



David P. Driscoll
Commissioner of Education

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Commissioner's Update

February 7, 2003

Dear Superintendents, and Leaders of Charter Schools and Collaboratives:

In this letter I have three announcements and four items posted at www.doe.mass.edu/.

State Budget Update

As most of you already know, the Governor last week announced a series of reductions in state-funded programs to address the Commonwealth's expected FY03 budget deficit. Department of Education grant programs for early childhood education, early literacy, and school breakfast were affected by these reductions. Our program managers have already been in contact with staff in affected districts to begin this process.

The Governor did not make any reductions in any other K-12 education programs. The lottery aid and additional assistance programs, which provide general unrestricted revenues for cities and towns, were each reduced by 9.35%. The Department of Revenue has advised cities and towns that reductions in departmental budgets can be made by action of the local appropriating authority. However, statutory spending obligations, which includes the chapter 70 net school spending requirement, must still be met.

The Governor is scheduled to release his budget recommendations for FY04 on February 26.

Criminal Offender Records Information (CORI)

Later this month, the Massachusetts Department of Education, in cooperation with the Criminal History Systems Board (CHSB), will issue an advisory notifying public and private schools in the Commonwealth about the recent changes in the law requiring criminal offender records information (CORI) checks on school personnel and others. Chapter 385 of the Acts of 2002, an Act Further Protecting Children, takes effect on February 25, 2003. It requires all schools to conduct criminal background checks on current and prospective employees, volunteers, school transportation providers, and others who may have "direct and unmonitored contact with children." Some schools may already conduct CORI checks on prospective employees under the current discretionary authority in G.L. c. 71, § 38R, or pursuant to other licensing requirements. Now, all schools must conduct CORI checks on current and prospective staff, volunteers and others. The forthcoming advisory will discuss the procedures that a school or district must follow to be certified by CHSB to obtain CORI, and will address other issues that schools should consider in consultation with their legal counsel. The advisory will be posted on our web site.

MCAS Performance Appeals

I have just released the next round of decisions on MCAS Performance Appeals submitted between November 25, 2002, and January 24, 2003. Results are at <http://www.doe.mass.edu/news/news.asp?id=1399>. If you are planning on submitting portfolio appeals for students in the Class of 2003, please get them in to my office by the end of February.

Recently Posted Items

In this letter are four items including a "working draft" on Question 2 and its ramifications for public schools:

1. Question 2, English Language Instruction Initial Guidance (Working Draft)



2. Notice of Public Comment on Proposed Amendments to 603 CMR 1.00, Charter School Regulations



3. Notice of Public Comment on a Proposed Amendment to 603 CMR 28.08 Special Education Regulations



4. Early Learning Survey



I am mindful of the fiscal realities that you are presently facing and that difficult decisions are impacting many people in your districts. I want to assure you that I will continue to do my utmost to work for the resources you need, and I pledge my support throughout this challenging period.

All the best, and

Sincerely,

David P. Driscoll
Commissioner of Education

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Education Laws and Regulations

Question 2- English Language Education in Public Schools

To: Interested Parties
From: Mark K. McQuillan, Deputy Commissioner of Education
Re: English Language Education in Public Schools
Date: January 31, 2003

Question 2, the new Massachusetts law governing the education of students who are English learners, was an initiative petition on the November 5, 2002 ballot that the voters approved. Question 2 went into effect on December 5, 2002. However, with one exception, the substantive provisions of Question 2 do not take effect until the start of the 2003-2004 school year. Section 7, regarding the administration of academic and English language proficiency assessments to English learners, is the only section of Question 2 that must be implemented during the current school year.

The attached document contains a copy of Question 2 and provides questions and answers regarding some of the law's provisions and their application. This document, which is in "working draft" form, was developed to provide assistance to school districts as they begin planning for the implementation of the new law.

We would appreciate receiving your feedback on the usefulness of this document. In addition, we would appreciate hearing from you if you have additional questions or comments. We have set up the following email address to receive questions and comments: question2@doe.mass.edu.

We look forward to hearing from you. Thank you.

 [Working Draft FAQ](#)

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**MASSACHUSETTS DEPARTMENT OF EDUCATION
WORKING DRAFT
1/29/03**

**QUESTIONS AND ANSWERS
REGARDING
QUESTION 2: ENGLISH LANGUAGE EDUCATION IN PUBLIC SCHOOLS**

General

1. *What is Question 2?*

Question 2, the new Massachusetts law governing the education of students who are English learners, was an initiative petition on the November 5, 2002 ballot that the voters approved.

2. *Who is considered an English learner under Question 2?*

Question 2 defines an English learner as “a child who does not speak English or whose native language is not English, and who is not currently able to perform ordinary classroom work in English.” The term “English learner” as used in Question 2, the term “English language learner” as used in Title VI of the federal law, and the term “limited English proficient (“LEP”) student,” as used in the Transitional Bilingual Education law currently in effect and in Chapter 218 of the Acts of 2002, are generally interchangeable.

3. *When does Question 2 go into effect?*

Initiative petitions take effect 30 days after voter approval and do not require legislative approval to become effective or to be implemented. This means that Question 2 went into effect on December 5, 2002. However, with one exception, the substantive provisions of Question 2 do not take effect until the start of the 2003-2004 school year. Section 7 is the only section of Question 2 that must be implemented during the current school year. Section 7 requires the following tests to be administered annually to students who are English learners: (1) a standardized, nationally-normed written test of academic subject matter in English (only for students in grades 2-12); and (2) a nationally-normed test of English proficiency (for students in grades K-12). The Board of Education must select both tests.

4. *What are the primary components of Question 2?*

Briefly summarized, the new law does the following:

- Requires districts annually to determine, not earlier than April 1, the number of English learners in the district, and to classify them according to grade level, primary language and the English learners program in which they are enrolled.
- Unless a waiver is granted, requires students who are English learners to learn English through a sheltered English immersion program for a period of time not normally intended to exceed one school year.
- Provides for waivers based on parent request under certain circumstances, assuming that the parent annually applies by visiting the student’s school and providing written informed consent.
- For students under 10, allows waivers under the following conditions: (a) the student has been placed in an English language classroom for at least 30 days prior to the parent’s

application for a waiver; (b) documentation by school officials in no less than 250 words that the student has special and individual physical or psychological needs, separate from lack of English proficiency, that require an alternative course of educational study and inclusion of such documentation in the student's permanent school record; and (c) authorizing signatures on the waiver application of both the school superintendent and the school principal.

- For students age 10 and older, allows waivers when it is the informed belief of the school principal and educational staff that an alternate course of educational study would be better for the student's overall educational progress and rapid acquisition of English.
- Allows students receiving waivers to be transferred to bilingual programs, including two-way bilingual programs, or "other generally recognized educational methodologies permitted by law."
- Requires schools in which 20 students or more of a given grade level receive a waiver to offer a bilingual or other type of language support program; in all other cases students with waivers must be permitted to transfer to a public school in which such a program is offered.
- Requires the following tests to be administered annually to students who are English learners: (a) a standardized, nationally-normed written test of academic subject matter in English (only for grades 2-12); and (b) a nationally-normed test of English proficiency (grades K-12). The Board of Education must select both tests.
- Gives parents legal standing to sue for enforcement of the provisions of the law and allows school officials to be personally liable if they willfully and repeatedly refuse to implement the terms of the law, or induce a parent to apply for a waiver by fraud or intentional misrepresentation.

5. *What effect does Question 2 have on Chapter 218 of the Acts of 2002?*

On August 6, 2002, the Legislature passed Chapter 218 of the Acts of 2002 ("Chapter 218"), entitled "An Act Relative to Enhancing English Opportunities for All Students in the Commonwealth." Chapter 218 amended G.L. c. 71A, the current Transitional Bilingual Education statute, as well as portions of G.L. c. 69, 70 and 71. Question 2 will supersede Chapter 218's amendment of G.L. c. 71A. However, since Question 2 amends only G.L. c. 71A, the Chapter 218 amendments to G.L. c. 69, 70, and 71 will go into effect, unless the Legislature acts to change them. The following is a summary of the Chapter 218 amendments that remain in effect:

Amendment to c. 69:

- Requires the Department to establish an Office of Language Acquisition to oversee and monitor the development of English Language Learners programs by districts.
- Requires additional data reporting requirements for districts relative to limited English proficient students (referred to as English learners under Question 2).
- Requires the Commissioner annually to analyze and publish district data and provide a report to the Joint Committee on Education, Arts & Humanities.

Amendment to c. 70:

- Revises the foundation aid formula to allow districts to count the number of LEP students enrolled in language support programs established under Question 2.

Amendment to c. 71:

- Section 38G: Permits the Board to require training in second language acquisition for receipt of standard or provisional teaching certificates.
- Section 38Q: Requires that in districts with LEP students, the professional development plan shall provide training for teachers in second language acquisition techniques for the recertification of teachers and administrators.
- Section 59C: Requires that in districts with LEP students, the plan to improve student performance shall provide a description of the opportunities to be provided by the school to ensure the progress of LEP students in developing oral comprehension, speaking, reading and writing of English, and also in meeting academic standards and curriculum frameworks.

6. *What state laws regarding English learners must districts comply with during the current 2002-2003 school year?*

General Laws c. 71A, the current Transitional Bilingual Education statute, remains in effect until the conclusion of the 2002-2003 school year. In addition, Section 7 of Question 2, regarding testing requirements, went into effect on December 5, 2002. (See # 4 for more detail.)

7. *Must districts that are under federal consent decrees regarding their language support programs comply with Question 2?*

It depends on the requirements of the consent decree. School districts should consult with their own legal counsel regarding this matter. The federal court that retains jurisdiction over the consent decree has the authority to resolve any conflict between the requirements of the consent decree and Question 2.

8. *Does Question 2 limit the amount of time in which an English learner may be enrolled in a sheltered English immersion or other type of English learner program?*

Section 4 of Question 2 states that children who are English learners shall be educated through sheltered English immersion “during a temporary transition period not normally intended to exceed one school year.” This language may not be interpreted to mean that there is a cap or limitation on the amount of time that an English learner may participate in a sheltered English immersion or any other type of language support program.

Title VI of the federal Civil Rights Act does not permit such a limitation. Title VI requires that English learners be provided language support services until an individual determination is made that the student no longer needs the services in order to participate meaningfully in the district's education program. Some English learners will reach this level of English proficiency within one year, but some will not. Since students acquire proficiency in English at different rates, districts cannot limit to one year the provision of language support services to English learners who are not yet able to participate meaningfully in the district's programs.

Waivers

9. *Can any of the provisions of Question 2 be waived?*

Section 5 of Question 2 provides for waivers for individual students under certain conditions if the parent annually applies for the waiver by visiting the student's school and providing written informed consent.

For students under 10, Question 2 allows waivers under the following conditions: (a) the student has been placed in an English language classroom for at least 30 days before the parent applies for the waiver; (b) documentation by school officials in no less than 250 words that the student has special and individual physical or psychological needs, separate from lack of English proficiency, that require an alternative course of educational study and inclusion of such documentation in the student's permanent school record; and (c) authorizing signatures on the waiver application of both the school superintendent and the school principal.

For students age 10 and older, Question 2 allows waivers when it is the informed belief of the school principal and educational staff that an alternate course of educational study would be better for the student's overall educational progress and rapid acquisition of English.

10. *Who has authority to issue waivers?*

The decision to issue a waiver is made by school district officials, after the student's parent or legal guardian has filed a waiver application by personally visiting the school in which the student is enrolled. For students 10 and older, the decision to grant a waiver is made by the school principal and other educational staff of the student's school. For students under 10, both the school principal and the superintendent must authorize the waiver and the decision to issue the waiver must be made under guidelines established by, and subject to the review of, the local school committee. The Board of Education may review a district's waiver procedures.

Students with Disabilities

11. *Does Question 2 apply to students receiving special education services or accommodations for disabilities?*

Under Section 4 of Question 2, special educational programs for physically or mentally-impaired students "shall be completely unaffected." If a student with disabilities has an Individualized Education Program (IEP) or a 504 Plan that requires instruction to be provided to the student in a language other than English, then the district must comply with the IEP or 504 plan in this regard, and no waiver is required.

Program Types and Services

12. How is “sheltered English immersion” defined under Question 2?

Question 2 defines “sheltered English immersion” as “an English language acquisition process for young children in which nearly all classroom instruction is in English but with the curriculum and presentation designed for children who are learning the language. Books and instructional materials are in English and all reading, writing, and subject matter are taught in English.” Under Question 2, the terms “sheltered English immersion” and “structured English immersion” are used interchangeably.

13. What are the elements of effective sheltered English immersion instruction?

Effective sheltered instruction will generally include the following elements:¹

- a. Lesson plans that include:
 - Content objectives based on standards from the Massachusetts curriculum frameworks in English language arts, history and social science, mathematics, and science and technology/engineering.
 - Language objectives based on the Massachusetts English language arts standards and the Massachusetts English language proficiency standards and benchmarks (currently in draft form).
- b. Frequent opportunities for interaction and discussion between teacher / student and among students, which encourage elaborated responses by students about lesson concepts.
- c. Availability of supplementary materials that support the content objectives and contextualize learning. Examples include:
 - hands-on manipulatives;
 - pictures, visuals;
 - multimedia;
 - demonstrations;
 - adapted text; and,
 - graphic organizers.
- d. Instruction that links academic concepts to students’ backgrounds. English learners bring personal and educational backgrounds and experiences to their classrooms that are different from those students born and educated in the United States. New content learning is most effective when it is associated with prior knowledge.
- e. Instruction that emphasizes English vocabulary by combining the teaching of vocabulary and the teaching of content.

¹ Based on the *Sheltered Instruction Observation Protocol* developed by the Center for Applied Linguistics. This model is elaborated in *Making Content Comprehensible for English Language Learners. The SIOP Model*. J. Echevarria, M Vogt and D. Short. Allyn and Bacon. 2000.

- f. Instruction that is designed to increase comprehensibility of spoken English by the use of speech appropriate for students' proficiency level, a clear explanation of academic tasks, and by the use of supplementary materials (see above).
- g. Adaptation of content, including texts, assignments and assessments. Presentation of content in all modalities, including written text, must be within the students' English proficiency level. Testing and informal classroom assessments should be appropriate for the students' English proficiency levels.
- h. Regular classroom activities that provide opportunities for students to practice and apply new content and language knowledge in English.
- i. Students actively engaged in learning 90 – 100% of the time.
- j. Frequent opportunities for students to demonstrate their mastery of content in English.

14. Does Question 2 allow teachers to use the native language of the students in a sheltered English immersion classroom?

Under Question 2, all textbooks and other instructional materials are to be in English, no subject matter shall be taught in any language other than English, and students learn to read and write solely in English. However, teachers may use an English learner's native language when necessary for clarification purposes. If the classroom teacher is not fluent in the student's primary language, the Department recommends that another teacher or assistant teacher who is fluent in the student's primary language be available at some point during the school day for clarification as needed.

15. Once Question 2 goes into effect, will districts be able to offer other types of language support programs and services to students, such as two-way bilingual programs or ESL services?

Yes. Districts may offer bilingual or other language support programs and/or services to students who receive parental waivers. If a parental waiver has been granted, the affected student may be transferred to classes teaching English and other subjects through bilingual education techniques, such as two-way bilingual programs, or other generally recognized educational methodologies permitted by law. Individual schools in which 20 students or more of a given grade level receive a waiver shall be required to offer such a class; in all other cases, such students must be permitted to transfer to a public school in which such a class is offered.

16. How should districts with low-incidence populations of English learners comply with Question 2?

Although districts with low-incidence populations need not establish a separate sheltered English immersion program, they must provide their students who are English learners with sheltered English immersion instruction. This means that such districts may either establish a separate English immersion classroom or modify their mainstream classroom to provide sheltered English immersion instruction. (See #13.)

17. Do districts need to offer ESL or other follow-up services to students who exit a sheltered English immersion classroom?

Federal law (Title VI) requires that English learners who need alternative language instruction in order to receive meaningful access to the district's mainstream educational program be provided those services until the district makes an individual determination that the services are no longer needed by the student.

18. What materials need to be translated by districts for English learners and their parents?

Title VI requires that school notices provided to all students must be provided to English learners in a language that they understand. In addition, districts must notify parents of English learners of school activities that are called to the attention of other parents. Such notices, in order to be adequate, may have to be provided in a language other than English.

The Massachusetts Access to Equal Educational Opportunity Regulations also impose requirements in this regard. Pursuant to 603 CMR 26.08(2), principals shall ensure that, when requested, school handbooks and district codes of conduct are available in the primary language of a parent or student whose primary language is not English.

Question 2 addresses translation requirements only in Section 5, regarding parental waivers. Section 5 of Question 2 requires that a parent or legal guardian desiring a waiver personally visit the school to apply for the waiver. Once there, they must be provided with “*a full description in a language they can understand*” of the educational materials to be used in the different educational program choices and all the educational opportunities available to the student.

19. Must districts provide English learners with guidance services in their native language?

Yes, although this issue is not addressed by Question 2. Pursuant to the Massachusetts Access to Equal Educational Opportunity Regulations, 603 CMR 26.07(8), the opportunity to receive guidance and counseling in a student's primary language should be made available to students from homes where English is not the primary language spoken.

Teacher Qualifications

20. Does Question 2 establish English language proficiency and/or training requirements for teachers?

A. English Language Proficiency Requirements

Section 2 of Question 2 requires those who teach in English language classrooms to be “fluent and literate in English.” Under Question 2, English language classrooms encompass both sheltered English immersion classrooms and English language mainstream classrooms.

Those teachers who possess a Massachusetts teaching license fulfill Question 2's requirement for literacy in English. In response to Question 2's requirements regarding

fluency in English, the Department will require the following for all teachers in English language classrooms during the 2003-2004 school year:

1. A written assurance by the district's superintendent that the teacher is fluent in English, in accordance with the Department's guidelines; or,
2. The teacher's demonstration of fluency in English through a test accepted by the Massachusetts Board of Education, if the superintendent cannot make such an assurance.

B. Licensing and Training Requirements

Question 2 does not specifically address the licensing or training requirements for teachers of sheltered English immersion classrooms. However, Title VI requires that teachers and other educational staff who implement a sheltered English immersion or other language support program be qualified to do so. Individuals with the following licenses and training may teach in sheltered English immersion classrooms in 2003-2004:

Early Childhood and Elementary Level Options:

1. TBE license in any language and an Early Childhood or Elementary license, as appropriate for grade served. Language of TBE license need not be primary language of students; or,
2. ESL license at the preK-9 level, if the focus for one year is more on learning English than on subject matter content. For instruction in a particular content area, a specialist in that subject area, (e.g., mathematics) may be used in conjunction with the ESL teacher when, in the principal's discretion, the ESL's teacher's skills require such supplementation; or,
3. Early Childhood or Elementary license, as appropriate for the grade served, and assurance from the Superintendent that the individual has taken professional development courses in sheltered English immersion strategies, first and second language acquisition, and linguistics, using Department guidelines.

* If the immersion teacher is not fluent in the student's primary language, the Department recommends that another teacher or assistant teacher who is fluent in the student's primary language be available at some point during the school day for clarification as needed.

Middle and Secondary Level Options:

1. TBE license in any language and subject matter license. Language of TBE license need not be primary language of students; or,
2. ESL license at the preK-9 or 5-12 level, if the focus for one year is more on learning English than on subject matter content. For instruction in a particular content area, a specialist in that subject area, (e.g., mathematics), may be used in conjunction with the

ESL teacher when, in the principal's discretion, the ESL's teacher's skills require such supplementation; or,

3. Subject matter license and assurance from the Superintendent that the individual has taken professional development courses in sheltered English immersion strategies, first and second language acquisition, and linguistics, using Department guidelines.

* If the immersion teacher is not fluent in the student's primary language, the Department recommends that another teacher or assistant teacher who is fluent in the student's primary language be available at some point during the school day for clarification as needed.

The Department will review these qualifications for school years subsequent to 2003-2004, and may impose additional training requirements and/or revise its licensing requirements.

Please note that under G.L. c. 71, § 59C, in school districts with language minority student populations, the school's professional development plan must specify how the plan will address the need for training and skills in second language acquisition and in working with culturally and linguistically diverse student populations. In addition, Chapter 218 amended G.L. c. 71, § 59C to establish additional requirements for professional development plans in regard to LEP students effective July 1, 2003. (See # 5.)

Assessment

21. How will districts administer the assessments required by Question 2?

Both the federal *No Child Left Behind Act of 2002* ("NCLB") and Question 2 require districts annually to assess the English proficiency of all LEP students beginning in the 2002-2003 school year.

During the spring of 2003, as an interim response to the new assessment requirements of the NCLB and Question 2, districts will be required to assess the reading and writing of all LEP students using the LAS-R and W (Language Assessment Scale – Reading and Writing). The LAS is published by CTB/McGraw-Hill. Districts will also be required to assess speaking and listening of LEP students using the MELA-O (Massachusetts English Language Assessment – Oral). Districts have been informed of these requirements. The Department is currently conducting statewide training on the MELA-O. Administration workshops for the LAS-R and W are being scheduled for March or April.

The Department has posted on its web site an RFR for a testing contractor to develop a new English Proficiency Assessment for use by districts in 2004. Rather than requiring districts to purchase the new tests directly from the testing contractor, the Department will administer the new English Proficiency Assessment Program, similar to the way in which it administers MCAS.

Question 2 also requires English learners in grades 2-12 to be assessed annually in academic subject matter, and requires that the assessment be administered in English. The Department

will inform districts regarding the implementation of the academic assessment provisions of Question 2 at a later date.

Regulations

22. When will the Department promulgate regulations under Question 2?

Question 2 requires the Department to promulgate regulations regarding school districts' annual obligation to identify and classify English learners enrolled in their districts. The Department intends to present draft regulations to the Board of Education in February of 2003 with a request that the Board vote to release the regulations for public comment. The Department intends to bring the draft regulations back to the Board for a final vote in April of 2003.

23. Will the Department promulgate regulations regarding maximum size and teacher-student ratios for English learner programs?

The Department does not intend to promulgate regulations in these areas. These decisions will be left up to the individual school district. Federal law (Title VI) requires that any language support program run by a district be designed and implemented to assure that English learners receive effective and appropriate content instruction at appropriate academic levels. Under federal law, districts may use their discretion in designing their English Learner programs (including class size and teacher/student ratio) as long as they meet this standard.

Liability

24. What does Question 2 say about parents' standing to sue school officials?

Question 2 states that "the parent or legal guardian of any school child shall have legal standing to sue for enforcement of [Question 2], and if successful shall be awarded reasonable attorney's fees, costs and compensatory services." In order to prevail on a claim against a school official for failure to comply with Question 2, the parent is required to prove that the school official "willfully and repeatedly refuse[d] to implement" the law. Districts should direct specific questions regarding the potential liability of school officials under Question 2 to their own legal counsel.

Planning

25. What should school districts be doing to prepare for the implementation of Question 2?

At this time, school districts in which LEP students are enrolled should:

- participate in the Department's English Proficiency Assessment training scheduled for this winter, and assess LEP students in accordance with the assessment schedule;
- inform faculty and parents of the provisions of Question 2 in a language that they understand;
- develop district procedures for the granting of individual student waivers under Question 2, using guidelines established by the local school committee; and,

- review the professional development plan of schools with LEP students to ensure that it addresses the need for teacher training and skills in second language acquisition and in working with culturally and linguistically diverse student populations (G.L. c. 71, § 59C).

The Department will issue additional guidance for districts in the upcoming months.

Office for Civil Rights (OCR) of the United States Department of Education

June 10, 1998

The following section of questions and answers are taken from a June 10, 1998 document prepared by the Office for Civil Rights (OCR) of the United States Department of Education entitled “Questions that may be raised by Proposition 227.” Proposition 227 is a law passed in California that is similar to Massachusetts’ Question 2. In the questions and answers below, we have replaced “Proposition 227” with “Question 2” and changed the references to California and San Francisco to Massachusetts and Boston. References to “the Department” in this section are to the United States Department of Education. The original document may be seen at www.ed.gov/offices/OCR/docs/prop227q.html.

OCR-1. *Under federal law, can a district place limited English proficient students in mainstream classes without providing any other assistance?*

No. In 1974, in Lau v. Nichols, the Supreme Court ruled that placing LEP students in a regular program taught in English, when they were unable to participate meaningfully in that program because of their limited English proficiency, constituted discrimination on the basis of national origin in violation of Title VI of the Civil Rights Act. The U. S. Department of Education's May 25, 1970 Memorandum directs school districts to take "affirmative steps to rectify language deficiencies in order to open its instructional program to these students." The May 1970 Memorandum was adopted by the Supreme Court in Lau v. Nichols. Similarly, the Equal Educational Opportunity Act, which is administered by the Department of Justice, requires public educational agencies to take appropriate action to overcome language barriers that impede student participation in the instructional program.

OCR-2. *Does Massachusetts Question 2 relieve districts of their civil rights obligations?*

No. Question 2 does not relieve school districts of any of their obligation to comply with federal civil rights requirements. These requirements afford recipients of federal funds considerable latitude in selecting an instructional approach, so long as it effectively addresses the educational needs of limited English proficient children.

- OCR-3.** *If a school district is implementing an OCR-approved plan, is it exempt from the requirements of Question 2?*
No. School districts in Massachusetts and in other states must comply with applicable state laws in a way that does not contradict federal legal requirements.
- OCR-4.** *What is the status of district resolution plans with OCR?*
OCR will continue to work closely with Massachusetts educators at the state and local levels to assist them in maintaining educational programs for LEP students that comply with federal Title VI. If school districts that are operating under OCR-approved plans determine that those plans need to be modified to comply with Question 2, they should contact the Boston OCR Enforcement Office. OCR is prepared to provide technical assistance to school districts to help them draft plan modifications that are consistent with federal Title VI.
- OCR-5.** *Would a one year limit on services to limited English proficient students be permissible under federal law?*
Lau requires that LEP students who need alternative language instruction in order to receive meaningful access to the district's mainstream educational program, be provided those services until an individualized determination is made that a student no longer needs the services in order to participate meaningfully in the district's educational program. Some children may reach this level of English proficiency within one year. However, children learn at different speeds, and districts cannot limit to one year alternative services for LEP students who are not yet able to participate meaningfully in the district's programs.
- OCR-6.** *If the parent of a LEP student opts that student out of alternative language instruction, what is the district's responsibility to that student?*
Lau establishes a district's obligation to provide LEP students with meaningful access to the educational program. When a parent declines participation in a particular formal language instruction program, the district must continue to ensure that the student has an equal opportunity to have his or her English language and academic needs met. Districts can meet this obligation in a variety of ways, for example, by providing adequate training to classroom teachers on second language acquisition and English language development and by monitoring the educational progress of the student.
- OCR-7.** *Can a district focus its instruction for LEP students on English acquisition for a year, and limit its instruction in academic content areas during that time?*
Under the 5th Circuit's decision in Castañeda v. Pickard districts are not precluded from adopting programs which temporarily emphasize English over other subjects, as long as the programs are recognized as sound by some educational experts. The Castañeda court stated that districts can make the determination as to whether they want to address the dual tasks of language and academic instruction simultaneously, by implementing a program designed to keep LEP students at grade level by providing language services to make the academic content areas accessible, or to address the tasks in sequence, by focusing first on

the development of English language skills and then later providing students with compensatory and supplemental education to remedy deficiencies in other content areas that they may develop during this period. (from U.S. Department of Education, Office for Civil Rights)

OCR-8. *How should a district determine when a LEP student is ready to exit an alternative language program?*

LEP students must be provided with alternative services until they are proficient enough to participate meaningfully in the regular program. Under OCR's long-standing Lau guidance, when deciding whether a student can participate meaningfully, recipients should consider such factors as the students' ability to keep up with their non-LEP peers in the regular education program and their ability to participate successfully in essentially all aspects of the district's curriculum without the use of adapted or simplified English materials.

OCR-9. *If districts modify their programs for serving LEP students in light of Question 2, must they evaluate the programs they implement?*

Under the 5th Circuit's decision in Castañeda v. Pickard, districts are required to evaluate their programs. If, after a legitimate trial period, the program is not successful in helping students overcome language barriers, the district may need to modify its program.

OCR-10. *Question 2 expressly permits districts to place in the same classroom English learners of different ages whose degree of English proficiency is similar. Does this violate federal law?*

While this is not a violation of federal law, it does raise concerns about its implementation because school districts generally place students in classrooms with others who are similar in age, in order to address their common age-related developmental and social needs. If a district places LEP students of different ages in the same classroom for a limited time and for the purpose of English language instruction, Castañeda makes clear that districts are responsible for ensuring that LEP students receive effective and appropriate content instruction at appropriate academic levels.

QUESTION 2

English Language Education in Public Schools

SECTION 1. Chapter Seventy-one A of the General Laws as appearing in the 2000 Official Edition is hereby amended by striking sections 1 through 9 and substituting the following:

Section 1. Findings and Declarations

The People of Massachusetts find and declare that:

- (a) The English language is the common public language of the United States of America and of the Commonwealth of Massachusetts. It is spoken by the vast majority of Massachusetts residents, and is also the leading world language for science, technology, and international business, thereby being the language of economic opportunity; and
- (b) Immigrant parents are eager to have their children become fluent and literate in English, thereby allowing them to fully participate in the American Dream of economic and social advancement; and
- (c) The government and the public schools of Massachusetts have a moral obligation and a constitutional duty to provide all of Massachusetts's children, regardless of their ethnicity or national origins, with the skills necessary to become productive members of our society. Of these skills, literacy in the English language is among the most important.
- (d) The public schools of Massachusetts have done an inadequate job of educating many immigrant children, requiring that they be placed in native language programs whose failure over past decades is demonstrated by the low English literacy levels of those children.
- (e) Immigrant children can easily acquire full fluency and literacy in a new language, such as English, if they are taught that language in the classroom as soon as they enter school.
- (f) Therefore it is resolved that: all children in Massachusetts public schools shall be taught English as rapidly and effectively as possible.

Section 2. Definitions

In this chapter,

- (a) "Bilingual education" means a language acquisition process for students in which all or substantial portions of the instruction, textbooks, or teaching materials are in the child's native language other than English.
- (b) "English language classroom" means a classroom in which the language of instruction used by the teaching personnel is overwhelmingly the English language, and in which such teaching personnel are fluent and literate in English. English language classrooms encompass both English language mainstream classrooms and sheltered English immersion classrooms.
- (c) "English language mainstream classroom" means a standard classroom, one in which the students either are native English language speakers or already have acquired reasonable fluency in English.
- (d) "English learner" means a child who does not speak English or whose native language is not English, and who is not currently able to perform ordinary classroom work in English.
- (e) "Sheltered English immersion" means an English language acquisition process for young children in which nearly all classroom instruction is in English but with the curriculum and presentation designed for children who are learning the language. Books and instructional materials are in English and all reading, writing, and subject matter are taught in English. Although teachers may use a minimal amount of the child's native language when necessary, no subject matter shall be taught in any language other than English, and children in this program

learn to read and write solely in English. This educational methodology represents the standard definition of “sheltered English” or “structured English” found in educational literature.

Section 3. Census

Local school committees shall annually ascertain, not earlier than the first day of April, under regulations prescribed by the Department of Education, the number of English learners within their school system in grades Kindergarten through twelve, and shall classify them according to grade level, the language of which they possess a primary speaking ability, and the English learner program type in which they are enrolled, with all such information being made publicly available by school and school district on a website.

Section 4. English language education

Subject to the exceptions provided in Section 5 of this chapter, all children in Massachusetts public schools shall be taught English by being taught in English and all children shall be placed in English language classrooms. Children who are English learners shall be educated through sheltered English immersion during a temporary transition period not normally intended to exceed one school year. Local schools shall be permitted but not required to place in the same classroom English learners of different ages but whose degree of English proficiency is similar. Local schools shall be encouraged to mix together in the same classroom English learners from different native-language groups but with the same degree of English fluency. Once English learners acquire a good working knowledge of English and are able to do regular school work in English, they shall no longer be classified as English learners and shall be transferred to English language mainstream classrooms. Foreign language classes for children who already know English shall be completely unaffected, as shall be special educational programs for physically- or mentally-impaired students.

Section 5. Parental waivers

(a). The requirements of Section 4 of this chapter may be waived with the prior written informed consent, to be provided annually, of the child’s parents or legal guardian under the circumstances specified in this section. Such informed consent shall require that said parents or legal guardian personally visit the school to apply for the waiver and that they there be provided a full description in a language they can understand of the educational materials to be used in the different educational program choices and all the educational opportunities available to the child. If a parental waiver has been granted, the affected child may be transferred to classes teaching English and other subjects through bilingual education techniques, such as two-way bilingual programs, or other generally recognized educational methodologies permitted by law. Individual schools in which 20 students or more of a given grade level receive a waiver shall be required to offer such a class; in all other cases, such students must be permitted to transfer to a public school in which such a class is offered.

(b). The circumstances in which a parental exception waiver may be applied for under this section are as follows:

- (1). Children who already know English: the child already possesses good English language skills, as measured by oral evaluation or standardized tests of English vocabulary comprehension, reading, and writing, in which the child scores approximately at or above the state average for his grade level or at or above the 5th grade average, whichever is lower; or
- (2). Older children: the child is age 10 years or older, and it is the informed belief of the school

principal and educational staff that an alternate course of educational study would be better suited to the child's overall educational progress and rapid acquisition of basic English language skills; or

(3) Children with special individual needs: the child already has been placed for a period of not less than thirty calendar days during that particular school year in an English language classroom and it is subsequently the informed belief of the school principal and educational staff that the child has such special and individual physical or psychological needs, above and beyond the child's lack of English proficiency, that an alternate course of educational study would be better suited to the child's overall educational development and rapid acquisition of English. A written description of no less than 250 words documenting these special individual needs for the specific child must be provided and permanently added to the child's official school records, and the waiver application must contain the original authorizing signatures of both the school principal and the local superintendent of schools. Waivers granted under this section cannot be applied for until after thirty calendar days of a given school year have passed, and this waiver process must be renewed each and every school year. Any such decision to issue such an individual waiver is to be made subject to the examination and approval of the local school superintendent, under guidelines established by and subject to the review of the local school committee and ultimately the state board of education. The existence of such special individual needs shall not compel issuance of a waiver, and the parents shall be fully informed of their right to refuse to agree to a waiver.

Section 6. Legal standing and parental enforcement

(a) As set forth in Section 4 of this chapter, all school children are to be provided at their assigned school with an English language public education. The parent or legal guardian of any school child shall have legal standing to sue for enforcement of the provisions of this chapter, and if successful shall be awarded reasonable attorney's fees, costs and compensatory damages.

(b) Any school district employee, school committee member or other elected official or administrator who willfully and repeatedly refuses to implement the terms of this chapter may be held personally liable for reasonable attorney's fees, costs and compensatory damages by the child's parents or legal guardian, and shall not be subsequently indemnified for such monetary judgment by any public or private third party. Any individual found so liable shall be barred from election or reelection to any school committee and from employment in any public school district for a period of five years following the entry of final judgment.

(c) Parents and legal guardians who apply for and are granted exception waivers under Section 5(b)(3) of this chapter retain full and permanent legal right to sue the individuals who granted such waivers if they subsequently discover before the child reaches the age of eighteen that the application for waivers was induced by fraud or intentional misrepresentation and injured the education of their child.

Section 7. Standardized testing for monitoring education progress

To ensure that the educational progress of all students in learning English together with other academic subjects is properly monitored, a standardized, nationally-normed written test of academic subject matter given in English shall be administered at least once each year to all public schoolchildren in grades 2 and higher who are English learners. This requirement shall not be construed as barring the administration of this same exam to other students. A nationally-normed test of English proficiency shall similarly be administered at least once each year to all

Massachusetts schoolchildren in grades Kindergarten and higher who are English learners. Only English learners classified as severely learning disabled may be exempted from these tests. The particular tests to be used shall be selected by the Board of Education, and it is intended that the tests shall usually remain the same from year to year. The national percentile scores of students shall be confidentially provided to individual parents, and the aggregated percentile scores and distributional data for individual schools and school districts shall be made publicly available on an internet web site; the scores for students classified as English learners shall be separately sub-aggregated and made publicly available there as well, with further sub-aggregation based on the English learner program type in which they are enrolled. School enrollment by race, ethnicity, and English learner program type shall also be made publicly available. Although administration of these tests are required solely for monitoring educational progress, public officials and administrators may utilize these test scores for other purposes as well if they so choose.

Section 8. Community-Based English Tutoring

In furtherance of its constitutional and legal obligations to provide all children with an adequate education, the state shall encourage family members and others to provide personal English language tutoring to such children as are English learners, and support these efforts by raising the general level of English language knowledge in the community. Subject to appropriation by the General Court, commencing with the fiscal year in which this initiative is enacted and for each of the nine fiscal years following thereafter, a sum of five million dollars (\$5,000,000) per year shall be spent for the purpose of providing funding for free or subsidized programs of adult English language instruction to parents or other members of the community who pledge to provide personal English language tutoring to Massachusetts school children who are English learners. Programs funded pursuant to this section shall be provided through schools or community organizations. Funding for these programs shall be administered by the Department of Education, and shall be disbursed at the discretion of the local school committees in each district, under reasonable guidelines established by, and subject to the review of, the Board of Education.

SECTION 2. Severability

If a provision of this act or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 3. Interpretation

Under circumstances in which portions of this act are subject to conflicting interpretations, the Findings and Declarations of subsection 1 of section 1 of this act shall be assumed to contain the governing intent of this act.

SECTION 4. Effective Date

Except for the testing requirements of subsection 7 of section 1 of this act, which shall be implemented immediately, all other sections of this act shall become effective for all school years that begin following the effective date of this act.



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Education Laws and Regulations

Notice Of Public Comment and Public Hearing Proposed Amendment to 603 CMR 1.00

Pursuant to its authority under M.G.L. c.69, § 1B, and Chapter 71, § 89, and in accordance with the Administrative Procedure Act, M.G.L. 30A, the Massachusetts Board of Education is soliciting public comment on the proposed amendments to 603 CMR 1.00, Charter Schools Regulations.

The proposed amendments clarify the roles of the Board and the Department of Education with respect to new charter schools, the renewal of charters, and charter amendments. These proposed amendments occur in four major areas: granting of charters; amendments to existing charters; renewal of charters; and charter revocation, probation, suspension, and non-renewal.

Copies of the proposed amendments may be obtained on the Department's web site at www.doe.mass.edu/lawsregs/proposed/p603cmr1.pdf, or by calling 781-338-3227. Written comments on the proposed amendments may be submitted by mail to the Massachusetts Department of Education, Charter School Office, 350 Main Street, Malden, MA 02148, by e-mail to charterschools@doe.mass.edu, or by fax to 781-338-3220. The deadline for submission of public comment is **Friday, March 21, 2003**.

The Board of Education will also conduct three public hearings to receive public comment on the proposed amendments. They are as follows:

Tuesday, March 4, 2003

Worcester State College
Blue Lounge
486 Chandler Street
Worcester, MA 01602
4:00 - 6:00 p.m.

Thursday, March 6, 2003

Massachusetts Department of Education
350 Main Street
Room 3A, B & C
Malden, MA 02148
4:00 - 6:00 p.m.

Monday, March 10, 2003

Springfield College
Fuller Arts Center
263 Alden Street
Springfield, MA 01109
4:00 - 6:00 p.m.

The Board is expected to vote on the proposed amendments at its regular monthly meeting scheduled for April 29, 2003.

[Proposed Amendment to 603 CMR 1.00: Charter Schools](#)

603 CMR 1.00: Charter Schools -- OFFICIAL REGULATIONS – last updated by December 2000 Board Action

Initial review of proposed amendments by Board of Education: December 17, 2002

Public comment period: December 18, 2002 – March 31, 2003

Anticipated final vote by Board of Education: April 29, 2003

Proposed amendments are indicated by underlining (additions) or ~~overstrike~~ (deletions)

Section

- 1.01: Scope, Purpose, and Authority
- 1.02: Definitions
- 1.03: General Provisions
- 1.04: Charter Application and Procedures for Granting Charters
- 1.05: Criteria for Assessment and Approval of Charter Applications, Awarding of Charters
- 1.06: Charter School Enrollment
- 1.07: Charter School Staff
- 1.08: Charter School Funding
- 1.09: Ongoing Review of Charter Schools
- 1.10: Complaint Procedures
- 1.11: Amendments to Charters
- 1.12: Renewal of Charter
- 1.13: Revocation and Probation
- 1.14: Severability Clause

1.01: Scope, Purpose and Authority

(1) Purpose. The purpose of 603 CMR 1.00 is to provide uniform rules and procedures governing the establishment of charter schools.

(2) Authority. 603 CMR 1.00 is promulgated under the authority of M.G.L. c. 69, § 1B, c. 71, § 89.

1.02: Definitions

As used in 603 CMR 1.00, unless the context clearly requires otherwise, terms shall have the following meanings:

Administrator. Any individual duly authorized by a charter school's Board of Trustees to manage the programs and operations of the charter school in accordance with its charter as well as federal and state laws and regulations.

Application Cycle. The period beginning in the summer and extending through the receipt of November 15 when final charter school applications ~~are received by~~

~~the Board of Education~~ for review, ending no later than the following February when the Board of Education makes final decisions on awarding new charters. The various stages of the application cycle occur in accordance with the schedule established by the Department of Education.

Board. The Board of Education or a person duly authorized by the Board.

Board of Trustees. Public agents authorized by the state to supervise and control the charter school. The Boards of Trustees shall be considered public employers for purposes of tort liability under M.G.L. c. 258. Boards of Trustees of Commonwealth charter schools shall be considered public employers for collective bargaining purposes under M.G.L. c. 150E. In the case of Horace Mann charter schools, the school committee shall be considered the public employer for purposes of collective bargaining under M.G.L. c. 150E.

Charter. A license issued by the Board of Education under the provisions of M.G.L. c. 71, § 89, and 603 CMR 1.00 allowing the grantee to operate a charter school for a period of five years.

Charter Applicant. An applicant shall include but is not limited to: individuals; groups; not-for-profit corporate entities; two or more certified teachers; or ten or more parents qualified under M.G.L. c. 71, § 89, to apply for a charter. An application for a charter school may be filed in conjunction with a college, university, museum, or other similar entity, or any combination thereof.

Charter School. A public school operated under a charter granted by the Board of Education. This term encompasses Commonwealth and Horace Mann charter schools unless otherwise specified. A Commonwealth charter school is independent of any school committee. A Horace Mann charter school is a school or part of a school that operates under a charter approved by the local school committee and the local teachers' union and granted by the Board of Education. To the extent provided by the terms of their charters, Horace Mann charter schools may be exempt from local collective bargaining agreements, provided that employees of the school will continue:

- (a) to be members of the local collective bargaining unit,
- (b) to accrue seniority, and
- (c) to receive at minimum, the salary and benefits established by the local collective bargaining agreement. Employees will be exempt from all union and school committee work rules to the extent provided by their charter.

Commissioner. The Commissioner of Education or his designee.

Department. The Department of Education.

Regional Charter School. A charter school with a charter designating it as "regional" authorizes it to serve and give preference in enrollment to students residing in a region ~~made up of~~containing more than one municipality. The region identified in the charter shall be the municipality in which the charter school is located for purposes of 603 CMR 1.00, except as provided in 603 CMR 1.11(2).

Sending District. A Massachusetts city, town, or regional school district in which a charter school student resides and where the student would otherwise attend a public school. ~~Where~~If a charter school ~~may have~~has a residential component, the sending district is the city, town, or regional school district in which ~~a~~the parent or legal guardian of the charter school student ~~'s parent or legal guardian~~ resides; or, in such case as if no parent or legal guardian can be identified, the school district in which the student last attended school.

1.03: General Provisions

(1) Administrative Bulletins. The ~~Board of Education~~Department of Education may, from time to time, issue administrative bulletins to interpret, implement, and provide guidance on 603 CMR 1.00.

(2) Waivers. Upon written request from a charter applicant or charter school Board of Trustees, the Board of Education may waive the applicability of one or more provisions of 603 CMR 1.00, provided that all such requests and approvals:

- (a) are in writing, signed by the waiver applicant;
- (b) specify the provisions of 603 CMR 1.00 to be waived, the duration of the waiver, and the circumstances to which the waiver applies;
- (c) include a certification that the waiver applicant has made a good faith effort to comply with said provisions; and
- (d) are accompanied by supporting documentation considered sufficient by the Board of Education to support the special circumstances or the need for relief.

Waivers of 603 CMR 1.00 shall be considered only under circumstances the Board of Education deems exceptional and shall be granted only to the extent allowed by law.

(3) Prohibitions. Private and parochial schools are not eligible for charter school status. Charter schools may not charge students an application fee, ~~nor may charter schools charge~~ tuition. Charter schools may not charge their students any fee related to the provision of required educational programs. Charter schools may not charge any public school for the use of their curriculum, subject to the restrictions contained in any contract between charter schools and third party providers. For-profit corporations may not apply for a charter.

1.04: Charter Application and Procedures for Granting Charters

(1) Charter Application Process. There shall be a two-stage application process leading to the granting of a charter. Applicants shall submit to the ~~Board~~ Department of Education ~~a prospectuses and final applications in accordance with the schedule, application form, and guidelines established by the Department. no later than November 15 on any application forms and under any guidelines the Board may establish. Each prospectus will be reviewed and evaluated based on the criteria outlined in 603 CMR 1.05. By the first week in December, Following the submission of prospectuses,~~ the Commissioner will invite selected applicants to submit ~~a comprehensive proposal~~ final applications.

(2) Local Approval of Horace Mann Applications. Teachers, parents, and others may petition school committees to convert, in whole or in part, a public school in the district to a Horace Mann charter school. A school committee shall notify the Department of Education within ten days of receiving such a petition. The school committee shall send to the Department a written explanation of the action taken by the committee on a petition within 60 days of receiving said petition. Applications for Horace Mann charter schools shall describe:

- (a) the elements of the local collective bargaining agreement that apply to employees of the school, other than those already mandated by law;⁵
- (b) the services the school district will provide to the school;⁵ and
- (c) the school's first annual budget allocation from the district, consistent with the allocation for other public schools in the district.

A valid application for a Horace Mann charter school shall have the approval of the local teachers' union and the school committee.

(3) Review Process.

- (a) The Department of Education shall review each prospectus and each final application submitted by the required deadlines. Prospectuses and Ffinal applications will be reviewed and evaluated according to criteria outlined in 603 CMR 1.05 and in the charter school application itself. In addition, the Department of Education will conduct interviews with all final applicants in order to better assess their qualifications to start a charter school.
- (b) Each applicant submitting a final application for a Commonwealth charter school shall also send a copy of the application to the superintendent of the school districts from which the applicant intends to draw students. The ~~Board-Department~~ of Education shall hold a public hearing on said-final applications and solicit and review comments on the application from the school committees of the school districts from which the applicant intends to draw students.
- (c) The Board of Education will ~~complete its review and~~ grant new charters in February. The Board and Department of Education may be

assisted in this process by review panels comprised of individuals appointed by the Commissioner. Members of these panels may review applications and participate in interviews with applicants. The reviewers' role shall be solely advisory.

(4) Granting of Charters.

- (a) The Board of Education shall grant charters to approved charter applicants under M.G.L. c. 71, § 89, and under such conditions and at such time as the Board specifies under 603 CMR 1.05 (2).
- (b) A charter granted by the Board of Education shall be effective for five years, beginning July 1 of the first year the school enrolls students, unless revoked pursuant to M.G.L. c. 71, § 89, and 603 CMR 1.12. If no students are attending a charter school within 19 months from the date the charter was granted, the charter will be null and void.
- (c) Should the Board of Education elect to award fewer than the number of charters specified under M.G.L. c. 71, § 89, in any given cycle, the Board may grant those charters not awarded in any subsequent application cycles in addition to the number of charters scheduled to be awarded and notwithstanding any limitations on the number of new charters authorized in such year.
- (d) The Board of Education may award any charter revoked or returned to the Board in subsequent application cycles in addition to the number of charters scheduled to be awarded and notwithstanding any limitations on the number of new charters authorized in such year.

1.05: Criteria for Assessment and Approval of Charter Applications, Awarding of Charters

(1) Criteria for Assessment and Approval of Charter Applications. The Department of Education will review charter applications to ensure that the applicant has demonstrated an ability to meet the following criteria:

- (a) furtherance of the purposes for establishment of charter schools, which are:
 - 1. to stimulate the development of innovative programs within public education;
 - 2. to provide opportunities for innovative learning and assessments;
 - 3. to provide parents and students with greater options in choosing schools within and outside their school districts;
 - 4. to provide teachers with a vehicle for establishing schools with alternative, innovative methods of educational instruction and school structure and management;
 - 5. to encourage performance-based educational programs;
 - 6. to hold teachers and school administrators accountable for students' educational outcomes; and

7. to provide models for replication in other public schools.
- (b) conformance with M.G.L. c. 71, § 89, and all other applicable laws and regulations, including any guidelines the Board of Education may issue, and including those related to bilingual students and those with special needs;
 - (c) assurance that the charter school will meet its enrollment projections through demonstration of need and support for the proposed charter school in the communities from which students would be likely to enroll;
 - (d) demonstration that the applicant will be able to provide educational models, including programs, curriculum, and teaching methods that can be replicated by other public schools;
 - (e) development of a management structure and plan which enables the charter school to achieve the goals and mission set forth in its charter, including the selection, role, and responsibilities of the Board of Trustees;
 - (f) assurance that students will meet the same performance standards, testing and portfolio requirements set by the Board of Education for students in other public schools;
 - (g) development of an assessment-accountability plan to establishing performance measure progress toward the goals set forth in its charter and that demonstrates the ability to accomplish the following:
 - 1. recruitment and retention of students;
 - 2. recruitment and retention of qualified teaching and managerial staff;
and
 - 3. fiscal and operational viability for the five-year term of the charter;
 - (h) ability of the charter school to administer its educational programs, school operations, and finances effectively;
 - (i) establishment of a process to provide to students, parents, the Board of Education, other interested parties, and the public all information required by law and regulation, as well as to provide other information the Board may request;
 - (j) development of an enrollment policy consistent with 603 CMR 1.06;
 - ~~(k) development of a plan which demonstrates the ability to accomplish the following:~~
 - ~~1. recruitment and retention of students;~~
 - ~~2. recruitment and retention of qualified teaching and managerial staff;~~
 - ~~3. fiscal and operational viability for the five-year term of the charter.~~
 - ~~(k)~~ thoroughness and accuracy of the charter school application; and
 - ~~(m)~~ demonstration that the applicant has access to school facilities that are in compliance with municipal building codes and other applicable laws, affordable, and adequate to meet the school's program requirements.

(2) Conditions for Awarding Charters to Approved Applicants. Charters shall be awarded subject to the conditions listed in 603 CMR 1.05(2)(a) through (i), and any additional conditions that the Board of Education may specify. The Board may temporarily waive such conditions and award a charter, provided that the applicant submits adequate written assurance that all such conditions will be met prior to the opening of the school. Failure to comply with any specified condition prior to the opening of the school shall constitute grounds for placing a charter school on probation.

- (a) the charter applicant shall submit to the Department of Education the names, home addresses, and employment and educational histories for the proposed members of the Board of Trustees; and a plan for the administration and management of the school, including the organization structure and by-laws;
- (b) in such cases where the charter school Board of Trustees intends to procure substantially all educational services under contract with another person, the Board of Trustees shall provide for the Board of Education's approval the terms of said contract;
- (c) the charter applicant shall submit to the Department of Education a copy of the school's code of conduct outlining the criteria and procedures for expulsion of students;
- (d) the charter applicant shall provide the Department of Education with written documentation that a criminal background check has been performed on all employees of the school;
- (e) the charter applicant shall provide the Department of Education with a copy of the school's enrollment policy;
- (f) the charter applicant shall provide the Department of Education with written documentation that the facilities to be used by the charter school are approved for use as a school by the building inspector in the municipality in which the building is located;
- (g) the charter applicant shall provide the Department of Education with written documentation that the facilities occupied by the charter school have been inspected by the Fire Department of the municipality in which the facilities are located;
- (h) if explosives or flammable compounds or liquids are used in connection with courses taught at the school, the charter applicant shall provide the Department of Education with written documentation that approval under M.G.L. c. 148 has been secured from the licensing authority of the municipality in which the building is located; and
- (i) the charter applicant shall provide the Department of Education with written documentation that the school is in compliance with all other applicable federal and state health and safety laws and regulations, including evidence of compliance with any required insurance coverage.

(3) Information for Distribution of Public Funds. Upon receiving its charter, a charter school shall provide the Department with a federal tax identification number issued solely to the charter school, and banking information regarding a bank account solely in the name of the charter school, as required by the State Treasurer for the transfer of public funds.

1.06: Charter School Enrollment

(1) Eligibility for enrollment may be consistent with the school's grade levels. Charter schools shall not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language or a foreign language, or prior academic achievement.

(2) Charter schools may not administer tests to potential applicants or predicate enrollment on results from any test of ability or achievement. Requirements for enrollment in a charter school, including, but not limited to attendance at informational meetings and interviews, shall not be designed, intended or used to discriminate.

(3) Schools shall give reasonable public notice, of at least one month, of all application deadlines.

(34) In conformance with M.G.L. c. 71, § 89, enrollment in Commonwealth charter schools shall be conducted as follows:

- (a) in such cases where there are fewer spaces than eligible applicants who reside in the city or town in which a Commonwealth charter school is located, or who are siblings of students already attending said charter school, the charter school shall hold an enrollment lottery for all such applicants; and
- (b) if there are more spaces available than eligible applicants from the city or town in which said Commonwealth charter school is located and who are siblings of current students, and there are more eligible applicants from outside of that city or town than spaces available, the charter school shall hold an enrollment lottery; and
- (c) the Department of Education shall notify each Commonwealth charter school no later than February 15 of any limitation on the number of students from a district that may be enrolled in charter schools for the upcoming school year.
- (d) Charter schools shall place names of students not selected in an enrollment lottery on a waiting list in the order the names were drawn. Students on the waiting list may be enrolled as space becomes available. In cases where the enrollment of a student, who is not a sibling of

another previously enrolled student, from the waiting list would exceed the district charter tuition cap, the student should be skipped over but kept on the waiting list. In cases where the enrollment of a student who is a sibling of a student already attending a charter school would exceed the district charter school tuition cap, the sibling may be enrolled with the Commonwealth of Massachusetts providing tuition for said sibling, subject to appropriation.

(45) In conformance with M.G.L. c. 71, § 89, enrollment in a Horace Mann charter school shall be conducted as follows:

- (a) priority shall be given first to any students actually enrolled in said school on the date that the final application is filed with the Board of Education and to their siblings. In such cases where there are fewer spaces in a Horace Mann charter school than eligible applicants who were enrolled in said school, the charter school shall hold an enrollment lottery;
- (b) if there are more spaces available than eligible applicants from the school, and there are more applicants than spaces available who reside in the city or town in which the charter school is located and who are currently enrolled in the public schools of the district in which the Horace Mann charter school is located, the charter school shall hold an enrollment lottery for all such applicants; and
- (c) if there are more spaces available than eligible applicants from the school or district, and there are more applicants than spaces available who reside in the city or town in which the Horace Mann charter school is located, the charter school shall hold an enrollment lottery for all such applicants.;

(56) If the principal enrollment process fails to produce an adequate number of enrolled students, a school may repeat the process more than once, if necessary, providing such process is fair and open, with reasonable public notice given at least one week prior to the application deadline. As spaces become available during the school year, a school may repeat the enrollment process to fill these openings. No student entering an enrollment process may be admitted ahead of other eligible students who were previously placed on a waiting list during a prior enrollment process, except in cases described in 603 CMR 1.06 (3)(d).

(67) All lotteries shall be conducted in public, with a disinterested party drawing names, and with reasonable public notice given at least one week prior to the lottery.

(78) A school may integrate its enrollment process with that of the school district, provided that the enrollment application is submitted in conjunction with

the local school district and such district maintains an intra-district school choice enrollment program.

(89) A school shall specify age thresholds and ceilings for kindergarten and/or high school programs, respectively.

1.07: Charter School Professional Staff

Charter school teachers hired after August 10, 2000 must either:

(1) take and pass, within their first year of employment at a charter school, the Massachusetts Tests for Educator Licensure, Certification Test™; or

(2) be already certified to teach in Massachusetts.

1.08: Charter School Funding

(1) Horace Mann charter schools shall be funded through the local school district. A Horace Mann charter school shall submit a budget request annually, in accordance with the budget schedule of the local school district and no later than April 1, to the superintendent and school committee of the district in which the charter school is located. The school committee shall act on the charter school budget request in conjunction with its approval of the district's overall budget. A Horace Mann charter school's budget allocation shall be consistent with the allocation of other public schools in the district. In the case of budget reductions in the school district, a Horace Mann charter school's budget may not be reduced disproportionately to other schools in the district. The charter school board of trustees may appeal any disproportionate budget allocation to the Commissioner of Education, who shall determine an equitable funding level for the school and shall require the school committee to provide such funding.

(2) Any operating Commonwealth charter school shall receive per-pupil payments from the sending district(s) equal to the average cost per student in said district(s), in accordance with M.G.L. c. 71, § 89. Payments shall be made only for the total number of students from all districts reported on the charter school pre-enrollment report due April 1.

(3) The average cost per student shall be the total cost within a district divided by that district's K-12 enrollment. Total cost shall be defined as total current expenditure on education and the sum of school committee and city/town spending on education within a given academic year, as reported on schedule 19 of a district's end of year report, in the following categories (defined in 603 CMR 10.99): administrative services; instructional expenditures; other recurrent school-related expenditures; food

services; athletics and student activities; operation and maintenance of school facilities; employee benefits; insurance; rental/lease of school buildings and non-instructional equipment; fixed assets; acquisition, improvement; and replacement of fixed assets; long-term debt; payments to collaboratives; and school choice revolving expenditures. The total cost shall exclude the following categories: expenditures for students with disabilities receiving services in out-of-district placements, student transportation services, community services, state school building assistance reimbursements, payments to other districts and regional schools, adult education, reimbursed food services, federal and state grants, and pre-kindergarten programs. In districts where charter school enrollment exceeds the net school spending cap, the Department may pro-rate the average cost per pupil to ensure that the district's total tuition transferred to Commonwealth charter schools does not exceed the cap.

(4) For purposes of calculating the average cost per student, district enrollment shall be defined as the total number of students enrolled less those tuitioned out, as reported on the October 1 enrollment report. This number shall be adjusted by the proportionate change of enrollment in the district during the previous year, as measured by the difference between the October 1 count and average membership. School choice participants shall be counted in the enrollment figures of the receiving districts.

(5) The State Treasurer shall make quarterly payments to Commonwealth charter schools. In making such payments, the Commonwealth shall reduce each sending district's M.G.L. c. 70 allocation by an amount sufficient to meet its charter school obligations for the quarter. If there are insufficient M.G.L. c. 70 funds to meet a district's obligation, the Commonwealth shall reduce other state aid allocated to the applicable cities and towns. If there are insufficient state aid funds of any kind to meet a district's obligation, the Board of Education shall recommend to the Governor and legislature that a supplemental appropriation be made to pay any remaining obligation to the charter school(s).

(6) The Department of Education shall notify both the Commonwealth charter school and the sending district(s) of the amount of these M.G.L. c. 70 reductions.

(7) The first ~~two~~ quarterly payments to Commonwealth charter schools shall be based on each charter school's pre-enrollment report, filed with the ~~Board~~ Department of Education pursuant to 603 CMR 1.08-(4). The remaining three~~last two~~ quarterly payments of each fiscal year shall be based on updated enrollment reports, submitted to the Department of Education by each charter school. Although each quarterly payment is intended to equal approximately one quarter of the projected annual amount, payments in the ~~final two~~later quarters of each fiscal year shall include adjustments to correct any over- or under-payments in ~~the first~~ two~~earlier~~ quarters.

(8) In its first year of operation, a Commonwealth charter school may be paid its first quarterly payment within 45 days after the start of the Commonwealth's fiscal year. The remaining three payments shall occur at the end of the Commonwealth's second, third, and fourth fiscal quarters. After its first year of operation, a Commonwealth charter school shall receive all of its quarterly payments, including its first quarter payment, at the end of the Commonwealth's fiscal quarters. The timing of all payments to charter schools is subject to the timely enactment of the Commonwealth's annual budget.

(9) In order to facilitate the acquisition of cash-flow financing, charter schools may be eligible for advance certification of quarterly payments, issued by the Board of Education and the Secretary of Administration and Finance. At least five days prior to the close of each fiscal quarter, the Commissioner of Education and the Secretary of Administration and Finance will certify to eligible charter schools the amount the Commonwealth will pay to such schools at the end of the subsequent quarter, barring a failure of the school to continue operations or a suspension or revocation by the Board of Education of the school's charter. To be eligible for advance certification a charter school shall submit to the Board of Education, prior to each quarterly certification, financial data necessary to ascertain the school's financial stability and solvency. Such data shall include an updated month-by-month cash flow statement for the current fiscal year and any other data that the Commissioner of Education may specify. If a charter school receiving advance certification of its quarterly payments ceases operations or if its charter is suspended, ~~or~~ revoked, or not renewed, the actual quarterly payment by the Commonwealth to the charter school may be less than the certified amount, if a lesser amount is sufficient to satisfy any outstanding loan balances to any secured party holding a perfected security interest.

(10) Transportation. School districts shall provide transportation to charter school students on the same basis as it is provided to regular public school students in the district. In providing such transportation, districts shall accommodate the particular school year and school day of the charter school, in accordance with M.G.L. c. 71, § 89. If a district and a charter school cannot reach agreement about the service to be provided, and if the charter school finds an alternative that costs the same as or less than the average cost of transportation per student in the district, the charter school may provide its own transportation services to students eligible for transportation. In such cases, the costs for such services will be deducted from a district's M.G.L. c. 70 account on a quarterly basis as described in 603 CMR 1.08(6), based on estimated and actual expenditures for transportation.

1.09: Ongoing Review of Charter Schools

(1) Annual Report. A charter school shall submit to the Board-Department of Education and make available, to ~~each~~every parent or guardian of its enrolled students, and to ~~each~~every parent or guardian contemplating enrollment in that charter school, an annual report. The annual report shall be issued no later than August 1 of each year for the preceding school year. The annual report shall include the following information:

- (a) a financial statement setting forth by appropriate categories the revenue and expenditures for the year just ended, and a balance sheet setting forth the charter school's assets, liabilities, and fund balances or equities;
- (b) projections of income and expenses for the upcoming school year;
- (c) discussion of progress made toward achievement of the goals of the charter and/or accountability plan;
- (d) evidence that the charter school is developing or has provided models for replication and best practices in education; and
- (e) such other information as the Board of Education may require in guidelines.

(2) Site Visits. The Board-Department of Education may send ~~evaluation~~ teams to visit each charter school on an annual basis to corroborate and augment the information provided in the annual report in accordance with guidelines issued by the Department. Site visit teams may also gather any other evidence relevant to the school's performance. The written reports from these site visits shall become part of the charter school's record, along with any written addendum that the school wishes to submit in response to a report.

(3) Financial Audits. In accordance with M.G.L. c. 71, § 89, each charter school shall have an independent audit conducted of its accounts, consistent with generally accepted auditing principles, and consistent with any guidelines the Department of Education may issue. Audits shall be filed annually on or before January first with the Department of Education and the State Auditor.

(4) Enrollment Reports. Each charter school shall conclude its principal enrollment process no later than March 15 of each year, and shall file annually with the Department of Education and with each sending district a pre-enrollment report no later than April 1. Said report will notify a district of:

- (a) the school's total enrollment for the subsequent academic year;
- (b) the projected number of students to be enrolled in the charter school from that district for the subsequent academic year, and
- (c) the number of students from that district on the waiting list, who, as a result, may be enrolled in the charter school in the subsequent academic year.

Each charter school shall also submit reports no later than October 15 and March 1 of actual enrollment as of October 1 and February 15, respectively. The report shall be filed on a form provided by the Board of Education.

(5) Additional Reports. The charter school shall be responsible for filing any data reports or school returns as required under public school law and regulations, in accordance with guidelines published by the Department of Education ensuring that charter schools are not asked for the same data more than once.

~~(6) Code of Conduct. The charter school shall submit to Department of Education for approval copies of any changes in the code of conduct outlining criteria and procedures for expulsion of students.~~

(6) As required by the Department, the charter school shall submit written documentation that the school remains in compliance with all building, health, safety, and insurance requirements established as conditions for charter granting in 603 CMR 1.05 (2) and that all related inspections and approvals are current.

(7) Notification of New Circumstances. The charter school shall notify the Department of Education in writing immediately of any change in circumstances that may have a significant impact on a charter school's ability to fulfill its goals or mission as stated in its charter. Within 30 days after receiving such notice, the Commissioner shall determine whether any remedial action is required, and shall recommend such action to the Board of Education. Such actions may include suspension or revocation of the charter or placing the charter school on probation under 603 CMR 1.12.

(8) Additional Information. At the discretion of the Board of Education, charter schools may be required to submit additional information other than that specifically required by 603 CMR 1.00.

(9) Signatory Authorization. Any information supplied to the Board of Education, the Commissioner, or the Department of Education by the charter school under 603 CMR 1.00 shall be signed by an individual given signatory authorization by the charter school Board of Trustees. All such information is submitted under penalty of perjury.

1.10: Complaint Procedure

(1) A parent, guardian or other individuals or groups who believe that a charter school has violated or is violating any provision of M.G.L. c. 71, § 89, or 603 CMR 1.00 may file a complaint with the charter school's Board of Trustees.

(2) The Board of Trustees shall respond no later than 30 days from receipt of the complaint in writing to the complaining party.

(3) The Board of Trustees shall, pursuant to a complaint received under 603 CMR 1.10, or on its own initiative, conduct reviews to ensure compliance with M.G.L. c. 71, § 89, and 603 CMR 1.00. The charter school and the specific individuals involved shall cooperate to the fullest extent with such review.

(4) A complaining party who believes the complaint has not been adequately addressed by the charter school Board of Trustees may submit the complaint in writing to the Commissioner of Education, who shall investigate such complaint and make a written response.

(5) In the event the charter school is found in non-compliance with M.G.L. c. 71, § 89, or 603 CMR 1.00, as a result of a complaint or upon investigation, the Commissioner or Board of Education may take such action as it deems appropriate, including but not limited to suspension or revocation of the charter under 603 CMR 1.13, or referral of the matter to the District Attorney or the Office of the Attorney General for appropriate legal action.

(6) A parent, guardian or other individuals or groups who believe that a charter school has violated or is violating any state or federal law or regulation regarding special education may file a complaint directly with the Department of Education.

1.11: Amendments to Charters

(1) If a charter school plans to make significant change to its program or governance, the Board of Trustees shall submit in writing to the Board of Education a request to amend its charter. Significant changes requiring a charter amendment include, but are not limited to, substantive modifications to:

(a) a charter school's educational philosophy or mission; or

~~(b) governance structure;~~

~~(c) by-laws;~~

~~(d) a school management contract;~~ or

~~(e) change of municipality in which the school is located. The Board shall consult with the school committee and local teachers' union on amendments that would change the program or governance of a Horace Mann charter school significantly.~~

(2) If a charter school plans to make any significant change ~~to its program or governance~~ with respect to its governance structure, bylaws, a change of municipality in which the school is located; the membership of its Board of Trustees, school

schedule, admissions process, code of conduct, or enrollment capacity; the school shall submit in writing to the Commissioner a request for such a change. [Regional charter schools must request an amendment to change the municipality in which the school is located.](#) Proposals to change the membership of a charter school's Board of Trustees must be submitted to the Commissioner, accompanied by background information on each new member as specified under 603 CMR 1.05(2)(a), and the change in membership shall not take effect until the Commissioner or the Commissioner's designee provides written approval of the amendment request. Such approval may not be unreasonably withheld.

(3) The Board of Education or the Commissioner shall endeavor to approve or deny amendment and change requests within 60 days after receiving such requests. [The Board shall consult with the school committee and local teachers' union on amendments that would change the program or governance of a Horace Mann charter school significantly.](#) Should the Commissioner deny a request for change to program or governance, the charter school's Board of Trustees may seek review of the Commissioner's decision by the Board of Education.

1.12: Renewal of Charters

———A charter school seeking renewal of its charter shall proceed as follows:

(1) The charter school shall submit its application for renewal of a charter under 603 CMR 1.00 no earlier than March 1 of the third school year and no later than August 1 after the end of fourth school year. The Board of Education will review renewal applications pursuant to the criteria set forth in 603 CMR 1.05 and M.G.L. c.71, § 89. [For renewal applications received on or before August 1,](#) ~~The Board of Education shall notify the charter applicant of the decision to renew or not to renew the charter and the reasons therefor no later than March 1~~ [following receipt of the year in which the renewal application was received.](#) In the event the renewal is denied, the charter school shall have all rights of review as provided in M.G.L. c. 30A and 801 CMR 1.00.

(2) The charter school may apply for renewal of its charter under renewal application guidelines established by the Board of Education. Applications for the renewal of Horace Mann charters must be submitted with the approval of the local teachers' union and the school committee.

(3) The ~~Board of Education~~[Department](#) shall issue guidelines describing the evaluation process to be followed in reviewing applications for charter renewal, [including protocols for site visits and renewal inspections.](#) The [decision regarding renewal of a charter shall be based upon affirmative evidence regarding whether the school's on an affirmative answer to three questions: is the](#) academic program [is a](#)

success; ~~whether is~~ the school is a viable organization; and, ~~has whether~~ the school has been faithful to the terms of its charter. ~~?~~ The Department will gather evidence regarding these issues. Answers to these questions shall be derived from the renewal application and from other information, including but not limited to, a school's annual reports, financial audits, test results, ~~and~~ site visit reports, and renewal inspection. All charter schools will be evaluated on the same performance criteria as provided in the guidelines, provided, however, that the criteria will take into account each school's charter and accountability plan.

~~(4) — Before charter renewal, the charter school shall submit written documentation that the school remains in compliance with all building, health, safety and insurance requirements established as conditions for charter granting in 603 CMR 1.05 (2) and that all related inspections and approvals are current.~~

~~(45)~~ Charters that are renewed shall be for five years from the expiration of the previous charter under such conditions as the Board of Education may establish under 603 CMR 1.05 (2). Charters of schools that do not file renewal applications shall expire at the end of the fifth year of the charter school's operation, subject to 603 CMR 1.13.

1.13: Charter Revocation, Probation, ~~and~~ Suspension, and Non-Renewal

- (1) The Board of Education may suspend or revoke (hereinafter, “revoke”) a charter for cause, including but not limited to:
 - (a) a material misrepresentation in the application for approval of the charter;
 - (b) failure to comply substantially with the terms of the charter, with any of the applicable provisions of M.G.L. c.71, or with any other applicable law or regulation;
 - (c) financial insolvency;
 - (d) misappropriation, conversion, mismanagement, or illegal withholding of funds or refusal to pay any funds that belong to any person otherwise entitled thereto and that have been entrusted to the charter school or its administrators in their fiduciary capacities;
 - (e) fraud or gross mismanagement on the part of charter school administrators or Board of Trustees;
 - (f) criminal convictions on the part of the charter school or its Board of Trustees; or
 - (g) failure to fulfill any conditions imposed by the Board of Education in connection with the grant of a charter. A failure to fulfill any conditions imposed on a charter shall cause the charter to expire automatically.

(2) Before the Board of Education revokes a charter, it shall notify the charter school in writing that the Board intends to revoke the charter. In the case of a Horace Mann charter, the Board shall also notify the district in which the school is located. Except in an emergency, the Board shall send the notice 60 days before the revocation takes effect.

(3) Upon receiving a notice of intent to revoke a charter, or notice of an emergency revocation where the health, safety or education of the school's students is at immediate risk, the school shall have all rights of review as provided in M.G.L. c. 30A, § 13, and 801 CMR 1.00. All requests for hearings, where hearings are provided by said statutes, shall be in writing, addressed to the Board of Education, and must be received within 15 days of receipt by the charter school of the notice of intent to revoke a charter.

(4) The Board of Education may place a charter school on probation, rather than revoke its charter, in order to allow for the implementation of a remedial plan approved by the Board. If after 60 days, or such longer period as the Board may specify, said plan is unsuccessful in remedying the problem or alleviating the causes of the probation, the Board may summarily revoke the charter. [The Board or the Department may also impose conditions on a school's charter.](#)

(5) The Board of Education may withhold payments to any charter school placed on probation or whose charter has been suspended, ~~or~~ revoked, or not renewed. [Charter schools must comply with the closing procedures, including contingency plans for closure, required by the Department.](#)

(6) Upon the revocation, non-renewal, or voluntary return of a Commonwealth charter, title to all of the property of the charter school shall immediately vest in the Commonwealth, subject to the rights of any secured party holding a perfected security interest in the property of such charter school. Any funds remaining after the satisfaction of the charter school's obligations shall be deposited in the General Fund. 603 CMR 1.13(6) shall not apply to the extent the charter school or any other interested party demonstrates that charter school property was purchased solely by, or solely with funds paid to the school by, persons or entities other than the Commonwealth, in which case ownership of the property shall be transferred to such persons or entities, unless otherwise voted by the Board of Trustees.

(7) Upon the revocation, non-renewal, or voluntary return of a Horace Mann charter, title to all of the property of the charter school shall immediately vest in the school district in which the school is located, subject to the rights of any secured party holding a perfected security interest in the property of such charter school. This regulation shall not apply to the extent the charter school or any other interested party demonstrates that charter school property was purchased solely by, or solely with funds paid to the school by, persons or entities other than the district

or Commonwealth, in which case ownership of the property shall be transferred to such persons or entities, unless otherwise voted by the Board of Trustees.

1.14: Severability Clause

If any section or portion of a section of 603 CMR 1.00, or the applicability of 603 CMR 1.00 to any person, entity or circumstance is held invalid by a court, the remainder of 603 CMR 1.00 or the applicability of such provisions to other persons, entities or circumstances shall not be affected thereby.

REGULATORY AUTHORITY

603 CMR 1.00: M.G.L. c. 69, § 1B; c. 71, § 89.



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Education Laws and Regulations

Notice Of Public Comment

Proposed Amendment to 603 CMR 28.08(4)

**Released for Public Comment by Board of Education:
January 28, 2003**

Public Comment accepted through: April 4, 2003

**Final Action by the Board of Education anticipated: April
29, 2003**

Pursuant to its authority under M.G.L. c.69, § 1B, and Chapter 71B and in accordance with the Administrative Procedure Act, M.G.L. 30A, the Massachusetts Board of Education is soliciting public comment on a proposed amendment to 603 CMR 28.08(4), Special Education Regulations.

The proposed amendment will ensure consistency with federal regulation 34 CFR 300.506(d), which allows a public agency to "establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party...who would explain and encourage the parents to use the process." The proposed amendment would delete part of the last sentence in 603 CMR 28.08(4), as follows:

(4) **Mediation.** A voluntary dispute resolution procedure, called mediation, shall be provided by mediators employed by the Bureau of Special Education Appeals and may be used by parents and school districts to seek resolution of their dispute. Mediations shall be provided at no cost to the parties. No parent shall be required to participate in mediation. ~~and school districts shall not require parents to participate in any meeting designed to explain the benefits of mediation.~~

Written comments on the proposed amendment may be submitted by mail to: Massachusetts Department of Education, Special Education Planning and Policy Development Office, 350 Main Street, Malden, MA 02148; by fax to 781-338-3390; or by e-mail to ltarmy@doe.mass.edu. The deadline for submission of public comment is **Friday, April 4, 2003**. The Board is expected to vote on the proposed amendment at its regular monthly meeting scheduled for April 29, 2003.

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Early Learning Services

Announcement of Upcoming Survey on Preschool and Kindergarten Programs

Dear Superintendents of Schools:

Over the next few weeks, many of your building principals will receive a survey from their Community Partnerships for Children coordinator. On behalf of the Department of Education, I ask you to encourage them to take the time to fill out the survey. Their information on local preschool and kindergarten programs will help us gain critical information on the early education and care system.

Over the past several years, it has become increasingly clear that we need to develop a high quality system of education and care if we want to support young children and families.

Quality programs do not exist in isolation, they need a quality infrastructure which includes: parent information and engagement; professional development and staff certification; licensing standards, enforcement and program accreditation; funding and financing; governance, planning, and accountability (Kagan and Cohen, 1997).

We believe that collecting detailed information from programs and families on the early care and education system continues to help local communities, as well as state and federal agencies, plan across programs and develop a high quality system. We need your continued help to assess how well we are meeting the needs of children and families and to plan improvements in the current system. Over the years, we have developed and refined surveys to gather information from early education and care providers in child care centers, Head Start programs, public schools, and family child care homes. **To secure the best information for planning, we need as many public school programs as possible to reply to these surveys.**

Please complete the enclosed survey. The Department of Education will make sure all survey data are entered, analyzed, and reported to each participating community to use for strategic planning and system development. We also share the data with our colleagues from other agencies for strategic planning at the state level. Thank you for joining us in the ongoing development of a system of early education and care in Massachusetts.

Sincerely,

David P. Driscoll
Commissioner of Education