

**PROPOSED AMENDMENTS TO REGULATIONS FOR ACCESS TO EQUAL
EDUCATIONAL OPPORTUNITY, 603 CMR 26.00
AND TO REGULATIONS FOR CHARTER SCHOOLS, 603 CMR 1**

- Presented to the Board of Elementary and Secondary Education for initial review and vote to solicit public comment: **April 23, 2012**
- Period of public comment: **through June 6, 2012**
- Final action by the Board of Elementary and Secondary Education anticipated: **June 26, 2012**

603 CMR 26.00: Access to Equal Educational Opportunity

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26.01: Purpose and Construction of 603 CMR 26.00; Definition

(1) 603 CMR 26.00 is promulgated to insure that the public schools of the Commonwealth do not discriminate against students on the basis of race, color, sex, gender identity, religion, national origin, or sexual orientation, and that all students have equal rights of access and equal enjoyment of the opportunities, advantages, privileges and courses of study at such schools. 603 CMR 26.00 shall be liberally construed for these purposes.

(2) The obligation to comply with 603 CMR 26.00 is not obviated or alleviated by any local law or rule or regulation of any organization, club, athletic or other league or association that would limit the eligibility or participation of any student on the basis of race, color, sex, gender identity, religion, national origin, or sexual orientation.

(3) For purposes of this section, gender identity shall mean a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth. Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity, or any other evidence that the gender-related identity is sincerely held as part of a person's core identity; provided, however, that gender-related identity shall not be asserted for any improper purpose.

26.02: School Admissions

(1) All public schools in the Commonwealth shall admit students without regard to race, color, sex, gender identity, religion, national origin, or sexual orientation. This includes, but is not limited to charter, elementary, secondary, trade, regional vocational-technical schools and selective academic high schools.

(2) No school shall discourage in any express or implied manner, applicants for admission because of race, color, sex, gender identity, religion, national origin, or sexual orientation. Written materials and other media used to publicize a school shall specifically affirm that the school does not discriminate on the basis of race, color, sex, gender identity, religion, national origin, or sexual orientation.

(3) The national citizenship of any applicant shall not be a criterion for admission to any public school nor shall national citizenship be a factor in the assignment or availability of courses of study or extra-curricular activities.

(4) Any standards used as part of the admissions process, including but not limited to testing, the use of recommendations and interviewing, to any public school (as referred to in 603 CMR 26.02 (1)) shall not discriminate on the basis of race, color, sex, gender identity, religion, national origin, or sexual orientation. A student's limited English-speaking ability (as defined by M.G.L. c. 71A) shall not be a deterrent to or limitation on a student's admission to a public school.

(5) In determining whether a student satisfies any criteria for admission to selective academic high schools, regional vocational technical schools, trade schools and charter schools, or in making any offer of admission to such a school, public school officials shall not treat a student differently from another based on the student's race, color, sex, gender identity, religion, national origin, or sexual orientation. Public schools shall not use admission criteria that have the effect of subjecting students to discrimination because of their race, color, sex, gender identity, religion, national origin, or sexual orientation.

(6) Nothing in 603 CMR 26.00 shall control the interpretation of or interfere with the implementation of M.G.L. c. 71, § 37C and related statutes, providing for the elimination of racial imbalance in public schools, or M.G.L. c. 71A, providing for the establishment of transitional bilingual education programs in public schools, all rules and regulations promulgated in respect thereto and all court and administrative decisions construing or relating thereto.

26.03: Admission to Courses of Study

(1) All courses of study offered by a public school shall be open and available to students regardless of race, color, sex, gender identity, religion, national origin, or sexual orientation.

(2) A public school shall determine what courses or units of study are required of a student without regard to the race, color, sex, gender identity, religion, national origin, or sexual orientation of that student.

(3) A public school shall not schedule students into courses or units of study on the basis of race, color, sex, gender identity, religion, national origin or sexual orientation.

(4) No student, on the basis of race, color, sex, gender identity, religion, national origin, limited English-speaking ability or sexual orientation, shall be discriminated against in accessing the courses of study and other opportunities available through the school system of the city or town in which he or she resides.

(5) Nothing in 603 CMR 26.03 shall be construed to prevent schools from providing separately to each sex those segments of a program of instruction dealing exclusively with human sexuality.

26.04: Career and Educational Guidance

(1) Guidance counselors and other personnel shall represent to students a broad spectrum of education and career opportunities. School personnel shall not present race, color, sex, gender identity, religion, national origin or sexual orientation as limiting factors in career determination.

(2) No materials, tests or procedures shall be employed for guidance purposes that discriminate and/or limit choices on the basis of race, color, sex, gender identity, religion, national origin or sexual orientation.

26.05: Curricula

(1) All public school systems shall, through their curricula, encourage respect for the human and civil rights of all individuals regardless of race, color, sex, gender identity, religion, national origin or sexual orientation.

(2) Teachers shall review all instructional and educational materials for simplistic and demeaning generalizations, lacking intellectual merit, on the basis of race, color, sex, gender identity, religion, national origin or sexual orientation. Appropriate activities, discussions and/or supplementary materials shall be used to provide balance and context for any such stereotypes depicted in such materials.

(3) Each school shall provide equal opportunity for physical education for all students. Goals, objectives and skill development standards, where used, shall neither be designated on the basis of sex, nor designed to have an adverse impact on members of either sex.

26.06: Extra-Curricular Activities

(1) Advantages and privileges of public schools include all extra-curricular activities made available, sponsored or supervised by any public school. No school shall sponsor or participate in the organization of outside extra-curricular activities conducted at such school that restrict student participation on the basis of race, color, sex, gender identity, religion, national origin or sexual orientation. 603 CMR 26.06 (1) does not prohibit school committees from allowing use of school premises by independent groups with restrictive membership.

(2) No student shall be denied the opportunity in any implied or explicit manner to participate in an extra-curricular activity because of the race, color, sex, gender identity, religion, national origin or sexual orientation of the student except as provided in 603 CMR 26.06(5). Participation in extra-curricular activities shall be actively encouraged by each school for all students regardless of race, color, sex, gender identity, religion, national origin or sexual orientation.

(3) Each school system shall provide equal opportunity for male and female students to participate in intramural and interscholastic sports.

(4) In order to provide equal athletic opportunity, public schools that operate or sponsor intramural or interscholastic sports teams shall ensure that budgetary allocations and the provision of athletic activities and services are fairly distributed between students of both sexes based upon student interests and abilities.

(5) A school may establish or sponsor separate teams for males and females for interscholastic and intramural competition in a particular sport where selection for the team is based upon competitive skill provided that the requirements of 603 CMR 26.06(6) are satisfied. A student shall have the opportunity to participate on the team that is consistent with the student's gender identity.

(6) Teams comprised primarily or solely of students of one sex shall be granted equal instruction, training, coaching, access to available facilities, equipment and opportunities to practice and compete as teams engaged in a similar activity comprised primarily or solely of students of the opposite sex.

26.07: Active Efforts

(1) The school committee of each school district shall establish policies and procedures, and implement monitoring and evaluation practices that insure that all obstacles to equal access to school programs for all students regardless of race, color, sex, gender identity, religion, national origin, limited English-speaking ability or sexual orientation, are removed. Such policies shall include a requirement for an annual evaluation of all aspects of the K through 12 school program to insure that all students regardless of race, color, sex, gender identity,

religion, national origin, or sexual orientation are given an opportunity to participate in all programs offered by the school including athletics and other extra-curricular activities.

(2) All public schools shall strive to prevent harassment or discrimination based upon students' race, color, sex, gender identity, religion, national origin or sexual orientation, and all public schools shall respond promptly to such discrimination or harassment when they have knowledge of its occurrence.

(3) The school committee and the superintendent shall provide in-service training for all school personnel at least annually regarding the prevention of discrimination and harassment based upon race, color, sex, gender identity, religion, national origin and sexual orientation, and the appropriate methods for responding to such discrimination and harassment in a school setting.

(4) The superintendent, as an agent of the school committee, shall promote and direct effective procedures for the full implementation of 603 CMR 26.00, and shall make recommendations to the school committee for the necessary policies, program changes, and budget resource allocations needed to achieve adherence to 603 CMR 26.00.

(5) The superintendent of each school system shall require employers who recruit new employees in and through the schools of that district to sign a statement that the employer complies with applicable federal and state laws prohibiting discrimination in hiring or employment practices.

(6) Adults serving on athletic regulatory boards shall fairly represent the interest of all students regardless of race, color, sex, gender identity, religion, national origin or sexual orientation.

(7) Any contributions to a school for activities and monetary awards within or sponsored by the school or for scholarships administered by the school by any person, group or organization shall be free from any restrictions based upon race, color, sex, gender identity, religion, national origin or sexual orientation. Schools may post or print information regarding private restricted scholarships as long as no preferential treatment is given to any particular scholarship offered and as long as the school does not endorse or recommend any such scholarship nor advise or suggest to a particular student that he or she apply for such a scholarship.

(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.

26.08: Notification and Complaint Procedure

(1) The superintendent shall be responsible for ensuring that all school handbooks and codes of conduct reference M.G.L. c. 76, § 5 and affirmatively state and explain the school's obligations under M.G.L. c. 76, § 5. In order to ensure that such obligations are fulfilled, all school handbooks and codes of conduct shall also contain the following:

a) A nondiscrimination policy that is consistent with M.G.L. c. 76, § 5 and affirms the school's non-tolerance for harassment or discrimination, including that based upon race, color, sex, gender identity, religion, national origin or sexual orientation; and

b) The school's procedure for accepting, investigating and resolving complaints alleging discrimination or harassment; and

c) The disciplinary measures that the school may impose if it determines that harassment or discrimination has occurred.

(2) The principal shall ensure that the applicable school handbook and district code of conduct are annually distributed to students, parents and school personnel and, when requested, ensure that such school handbook and district code of conduct are available in the primary language of a parent or student whose primary language is not English.

26.09: Private Right of Enforcement

(1) Nothing in 603 CMR 26.00 shall abridge or in any way limit the right of a parent, guardian, or person affected to seek enforcement of M.G.L. c. 76, § 5 in any court or administrative agency of competent jurisdiction.