*****Massachusetts Department of***

***Elementary and Secondary Education***

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| Jeffrey C. Riley  *Commissioner* |  |

# MEMORANDUM

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| **To:** | Members of the Board of Elementary and Secondary Education |
| **From:** | Jeffrey C. Riley, Commissioner |
| **Date:** | June 11, 2021 |
| **Subject:** | Proposed Amendments to 603 CMR 4.03(6)(a) Career/Vocational Technical Education Admissions Regulations – Vote to Approve Proposed Regulations |

In April 2021, the Board of Elementary and Secondary Education (Board) voted to solicit public comment on proposed amendments to [603 CMR 4.03(6)(a)](https://www.doe.mass.edu/lawsregs/603cmr4.html?section=03), the Career/Vocational Technical Education (CVTE) admissions regulations. I am recommending several modifications to the amendments based on the public comment the Department of Elementary and Secondary Education (Department) received. Copies of all the public comments, along with a summary, are included with this memo. I recommend that the Board vote on June 22, 2021 to adopt the proposed amendments, including these additional changes.

The Board’s vote on these amendments will conclude the second phase of the CVTE regulatory changes, which complement the changes the Board adopted in Phase I in February 2020. As a reminder, these admissions-related amendments are designed to address three primary goals:

1. Provide districts offering CVTE programs with flexibility to develop data-informed local admissions policies that promote equitable access, comply with state and federal laws and regulations, and receive annual approval from the district’s school committee or board of trustees.
2. Clarify the Department’s authority to intervene in cases of non-compliance, and in such cases, to order changes to admissions policies that may include requiring a lottery.
3. Improve access to information about CVTE for students and families.

**Background**

The proposed changes to CVTE admissions regulations follow extensive stakeholder engagement and discussion. These discussions, along with the Department’s analysis of enrollment and admissions data, have made clear that applying a single set of state-prescribed admissions criteria is not in the best interests of students, families, and vocational schools and programs. Vocational education is driven by many variables, including student interest, labor and market demands, and diverse student populations, both within and across vocational schools. I believe we can best address this complex issue by allowing individual schools and programs to set policies that respond to the needs of their sending communities and are consistent with applicable federal and state laws and regulations to promote equitable access for all students, while retaining the Department’s role to monitor compliance and intervene when necessary.

In particular, the proposed amended regulation on admission of students submitted to the Board in April:

* **Adds**that each vocational school and program must annually submit its admissions policy to the Department by August 15, publish it in its Program of Studies, post a copy on the school website, and provide a copy to each student applicant and their parent/guardian. Vocational schools and programs must make these admissions materials available in both English and the primary language of the home, if such primary language is other than English.
* **Adds**that vocational schools and programs using selective criteria shall not use criteria that have the effect of disproportionately excluding persons in protected classes unless they can demonstrate that (1) the criteria have been validated as essential to participation and (2) alternative equally valid criteria that do not have such a disproportionate adverse effect are unavailable.
* **Adds** that admission policies using selective criteria may be used only when there are more applicants than available seats.
* **Removes** the requirement to use four criteria (grades, attendance, discipline record, and counselor recommendation) and **prohibits** the consideration of excused absences and minor behavior or disciplinary infractions.
* **Removes**language that schools may condition admission on a student having passed courses in English Language Arts or its equivalent and mathematics for the school year immediately preceding their enrollment, while affirming that vocational schools and programs may condition admission on a student having been promoted to the grade they have been admitted to enter.
* **Adds**a requirement that admission policies include strategies to promote equal educational opportunities and attract, enroll, and retain a student population that, when compared to students in similar grades in sending districts, has a comparable academic and demographic profile.
* **Adds**that the admission policy must be approved annually by the school’s board of trustees or school committee.
* **Adds**the requirement that vocational schools and programs maintain a record of all students who apply for admission, enroll in the school, or are placed on a waitlist, and their score on admission criteria, if used, to facilitate an analysis and evaluation of the admissions system and its compliance with 603 CMR 4.03(6), and affirms the right for students and parents/guardians to appeal to the superintendent or their designee a decision to deny the student admission to the school or program.
* **Adds** that the Department may intervene in cases where the admissions policies and practices of vocational schools and programs do not comply with applicable state and federal laws and regulations and order compliance actions, including revisions to, or replacement of, existing admission policies. This intervention may include a requirement that such schools and programs institute an admissions lottery.
* **Adds** that sending districts shall offer vocational schools and programs opportunities to provide middle school students with information about vocational programs and careers on-site at their middle schools, as well as through mail and email. Directs sending districts to not count as an unexcused absence a middle school student’s tour of a vocational school or program, if the school or program confirms the student’s participation.

**Overview of Comments Received**

The public comment period began after the April 20, 2021 Board meeting and closed on May 28, 2021. In total, the Department received 33 public comments from a variety of individual and group stakeholders, including group comments from: The Education Working Group of the Progressive Democrats of Massachusetts, Brockton Interfaith Community and Restoration Church Action Ministry, Massachusetts Advocates for Children, American Federation of Teachers Massachusetts, Massachusetts Business Alliance for Education, Gateway Cities Legislative Caucus, Black Educators’ Alliance of Massachusetts, Inc., Revere Youth in Action, Massachusetts Teachers Association and members of its Career Technical Education Committee, Massachusetts Municipal Association, Massachusetts Association of Vocational Administrators, Vocational Education Justice Coalition, Lawyers for Civil Rights Boston, Whittier Regional Education Association, Inquilinos Boricuas en Acción, North Atlantic States Carpenters Training Fund, United Interfaith Action of Southeastern MA, Inc., Pioneer Valley Project, La Colaborativa, Citizens for Public Schools, and Massachusetts Communities Action Network.

The Department’s analysis of these comments can be found in the attached Summary document.

**Changes After Consideration of Public Comment**

I highlight below the five changes to the proposed regulations that I am recommending after careful consideration of all of the public comments received. These changes address several of the concerns expressed and provide additional clarity to better achieve the goals of these proposed regulatory revisions. The changes are presented in the order in which they appear in the regulatory text for easy reference.

1. The Department agrees that including a **clear definition of “minor behavior or disciplinary infractions”** in the regulations, rather than in guidance as previously planned, would be helpful to families, schools, and other interested parties. Accordingly, I recommend adding the following definition: “a ‘minor behavior or disciplinary infraction’ means any student conduct other than conduct for which suspension or expulsion was imposed pursuant to [M.G.L. c. 71 §37H](https://malegislature.gov/laws/generallaws/parti/titlexii/chapter71/section37h) or [M.G.L. c. 71 §37H ½](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71/Section37H1~2), or for which suspension or expulsion for more than 10 days was imposed pursuant to [M.G.L. c. 71 §37H ¾](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71/Section37H3~4).” Adding this definition makes clear that a “minor” infraction is something other than a serious infraction covered by these statutes. For example, these statutes include serious infractions such as possession of a dangerous weapon on school premises, assault on educational staff, and criminal felony charges. (The statutes also specify due process protections for students before a school may impose suspension or expulsion for these infractions.)
2. To address concerns about **deadlines**, I recommend adjusting the deadline for submitting admissions policies (and attestations described below) to the Department from August 15 to October 1 (with the first submission this fall, on October 1, 2021). The Department will also consider extensions, upon request and on a case-by-case basis, for this first year, so long as materials are submitted before the school’s 2022-2023 admissions cycle begins. Schools will also only be required to re-submit their policy in subsequent years if they have revised their policy, though the attestation will be required annually.
3. The Department appreciates commenters’ concerns regarding compliance with the **two-part standard for selective admissions criteria** that is set forth in federal civil rights guidelines and reiterated in these regulations. To address this concern, I recommend adding that CVTE schools/programs submit an attestation annually that they have reviewed any admissions criteria they intend to use pursuant to state and federal laws, and that they are in compliance. This approach is similar to attestations that the Department already requires in other circumstances. The Department will be collecting and analyzing data from CVTE schools/programs and will monitor and report on results. Further, any students who are denied admission to a CVTE school/program have a right of appeal to the superintendent, who must provide documentation to the Department and the prospective student’s parent/guardian upon request.
4. To clarify the commitment to robust oversight, I recommend revising the sentence, “The Department may intervene in cases where the admissions policies and practices of vocational technical schools and programs do not comply with applicable state and federal laws and regulations, and order compliance actions, including revisions to, or replacement of, existing admission policies” by replacing “may intervene in” with **“will take actions it deems necessary to address,”** to clarify that the Department will be holding schools accountable, while preserving its discretion to determine what actions are necessary to address issues of non-compliance.
5. To address concerns about substantive, hands-on access to opportunities for middle schoolers to learn about CVTE programs, I recommend adding a requirement that sending districts “**may not unreasonably withhold student access to tours of vocational schools and programs during the school day.”** I strongly encourage vocational schools and programs to work collaboratively with sending districts to schedule such tours at mutually agreeable times that minimize disruption to students’ educational programs.

I recommend that the Board vote to adopt the amended regulations as presented. A motion is attached. At the June 22, 2021 Board meeting, Department staff, including Cliff Chuang, Senior Associate Commissioner for Educational Options; Elizabeth Bennett, Associate Commissioner for College, Career, and Technical Education; and Caitlin Looby, Counsel in our Legal Office, will be present to address the Board and answer questions.

Enclosures:603 CMR 4.03(6)(a) – Summary of Public Comments Received and Department Response

603 CMR 4.03(6)(a) – Clean version of regulations incorporating proposed amendments and changes based on public comments

603 CMR 4.03(6)(a) – Strikethrough version of regulations showing proposed amendments (strikethrough or underline) and changes based on public comments (bold italics)

Motion