

**COMMONWEALTH OF MASSACHUSETTS
BOARD OF EDUCATION
REGULAR MEETING
MASSACHUSETTS DEPARTMENT OF EDUCATION
350 MAIN STREET
MALDEN, MASSACHUSETTS
TUESDAY, MARCH 28, 2000
9:00 a.m. - 11:30 a.m.**

MEMBERS OF THE BOARD

OF EDUCATION PRESENT: Mr. James A. Peyser, Chairman, Dorchester
Dr. Roberta R. Schaefer, Vice-chair
Mr. Charles D. Baker, Swampscott
Ms. Patricia Crutchfield, Southwick
Dr. Edwin J. Delattre, Boston
Dr. Judith I. Gill, Acting Chancellor, Boston
Mr. William K. Irwin, Wilmington
Mr. Marcel LaFlamme, Monson, Chair, Student Advisory Council
Dr. Abigail Thernstrom, Lexington

Dr. David P. Driscoll, Commissioner of Education & Secretary to the Board

CHAIRMAN PEYSER: Good morning. Welcome to a wet Board of Education meeting. I will forego any comments. I'll have several comments as we get into the agenda. Let me turn it over to the Commissioner for any opening comments he might have.

COMMISSIONER DRISCOLL: I have been meeting with a number of people regarding the mathematics framework, including the representatives of those groups that were designated by the Board of Education: the Math and Science Advisory Council, the Massachusetts Association of School Superintendents, and ATMIM, which is an affiliate of Math West. I have been meeting with a number of people individually, as well. I'm still confident that we can bring back to the Board a framework in May. There are a couple things to be said. First of all, there's virtually unanimous agreement that the framework should not be about drill and kill nor can it just be about process. We need a combination of both.

We've developed an updated version which integrates some of the NCTM principles and changes the format. We are asking people, throughout the state, to give us classroom examples and vignettes to show how the standards come alive in the classroom. And that, of course, is the most important aspect, not just the standards, although it's very important that the standards be clear as well.

I also want to mention that the Commonwealth of Massachusetts did prevail in Lopez v. Commonwealth of Massachusetts, brought by Gary Lopez and others around the issue of the fairness of the foundation budget and whether or not certain communities, particularly those on the Cape, were being unfairly treated. The Summary Judgment from the Single Justice of the Supreme Judicial Court found that the formula was not unfair.

I also want to mention in the case of the City of Lawrence, that the school committee appointed Gene Thayer, former superintendent of schools in Lawrence who then moved on to Framingham and Concord-Carlyle. He's been elected as interim superintendent and I think the best thing to be said is things have really calmed down and they are about the business of teaching and learning. He is spending a lot of time in schools, in classrooms, talking to teachers, talking to people throughout the community. So I'm pleased that it has settled down. And we are about the business of going through the process to select a new superintendent which, by our legal agreement with the school committee, calls for a screening committee to be established by this Board and the school committee, and we are hoping to have an expedited process. Matt George has agreed again to help lead that effort on behalf of the Department as my representative, and we look forward to that. I met with a few classroom teachers in Lawrence. It was very instructional. These are people who are extremely dedicated, as we all know, working under very difficult conditions, and what they reported to me on their experience is very instructive as we go forward. So I was glad to have that opportunity arranged by Kathy Kelley.

You may know through the newspapers that we sent letters to 1,200 students in grades 4, 8 and 10 throughout the Commonwealth. We had some student awards through National Merit Finalists, we had some special National Volunteer Awards that students received, and so I've begun writing letters to students and have gotten some positive feedback. We decided to do this on a larger scale, but I didn't think it was going to receive the kind publicity and reaction. We're getting calls from all over the state telling us that they are posted on refrigerators and so forth. It's a good thing. I think, too often, we neglect to reward student success. We just take for granted the achievement of our students, and that shouldn't happen. We need to remember many of our students do an outstanding job. I was glad to be part of that.

We are in the process of finalizing the contract with our new assessment vendor and that will take a little bit more time. We've worked out a relationship between the old vendor and the new, so it will be a very smooth transition. And we are also working to finalize the educator test contract.

PUBLIC COMMENT

CHAIRMAN PEYSER: The next item is the public comments. We have five people who signed up to speak this morning. I want to change the order a bit. The fifth person on the list is Joseph O'Sullivan. I would like to move him up to number 3 so that all the folks who are testifying with respect to the testing of math teachers can speak together. Then, we'll have the special education testimony, immediately followed by our consideration of the special education regulation reform. With that, let me first call Steve Gorrie, President of the Massachusetts Teachers Association.

Steve Gorrie, President of the Massachusetts Teachers Association.

MR. GORRIE: Good morning. Thank you for allowing me to speak today on the proposed regulations concerning the testing of math teachers. For the record, I will state my name. I'm Steve Gorrie, President of the Massachusetts Teachers Association. Let me repeat something that we have been saying over and over, that the MTA strongly believes that only qualified, certified teachers should be hired in our public schools and that all teachers should be held to high standards, and the most effective way to determine if teachers are doing a good job is to evaluate their performance in the classroom. With that said, we strongly oppose these regulations on several grounds.

First, the legislature has never granted this Board authority to impose a testing requirement on any teachers and, in fact, has rejected teacher testing legislation twice in the past two years. Second, we believe the criterion for determining which teachers must be tested under this plan is arbitrary and misguided. And third, and most important, we believe this proposal will do a disservice to the various students it is purported to help because it will drive good math teachers away from inner city schools. I would like to elaborate if I might.

As you know, in 1998 and again in 1999, Governor Cellucci filed legislation to require all teachers to be tested in subject area knowledge and literacy skills. That poorly conceived proposal was rightly rejected by the legislature. This time the Governor has decided to bypass the legislature and impose a teacher testing proposal administratively by regulation. In our opinion, the Governor did not have the authority to test all teachers without explicit legislative authority and, likewise, he does not have the authority to test a subset of teachers without such authorization, and we are currently exploring our legal options in opposing this test.

A second concern is that the test score cutoff used to determine which schools have so-called low-performing mathematics programs is arbitrary and defies common sense. The 30 percent failure rate has no relationship to any designation of under-performing or under-performance in your recently adopted regulations. Indeed, as you know, a large majority of the state's middle and high schools have failure rates of 30 percent or more on the mathematics MCAS test, including many that are considered excellent schools by any other measure of achievement. Once again, this disconnect between student MCAS scores and student success on other assessments casts a shadow on the validity of the MCAS tests themselves. Identifying such a large percentage of our schools as low-performing in math is part and parcel with other recent rhetoric and actions by the Board that unjustly undermine public confidence in our public schools and in the teachers who work there.

Last but not least, this proposal is poor public policy that will not result in the desired ends. There is a presumption built into these proposed regulations that teachers who work with disadvantaged students are probably less competent than their peers who teach affluent students. This is both untrue and insulting and it's precisely the wrong message to send if

this Board is serious about attracting and retaining excellent teachers in our urban schools. Let me give you one illustration. Imagine a certified teacher named Jane Doe who is highly qualified in math. Imagine that she has two job offers, one in Lexington High School and the other in Durfee High School in Fall River. If she teaches in Lexington, she will be in a school that is deemed to be high performing. She will not be subjected to humiliating articles in the media about the low performance of her students. Her qualifications to teach will not be questioned by anyone, politicians included, and she will not be subjected to the burden and insult of having to do a math test. If she chooses to work at Durfee, however, she will indeed face those same burdens and she will be paid far less for her efforts. Members of the Board, I ask you, if you were in Jane Doe's shoes, which job would you accept? I hope you will give serious consideration to the potential serious negative consequences to this proposal and will vote to reject these regulations. Thank you very much.

Kathleen Kelly, President of the Massachusetts Federation of Teachers.

MS. KELLEY: Good morning, Mr. Chairman, Commissioner, members of the Board. For the record, my name is Kathleen Kelley and I'm President of the Mass. Federation of Teachers. I'll make one brief comment on the special education regulations. I sat through a hearing at the legislature and it was clear to me from the comments of both senators and representatives that they are embarking on some changes in the regulations as well. My concern is how many changes are we going to go through before we get a final document that makes sense. I would urge the Board to take a very careful look at what the legislature is doing and work in conjunction with what they are doing.

I come today to also speak, as my colleague from the MTA did, against the policy of math testing of middle school and high school teachers in low-performing districts. We oppose this plan. The legislature, as you know, has consistently, since 1993, rejected testing as an inappropriate and unconstructive means of determining the quality of teachers. This policy unfairly targets urban teachers. Urban teachers, who are the most underpaid, work in the most difficult conditions and have the least amount of professional support. My colleague from the MTA gave you an example, but I want to give you some others. I had new teachers meet with the Commissioner in one of the poorest urban districts. Two of those teachers are leaving teaching at the end of this year.

At some point this Board has got to grapple with making districts accountable to the teachers and students in the classroom, and that means looking at what the resources are and how they are being used. It means having strong induction programs for new teachers, it means making sure that class sizes are rational and reasonable given the enormous challenges that we have confronting us today and the kind of high standards that you and I both support for all children. We have to make sure that all districts have aligned their curriculum with the statewide standards. In some districts that still has not occurred. I suggest that you take serious steps in accountability measures for school districts and you work with school districts to set in motion competent, comprehensive evaluation systems to hold teachers and districts accountable for providing the kinds of resources and conditions in which I want to teach. I have serious questions about what your proposal does, and my time is up. I will put the questions in writing. I think it is an ill-conceived policy and it is not something that will be constructive to making sure that we meet the kinds of standards we want to.

Joseph O'Sullivan of the Brockton Education Association.

MR. O'SULLIVAN: Thank you, good morning. I'm Joe O'Sullivan, an award-winning earth science teacher from Brockton. I'm also a parent of two daughters who completed public schools and are having successful college careers now. I sacrificed my wife to a school committee at Whitman-Hanson, and she's on the Board of the North River Collaborative. I'm here for two reasons. Number one, I came for the math teachers. Second, I came because of my daughters.

As I sat here through the last meeting I had the thought that the silence from teachers has been deafening regarding a lot of your initiatives, and that you may be construing that as widespread support for some of the things that you are doing. I want to first speak to testing math teachers. I brought three handouts with me today.

One is this analogy about being the best dentist, which is a great summary of why it's wrong to test people in the way that you are and hold them accountable in that way. Second is a pullout section from the Brockton Enterprise, *Lessons Learned*. It's every single school district on the South Shore, and it's really positive, right down-the-middle rating, and it addresses many concerns from parents, students and kids. And the last one, if you give me some extra time at the end, is a teacher recruitment proposal which is the Teacher Next Door program where eight local banks have put in a million dollars each to have teachers buy homes in Brockton at below-interest rates.

I'm an earth science teacher at Brockton High. In 1993, the last time I was full-time in the classroom, I started the year with 105 students in my class and ended the year with 103 children in my class. That's five earth science classes. The problem was, during the year 43 students transferred out, 40 transferred in; that's a turnover of 73 kids out of 103. Those numbers haven't changed. You would be holding me accountable for what children did not learn in other cities, other states and, in my case, other countries. We have 1300 kids who have been in the country less than three years. You want to test teachers based on that? I suspect that if that happened to me and you made me take a test, I would be in court for the rest of my life because that's a discipline without just cause in my book. So I suggest you really don't want to do that.

I have a real concern about the testing as it stands right now. It's the industrial model. Kids are a product, teachers are workers, administrators are middle management, the school committee is the board of directors, and the public is the stockholders. In 1992 people stood up and said, If you follow that, you're going to wind up testing teachers and testing kids, and it hasn't produced improvement anywhere. Lastly, let me get to MCAS because the MCAS is the foundation or the framework on which you are going to try to test teachers. At this point, MCAS is the educational equivalent of a drive-by shooting. It's inaccurate, it's indiscriminate, and it's destructive. It's inaccurate simply because the frameworks are continually changing and we haven't had time to do it. My wife is piloting a new math program at Whitman-Hanson and they are looking at having to change that program already. It's indiscriminate because every single high school that has a voc-ed or occ-ed program in it has an MCAS bomb in it. There is no accounting for the fact that we have 1300 kids that have been in the country less than three years. There is no accounting for the transient rate. I was a very, very strong supporter of standards based education, and I still support high standards, I even support realistic frameworks. As a matter of fact, I got this button when I was part of your Common Core panels around the state but I can no longer support MCAS in the way it's being used. It's hurting children and I think you ought to either modify it or not use it. Thank you.

Julia Landau of the Massachusetts Advocacy Center.

MS. LANDAU: Good morning. I'm Julia Landau, I'm an attorney at the Mass. Advocacy Center which is an nonprofit children's advocacy organization. As you may have guessed, I'm here to urge you to delay your vote on the special education regulations that are before you.

As we stated previously, we believe that there are many proposals in these regs that will harm children with all types and all severities of disabilities throughout the Commonwealth. Moreover, we believe the Board should not attempt to circumvent the legislative process by addressing major issues that are statutory in nature. As you know and as the other speakers addressed, the legislature recently received the results of the study commissioned from McKenzie and Company. They just had an extensive hearing and it's clear there's a will in the legislature to move a bill forward. If you vote to pass these regs today, we believe you will not only harm children but you're going to create massive chaos and confusion. There are provisions in these regs that conflict with state law and federal law. There are provisions that are going to be subject to legal challenge. There are provisions that are inconsistent with all the reform bills that are pending in the legislature, both those proposed by the House and the Senate. And we will place our federal special ed. funding, millions of dollars, in jeopardy because of the provisions that conflict with federal law.

As you know, our office and the Disability Law Center provided extensive comments on the previous draft and we acknowledge and appreciate that a few of our concerns were addressed in the draft that's before you today. But there are still many critical issues that are outstanding, and I want to briefly summarize some of them. Tim Sindelar from the Disability Law Center will address some of the safety concerns.

First, there's still several provisions in the regs which implement the lower federal standard rather than the state statutory standard that requires services to give children the maximum feasible benefit in the least restrictive environment. Secondly, the proposed regs reduce parents' and children's rights to independent evaluations which are required by state law. There are no provisions in state law to require parents to pay for this outside testing. And, as you know, both the House and Senate bills would require sliding fee scales to change what's in the current statute. There's no such scale in these proposed regs. These proposed regs do allow children who qualify for free or reduced lunch to receive independent evaluations, but there's no provision for middle-income families or other low-income families. And, as you know, there are many middle-income families who have extraordinary expenses because of their children's disabilities. So these regs are going to result in a two-track system where children whose parents have resources will still be able to get this outside

testing, which is critical, particularly for kids with low-incidence disabilities, and other families will be barred from pursuing that important testing.

Third, the proposed regs significantly limit eligibility for special education services in a manner which we believe is going to exclude children with bona fide disabilities from receiving services. Particularly, children who are in parochial and other private schools are going to be barred from receiving special ed. services, many of those children, because of your eligibility requirements. Fourth, your proposed regs would eliminate the requirement to continue parent advisory councils and leave that optional for school committees to decide in what manner to allow parent participation. The whole thrust of ed reform is to encourage parent participation. We have vehicles in our state that have done an excellent job of including parents, and all the bills pending would require parents to continue. It makes no sense to delete that requirement at this time. The timelines have been extended significantly for how long children will have to wait to begin to receive these vital services. The timelines are almost doubled. And the regs attempt to eliminate teacher and parent participation in making placement decisions in a manner which clearly conflicts with federal law. In fact, the Federal Department of Education had to cite our state out of compliance because of previous regs that let administrators unilaterally make these decisions. Our state was required to make the changes that are in our regs, and now you're proposing to go back to the very system with regs already found to be in noncompliance with federal law. Again, we urge you to delay your vote. I hope you remain open to listening to these points. We believe that the regulations should be amended after the legislature has acted on these statutory issues. It's the right thing to do for children.

Tim Sindelar of the Disability Law Center

MR. SINDELAR: Thank you, Chairman, Commissioner. Thanks for this opportunity to address you today as you consider the most major rewrite to our special education regulations since their initial publication. The subject has generated tremendous attention, as it should because these are fundamental changes to a set of rules that have guided thousands of parents and educators over 20 years. We only hope that you act with the diligence that is due in making any of these major changes.

I fully concur with the statements that Julia Landau made here before. We agree the major changes you're making that are programmatic need to be addressed first by the legislature. We do not need to be in a period of at least two sudden reversals in where we're going. We do not need to have school districts making these adjustments now and again in the future once the legislature has taken action and you've enacted new regulations to reflect what the legislature has done. I want to address very briefly some of the concerns I have about elimination of health and safety requirements in these regulations. I'm somewhat shocked that these haven't received more attention than the programmatic decisions, although the programmatic considerations that Ms. Landau referred to are extremely important and, as she stated, can in fact jeopardize our federal funding, can in fact jeopardize the educational opportunities for thousands and thousands of our children with disabilities. But I'm really concerned as a representative of the Disability Law Center, which is the protection and advocacy agency for the state of Massachusetts. We are concerned about the effect that these changes are going to have on health and safety of children. There are many areas in which the regulations cut back on existing regulations in this area. For example, in the area of transportation.

The proposed regulations would delete specific requirements that are health-and-safety oriented. For example, they will delete the requirement that vehicles be able to transport a child in a wheelchair, which is often a very necessary safety requirement, rather than take a child out of the chair, carry them up the steps into a vehicle, and then collapse the chair and repeat the process at the other end. It's just a basic common sense requirement that was in our early regulations that's deleted in these regulations. The regulation that requires school districts to make sure that vehicles are safe. We had a requirement that vehicles have to be spot-checked. There had to be unannounced checks on all transportation contracts on the vendors. That requirement is simply gone. There are at least six or seven other transportation points I could mention, but since you've taken those away, I will condense those.

Let's move on to the health and safety regulations with regard to private schools. Again, one of the major changes that you're doing here is you're taking a whole chapter of regulations with regard to our private schools, chapter 18, and collapsing the private special education rules into a very, very brief section. And in the process of doing that, you're eliminating 90 percent of the health and safety regulations that we have that govern the operation of private special education schools in this state. We have had a situation where we've had three deaths in five years in private special education schools as a result of improperly used restraint. Yet you want to take away the regulations that limit the use of

restraint and simply require schools to have policies. This is your opportunity to act on the whole question of restraint in special education, period. Yet all you're doing right now is removing existing regulations and letting this open to the discretion of the schools. This is simply unacceptable.

Again, there's a reduction of transportation regulations, there's a reduction of basic health and safety, water safety, program safety regulations. Almost all of the very specific regulations in this area are eliminated. This is going to increase the chance of further accidents, this is going to increase the risk of further harm to our children. There's simply no justification for removing these health and safety requirements at this time. For this reason, we would ask that you look again carefully at the regulations in front of you and compare them and see what they are doing and not take any rash action at this time that would put children at risk. Thank you.

CHAIRMAN PEYSER: There is also a statement we received from Andrea Watson that the Commissioner will read at this time.

COMMISSIONER DRISCOLL: Thank you, Mr. Chairman. This is from Andrea Watson who had planned to testify but had a family emergency:

Dear Members of the Board.

I had planned on being here today but due to circumstances beyond my control I was not able to as my own children come first. I would like to first thank the Commissioner for putting language into the new regulations regarding criminal background checks. This is important as it leaves language open as to not only be limited to the CORI check and will allow the schools to develop a policy to check into histories out of state for those prospective employees that come from other states. This is helpful also in that it will hopefully eliminate the employment of those who have committed crimes against children and disabled elsewhere. I would ask at this time also that you reconsider the residential piece where the Department defers to other state agencies. In the Parents For Residential Reform's opinion, if the Department of Education gives 766 approved status to residential schools, helps to pay for the placements in a lot of cases, and also sets regulatory standards, then they should also be responsible for the health, welfare and safety issues that go along with those responsibilities of the children 24 hours a day, not just school hours, in 766 approved school placement. The Department should not wash their hands of this responsibility as they are presently the only agency that takes all aspects of the complaint seriously as well as the investigation, such as talking to parents, staff, hosting school departments, and if possible the child they also typically have taken action and followed up more seriously in these situations than other state agencies. Please reconsider this part of the regulations.

Thank you, Andrea Watson, President Parents for Residential Reform.

APPROVAL OF MINUTES

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education approve the minutes of the February 23, 2000 meeting as presented by the Commissioner.**

The motion was made by Ms. Crutchfield and seconded by Mr. Irwin, the vote was unanimous.

AMENDMENTS TO SPECIAL EDUCATION REGULATIONS (603 CMR 28.00 and 18.00) - Discussion and Vote

CHAIRMAN PEYSER: The next item on the agenda is a discussion of the special education regulations that are pending before us. I want to preface my comments by saying that I have been in contact with the legislative leadership over the past several days and to some extent even earlier. They have urged delay. As much as I'd like to accommodate their wishes, because I do believe they are acting in good faith to try to reform the special education law as quickly and effectively as they can, I do not believe it is in the best interests of reform to do so. There are several reasons for that.

One is, as you know, we have already waited nine months in an effort to accommodate the legislature and give them time to act. And in that nine-month period, very little has been done other than the commission and completion of the study by McKenzie. Even a brief delay at this point would make it impossible to implement these reforms for the 2000/2001 school year. In other words, a delay of a few months is tantamount to a delay of another year, which I think is in no one's best interests. In addition, the reforms we are considering today do not infringe on legislative prerogatives. They are consistent with the kinds of reform proposals that are pending before the legislature and they are consistent with the McKenzie report, particularly with respect to eligibility criteria. With that, I'd like to make a few comments about the reform regulations that are pending before us today.

The regulatory reforms we are considering are designed to do two basic things: first, to ensure that special education resources are not dissipated on students who are not disabled, and second, to provide some amount of administrative flexibility in order to increase the educational productivity of those resources. The revised regulations clarify eligibility criteria by defining, more specifically, the kinds of disabilities that qualify students for special education services. This change is consistent with federal criteria and the criteria of most other states. Its purpose is simple, but clearly needed to ensure that special education resources, and the system of mandated procedures and protections, are focused on those students with clinical or specific disabilities who can benefit from specialized educational services, rather than students who are simply falling behind their peers academically or who present discipline problems.

The proposed changes are also designed to introduce a modicum of local discretion in the administration of special education programs. And I emphasize the word modicum. The revised regulations do not effect the mandated standard of service, popularly known as Maximum Feasible Benefit. The revised regulations do not substantially affect the timelines for evaluating students and developing IEP's. The revised regulations do not affect the existing class size or age-span limits. The revised regulations continue to require free second opinions (also known as independent evaluations) for low-income families. And the revised regulations continue to require meaningful involvement by special education parents in district decision-making. The proposed revisions before us today are important and overdue. Nevertheless, they offer only modest potential for driving the kind of reform in special education that I believe is necessary.

It is increasingly clear to me that by focusing on issues of civil rights and procedural protections, the 30-year debate over special education has unintentionally diverted us from what now matters most -- quality and improvement. Accurate assessments, effective instruction and services, and educationally sound placements cannot be assured through legislation or litigation. Indeed, the attempt to do so deflects our attention to matters of process, rather than substance, leaving little time for addressing critical weaknesses in the programs and the services for students with special needs. It also erects barriers between parents and school staff, turning them into adversaries and making cooperative effort difficult, and at times impossible. The right to services alone, without regard to quality, is not worth fighting for. Both sides of this debate need to reorient their focus to concentrate on how to improve educational outcomes for students with disabilities, rather than continuing to fight the last war over access and procedural protections. It is time to begin to focus on effectiveness and improvement -- not through government mandates, but through collaborative efforts. And there are a few places we can start.

How can we begin collecting the meaningful data about the educational progress of students with disabilities? How can we ensure that more districts have access to more competent diagnostic clinicians and other trained evaluators across the entire spectrum of disabilities? How can we help districts acquire better and more timely information about successful classroom practices and alternative placements? I intend to schedule a public roundtable discussion this fall to address these and other questions, involving educators, parents, students, clinicians, and policymakers. I hope this forum will result in more productive public discourse on the subject of special education that can lead over time to better outcomes for children with disabilities. With that, I'd entertain a motion to approve the regulations that are before us. I open the floor for discussion. I'd like to open the floor to the Commissioner and Marcia Mittnacht, in particular, to make any comments about the regulations before us that need to be made at this time.

COMMISSIONER DRISCOLL: Thank you, Mr. Chairman. First of all, I am offering an amendment which I hope the Board will favorably consider. That does have to do with procedure that would require residential schools to develop procedures on hiring that include a description of the steps the school will take to consider, and act upon information related to criminal convictions for any prospective staff members whose responsibilities bring them into direct contact with students. We do believe that this makes a lot of sense. We work, as you know, with a number of other agencies, and they have responsibilities in this area.

Regarding coordination with legislative changes, we have shown in these regulations how nimble we are. The legislature as part of the budget this year did reinstitute the statutory language relating to private school students. Now, this Board had taken advantage of the change in the federal law to reduce that responsibility. Once that was done, it changed what we are doing. We are making that change in compliance with the state statute. I think the two areas that we would look at are both independent evaluations and the parent advisory councils. In our case, even though the legislature is talking about a sliding scale, we introduced the notion of free and reduced lunches. I don't see that as a major problem, if that were to pass, for school districts to make that change.

Secondly, with respect to parent advisory councils, if the legislature chooses to mandate those, it would be a very easy change for schools to make since they have been living with that requirement under the current regulation. I agree with the Chairman, the time has come. We can very easily make the changes that the legislature will make, and the legislative leaders and representatives have indicated that it will be part of the budget process, which means that it will have to be completed this year by July 31. So I'm very comfortable, Mr. Chairman, with the changes that we've proposed. I would like to offer this one amendment, and the staff and I stand ready to answer any questions.

CHAIRMAN PEYSER: Let's have some discussion about the general question and then we'll bring up your amendment before a final vote on the regulations. Are there any comments?

DR. DELATTRE: I agree with you. We have waited in good faith; I don't think we should wait any longer. I want us to be on record as opposing mandatory parent advisory councils. I want us to leave it to the discretion of local districts as to how they should deal with parents and parents with them, because I don't think the state should be saying parents have to have intermediaries who may or may not speak accurately for them. If the legislature overrules us, so be it.

I also want us to be on record as opposing the Maximum Feasible Benefit Standard and favoring the Federal Standard. I could go the whole way on the rights, but at least we look in that direction. If the legislature overrules us, the legislature overrules us. Having waited as long as we have, it seems to me we have an obligation to say publicly where we stand on these matters. I agree with your account that the IEP's are not delayed by this. I would be in opposition to our approving anything that did delay the IEP's. I don't think these regulations have that consequence. I would like to make one tiny suggestion about language. On page 15 of 35 on the proposed regs, under number 4 on that page, the contents of the IEP, do you see where I am?

CHAIRMAN PEYSER: Yes.

DR. DELATTRE: In item A it says, "The IEP shall include specially designed instruction to meet the unique needs of the student." We are concerned with scientifically identifiable disabilities. That they are scientifically identifiable means they are not unique. They apply and are discoverable in a broad range of individuals. Referring here to the "unique needs" of students suggests that every idiosyncrasy in a person somehow counts as a disability; that's not true and we should not be in the position of saying or suggesting that it does.

CHAIRMAN PEYSER: Excuse me for a second. Let me make a comment or perhaps ask a question. My interpretation of this is that this does not relate to the identification or designation of a disability.

DR. DELATTRE: I know it doesn't. I still think it will be used that way. If it were up to me, I would say, "The IEP shall include specially designed instruction to meet the needs of individual students," or, "the individual student," then there's no possibility of this being misused.

CHAIRMAN PEYSER: I don't know if anyone has any comment on that particular change?

MS. MITTNACHT: I would say the language "unique needs of the individual student" is consistent with federal language that says that same thing.

DR. DELATTRE: Yes, I know, but I don't have the authority to raise an objection to it there.

CHAIRMAN PEYSER: While I agree with you, with respect to the change in the standard of service from maximum possible development to free and appropriate, which is the federal standard, that is beyond the scope of the regulations and it is a statutory requirement and regulations. Are there other comments?

DR. SCHAEFER: In the public testimony we did hear from two people who raised a number of issues. Could you comment on the issues that they raised and whether you feel comfortable that, for example, with transportation and so on and safety issues, that these regulations will not undermine those efforts to make the situation a safe one and so on for students?

MS. MITTNACHT: It is certainly my belief that the regulations don't undermine the safety of children. It is true they are streamlined. We had received those same comments during our public comment period, and we did strengthen the language in a number of cases. The team does have the responsibility to be very specific about the individual needs of the student when they are determining the transportation needs of the student. And they are supposed to be very specific about what kind of services that student needs in order to benefit and participate in the transportation services. In other words, if they need an aide, if they need their wheelchair to be moved in and out of the vehicle, there's nothing that prohibits them from being very specific and saying that.

In terms of the safety of the vehicle, the licensing of those particular school vehicles is covered under other regulations having to do with the transportation in the vehicle itself, and did not seem to be appropriately covered as an educational requirement. And that was one of the reasons that that was reduced. We did add additional language around the training of the people who are transporting the students, either as an assistant or as a driver themselves, and that language was added back in as a part of the public comment. I think that the remaining language is very consistently appropriate for the education regulations.

As far as the private schools and the safety issues around the private schools, we have, for the last 20 years in our section 18 regulations, had a number of regulations that were simply a reiteration of the regulations that were promulgated by the Office of Childcare Services, which has the responsibility to license residences. Those regulations have been highlighted in our regulations with a little asterisk. But typically we have not, as the Education Department, looked at those items. Since they are regulated, and I would say highly regulated, by the Office of Childcare Services, we simply did not repeat them in our education regulations. We focused instead on our authority which is appropriately to the educational environment of the private school. And I believe that the regulations that we have proposed there are very strong.

DR. THERNSTROM: Jim, you said you have been in contact with members of the legislature on this issue and they've said not to worry, essentially, we are not going to have a potential conflict here. Obviously, if the legislature is asking us for a delay, there is a perceived potential conflict down the road if we vote for these amendments today. Could you spell that out a little bit further for me?

CHAIRMAN PEYSER: I think there is a misplaced belief that some of these issues should be the purview of the legislature rather than the Board and the Department, but these issues are clearly regulatory issues that occur within the context of the existing statute and our existing authority. I think the whole area of special education reform, legislatively, is such a sensitive one that there are concerns that any change of any of the variables surrounding the process will somehow throw it wildly off course. My experience with this over the years has been that passing the special education legislation is, if not impossible, so difficult as to be something that you just can't rely on ever happening. And while I accept, on good faith, the efforts that are being made right now to pass a bill, I'm not at all confident that they'll be successful. I hope they are and I would hope we can help them be successful. I'm not at all convinced that the differences that exist between the two bodies have been resolved by the McKenzie report or are any closer to resolution than they were six or nine months ago. Which means that the request for further delay will continue indefinitely. In fact, we've essentially been holding off on this process, not for nine months but more like a couple of years, in the hope that the legislature would act. Yes, there is more activity now. Yes, maybe they are a few steps closer than they were a couple of years ago, but I think it just remains to be seen. I think the nine months we gave them was more than enough time to act and, as has been shown so far, it still wasn't enough time.

DR. THERNSTROM: Why isn't it in the legislative interest to pass the buck in fact to the Board of Education and therefore why would not legislators welcome action by this Board today?

CHAIRMAN PEYSER: There may be some legislators who are welcoming the action quietly or otherwise. But I don't know. I can't speak for them.

MR. BAKER: I can answer that question. There's always the question about authority and rule making and policy development. My view on this one is if the legislature decides that we did anything associated with these regs that they think is inconsistent with legislative intent or objectives, they'll pass something that will adjust that. The point Jim made about how hard it is to pass something on this, talk to Lida Harkins or Barbara Gardner about reforming special ed. They spearheaded a huge effort that took place a few years ago with the absolute best of intentions and never got a bill out of committee. This is a really tough issue to generate a 51 percent majority on in the legislature, period. And I think in some ways this will probably help them rather than hurt them in the context of getting the debate fully engaged at a point in time when they only have three or four months left in their legislative session anyway.

CHAIRMAN PEYSER: I hope it does help them. By the same token, I would have liked them to have gone first, but they haven't. And I think time is running out in terms of our being able to implement some kind of reform that can be implemented in a reasonably timely way. Again, I think we have already missed several years here and if we wait another couple of months, we're going to miss another one.

COMMISSIONER DRISCOLL: There clearly is a conflict on one level. We've heard from the Speaker of the House and the Senate President and the chairs of the Joint Committee. I've shared letters with you from individual legislators. So there clearly is a conflict between what many legislators want us to do, which is delay, and what I'm urging this Board to do. I didn't mean to minimize that conflict with my earlier comments.

I feel very strongly, as the Chairman has said, that these are long overdue and necessary for school districts. My interest is in September of 2000, when we implement them. And that's where I don't see a conflict. If the legislature does act and does make statutory changes that are in conflict with what the Board does today, we can adjust. In fact, I think in many ways we have helped clarify the field of issues, if you will, and we are well aware of what's in the bills and where there are changes. So it would be in that sense, I think, easy -- if the word "easy" is the right word -- for us to make the regulatory change and move forward for September of 2000.

DR. GILL: Mr. Chairman, as a new member of the Board, I have a great deal of respect for the comments that you have made, that the Commissioner has made, and that Mr. Baker has made. I was actually present in the legislature when the Bartley/Daily Bill was passed and I know the importance of this. I am not as familiar as most of my colleagues are with the regulations that you have been discussing, and I am concerned about some of the testimony that I have heard today. I would like to ask why it is not possible to delay this vote for one more month?

CHAIRMAN PEYSER: Again, the issue is in trying to schedule training for schools and districts in how to apply the new regulations in the coming school year. We have very little time left. There are only three months left of school before summer, which makes it impossible to do the kind of informational meetings we need to get this out. The other thing is that it has been on our table, literally, for one year from draft to now. I don't think one month is time enough for the legislature to act. I don't think the legislature would say they'll get a bill to the Governor's desk within one month. I think the best-case scenario we are talking about would be June or July, and it would probably get locked up in the budget process which we know itself doesn't necessarily have a fixed termination point. So I don't think a month would buy us anything and I think it may set us back in terms of getting things done in September.

MR. BAKER: Could someone comment on the federal money question that was raised?

MS. MITTNACHT: I'd be happy to comment not only on the federal money issue, but on the comment that was made earlier that these regulations, in a number of areas, conflict with federal requirements. I believe that it is absolutely untrue that they conflict. In fact, when we first proposed these regulations in March of last year, a copy of them was sent to the U.S. Office of Special Education Programs to give them an opportunity to give us any feedback or comments about any concerns that they had. Their concerns were very minimal and every one of their concerns has been addressed in these proposed regulations before you today. Yes, we receive quite a bit of money from the feds. We get about \$130 million a year now, and I don't see it as being in any jeopardy.

DR. DELATTRE: Will you let me move Dave's amendment and separately move my new amendment?

MR. LaFLAMME: Could you restate the amendments?

DR. DELATTRE: On page 15 of the text it changes the sentence from reading "to meet the unique needs of the student" to "meet the needs of the individual student".

CHAIRMAN PEYSER: And you've moved, you're moving both of these.

DR. DELATTRE: Separately, but moving Dave's amendment on the CORI, however he wants the language, and this other amendment.

CHAIRMAN PEYSER: Dave, would you like to read your amendment?

COMMISSIONER DRISCOLL: You have a copy of mine, Marcel, which essentially asks that we include the procedures on hiring to include the steps they are going to take to do CORI checks and criminal checks.

DR. THERNSTROM: I also have a question, it's actually directed to you, on Ed Delattre's amendment. Is it in any way a problem for us to deviate from the federal language? Does that open any kind of door that we don't want?

MS. MITTNACHT: Your question is an important one because every once in a while we have had one word in our regulations where we have had a big discussion with the federal government, but I don't think in this case that it would be a problem.

CHAIRMAN PEYSER: So if all are in agreement here, let's take a vote on first Ed's amendment to section 28.05 (4) (a). All in favor?

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education accept the additional revision to the proposed amendments to the Special Education Regulations, 603 CMR 28.05 (4) (a), as offered by Dr. Delattre.**

The motion was made by Dr. Delattre and seconded by Dr. Thernstrom. The vote was unanimous.

CHAIRMAN PEYSER: The second amendment is the one that has been put forth by the Commissioner. I think you have it in your packets, with respect to background checks on employees of private schools.

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education accept the additional revision to the proposed amendments to the Special Education Regulations, 603 CMR 28.09, as presented by the Commissioner.**

The motion was made by Dr. Delattre and seconded by Dr. Thernstrom. The vote was unanimous.

CHAIRMAN PEYSER: Now the question comes on the motion as amended to adopt the regulations amending the existing special education regulations.

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education, in accordance with G.L. c. 69, §1B and c. 71B, and having solicited public comment in accordance with the Administrative Procedure Act, G.L. c. 30A, §3, hereby adopt revised Special Education Regulations, 603 CMR 28.00, as amended, in place of the current Chapter 766 Regulations (603 CMR 28.00) and the Regulations for the Approval of Private Day and Residential Schools (603 CMR 18.00). Said revised Special Education Regulations have been subject to public comment in 1999 in accordance with the Administrative Procedure Act, G.L. c. 30A, §3. Said revised Special Education Regulations shall take effect September 1, 2000.**

The motion was made by Dr. Schaefer and seconded by Ms. Crutchfield. The motion passed with 8 votes. Dr. Gill abstained.

PROPOSED REGULATIONS ON DIAGNOSTIC ASSESSMENT OF CERTAIN MATHEMATIC TEACHERS
Discussion and Vote to Solicit Public Comment

CHAIRMAN PEYSER: I'd like to initiate the conversation by reading a statement on this subject.

As those of us on this Board are perhaps painfully aware, there is a great controversy over what ails mathematics education in Massachusetts. At one end of the spectrum are those who argue that too many math classes are intellectually empty drill-and-kill sessions which leaves students without any understanding of math concepts. At the other end are those who believe that the problem is math instruction is too often an exercise in building self-esteem, in which students are encouraged to invent their own version of mathematics. Regardless of where one stands in this debate, at either extreme or someone in the middle, there is little disagreement that there is indeed a problem. High failure rates on the math section of MCAS are just the latest indicators of how far we have to go. What's more, there is little disagreement that effective math instruction cannot occur unless math teachers know their subject well. And as a corollary, it is clear that improved math instruction will require teachers to deepen their knowledge of mathematics through professional development. With this as a backdrop, let's look at the proposal before us today.

Under the draft regulations, a middle school or high school with MCAS failure rates above 30 percent, which is not meeting or exceeding expectations for improvement, would be deemed to have a low-performing math program. In such schools, the regulations would require that math teachers take a diagnostic assessment to identify their strengths and weaknesses with respect to subject mastery, in order to inform future professional development plans. Math teachers who do poorly on the assessment will not be publicly embarrassed, as individual results will be kept strictly confidential between the teacher and his or her principal. They will not lose their jobs or receive unsatisfactory performance reviews, as the assessment is to be used for diagnostic purposes only. There is nothing at all punitive about this process. Indeed, teachers who participate will receive, at no cost, 10 professional development points toward their recertification. More important, having meaningful diagnostic information about a teacher's subject knowledge will help that teacher improve and help students to learn. Isn't this what education reform is all about?

I understand that teachers feel they are being blamed and demeaned. And I agree that at times the rhetoric on the issue of teacher quality has become overheated and one-sided. For myself, I hope that my past comments have not contributed to this perception and I pledge that my future comments will treat all teachers with the respect and fairness that they deserve. This does not mean that any of us should remain silent in the face of unsatisfactory performance. And it does not mean that we should allow ourselves to lose sight of our primary responsibility, which is raising student achievement. This is the spirit in which these regulations are offered and it is in this spirit that I ask the Board's support. Will someone move the motion?

DR. DELATTRE: I intend to vote for this because it involves sending it out for public comment. I hope that, in addition to public comment, the Department will address two specific problems that seem to loom here. I would like to know, in the course of the public comment period, how we intend to address that. The two things that concern me are: the problem of hiring good teachers in an area where the math accomplishment levels are already low and where the specter of teacher testing looms; and also, how specifically we will deal with the demographic problems of transient students. I think we have to know how we're going to face that in order to ultimately approve these as regulations. And I don't want to just rely on the field. I want a systematic account from inside.

CHAIRMAN PEYSER: I will make a couple of quick comments not as answers but as responses, or thoughts. We do exempt schools that show improvement, regardless of the failure rate, that meet expectation. And while I will grant you that the transience problem makes it harder to reach or achieve, there is an expectation that regardless of where one starts and regardless of one's circumstances, that improvement is possible. And maybe that's more faith than fact at the moment, but that's certainly where we are starting.

The second thing is that, just as a general principle, I think that the profession as a whole, education as a whole, needs to get more comfortable with assessment as a regular part of doing business. People should not view assessments of their knowledge or skill as punishments or as burdens, but rather as helpful parts of improvement. In fact, maybe the most critical

part of improvement is to understand what you need to change and where your weaknesses are. Both your points are important. Any other questions or comments?

MR. LaFLAMME: Referring to Tab 8, there's an article from *The Enterprise*. It's just a paragraph and certainly not an unfamiliar thought, but it's something that I think we can discuss, even if the scope of the answer exceeds the jurisdiction of the Board. I'm reading a paragraph from the second column, about halfway through Tab 8, where it says, "The MTA considers the proposal an attempt to circumvent the 1993 Education Reform Act, which exempts veteran teachers from taking a certification test. Only new teachers are required to pass a competency test before they are certified to teach in public schools." I understand that issue is one that is being addressed in venues other than this Board, but I wonder whether there is a line of policy or just some capsulized reaction to that as we look at these regulations.

CHAIRMAN PEYSER: One thing that relates to the comments and the question is that the earlier proposals around teacher testing were directly linked to the teachers' employment and certification. In particular, if you failed the test, you were at risk of losing your job or your certification. That is not the case in the proposal before us today. It's entirely diagnostic. In terms of the way the regulations are drafted, the only potential penalty comes from not taking the test as opposed to how one performs on it. There is no pass/fail on this test. It is only information to guide professional development.

DR. SCHAEFER: I think you're making an important point, because from the very beginning, when this teacher test was proposed a couple years ago, I thought that it should be viewed in the context of recertification. And if we link it to that, it seems to me you're using it for diagnostic purposes. What teachers need to focus on for their whole professional development plan is the context in which we should be viewing this.

CHAIRMAN PEYSER: Another thing I'd mention as a point of information is that, especially in middle school, there are high percentages of teachers who are teaching mathematics who have a general middle school certificate but not a math certificate. These aren't technically out-of-field teachers per se, but they are not specifically trained, or at least through the certification, they've not been certified as specifically trained in math instruction. I think the latest data was something like 40 to 45 percent of middle school math teachers, are not certified in math. Which suggests that focusing on math teachers is not arbitrary, not only because of the MCAS performance and other measures, but because of what is clearly a fairly large percentage of teachers who have not necessarily majored in math prior to entering the teaching profession.

MS. CRUTCHFIELD: When are the public comment forums? When will they be held? Or am I missing that in my packet?

CHAIRMAN PEYSER: I don't know, Commissioner, do you have any plans for scheduled forums or meetings?

MS. DUFFY: Once the document goes out for public comment, we'll then be scheduling forums next month so we can catch it before the school year ends. So once we vote, they'll be scheduled. They have not been scheduled yet.

MS. CRUTCHFIELD: I will be very interested in hearing what we get back in terms of feedback, clearly.

DR. GILL: As would I.

COMMISSIONER DRISCOLL: I do want to comment on that and, just for the record, I want to very quickly frame this.

This obviously began with a State-of-the-State speech by the Governor in which he made public this directive for the Board of Education and the Department to not only test teachers in schools that have 30 percent failure rates or more, but also to do an analysis and diagnosis of the whole situation. What we put before you to put out for public comment is the ways that we see it being done. And there's no kidding ourselves. This will be legally challenged, as you heard today, for the reasons of the history of testing teachers.

Not only was this a debate as the law was passed, because this was an issue raised on a number of occasions, but it's been the subject of discussion. So we certainly will anticipate a legal challenge. We have proposed, both in the case of underperforming and in the case of recertification, ways that this can be done. We have also talked about a way of implementing it. The Chairman outlined his principles, at least, to make this work. I, too, am looking forward to the comment period. And I want to reiterate what Chairman Peyser said just a few minutes ago.

There is this growing concern that as we implement things in schools, districts, and with individual teachers, that there is a demeaning, an idea of bashing, as you hear it. We have been told, on a number of occasions, by both the Governor and the Lieutenant Governor, that this is not to be punitive. So I, too, am looking forward to the comment period. In fact, the Chairman and I met with the Governor's office last week, to talk about this very idea. During the public comment period, hopefully there can be an opportunity to have a dialogue with teachers, others in the field, and the public. We all recognize we have a problem in mathematics as opposed to English language arts. It's a national problem, certainly not just here in Massachusetts. We're going to do the best we can to make these regulations the best we can make them. But we've got to have the dialogue as well. We need involvement in trying to get to the bottom of these issues.

DR. THERNSTROM: Obviously, the question of the arbitrariness of singling out math teachers has been raised, but at the same time, it's perfectly clear that the MCAS math scores are of particular concern. Nevertheless, do you roughly know what percentage of schools have a 30 percent failure rate on the English Language Art portion of MCAS?

CHAIRMAN PEYSER: That's a good question.

COMMISSIONER DRISCOLL: We were all set to answer that in the math question. That was a trick MCAS question. Why don't we give the math answer and then I will guess at the English.

MS. DUFFY: I don't have the exact numbers with me, but just to give you a rough estimate, about 80 percent of the schools in the state would fall into this category. And to compound the problem, if we are defining a mathematics teacher as any teacher that teaches any form of mathematics, then we actually broaden the scope beyond just those teachers assigned mathematics. We'd now be talking about the teachers teaching one or two classes a day of mathematics or, as the Chairman mentioned a moment ago, teachers who were hired as general middle school teachers and are now teaching a math class.

CHAIRMAN PEYSER: The regulations before you would exempt those schools among those 80 percent who are showing the requisite amount of improvement. So it would be less than that. I don't know how much.

DR. THERNSTROM: I understand, but I'm trying to get at the arbitrariness question. That is, if you have a significant percentage of schools that are, as well, falling below that 30 percent mark on the English Language Arts test and we are ignoring that problem, then there is in fact some legitimacy to the question of punitively, arbitrarily targeting math teachers.

CHAIRMAN PEYSER: Looking at the state overall, there's clearly a distinction in the 8th grade. Particularly the failure rate in English which was 13 percent and 40 percent in math.

DR. THERNSTROM: I'm curious what the English Language Arts picture looks like, that's all, as some information that would be useful in thinking about what we are embarking on here.

CHAIRMAN PEYSER: We can certainly put that together.

DR. DELATTRE: I want to make one other point that I haven't heard in any of the public discourse about this. It seems to me that the prevailing current in American education is that testing is punitive. What bothers me most about that is my belief that children are being taught that testing is punitive. I think it is obligatory for us to say, "No, it isn't. Implementing testing on a wide scale in a variety of domains enables children to learn over time. It isn't punitive, it's instructional, and part of a legitimate assessment." I don't know any other way we can weigh in against attempts to indoctrinate children to believe that testing is somehow an effort to punish them.

CHAIRMAN PEYSER: If there's no further comment, I would call the question. Anyone else have any final words? If not, we'll send it out for public comment. Commissioner, what is your expectation for when it would come back to the Board?

MS. CRUTCHFIELD: May is what it says here.

COMMISSIONER DRISCOLL: That's right.

CHAIRMAN PEYSER: Thank you very much.

On a motion duly made and seconded, it was:

VOTED: that the Board of Education, in accordance with G.L. Chapter 69, sections 1B and 1J, and chapter 71, section 38G, hereby authorize the Commissioner to proceed in accordance with the Administrative Procedure Act, G.L. Chapter 30A, section 3, to solicit public comment on the proposed regulations on diagnostic assessment of certain mathematics teachers, to be adopted as amendments to the Regulations on Under Performing Schools and Districts (603 CMR 2.00) and Recertification Regulations (603 CMR 44.00), as presented by the Commissioner

The motion was made by Dr. Gill and seconded by Dr. Schaefer. The vote was unanimous.

AMENDMENT TO BOSTON STUDENT ASSIGNMENT PLAN - Discussion and Vote

CHAIRMAN PEYSER: The next item on the agenda is Amendments to the Boston Student Assignment Plan. We have with us Superintendent Payzant. Would you like to come up? I don't know if you have any further comments to make, especially with respect to any changes that may have occurred between now and the last time you were here, but the microphone is yours.

DR. PAYZANT: Thank you, Mr. Chairman. I would like to make a brief statement, if I may.

As the Board will recall, at last month's meeting I presented you with evidence to support the case that Boston's controlled-choice student assignment plan, as modified by the school committee July 14, 1999, and again in November of last year, meets the intent, goals, and objectives of Boston's original controlled-choice plan.

I am requesting that the State Board approve the plan as modified. Last month, I reviewed with you the following: The context in which Boston's plan is operating and its change in demographics; secondly, the modifications that are made by the school committee in the controlled-choice plan; third, our detailed plan for monitoring the results of the plan and potential options for ongoing adjustments; and our plans for three new schools which will be submitted to the Department in June of this year. I also responded to a number of questions from Board members, and since that meeting in February, I met with the Racial Imbalance Advisory Committee, on Friday, March 10, and responded to committee members' questions about Boston's student assignment plan. As requested by the committee, I responded to several of their questions in writing in a letter that was forwarded to the Chair of the committee, on March 13. I believe the Commissioner has shared a copy of that letter with you as well as a letter from the Racial Imbalance Advisory Committee.

I believe that Boston has made a compelling case that the controlled-choice student assignment plan, as modified in 1999, continues to ensure both choice and access to schools beyond a student's particular neighborhood in order to preserve racial and ethnic diversity and reduce the likelihood of racial isolation within its schools. The modified plan specifies that 50 percent of the seats for not only the new schools but any school in the Boston public schools, elementary and middle level, will have an allocation of 50 percent for walk zone and 50 percent for students who reside outside of the walk zone within what we have proposed to retain as three large geographic assignment zones. In addition, the modified plan retains the educational benefits of the original controlled-choice plan including promotion of school improvement, continuing stability of placement for students, equitable distribution of resources to schools throughout the city, and educational opportunity for student and parent choice. I have made the commitment to continue monitoring results and to make recommendations for adjustments to the plan as necessary, and the school committee, as I've pointed out, is defending vigorously this plan in court because it is still being challenged by the plaintiffs. We are making the strong case that we must have this controlled-choice plan to continue our commitment to diversity and our opposition to racial isolation in the schools. I'd be happy to respond to any questions that you may have.

COMMISSIONER DRISCOLL: Just two comments. First of all, should the Board approve this, the plans for the new schools will still need to be submitted to us and looked at by the Department, as we did in Waltham, and will continue to do so in all building projects going forward. So the approval of the assignment plan does not necessarily mean that buildings will be qualified. Secondly, I gave you a copy of the Advisory Council's very thoughtful letter to the Board, and in there they talk about, not only has the superintendent committed to monitoring as we go forward, but they suggest the

Department of Education institute a formalized monitoring process as well. And I think that that is an excellent idea and something that I will commit to. So with those two comments I certainly urge the Board to support this plan.

CHAIRMAN PEYSER: I would just add further that I think in following up on your comment about the individual building proposals themselves, that that is where the rubber meets the road, as opposed to the amendment itself. In particular, things that have to do with location of school buildings and the design and extent to which they are capable of accommodating different populations, that's going to drive whether, in fact, the program that's put forward does not result in racial isolation or imbalance. It's not so much the proposal itself. I think the proposal itself, especially with the monitoring provisions that are now explicitly part of it, ensure that there's a framework for having these kind of discussions around the specific building projects. It's going to be a consideration of the building projects themselves, and the care with which the district brings forward those proposals, that is going to be far more important in determining the success or failure of this, rather than some of the individual and more specific elements of the proposal itself. So I'm comfortable that the proposal meets the spirit of the law, has a realistic chance of actually producing the desired result, and may indeed have a better educational outcome. So, again, I would endorse the amendment and hope the Board members do likewise.

On a motion duly made and seconded, it was:

MOVED: **that the Board of Education, having reviewed the preliminary report of the Racial Imbalance Advisory Council and the supplemental material submitted by Superintendent Payzant, approve the amendments to the student assignment plan submitted by the Boston Public Schools under the Racial Imbalance Law.**

Further, that the Board direct the Department to thoroughly and expeditiously analyze the school building projects that Boston has presented and determine whether each project satisfies the standard for 90% School Building Assistance funding under General Laws chapter 15, section 1I; that is, that "... the construction or enlargement of the schoolhouse is for the purpose of reducing or eliminating racial imbalance...or imbalance of minority students...."

The motion was made by Mr. Irwin and seconded by Dr. Schaefer. The vote was unanimous.

ANNUAL REPORT OF THE BOARD AND COMMISSIONER - Discussion

CHAIRMAN PEYSER: The fifth item on the agenda is the annual report, and it says here that we're going to have a discussion and vote. That had been my original intent, but I'm not sure we need a vote. I'm not sure members have had a chance to look at the most recent spin on this, in particular the data sections in the back. But in addition, I'm not sure this is something that actually requires a vote of the Board. I am, certainly, and the Commissioner is open to any editorial suggestions you have. If anyone has a violent objection to the information in it, that may require a rewriting of history more than a rewriting of the annual report, which is a little more difficult to do. So if it's okay with members, what I would encourage you to do is get comments to myself and the Commissioner or Ann Hess by the end of the week, if at all possible, is it ahess@doe.mass.edu?

DR. SCHAEFER: I want to compliment Ann and the staff. They have to make some changes, but I think this is not only a useful document, it is well done. When I was going through it, I was impressed by how much the Board has actually accomplished. In particular, I want to compliment the Chairman and the Commissioner for guiding us through all these things. There were a lot of issues that we have taken up, very important ones, and that is elaborated in this document.

MS. CRUTCHFIELD: I would agree. I think there's a tremendous amount of useful information here and Ann is very responsive via e-mail. Thank you.

CHAIRMAN PEYSER: Even in person she's responsive.

DR. GILL: Mr. Chairman, I haven't had an opportunity to review it other than the first page, but I would like very much to thank you for dedicating this to the former chancellor. It's a wonderful picture.

CHAIRMAN PEYSER: I'm not sure you will all agree about our own pictures, but that can be part of your comments. If there's no further discussion, again, the window is open here for some final comments. I would hope that you can get them to Ann by the end of the week, and we'll move as quickly as possible toward publishing it.

CERTIFICATE OF MASTERY – Discussion and Vote

CHAIRMAN PEYSER: Certificate of Mastery is the next item on the agenda. There are a couple of things to go over prior to taking this up. One is that you have a revised version of what was in the packet, and the revisions are quite minor and technical. Another is to include an example of a competitive publication that would be considered an achievement for purposes of certificate of mastery, and that is citing the example of the Concord Review as a journal that would qualify. And the second part is number 4, under 31.02, I guess, which simply states the Department will issue guidelines around how the applications shall be submitted and when the certificates shall be awarded. The quick issue on this is that the prior draft that you received implies the students themselves, would apply to the Department. I think some process that involves the schools or the districts as the applicants to the Department on behalf of the students is more likely to be the scenario we'd pursue.

With some help from the Department, I have drafted an amendment which attempts to do something a little bit more substantive, but I hope is acceptable to the Board. There is, under the draft regulations you have before you, a distribution requirement for showing accomplishments above and beyond MCAS performance, or at least above and beyond proficiency in MCAS. My recommendation was that if a student scores in the Advanced category in one of the requisite MCAS areas, that they would not have to demonstrate other accomplishments in that particular field if they chose instead to show two additional accomplishments in the other part. Described in more detail, there's arts & humanities and math & science. If I scored Advanced on arts & humanities but wished to do an AP course in math and take an SAT II in science, that would satisfy my distribution requirement, rather than forcing me, essentially, to do an AP course in, let's say, English and an SAT in science. Does that make sense to people? Do people understand what I'm getting at here? Then you're probably ahead of most other people in the audience. The other half of it is that if you are doing two, either an AP or SAT II or two of the other achievements in one of those distribution areas, that they would have to be in different subjects. So, for example, your AP course in calculus would mean that your other SAT II would have to be in something other than calculus so you're not accumulating two achievements in the same subject area. All right? I guess, first, if someone would move the regulations as revised without my amendment.

MS. CRUTCHFIELD: So moved.

DR. SCHAEFER: Second.

CHAIRMAN PEYSER: Is anyone interested in moving my amendment as an amendment?

DR. SCHAEFER: So moved.

MS. CRUTCHFIELD: Second.

MR. LaFLAMME: Though perhaps not. I like your amendment, but I have two thoughts. The first is a procedural one. We talked about this year, because of the late date that we are implementing this, that we'd be looking at MCAS scores exclusively as far as candidacy for the certificate. Or is that something that --

CHAIRMAN PEYSER: No. I don't know if anyone from the Department wants to come out and be specific, but I believe this would require not only the requisite MCAS performance but also the requisite performance on AP and SAT II.

MR. LaFLAMME: So that complete application process we should be able to put together in the time frame available? Because that was a concern before.

CHAIRMAN PEYSER: Yes.

COMMISSIONER DRISCOLL: Yes.

CHAIRMAN PEYSER: That is my understanding. Having said that, it may be, in fact, that the certificates are not issued until after graduation occurs, but they would still be issued to this class.

MR. LaFLAMME: Okay. Another thing, and maybe there's a reason for this that has to do with budgetary or other things, but 31.05 simply reads, "The student who fulfills the requirements of 603 CMR 31.04 will receive the Stanley Z. Koplik Certificate of Mastery Award," with no further explanation about what that entails. Was that a conscious decision, and if so, where will the topic "award" be defined, I guess?

CHAIRMAN PEYSER: That is a good question. There have been a couple of things discussed. One has to do with scholarships, which is sort of beyond our purview, and perhaps the Acting Chancellor can comment on that. The other is the possibility of offering some financial award as a result of receiving a Certificate of Mastery which, generally speaking, is also outside of our control, meaning it's in the legislature's hands. But Commissioner, do you want to comment further?

COMMISSIONER DRISCOLL: No, that's it. Did something get filed?

MR. WULFSON: The supplement from the Governor.

COMMISSIONER DRISCOLL: Two million. So that's been filed.

CHAIRMAN PEYSER: So if that, in fact, is passed and funded, there would be some financial awards.

DR. GILL: That I was not aware of, but I would like to thank the Board of Education on behalf of the Board of Higher Education and its staff for naming the Certificate of Mastery for the former chancellor and Board of Education member. Stan's work on this Board was very important to him. So too was his interest and his concern for providing incentives for students to achieve and to promote excellence. Therefore, in recognition of this honor, what I will do is ask the Board of Higher Education if it will then consider a motion to move a tuition waiver to all students who receive a Certificate of Mastery and attend an institution of higher education.

CHAIRMAN PEYSER: Thank you very much.

COMMISSIONER DRISCOLL: You'll have my vote soon on that one.

MR. IRWIN: Specifically, David, at the last meeting we spoke about looking at the vocational-technical schools, and I see that there's really nothing in here except perhaps "additional achievements as approved by the Department." Is that what we are looking at here? Can you give us some idea?

COMMISSIONER DRISCOLL: As you know, the Certificate of Occupational Proficiency was part of the law, as its counterpart if you will, and that was easier said than done when the law passed in 1993. We have recently made a great deal of progress in that area. Even in other states where we thought they were way ahead of us, it proved more difficult than we thought. But this is exactly the track that we want to follow for kids in either comprehensive schools or vocational schools to give them the opportunity to earn and be awarded this special certificate. I, too, would like to see a financial incentive and other award, whatever the appropriate issue might be. Paralleling this is exactly what I want to see- the Certificate of Occupational Proficiency for kids as well.

CHAIRMAN PEYSER: In finally promulgating Certificate of Occupational Proficiency regulations in the various fields, I would hope we also take into consideration not only certificates of occupational proficiency but occupational mastery, as well. I do think that we need to be able to recognize excellence across the board.

MR. IRWIN: And there are vehicles to do this, whether it's the National VICA Contest or something like that. Both Dave and Jim are going to the Outstanding Student awards banquet, I will be out of town when that happens, but you're going to really get a firsthand look at some of the great things that are being done in vocational-technical schools.

COMMISSIONER DRISCOLL: Many of those kids receive the Commonwealth Scholarship Award in the UMass system, so you're absolutely right.

DR. SCHAEFER: I just wanted to say that I hope that we can pass this as expeditiously as possible given that we have been discussing this for I think three years.

CHAIRMAN PEYSER: Approximately.

COMMISSIONER DRISCOLL: Off and on.

DR. SCHAEFER: And I think that we have finally come up with something that looks very promising.

COMMISSIONER DRISCOLL: I take it that you're moving the question.

DR. SCHAEFER: I certainly am.

CHAIRMAN PEYSER: So let's take up my amendment first. All in favor of the amendment?

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education accept the amendments presented by the Chairman to the proposed regulations on the Massachusetts Certificate of Mastery.**

The motion was made Ms. Crutchfield and seconded by Dr. Schaefer. The vote was unanimous.

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education, in accordance with G.L. c. 69, §§ 1B and 1D and having solicited and reviewed public comment on the proposed regulations in accordance with the Administrative Procedure Act, G.L. c. 30A, § 3, hereby adopt the Regulations on the Massachusetts Certificate of Mastery, 603 CMR 31.00, as amended.**

The motion was made by Ms. Crutchfield and seconded by Dr. Schaefer. The motion passed with 6 votes. Mr. LaFlamme abstained from the vote.

FY2000 BUDGET UPDATE - Discussion

CHAIRMAN PEYSER: I think we are now back to the budget update. Am I correct or have I missed something?

COMMISSIONER DRISCOLL: No, you haven't missed it.

CHAIRMAN PEYSER: FY 2000 budget and spending update. This is probably more informational than anything else.

COMMISSIONER DRISCOLL: Well, this was, again, part of your planning, Mr. Chairman, a year ago to have us not only develop an annual report, but a financial subcommittee, and you talked about this idea of having periodic budget updates. So here we are.

CHAIRMAN PEYSER: I want to commend Ann Hess for her work in this area, and for putting up with my frequent and unpredictable edits. There are a couple of things worth noting. One is the budget report, on the first page after the cover memo, that connects the staffing to the spending and which tries to identify the direct spending as opposed to the administrative spending. There's an attempt to try to combine some of these things into a single report. There is then the budget report on the next three pages which has all the various line items that you're familiar with. It tries to align them to the categories that are in the first page so there's some consistency. And then the third section is a pie chart which shows the distribution of administrative expenses across the various accounts. The purpose of all of this is to try to provide us a little bit more information in exercising our fiduciary responsibilities to assure that the Commissioner isn't wasting money. Isn't that the basic purpose? So I guess what I would be interested in, and again this is something which doesn't have to be discussed in full today but can be subject to comments over the intervening weeks, is to get feedback from members as to the usefulness of these reports. I hope to get some feedback as to whether there are other reports which would be as useful or more useful in addition to the ones that are presented to you today. Does anyone have any immediate comments?—

MS. CRUTCHFIELD: I must say that I found this not only useful, but I found it useful because it was easy to follow.

MR. BAKER: At the risk of complicating matters further, when I looked at this I thought to myself, Hmm, I wonder if it would be possible to take some of the information that's in the back of this and incorporate it into this. This format is actually a lot. I ended up using this format to track some of what was in the front end of this, rather than using information in the back which in some cases wasn't coded or tracked the same way as this information.

CHAIRMAN PEYSER: The only reason I bring it up is because people said they thought this was helpful. Perhaps it is something for next-year.

MS. CRUTCHFIELD: Maybe it's cut and paste.

CHAIRMAN PEYSER: Is your comment that the format of these materials is more useful than some of the materials that are in the annual report or the other way around?

MR. BAKER: My view would be yes and no. I found this stuff very helpful but I also found a lot of what was in the back of this helpful. My problem with this is that it's in the back. It's not up here where a lot of the program information is. So a lot of the demographic and financial information that is, theoretically anyway, supporting and driving a lot of the program data in the front end is not integrated to it. That might be a next-year thing, not a this-year thing. And my annual pet peeve, we have everything about the SBAB except the actual level of spending since 1991.

CHAIRMAN PEYSER: We can include that.

MR. BAKER: I think this stuff is great.

CHAIRMAN PEYSER: If there's no further discussion or comment, we are done. That also concludes the business items on the agenda.

COMMISSIONER DRISCOLL: If I could, there are two very quick things. First of all, on April 14 we are bringing together all of the advisory councils out in Marlboro and we'd love to have Board members attend. It's something we haven't done in a while. We only did it once in the past, but it's very, very helpful because it provides the connection between all of these special interest advisory councils and the broader goals of the frameworks of Ed Reform and so forth. So it is very helpful. And if Board members can make it, we'd love to have you. It's in Marlboro on the 14th of April.

DR. SCHAEFER: What is the format?

COMMISSIONER DRISCOLL: We'll have a general session and then they will break out into their own advisory councils, and we'll bring them back together again. So it is a combination of bringing everybody together to talk about some broad issues and then having them reconvene with their councils. It's an opportunity to meet and see all of these people who you've appointed to do all this great volunteer work, be it the Home Economics Advisory Council, the Racial Imbalance Advisory Council, the Gifted and Talented. There's 15. It is a great opportunity. And the second thing is, come April, we'll bring the grants to you to be approved before they are sent out. This is the last group of grants that I've approved under your special authority because of the late budget. So we are hopefully done with that process and won't have a late budget next year.

CHAIRMAN PEYSER: Where are we meeting next month?

COMMISSIONER DRISCOLL: We are on the road again. In April we are meeting in the very western part of the state, either in Pittsfield or North Adams. This Board hasn't been out there in at least five years. And in May we are in the great town of Monson in honor of our student member who will be leaving us soon.

MS. CRUTCHFIELD: He's got one more. So we're going west twice. Wow! What a refreshing thought.

MR. IRWIN: You're going east, though, Pat, aren't you?

MR. LaFLAMME: Just one more thing. Were it not for abundant traffic on the Mass. Pike, I would have introduced it earlier. But for the purposes of clarification, back in the Commissioner's note, way back at the beginning of the packet, he

talks about coming to speak at the student advisory council meeting last week here at the Department. On behalf of the council, I'd like to thank him for coming to that. But for informational purposes of the Board, it does mention that 15 of the students said they were planning to boycott this year's test to show their displeasure with the program. Those students that were there were actually representatives of a group called the Student Coalition for Alternatives to the MCAS, and were not themselves members of the advisory council. I mention this so as not to incorrectly attribute that to the council. The council, historically, has been supportive of the MCAS in the context of trying to improve and inform students about it. We also had representatives from Mass. Insight there. There was also a great round table discussion.

COMMISSIONER DRISCOLL: It was fun.

CHAIRMAN PEYSER: With that, if there is no other urgent business, we are adjourned.

The meeting adjourned at 11:30 a.m.