

# Watertown Public Schools



## Annual and Continuous Civil Rights Training Manual

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### **What is the Department of Social Services (DSS)**

- The Department of Social Services is the state agency whose primary mission is to protect children who have been abused or neglected.
- DSS provides preventative services to children and families where there is a risk of abuse or neglect.

### **What is “abuse” and “neglect”**

- Massachusetts law and DSS regulations define *ABUSE* as:
  - The *non-accidental commission* of any act by a caretaker which causes or creates a substantial risk of physical or emotional injury; or the commission of a sex offense against a child as defined by the criminal laws of the State, or any sexual contact between a caretaker and a child.
- Massachusetts law and DSS regulations define *NEGLECT* as:
  - *Failure* by a caretaker, either deliberately, through negligence, or inability, to take actions necessary to provide a child with minimally adequate, food, clothes, shelter, medical care, supervision, emotional stability and growth or other essential care.

### **What is a “Mandated Reporter”**

- Most people who work with children are mandated to report instances of abuse and neglect. This includes teachers, administrators, paraprofessionals, nurses

### **What is a 51A?**

- This is the legal statute number or law that specifically addresses the requirement to report “reasonable suspicions” of a child being abused or neglected, or when there is “reasonable cause to believe” abuse has occurred or is occurring.
- The actual Statute is *MGL Chapter 119, section 51A* – Included (with highlights) in this package

### **When is a 51A filed?**

- When a mandated reporter who, in her or his professional capacity, has reasonable cause to believe that a child under the age of 18 years is suffering serious physical or emotional injury as a result of abuse, including sexual abuse, or from neglect, including malnutrition, or who is determined to be physically dependent upon an addictive drug at birth.
- Always consult with an administrator before you speak with DSS on any suspected case of abuse or neglect.

### **One of two findings from a 51A**

- A *Supported* report means that DSS had enough information or evidence to support the allegation that abuse/neglect has occurred.
- An *Unsupported* report means that there is not enough information or evidence to support the report. This does not mean that it did not happen.

**Important to know about 51A's**

- Failure to report may be punishable by a fine of up to one thousand dollars.
- It is your responsibility to report abuse/neglect when you suspect it.
- Consult, consult, consult with an administrator.
- It is illegal to release the name of the person who has filed a 51A to anyone other than a DSS worker.

## Chapter 119: Section 51A. Injured children; reports

Section 51A. Any physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, psychologist, emergency medical technician, dentist, **nurse**, chiropractor, podiatrist, optometrist, osteopath, public or private **school teacher, educational administrator, guidance or family counselor**, day care worker or any person paid to care for or work with a child in any public or private facility, or home or program funded by the commonwealth or licensed pursuant to the provisions of chapter twenty-eight A, which provides day care or residential services to children or which provides the services of child care resource and referral agencies, voucher management agencies, family day care systems and child care food programs, probation officer, clerk/magistrate of the district courts, parole officer, social worker, foster parent, firefighter or policeman, licenser of the office of child care services or any successor agency, school attendance officer, allied mental health and human services professional as licensed pursuant to the provisions of section one hundred and sixty-five of chapter one hundred and twelve, drug and alcoholism counselor, psychiatrist, and clinical social worker, priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, ordained or licensed minister, leader of any church or religious body, or accredited Christian Science practitioner, or person employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis, who, **in his professional capacity** shall have **reasonable cause to believe** that a **child under the age of eighteen years is suffering physical or emotional injury** resulting from **abuse** inflicted upon him which causes harm or **substantial risk** of harm to the child's health or welfare including sexual abuse, or from neglect, including malnutrition, or who is determined to be physically dependent upon an addictive drug at birth, **shall immediately report such condition to the department by oral communication and by making a written report within forty-eight hours after such oral communication**; provided, however, that *whenever such person so required to report is a member of the staff of a medical or other public or private institution, school or facility, he shall immediately either notify the department or notify the person in charge of such institution, school or facility, or that person's designated agent, whereupon such person in charge or his said agent shall then become responsible to make the report in the manner required by this section.* Any such hospital personnel preparing such report, may take or cause to be taken, photographs of the areas of trauma visible on a child who is the subject of such report without the consent of the child's parents or guardians. All such photographs or copies thereof shall be sent to the department together with such report. Any such person so required to make such oral and written reports who fails to do so shall be punished by a fine of not more than one thousand dollars. Any person who knowingly files a report of child abuse that is frivolous shall be punished by a fine of not more than one thousand dollars.

Said reports shall contain the names and addresses of the child and his parents or other person responsible for his care, if known; the child's age; the child's sex; the nature and extent of the child's injuries, abuse, maltreatment, or neglect, including any evidence of

prior injuries, abuse, maltreatment, or neglect; the circumstances under which the person required to report first became aware of the child's injuries, abuse, maltreatment or neglect; whatever action, if any, was taken to treat, shelter, or otherwise assist the child; the name of the person or persons making such report; and any other information which the person reporting believes might be helpful in establishing the cause of the injuries; the identity of the person or persons responsible therefor; and such other information as shall be required by the department.

**Any person required to report under this section who has reasonable cause to believe that a child has died as a result of any of the conditions listed in said paragraph shall report said death to the department and to the district attorney for the county in which such death occurred and to the medical examiners as required by section six of chapter thirty-eight. Any such person who fails to make such a report shall be punished by a fine of not more than one thousand dollars.**

In addition to those persons required to report pursuant to this section, any other person may make such a report if any such person has reasonable cause to believe that a child is suffering from or has died as a result of such abuse or neglect. No person so required to report shall be liable in any civil or criminal action by reason of such report. No other person making such report shall be liable in any civil or criminal action by reason of such report if it was made in good faith; provided, however, that such person did not perpetrate or inflict said abuse or cause said neglect. Any person making such report who, in the determination of the department or the district attorney may have perpetrated or inflicted said abuse or cause said neglect, may be liable in a civil or criminal action.

*No employer of those persons required to report pursuant to this section shall discharge, or in any manner discriminate or retaliate against, any person who in good faith makes such a report, testifies or is about to testify in any proceeding involving child abuse or neglect. Any such employer who discharges, discriminates or retaliates against such a person shall be liable to such person for treble damages, costs and attorney's fees.*

Within sixty days of the receipt of a report by the department from any person required to report, the department shall notify such person, in writing, of its determination of the nature, extent and cause or causes of the injuries to the child, and the social services that the department intends to provide to the child or his family.

Any privilege established by sections one hundred and thirty-five A and one hundred and thirty-five B of chapter one hundred and twelve or by sections 20A and 20B of chapter two hundred and thirty-three, relating to confidential communications shall not prohibit the filing of a report pursuant to the provisions of this section or the provisions of section twenty-four.

Notwithstanding section 20A of chapter 233, a priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body or accredited Christian Science practitioner shall report all cases of abuse under this section, but need not report information solely gained in a confession or similarly confidential communication in

other religious faiths. Nothing in the general laws shall modify or limit the duty of a priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body or accredited Christian Science practitioner to report a reasonable cause that a child is being injured as set forth in this section when the priest, rabbi, clergy member, ordained or licensed minister, leader of a church or religious body or accredited Christian Science practitioner is acting in some other capacity that would otherwise make him a reporter.

## HARASSMENT

The Watertown Public School System is committed to maintaining a learning and working environment free of harassment on the basis of disability, national origin, race, religion, gender or sexual orientation.

Harassment on the basis of disability, national origin, race, religion, gender or sexual orientation includes any unwanted physical or verbal action toward another which has the purpose or effect of creating an intimidating, hostile or offensive environment.

Federal and state laws proscribe harassment. Therefore, Sexual harassment in the workplace, in buildings and grounds controlled by the Watertown Public School System and during events sponsored by the Watertown Public School System is unlawful.

Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature where:

- a. submission to such conduct is made an implied or explicit term or condition of success in school or of employment; or
- b. submission to or rejection of such conduct by an individual is used as the basis for student grading/participation decisions or employment decisions affecting such individual;

or

- c. the conduct has the purpose or effect of substantially interfering with an individual's school or work performance or creating an intimidating, hostile, or offensive learning or working environment.

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which may constitute sexual harassment depending upon the totality of the circumstances, the severity of the conduct and its pervasiveness:

- a. unwelcome sexual advances - whether they involve physical touching or not;
- b. sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding an individual's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, and prowess;
- c. displaying sexually suggestive objects, pictures and/or cartoons;
- d. unwelcome leering, whistling, brushing against the body, sexual gestures, and suggestive or insulting comments;
- e. inquiries into one's sexual experiences; and,
- f. discussion of one's sexual activities.

Grievance Officer: James Morrissey, Director of Personnel, 30 Common Street, Watertown, MA.



## **Harassment Reporting and Investigation Protocol**

Any student subjected to harassment is strongly encouraged to contact a teacher, guidance counselor, nurse, any administrator in his/her building, or any central office administrator. Harassment complaints are to be promptly investigated in as confidential a manner as is consistent with the problem.

Any student found to have engaged in harassment is subject to discipline including but not limited to suspension, expulsion, and/or may be required to undergo counseling.

Any employee or other person subjected to harassment is strongly encouraged to contact his/her supervisor, any administrator in his/her building or any central office administrator. Harassment complaints are to be promptly investigated in as confidential a manner as is consistent with the nature of the complaint.

Any employee found to have engaged in harassment is subject to discipline up to and including discharge administered in a manner consistent with laws and any collective bargaining agreement, if any, covering that employee.

Any attempt by an employee or a student to retaliate against a person who makes, or provides information regarding a claim of harassment is strictly prohibited and subject to disciplinary action as outlined above.

A protocol on this policy shall indicate when and under what circumstances a matter covered herein shall be brought to the immediate attention of the Superintendent of Schools.

If you believe you may have been harassed, or if you witness or learn about the harassment of another individual, you should inform a principal or other administrator immediately. If you do not wish to discuss the issue with your principal, or if he/she does not address the problem, you should inform the Assistant Superintendent of Schools. The Assistant Superintendent may be reached at 926-7700, 30 Common Street, Watertown, MA 02472—3492.

The Watertown Public School System will promptly investigate every complaint of harassment of which notice is given consistent with this protocol. Such investigation may include discussions with all involved parties, identification and questioning of witnesses, and other appropriate actions.

If the investigator determines that harassment has occurred, he/she will take action to end the harassment and ensure that it is not repeated. Steps which may be taken may include, among other, warnings, transfers, suspension, probation and discharge of the individual responsible for the harassment.

Any individual who is dissatisfied with the results of progress of an investigation may discuss his/her dissatisfaction directly with the Superintendent of Schools.

The Watertown Public Schools urges all students and employees to bring any concerns or complaints of harassment to its attention so that the issue can be resolved.

The state agency responsible for enforcing the laws prohibiting harassment is:  
The Massachusetts Commission (MCAD) Against Discrimination

Boston Office:  
One Ashburton Place,  
Boston, MA 02108—1518  
(617) 727—3990

Springfield Office:  
Rrn. 601 424 Dwight Street, Rm. 220  
Springfield, MA 01103  
(413) 739—2145

The federal agency responsible for enforcing federal laws prohibiting harassment is:  
The United States Equal Employment Opportunity Commission

1 Congress Street, 10th Floor  
Boston, MA 02114  
(617) 565—3200

Each of these agencies has a short time period for filing a charge of discrimination claim:

EEOC - 180 days\*  
MCAD – 300 days

\* This 180-day filing deadline is extended to 300 days if the charge also is covered by a state or local anti-discrimination law. For ADEA charges, only state laws extend the filing limit to 300 days.

SOURCE: Watertown  
Adopted: January 11, 1993  
Revised: June 14, 1993  
Revised: July 14, 1997  
Revised: October 5, 1998

## Sexual Harassment

Source: <http://www.mass.gov/mcad/shguide.html>

### Generally

There are two types of sexual harassment: "*quid pro quo*" harassment and "hostile work environment" harassment. They may occur independently or concurrently.

### *Quid Pro Quo* Harassment

Chapter 151B defines "quid pro quo" sexual harassment as:

sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when . . . submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions<sup>7</sup>

To prove a claim for quid pro quo harassment, the employee must establish the following elements:

- That the alleged harasser made sexual advances or sexual requests, or otherwise engaged in conduct of a sexual nature;
- the sexual conduct was unwelcome;
- he or she rejected such advances, requests or conduct; and
- the terms or conditions of his or her employment were then adversely affected.<sup>8</sup>

or

- That the alleged harasser made sexual advances or sexual requests, or otherwise engaged in conduct of a sexual nature;
- the sexual conduct was unwelcome;
- he or she submitted to such advances, requests or conduct; and
- when he or she submitted to the unwelcome sexual conduct, he or she did so in reasonable fear of adverse employment action.<sup>9</sup>

*Quid pro quo* harassment occurs when an employee with authority or control over the terms and conditions of another employee's work offers her<sup>10</sup> a work benefit or advantage in exchange for sexual favors or gratification.<sup>11</sup> Conversely, if an employee is denied a work benefit or advantage due to her refusal to respond to, or rejection of, requests for sexual favors or gratification, she is subjected to *quid pro quo* harassment. Thus, either submission to, or rejection of, unwelcome sexual advances may result in *quid pro quo* harassment if the terms or conditions of one's employment are impacted.<sup>12</sup> Examples of such impact may include but are not limited to: termination; demotion; denial of promotion; transfer; alteration of duties, hours or compensation; or unjustified performance reviews.<sup>13</sup>

Once the complainant establishes a prima facie case, the burden of production, as opposed to the burden of proof, shifts to the respondent to articulate a legitimate, non-discriminatory reason for the adverse employment action taken, supported by credible evidence.<sup>14</sup> If the respondent meets its burden of production, the complainant must prove that the reasons offered by the respondent were not its true reasons, but were a pretext for discrimination.<sup>15</sup> For example, a complainant may meet her initial burden by showing that she was fired soon after she turned down her supervisor's request for a date. The request for a date would constitute the unwelcome advance. If there is sufficient closeness in time between the complainant's rejection of her supervisor's request and her firing, this may create an inference of causation.<sup>16</sup> The employer would then have to articulate a legitimate non-discriminatory reason for its adverse action supported by credible evidence. For example, if the respondent credibly asserts that the complainant was terminated for poor job performance, the burden remains with the complainant to prove, by a preponderance of the evidence, that the respondent's conduct was motivated by her rejection of her supervisor's advance.<sup>17</sup> This may be done by proving that the respondent's articulated reason is false.<sup>18</sup>

## **Hostile Work Environment** <sup>19</sup>

Chapter 151B defines "hostile work environment" harassment as:

sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when . . . such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.<sup>20</sup>

In a hostile work environment case, the complainant must prove:

- she was subjected to conduct of a sexual nature;
- the conduct of a sexual nature was unwelcome;
- the conduct of a sexual nature had the purpose or effect of creating
- an intimidating, hostile, humiliating or sexually offensive work environment; and
- the conduct unreasonably interfered with complainant's work performance or altered the terms and conditions of the complainant's employment.<sup>21</sup>

### **Conduct of a Sexual Nature**

Examples of conduct that might create a hostile work environment include: inappropriate touching; sexual epithets, jokes, gossip, sexual conduct or comments; requests for sex; displaying sexually suggestive pictures and objects; and leering, whistling, or sexual gestures.<sup>22</sup> Harassing conduct need not be motivated by sexual desire in order to constitute sexual harassment.<sup>23</sup>

### **Welcomeness**

The law does not proscribe all conduct of a sexual nature. Only unsolicited and unwelcome conduct may create a hostile work environment. When the employee initiates conduct of a sexual nature or is a willing participant in a sexually charged environment,

she may not be the victim of sexual harassment. Whether the conduct was "welcome" does not turn on whether the complainant's behavior was "voluntary." When an employee only submits to harassing behavior to avoid being targeted further, to cope in a hostile environment, or because participation is made an implicit condition of employment, she is not considered to have welcomed the conduct.<sup>24</sup> The employee's rejection of, or failure to respond positively to, suggestive comments or gestures may demonstrate unwelcomeness. The fact that the employee may have infrequently joked with the alleged harasser does not demonstrate that the alleged harasser's entire course of conduct was welcome.<sup>25</sup> An employee need not communicate her objection to harassing conduct to demonstrate its unwelcomeness.<sup>26</sup>

### **Conduct Creating a Hostile Work Environment**

In order to rise to the level of creating a hostile work environment, the conduct must be hostile, intimidating, humiliating or offensive both from an objective and a subjective perspective.<sup>27</sup> An employee who does not subjectively perceive the behavior at issue as hostile, intimidating, humiliating or offensive is not a victim of sexual harassment within the meaning of the law, even if other reasonable individuals would consider such behavior to be so.<sup>28</sup> On the other hand, an employee who subjectively finds behavior to be hostile, intimidating, humiliating or offensive when it is not objectively so, is not a victim of a hostile work environment under chapter 151B. Thus, for example, if a female employee is faced with requests for sexual favors, the question becomes whether a reasonable person in her position would find the conduct offensive and whether she actually found the conduct offensive.<sup>29</sup>

In determining whether conduct is objectively offensive, the Commission looks to whether the conduct is severe or pervasive. In order for conduct to be considered pervasive, a complainant must prove that she was subjected to "a steady barrage of opprobrious [sexual] comment or abusive treatment."<sup>30</sup> Such treatment can involve a combination of physical and verbal conduct, e.g., unwanted groping or touching combined with profanity or sexual innuendo. Sexual harassment experienced by others in the workplace may also be relevant to the assessment of the conduct's pervasiveness.<sup>31</sup>

In some circumstances, a hostile environment may be established based on a single incident, due to its severity, despite the fact that the conduct is not frequent or repetitive.<sup>32</sup> Moreover, purely verbal conduct, without a physical component, may be severe or pervasive enough to create a hostile work environment. However, minor, isolated conduct does not constitute sexual harassment.<sup>33</sup> "A few isolated remarks over a period of time" are generally insufficient to meet the pervasiveness standard.<sup>34</sup> Chapter 151B is not a clean language statute and does not prohibit all use of profane or offensive language.<sup>35</sup>

### **Conduct that Interferes with an Individual's Ability to Perform Her Job**

Proof of a hostile work environment claim requires a showing that the unwelcome sexual conduct created an impediment to an employee's full participation in the workplace, altered the terms and conditions of her employment, or unreasonably interfered with her work performance.<sup>36</sup> While not all offensive or inappropriate conduct will create such an

impediment,<sup>37</sup> one's working conditions may be altered without a showing of a tangible job detriment.<sup>38</sup> Thus, an employee may seek recovery for hostile environment sexual harassment even if she has not suffered an adverse job action such as termination, suspension, or demotion.<sup>39</sup>

Whether conduct interferes with an individual's ability to perform her job is essentially a question of fact based on the totality of the circumstances, which include the nature, severity and pervasiveness of the conduct and the psychological harm to the employee. Conduct that interferes with an employee's ability to do her job need not necessarily cause severe psychological harm or emotional distress to be actionable.<sup>40</sup>

### **Same-Sex Sexual Harassment**

Sexual harassment can occur between individuals of the same gender. The same standards that apply to sexual harassment between individuals of the opposite sex apply to harassment cases involving individuals of the same gender.<sup>41</sup> Under a same-sex sexual harassment claim, the sexual orientations of the parties are irrelevant, as the harassing conduct need not be motivated by sexual desire to be actionable.<sup>42</sup> In addition, there is no requirement under chapter 151B that a complainant prove the conduct was motivated by his or her gender.<sup>43</sup>

### **Sexual Harassment Outside of the Workplace**

Chapter 151B may apply to harassment that occurs between co-workers that takes place outside the workplace. When the conduct complained of occurs outside of the workplace, the Commission may consider the following factors in assessing whether the conduct constitutes sexual harassment:

- whether the event at which the conduct occurred is linked to the workplace in any way, such as at an employer-sponsored function;<sup>44</sup>
- whether the conduct occurred during work hours;<sup>45</sup>
- the severity of the alleged outside-of-work conduct;
- the work relationship of the complainant and alleged harasser, which includes whether the alleged harasser is a supervisor and whether the alleged harasser and complainant come into contact with one another on the job;<sup>46</sup>
- whether the conduct adversely affected the terms and conditions of the complainant's employment or
- impacted the complainant's work environment.<sup>47</sup>

### **Individuals May Be Liable Under Chapter 151B, § 4(4A)**

Chapter 151B, §4(4A) states that it is an unlawful practice:

for *any person* to coerce, intimidate, threaten or interfere with another person in the exercise or enjoyment of any right granted or protected by this chapter.(emphasis supplied).

Individuals may be subject to liability under §4(4A) for engaging in sexually harassing conduct.<sup>68</sup> Both supervisors and co-workers may be liable under this section for engaging in sexually harassing conduct.<sup>69</sup> Furthermore, the Commission has held that an individual may be liable even in circumstances where the employer is not subject to liability.<sup>70</sup> Section 4(4A) even reaches the conduct of a third party, non-employee who sexually harasses an employee.<sup>71</sup>

### **Individuals May Be Liable Under Chapter 151B, § 4(5) ("Aiding and Abetting" Liability)**

Chapter 151B, §4(5) states that it is an unlawful practice:

for any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter or to attempt to do so.

Under the language of §4(5), any individual - including employees of respondents and third parties - who actively perpetrates or assists another in acts prohibited by chapter 151B can be held separately liable as an aider and abettor.<sup>72</sup> The tripartite standard for determining "aider and abettor" liability is:

- The wrongful act must be separate and distinct from the underlying claim or an act in furtherance of the underlying claim;
- The aider and abettor shared an intent to discriminate not unlike that of the alleged principal offender; and
- The aider and abettor knew of his or her supporting role in an enterprise that deprived an individual of a right guaranteed under M.G.L. c. 151B.<sup>73</sup>

Inaction by an employee may, under certain circumstances, give rise to individual liability under §4(5). For liability to attach in this circumstance, the individual must:

- have knowledge of ongoing sexual harassment;
- have an obligation and the authority to investigate and/or take remedial action;
- intentionally fail to take such action; and
- contribute to the complainant's injury by failing to act.<sup>74</sup>

"[I]n situations where the inaction of the employee results from 'deliberate indifference,' and not mere inattention or negligence, such nonfeasance 'is not mere inaction, but a designed and willful act of forbearance in a situation where action is required.'"

<sup>75</sup>However, if the employee has no duty to intervene to stop the harassment and is not in a position to do so, he will not be subject to liability under §4(5).<sup>76</sup>

An individual may only be liable as an aider or abettor when there is evidence of a joint enterprise between more than one participant.<sup>77</sup> The individual must have specific knowledge of his or her supporting role in the unlawful enterprise.<sup>78</sup> An individual may engage in a joint enterprise with the "fictional" legal entity of the respondent corporation

- which possesses all of the legal attributes of a natural person - if that individual is in a position to subject the employer to vicarious liability. <sup>79</sup>



## Watertown Public Schools Contact Information

Superintendent of Schools	Steven A. Hiersche, Ed.D. 30 Common Street Watertown MA 02472 617-926-7700 shiersche@watertown.k12.ma.us
Assistant Superintendent of Schools	Ann Koufman-Frederick, Ph.D 30 Common Street Watertown MA 02472 617-926-7700 akoufman@watertown.k12.ma.us
Director of Personnel Title IX, Title VI, ADA Coordinator Harassment Officer	James Morrissey 30 Common Street Watertown MA 02472 617-926-7700 jmorrissey@watertown.k12.ma.us
Director of Student Services Homeless Coordinator	Elisabeth Schaefer 30 Common Street Watertown MA 02472 eschaefer@watertown.k12.ma.us
Nurse Leader 504 Coordinator	Lillian Brooks 68 Waverly Avenue Watertown MA 02472 lbooks@watertown.k12.ma.us

Publications of the Watertown Public Schools are available in languages other than English upon request

**As part of our annual and continuous notification to the School, the following statutes are those civil rights statutes for which the Department of Education reviews periodically for compliance.**

**Federal:**

(Note: "U.S.C." refers to the United States Code, available at <http://www4.law.cornell.edu/uscode/>. "CFR" refers to the Code of Federal Regulations. "Et seq." means "and following.")

**Title VI: *Title VI of the Civil Rights Act of 1964***

Prohibits discrimination, exclusion from participation, and denial of benefits based on race, color or national origin in programs or activities receiving federal financial assistance. Title VI is codified at 42 U.S.C. 2000d *et seq.*; regulations have been promulgated under it in the Code of Federal Regulations at 34 CFR Part 100 (available at <http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr100.html>).

**EEOA: *the Equal Educational Opportunities Act of 1974***

Prohibits the denial of equal educational opportunity in public schools on account of race, color, sex, or national origin. The EEOA is codified at 20 U.S.C. 1701 *et seq.*

**Title IX: *Title IX of the Education Amendments of 1972***

Prohibits discrimination, exclusion from participation, and denial of benefits based on sex in educational programs and activities receiving federal financial assistance. Title IX is codified at 20 U.S.C. 1681 *et seq.*; regulations have been promulgated under it at 34 CFR Part 106 (available at <http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html>).

**Section 504: *Section 504 of the Rehabilitation Act of 1973***

Prohibits discrimination, exclusion from participation, and denial of benefits based on disability in programs or activities receiving federal financial assistance. Section 504 is codified at 29 U.S.C. 794; regulations have been promulgated under it at 34 CFR Part 104 (available at <http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>).

**Title I: *Title I of the Americans with Disabilities Act of 1990***

Prohibits discrimination, exclusion from participation, and denial of benefits on the basis of disability in areas of employment

**Title II: *Title II of the Americans with Disabilities Act of 1990***

Prohibits discrimination, exclusion from participation, and denial of benefits on the basis of disability in public entities. Title II is codified at 42 U.S.C. 12131 *et seq.*; regulations have been promulgated under it at 28 CFR Part 35 (available at <http://www.ed.gov/policy/rights/reg/edlite-28cfr35.html>).

**IDEA 2004: *the Individuals with Disabilities Education Act of 2004 (available at [http://thomas.loc.gov/cgi-bin/query/z?c108:h.1350.enr](http://thomas.loc.gov/cgi-bin/query/z?c108:h.1350.enr;);)***

Governs special education. IDEA 1997 was codified at 20 U.S.C. 1400 *et seq.*; regulations were promulgated under it at 34 CFR 300 (available at <http://www.ideapractices.org/law/index.php>). Until final regulations under IDEA 2004

become effective on October 13, 2006, the Department has the responsibility of enforcing regulations under IDEA 1997 that do not conflict with IDEA 2004.

**NCLB: *the No Child Left Behind Act of 2001***

Governs elementary and secondary education. NCLB is available at <http://www.ed.gov/legislation/ESEA02/>.

Title X, Part C is the McKinney-Vento Homeless Education Assistance Improvements Act of 2001: information on this act is available in the Massachusetts Department of Education's Homeless Education Advisories at <http://www.doe.mass.edu/mv/haa>

**FERPA: the Family Educational Rights and Privacy Act of 1974**

Protects the privacy of student education records and gives parents certain rights with respect to those records. FERPA is codified at 20 U.S.C. § 1232g; regulations have been promulgated under it at 34 CFR Part 99 (available at [http://www.access.gpo.gov/nara/cfr/waisidx\\_04/34cfr99\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/34cfr99_04.html))

**Massachusetts:**

(Note: Massachusetts education laws are available at <http://www.doe.mass.edu/lawsregs/statelaws.html>; Massachusetts education regulations are available at <http://www.doe.mass.edu/lawsregs/stateregs.html>.)

**Mass. Const. amend. art. 114: Article CXIV of the Amendments to the Massachusetts Constitution**

Prohibits discrimination, exclusion from participation, and denial of benefits on the basis of disability in any program or activity in the Commonwealth.

**M.G.L. c. 69: *Massachusetts General Laws, Chapter 69***

Establishes the powers and duties of the Department of Education. Section 1G requires the Board of Education to set the minimum length for a school day and the minimum number of days in the school year for Massachusetts public schools. Regulations have been promulgated under Section 1G at 603 CMR 27.00.

**M.G.L. c. 71: *Massachusetts General Laws, Chapter 71***

Governs public schools. Section 34D requires promulgation by the Board of Education of student record regulations. Such regulations have been promulgated at 603 CMR 23.00. Section 34H concerns the provision of information by schools to noncustodial parents. Section 37G provides for the use of reasonable force to protect pupils, school personnel, and other persons from assault by a pupil and requires the promulgation by the Board of Education of regulations regarding the use of physical restraint on students. Such regulations have been promulgated at 603 CMR 46.00. Section 37H relates to codes of conduct and handbooks. Section 38Q ½ requires every school district to adopt and implement a curriculum accommodation plan.

**M.G.L. c. 71A: *Massachusetts General Laws, Chapter 71A***

Governs the education of English learners. Regulations have been promulgated under it at 603 CMR 14.00.

**M.G.L. c. 71B: *Massachusetts General Laws, Chapter 71B***

Governs the education of children with special needs. Section 6 relates to the assignment of children to special education classes. Regulations have been promulgated under c. 71B at 603 CMR 28.00.

**M.G.L. c. 76: *Massachusetts General Laws, Chapter 76***

Governs school attendance. Section 5 prohibits discrimination in all public schools on the basis of race, color, sex, religion, national origin, or sexual orientation. Regulations have been promulgated under section 5 at 603 CMR 26.00. Section 18 requires notice to students permanently leaving school.

**St. 1965, c. 741: *Chapter 741 of the Massachusetts Acts of 1965***

Established the maximum age for compulsory school attendance as sixteen.

## **NONDISCRIMINATION**

The Watertown Public Schools do not discriminate in educational and employment practices on the basis of race, color, gender, religion, national origin, sexual orientation, age or disability as required by state and federal law.

The Committee's policy of nondiscrimination will extend to students, staff, the general public, and individuals with whom it does business.

No person shall be excluded from or discriminated against in admission to a public school or in obtaining the advantages, privileges, and courses of study of such public school on account of race, color, sex, religion, national origin, sexual orientation or disability.

If someone has a complaint or feels that they have been discriminated against because of their race, color, sex, religion, national origin, sexual orientation or disability, their complaint should be registered with the Title IX compliance officer.

SOURCE: Watertown and MASC  
Revised: October 5, 1998

LEGAL REFS.: Title VI, Civil Rights Act of 1964  
Title VII, Civil Rights Act of 1964, as amended by the  
Equal Employment  
Opportunity Act of 1972  
Executive Order 11246, as amended by E.O. 11375  
Equal Pay Act, as amended by the Education Amendments  
of 1972  
Title IX, Education Amendments of 1972  
Rehabilitation Act of 1973  
Education for All Handicapped Children Act of 1975  
M.G.L. 71B:1 et seq. (Chapter 766 of the Acts of 1972)  
M.G.L. 76:5; Amended 1993  
M.G.L. 76:16 (Chapter 622 of the Acts of 1971)  
Board of Education Chapter 622 Regulations Pertaining to  
Access to Equal  
Educational Opportunity, adopted 6/24/75, as amended  
10/24/78  
Board of Education 603 CMR 26:00  
Board of Education Chapter 766 Regulations, adopted  
10/74, as amended through 3/28/78

CROSS REFS.: ACA- ACE, Subcategories for Nondiscrimination  
GBA, Equal Employment Opportunity  
JB, Equal Educational Opportunities

## **NONDISCRIMINATION ON THE BASIS OF SEX**

The School Committee, in accordance with Title IX of the Education Amendments of 1972, declares that the school system does not and will not discriminate on the basis of sex in the educational programs and activities of the public schools. This policy will extend not only to students with regard to educational opportunities, but also to employees with regard to employment opportunities.

The School Committee will continue to ensure fair and equitable educational and employment opportunities, without regard to sex, to all of its students and employees.

The Committee will designate an individual to act as the school system's Title IX compliance officer. All students and employees will be notified of the name and office address and telephone number of the compliance officer.

SOURCE: MASC

LEGAL REFS.: Title IX of the Education Amendments of 1972  
45 CFR, Part 86, (Federal Register, 6/4/75)  
M.G.L. 76:5; 76:16 (Chapter 622 of the Acts of 1971)  
Board of Education Chapter 622 Regulations Pertaining to Access  
to Equal Educational Opportunity, adopted 6/24/75, amended  
10/24/78  
Board of Education 603 CMR 26:00

CROSS REF.: AC, Nondiscrimination

## **NONDISCRIMINATION ON THE BASIS OF DISABILITY**

Title II of the Americans With Disabilities Act of 1992 requires that no qualified individual with a disability shall, because the District's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, and activities of the District or be subject to discrimination. Nor shall the District exclude or otherwise deny services, programs, or activities to an individual because of the known disability of a person with whom the individual is known to have a relationship or association.

**Definition:** A "qualified individual with a disability" is an individual with a disability who, with or without reasonable modification to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the District.

**Reasonable Modification:** The District shall make reasonable modification in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the District can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

**Communications:** The District shall take the appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. To this end, the District shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy benefits of, a service, program, or activity conducted by the District. In determining what type of auxiliary aid or service is necessary, the District shall give primary consideration to the requests of the individuals with disabilities.

**Auxiliary Aids and Services:** "Auxiliary aids and services" includes: (1) qualified interpreters, note takers, transcription services, written materials, assisted listening systems, and other effective methods for making aurally delivered materials available to individuals with hearing impairments; (2) qualified readers, taped texts, audio recordings, Braille materials, large print materials, or other effective methods for making visually delivered materials available to individuals with visual impairments; (3) acquisition or modification of equipment or devices and (4) other similar services and actions.

**Limits of Required Modification:** The District is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. Any decision that, in compliance with its responsibility to provide effective communication for individuals with disabilities, would fundamentally alter the service, program, or activity or unduly burden the District shall be made by the School Committee after considering all resources available for use in funding and operating the program, service, or activity. A

written statement of the reasons for reaching that conclusion shall accompany the decision.

Notice: The District shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of Title II of the American with Disabilities Act (ADA) and its applicability to the services, programs, or activities of the District. The information shall be made available in such a manner as the School Committee and Superintendent find necessary to apprise such persons of the protections against discrimination assured them by the ADA.

Compliance Coordinator: The District shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title II of ADA, including any investigation of any complaint communicated to it alleging its noncompliance or alleging any actions that would be prohibited under ADA. The District shall make available to all interested individuals the name, office address, and telephone number of the employee(s) so designated and shall adopt and publish procedures for the prompt and equitable resolution of complaints alleging any action that would be prohibited under the ADA.

The school system receives federal financial assistance and must comply with the above requirements. Additionally, the School Committee is of the general view that:

1. Discrimination against a qualified handicapped person solely on the basis of handicap is unfair; and
- 2 . To the extent possible, qualified handicapped persons should be in the mainstream of life in the school community.

Accordingly, employees of the school system will comply with the above requirements of the law and policy statements of this Committee to ensure nondiscrimination on the basis of handicap.

SOURCE: MASC

LEGAL REFS.:       Rehabilitation Act of 1973, Section 504  
                          Education for All Handicapped Children Act of 1975  
                          M.G.L. 71B:1 et seq. (Chapter 766 of the Acts of 1972)  
                          Title II, Americans with Disabilities Act of 1992  
                          Board of Education Chapter 766 Regulations, adopted 10/74, as  
                          amended through 3/28/78

CROSS REFS.:       IGB, Support Services Programs  
                          IGBA, Programs for Handicapped Students



### **Review of Instructional Materials**

All teachers are reminded that they should be reviewing and evaluating ALL instructional materials including supplementary materials for simplistic and demeaning generalizations and content lacking intellectual merit on the basis of disability, race, color, sex, religion, national origin, and sexual orientation. In such cases where the decision is made to use educational materials that contain such content, teachers are required to allow ample class time for discussions of the issues identified.

See COMPREHENSIVE PROGRAM VIEW MOA 24

**COMPENSATORY EDUCATION  
(Title 1)**

Title 1 funds shall be used to provide educational services that are in addition to the regular services provided for District students. By adoption of this policy, the School Committee ensures equivalence in the provision of curriculum materials and supplies.

## **ENGLISH LANGUAGE LEARNERS**

The District shall provide suitable research-based language instructional programs for all identified English language learners in grades Kindergarten through 12 in accordance with the requirements of state and federal statutes and Massachusetts Department of Education regulations and guidance.

LEGAL REFS.:        20 U.S.C. 3001 et seq. (language instruction for limited English proficient and immigrant students contained in No Child Left Behind Act of 2001)  
                             42 U.S.C. 2000d (Title VI of the Civil Rights Act of 1964)  
                             603 CMR 14.00

## **HOMEBOUND INSTRUCTION**

The schools may furnish homebound instruction to those students who are unable to attend classes for at least four consecutive weeks due to a physical injury, medical situation, suspension, or a severe emotional problem. The instruction is designed to provide maintenance in the basic academic courses so that when a student returns to school he/she will not be at a disadvantage because of the illness or the hospitalization.

To qualify for the program the student needs a written statement from a medical doctor requesting the homebound instruction, stating the reasons why, and estimating the time the student will be out of school. This statement needs to be sent to the Director of Pupil Services.

Homebound instruction is offered in basic elementary subjects and in secondary subjects which do not require laboratories and special equipment, subject in all cases to the availability of qualified teachers.

Certified teachers are assigned to homebound instruction by the Director of Student Services with the approval of the Superintendent.

## EQUAL EDUCATIONAL OPPORTUNITIES

The School Committee believes that the aim of the educational program is to provide equal educational opportunity for every student, and that every student, regardless of gender, disability, sexual orientation, racial, religious, ethnic or socio-economic background, has an equal right to participate in educational experiences that will result in growth and learning.

The Committee and its staff will make every effort to comply with the letter and the spirit of the Massachusetts equal educational opportunities law (known as Chapter 622 of the Acts of 1971), which prohibits discrimination in public school admissions and programs.

The law reads as follows:

No child shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and course of study of such public school on account of race, color, sex, religion, national origin or sexual orientation.

All implementing provisions issued by the Board of Education in compliance with this law will be followed.

LEGAL REFS.: Title VI, Civil Rights Act of 1964  
Title VII, Civil Rights Act of 1964, as amended by the  
Equal Employment Opportunity Act of 1972  
Executive Order 11246, as amended by E.O. 11375  
Title IX, Education Amendments of 1972  
M.G.L. 76:5; 76:16 (Chapter 622 of the Acts of 1971)  
Board of Education Chapter 622 Regulations Pertaining to  
Access to Equal  
Educational Opportunity, adopted 6/24/75, amended  
10/24/78  
Board of Education, Chapter 766 Regulations 10/74 -  
amended through 3/28/78  
603 CMR 26:00

CROSS REF.: AC, Nondiscrimination

## **HOMELESS STUDENTS: ENROLLMENT RIGHTS AND SERVICES**

To the extent practical and as required by law, the district will work with homeless students and their families to provide stability in school attendance and other services. Special attention will be given to ensuring the enrollment and attendance of homeless students not currently attending school. Homeless students will be provided district services for which they are eligible, including Head Start and comparable pre-school programs, Title I, similar state programs, special education, bilingual education, vocational and technical education programs, gifted and talented programs and school nutrition programs.

Homeless students are defined as lacking a fixed, regular and adequate nighttime residence, including:

1. Sharing the housing of other persons due to loss of housing or economic hardship;
2. Living in motels, hotels, trailer parks or camping grounds due to the lack of alternative adequate accommodations;
3. Living in emergency or transitional shelters;
4. Being abandoned in hospitals;
5. Awaiting foster care placement;
6. Living in public or private places not designed for or ordinarily used as regular sleeping accommodations for human beings;
7. Living in cars, parks, public spaces, abandoned buildings, substandard housing, transportation stations or similar settings;
9. Migratory children living in conditions described in the previous examples.

The Superintendent shall designate an appropriate staff person to be the district's liaison for homeless students and their families.

To the extent feasible, homeless students will continue to be enrolled in their school of origin while they remain homeless or until the end of the academic year in which they obtain permanent housing. Instead of remaining in the school of origin, parents or guardians of homeless students may request enrollment in the school in the attendance area in which the student is actually living, or other schools. Attendance rights by living in attendance areas, other student assignment policies, or intra and inter-district choice options are available to homeless families on the same terms as families resident in the district.

If there is an enrollment dispute, the student shall be immediately enrolled in the school in which enrollment is sought, pending resolution of the dispute. The parent or guardian shall be informed of the District's decision and their appeal rights in writing. The district's liaison will carry out dispute resolution as provided by state rule. Unaccompanied youth will also be enrolled pending resolution of the dispute.

Once the enrollment decision is made, the school shall immediately enroll the student, pursuant to district policies. If the student does not have immediate access to

immunization records, the student shall be admitted under a personal exception. Students and families should be encouraged to obtain current immunization records or immunizations as soon as possible, and the district liaison is directed to assist.

Records from the student's previous school shall be requested from the previous school pursuant to district policies. Emergency contact information is required at the time of enrollment consistent with district policies, including compliance with the state's address confidentiality program when necessary.

Homeless students are entitled to transportation to their school of origin or the school where they are to be enrolled. If the school of origin is in a different district, or a homeless student is living in another district but will attend his or her school of origin in this district, the districts will coordinate the transportation services necessary for the student, or will divide the costs equally.

The district's liaison for homeless students and their families shall coordinate with local social service agencies that provide services to homeless children and youths and their families; other school districts on issues of transportation and records transfers; and state and local housing agencies responsible for comprehensive housing affordability strategies. This coordination includes providing public notice of the educational rights of homeless students in schools, family shelters and soup kitchens. The district's liaison will also review and recommend amendments to district policies that may act as barriers to the enrollment of homeless students.

LEGAL REFS.:                      Title I, Part C  
    No Child Left Behind Act, 2002

**Section 504 of the Rehabilitation Act of 1973**  
**Subpart D**

Subpart D applies to preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

A recipient that operates a public elementary or secondary education program or activity shall annually:

- (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
- (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

**104.33 Free appropriate public education.**

(a) *General.* The School District shall provide a free appropriate public education to each qualified handicapped person who is in the district's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements

Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard

The District may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, it remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

*Free education –*

*General.* The provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian.

*Transportation.* If the district places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the district as its means of carrying out the requirements of free and appropriate education, the district is required to ensure



adequate transportation at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in district.

*Residential placement.* Parents do not have to pay for public or private residential placement if it is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap.

*Placement of handicapped persons by parents.* The School District is not responsible for paying for Private School if the student's parents choose to send that student.

### **Location and notification.**

A recipient that operates a public elementary or secondary education program or activity shall annually:

- (a) Undertake to identify and locate every qualified handicapped person residing in the District who is not receiving a public education; and
- (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the district's duty under this subpart.

### **Free appropriate public education.**

*General.* The district is required to provide a free appropriate public education to each qualified handicapped person who in the district, regardless of the nature or severity of the person's handicap.

*Appropriate education.* (1) The provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of the law.

Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting standards

The district may place a handicapped person or refer such a person for aid, benefits, or services out of district as its means of carrying out the requirements of this subpart. If so, the district remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

*Free education -- (1) General.* The provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services

not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

*Transportation.* If the District places a handicapped person or refers such person for out of district as its means of carrying out the requirements of this subpart, we are responsible for providing adequate transportation to and from that placement at no greater cost than would be incurred by the person or his or her parents or guardian if the person were in-district

*Residential placement.* If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

*Placement of handicapped persons by parents.* If the district conforms to the law and the student's parents/guardians choose to place that student in a private school, the district is not obligated to pay for that placement.

### **Educational setting.**

*Academic setting.* The district must educate, or provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. The district is required to place a handicapped person in the regular educational environment unless it is demonstrated that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever the district places a student in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

*Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities the district is required to ensure that handicapped persons participate with non-handicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

*Comparable facilities.* In operating a facility that is identifiable as being for handicapped persons, the district is required to ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

## **Evaluation and placement.**

*Preplacement evaluation.* We are required to conduct an evaluation of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

*Evaluation procedures.* The district has standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

- (1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
- (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
- (3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

*Placement procedures.* In interpreting evaluation data and in making placement decisions, we are required to (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made legal.

*Reevaluation.* A recipient to which this section applies shall establish procedures for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

## **Procedural safeguards.**

A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's

parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

### **Nonacademic services.**

*General.* The District must provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are non handicapped students with similar interests and abilities.

*Physical education and athletics.* In providing physical education courses and athletics to any of our students, we do not discriminate on the basis of handicap. In physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.

We may offer to handicapped students physical education and athletic activities that are separate or different from those offered to non handicapped students only if separation or differentiation is consistent with the requirements of the law and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

### **Preschool and adult education.**

The district provides preschool education and may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided.

**Education Laws**  
**603 CMR 23.00**

Section:

- [23.01: Application of Rights](#)
- [23.02: Definition of Terms](#)
- [23.03: Collection of Data: Limitations and Requirements](#)
- [23.04: Personal Files of School Employees](#)
- [23.05: Privacy and Security of Student Records](#)
- [23.06: Destruction of Student Records](#)
- [23.07: Access to Student Records](#)
- [23.08: Amending the Student Record](#)
- [23.09: Appeals](#)
- [23.10: Notification](#)
- [23.11: Monitoring](#)
- [23.12: Severance Clause](#)

Most Recently Amended by the Board of Education: August 15, 2006

Regulatory Authority:  
603 CMR 23.00: M.G.L. c. 71, 34D, 34E.

**23.01: Application of Rights**

603 CMR 23.00 is promulgated to insure parents' and students' rights of confidentiality, inspection, amendment, and destruction of student records and to assist local school systems in adhering to the law. 603 CMR 23.00 should be liberally construed for these purposes.

- (1) These rights shall be the rights of the student upon reaching 14 years of age or upon entering the ninth grade, whichever comes first. If a student is under the age of 14 and has not yet entered the ninth grade, these rights shall belong to the student's parent.
- (2) If a student is from 14 through 17 years of age or has entered the ninth grade, both the student and his/her parent, or either one acting alone, shall exercise these rights.
- (3) If a student is 18 years of age or older, he/she alone shall exercise these rights, subject to the following. The parent may continue to exercise the rights until expressly limited by such student. Such student may limit the rights and provisions of 603 CMR 23.00 which extend to his/her parent, except the right to inspect the student record, by making such request in writing to the school principal or superintendent of schools who shall honor such request and retain a copy of it in the student record. Pursuant to M.G.L. c. 71, section 34E, the parent of a student may inspect the student record regardless of the student's age.

(4) Notwithstanding 603 CMR 23.01(1) and 23.01(2), nothing shall be construed to mean that a school committee cannot extend the provisions of 603 CMR 23.00 to students under the age of 14 or to students who have not yet entered the ninth grade.

## **23.02: Definition of Terms**

The various terms as used in 603 CMR 23.00 are defined below:

Access shall mean inspection or copying of a student record, in whole or in part.

Authorized school personnel shall consist of three groups:

(a) School administrators, teachers, counselors and other professionals who are employed by the school committee or who are providing services to the student under an agreement between the school committee and a service provider, and who are working directly with the student in an administrative, teaching counseling, and/or diagnostic capacity. Any such personnel who are not employed directly by the school committee shall have access only to the student record information that is required for them to perform their duties.

(b) Administrative office staff and clerical personnel, including operators of data processing equipment or equipment that produces microfilm/microfiche, who are either employed by the school committee or are employed under a school committee service contract, and whose duties require them to have access to student records for purposes of processing information for the student record. Such personnel shall have access only to the student record information that is required for them to perform their duties.

(c) The Evaluation Team which evaluates a student.

Eligible student shall mean any student who is 14 years of age or older or who has entered 9th grade, unless the school committee acting pursuant to 603 CMR 23.01(4) extends the rights and provisions of 603 CMR 23.00 to students under the age of 14 or to students who have not yet entered 9th grade.

Evaluation Team shall mean the team which evaluates school-age children pursuant to M.G.L. c. 71B (St. 1972, c. 766) and 603 CMR 28.00.

Parent shall mean a student's father or mother, or guardian, or person or agency legally authorized to act on behalf of the student in place of or in conjunction with the father, mother, or guardian. Any parent who by court order does not have physical custody of the student, is considered a non-custodial parent for purposes of M.G.L. c. 71, § 34H and 603 CMR 23.00. This includes parents who by court order do not reside with or supervise the student, even for short periods of time.

Release shall mean the oral or written disclosure, in whole or in part, of information in a student record.

School-age child with special needs shall have the same definition as that given in M.G.L. c. 71B (St. 1972, c. 766) and 603 CMR 28.00.

School committee shall include a school committee, a board of trustees of a charter school, a board of trustees of a vocational-technical school, a board of directors of an educational collaborative and the governing body of an M.G.L. c. 71B (Chapter 766) approved private school.

Student shall mean any person enrolled or formerly enrolled in a public elementary or secondary school or any person age three or older about whom a school committee maintains information. The term as used in 603 CMR 23.00 shall not include a person about whom a school committee maintains information relative only to that person's employment by the school committee.

The student record shall consist of the transcript and the temporary record, including all information recording and computer tapes, microfilm, microfiche, or any other materials regardless of physical form or characteristics concerning a student that is organized on the basis of the student's name or in a way that such student may be individually identified, and that is kept by the public schools of the Commonwealth. The term as used in 603 CMR 23.00 shall mean all such information and materials regardless of where they are located, except for the information and materials specifically exempted by 603 CMR 23.04.

The temporary record shall consist of all the information in the student record which is not contained in the transcript. This information clearly shall be of importance to the educational process. Such information may include standardized test results, class rank (when applicable), extracurricular activities, and evaluations by teachers, counselors, and other school staff.

Third party shall mean any person or private or public agency, authority, or organization other than the eligible student, his/her parent, or authorized school personnel.

The transcript shall contain administrative records that constitute the minimum data necessary to reflect the student's educational progress and to operate the educational system. These data shall be limited to the name, address, and phone number of the student; his/ her birthdate; name, address, and phone number of the parent or guardian; course titles, grades (or the equivalent when grades are not applicable), course credit, grade level completed, and the year completed.

### **23.03: Collection of Data: Limitations and Requirements**

All information and data contained in or added to the student record shall be limited to information relevant to the educational needs of the student. Information and data added

to the temporary record shall include the name, signature, and position of the person who is the source of the information, and the date of entry into the record. Standardized group test results that are added to the temporary record need only include the name of the test and/or publisher, and date of testing.

#### **23.04: Personal Files of School Employees**

The term student record does not include notes, memory aids and other similar information that is maintained in the personal files of a school employee and is not accessible or revealed to authorized school personnel or any third party. Such information may be shared with the student, parent or a temporary substitute of the maker of the record, but if it is released to authorized school personnel it becomes part of the student record subject to all the provisions of 603 CMR 23.00.

#### **23.05: Privacy and Security of Student Records**

(1) The school principal or his/her designee shall be responsible for the privacy and security of all student records maintained in the school.

(2) The superintendent of schools or his/her designee shall be responsible for the privacy and security of all student records that are not under the supervision of a school principal, for example, former students' transcripts stored in the school department's central administrative offices or student records of school-age children with special needs who have not been enrolled in a public school.

(3) The principal and superintendent of schools shall insure that student records under their supervision are kept physically secure, that authorized school personnel are informed of the provisions of 603 CMR 23.00 and M.G.L. c. 71, § 34H and are educated as to the importance of information privacy and confidentiality; and that any computerized systems employed are electronically secure.

#### **23.06: Destruction of Student Records**

(1) The student's transcript shall be maintained by the school department and may only be destroyed 60 years following his/her graduation, transfer, or withdrawal from the school system.

(2) During the time a student is enrolled in a school, the principal or his/her designee shall periodically review and destroy misleading, outdated, or irrelevant information contained in the temporary record provided that the eligible student and his/her parent are notified in writing and are given opportunity to receive the information or a copy of it prior to its destruction. A copy of such notice shall be placed in the temporary record.

(3) The temporary record of any student enrolled on or after the effective date of 603 CMR 23.00 shall be destroyed no later than seven years after the student transfers, graduates, or withdraws from the school system. Written notice to the eligible student and



his/her parent of the approximate date of destruction of the record and their right to receive the information in whole or in part, shall be made at the time of such transfer, graduation, or withdrawal. Such notice shall be in addition to the routine information letter required by 603 CMR 23.10.

(4) In accordance with M.G.L. c 71, section 87, the score of any group intelligence test administered to a student enrolled in a public school shall be removed from the record of said student at the end of the school year in which such test was so administered.

### **23.07: Access to Student Records**

(1) Log of Access. A log shall be kept as part of each student's record. If parts of the student record are separately located, a separate log shall be kept with each part. The log shall indicate all persons who have obtained access to the student record, stating: the name, position and signature of the person releasing the information; the name, position and, if a third party, the affiliation if any, of the person who is to receive the information; the date of access; the parts of the record to which access was obtained; and the purpose of such access. Unless student record information is to be deleted or released, this log requirement shall not apply to:

- (a) authorized school personnel under 603 CMR 23.02(9)(a) who inspect the student record;
- (b) administrative office staff and clerical personnel under 603 CMR 23.02(9)(b), who add information to or obtain access to the student record; and
- (c) school nurses who inspect the student health record.

(2) Access of Eligible Students and Parents. The eligible student or the parent, subject to the provisions of 603 CMR 23.07 (5), shall have access to the student record. Access shall be provided as soon as practicable and within ten days after the initial request, except in the case of non-custodial parents as provided in 603 CMR 23.07 (5). Upon request for access, the entire student record regardless of the physical location of its parts shall be made available.

- (a) Upon request, copies of any information contained in the student record shall be furnished to the eligible student or the parent. A reasonable fee, not to exceed the cost of reproduction, may be charged. However, a fee may not be charged if to do so would effectively prevent the parents or eligible student from exercising their right, under federal law, to inspect and review the records.
- (b) Any student, regardless of age, shall have the right pursuant to M.G.L. c. 71, section 34A to receive a copy of his/her transcript.

(c) The eligible student or the parent shall have the right upon request to meet with professionally qualified school personnel and to have any of the contents of the student record interpreted.

(d) The eligible student or the parent may have the student record inspected or interpreted by a third party of their choice. Such third party shall present specific written consent of the eligible student or parent, prior to gaining access to the student record.

(3) Access of Authorized School Personnel. Subject to 603 CMR 23.00, authorized school personnel shall have access to the student records of students to whom they are providing services, when such access is required in the performance of their official duties. The consent of the eligible student or parent shall not be necessary.

(4) Access of Third Parties. Except for the provisions of 603 CMR 23.07(4)(a) through 23.07(4)(h), no third party shall have access to information in or from a student record without the specific, informed written consent of the eligible student or the parent. When granting consent, the eligible student or parent shall have the right to designate which parts of the student record shall be released to the third party. A copy of such consent shall be retained by the eligible student or parent and a duplicate placed in the temporary record. Except for information described in 603 CMR 23.07(4)(a), personally identifiable information from a student record shall only be released to a third party on the condition that he/she will not permit any other third party to have access to such information without the written consent of the eligible student or parent.

(a) A school may release the following directory information: a student's name, address, telephone listing, date and place of birth, major field of study, dates of attendance, weight and height of members of athletic teams, class, participation in officially recognized activities and sports, degrees, honors and awards, and post-high school plans without the consent of the eligible student or parent; provided that the school gives public notice of the types of information it may release under 603 CMR 23.07 and allows eligible students and parents a reasonable time after such notice to request that this information not be released without the prior consent of the eligible student or parent. Such notice may be included in the routine information letter required under 603 CMR 23.10.

(b) Upon receipt of a court order or lawfully issued subpoena the school shall comply, provided that the school makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.

(c) A school may release information regarding a student upon receipt of a request from the Department of Social Services, a probation officer, a justice of any court, or the Department of Youth Services under the provisions of M.G.L. c. 119, sections 51B, 57, 69 and 69A respectively.

(d) Federal, state and local education officials, and their authorized agents shall have access to student records as necessary in connection with the audit, evaluation or enforcement of federal and state education laws, or programs; provided that except when collection of personally identifiable data is specifically authorized by law, any data collected by such officials shall be protected so that parties other than such officials and their authorized agents cannot personally identify such students and their parents; and such personally identifiable data shall be destroyed when no longer needed for the audit, evaluation or enforcement of federal and state education laws.

(e) A school may disclose information regarding a student to appropriate parties in connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. This includes, but is not limited to, disclosures to the local police department and the Department of Social Services under the provisions of M.G.L. c. 71, section 37L and M.G.L. c. 119, section 51A.

(f) Upon notification by law enforcement authorities that a student, or former student, has been reported missing, a mark shall be placed in the student record of such student. The school shall report any request concerning the records of the such child to the appropriate law enforcement authority pursuant to the provisions of M.G.L. c. 22A, section 9.

(g) Authorized school personnel of the school to which a student seeks or intends to transfer may have access to such student's record without the consent of the eligible student or parent, provided that the school the student is leaving, or has left, gives notice that it forwards student records to schools in which the student seeks or intends to enroll. Such notice may be included in the routine information letter required under 603 CMR 23.10.

(h) School health personnel and local and state health department personnel shall have access to student health records, including but not limited to immunization records, when such access is required in the performance of official duties, without the consent of the eligible student or parent.

(5) Access Procedures for Non-Custodial Parents. As required by M.G.L. c. 71, § 34H, a non-custodial parent may have access to the student record in accordance with the following provisions.

(a) A non-custodial parent is eligible to obtain access to the student record unless:

1. the parent has been denied legal custody or has been ordered to supervised visitation, based on a threat to the safety of the student and the threat is specifically noted in the order pertaining to custody or supervised visitation, or
2. the parent has been denied visitation, or

3. the parent's access to the student has been restricted by a temporary or permanent protective order, unless the protective order (or any subsequent order modifying the protective order) specifically allows access to the information contained in the student record, or
4. there is an order of a probate and family court judge which prohibits the distribution of student records to the parent.

(b) The school shall place in the student's record documents indicating that a non-custodial parent's access to the student's record is limited or restricted pursuant to 603 CMR 23.07(5)(a).

(c) In order to obtain access, the non-custodial parent must submit a written request for the student record to the school principal.

(d) Upon receipt of the request the school must immediately notify the custodial parent by certified and first class mail, in English and the primary language of the custodial parent, that it will provide the non-custodial parent with access after 21 days, unless the custodial parent provides the principal with documentation that the non-custodial parent is not eligible to obtain access as set forth in 603 CMR 23.07 (5)(a).

(e) The school must delete all electronic and postal address and telephone number information relating to either work or home locations of the custodial parent from student records provided to non-custodial parents. In addition, such records must be marked to indicate that they shall not be used to enroll the student in another school.

(f) Upon receipt of a court order that prohibits the distribution of information pursuant to G.L. c. 71, §34H, the school shall notify the non-custodial parent that it shall cease to provide access to the student record to the non-custodial parent.

### **23.08: Amending the Student Record**

(1) The eligible student or the parent shall have the right to add information, comments, data, or any other relevant written material to the student record.

(2) The eligible student or the parent shall have the right to request in writing deletion or amendment of any information contained in the student record, except for information which was inserted into that record by an Evaluation Team. Such information inserted by an Evaluation Team shall not be subject to such a request until after the acceptance of the Evaluation Team Educational Plan, or, if the Evaluation Team Educational Plan is rejected, after the completion of the special education appeal process. Any deletion or amendment shall be made in accordance with the procedure described below:

(a) If such student or parent is of the opinion that adding information is not sufficient to explain, clarify or correct objectionable material in the student

record, either student or parent shall present the objection in writing and/or have the right to have a conference with the principal or his/her designee to make the objections known.

(b) The principal or his/her designee shall within one week after the conference or receipt of the objection, if no conference was requested, render to such student or parent a decision in writing, stating the reason or reasons for the decision. If the decision is in favor of the student or parent, the principal or his/her designee shall promptly take such steps as may be necessary to put the decision into effect.

### **23.09: Appeals**

(1) In the event that any decision of a principal or his/her designee regarding any of the provisions contained in 603 CMR 23.00 is not satisfactory in whole or in part to the eligible student or parent, they shall have the right of appeal to the superintendent of schools. Request for such appeal shall be in writing to the superintendent of schools.

(2) The superintendent of schools or his/her designee shall within two weeks after being notified of such appeal (longer should the appellant request a delay) review the issues presented and render a written decision to the appellant, stating the reason or reasons for the decision. If the decision is in favor of the appellant, the superintendent of schools or his/her designee shall promptly take such steps as may be necessary to put the decision into effect.

(3) In the event that the decision of the superintendent of schools or his/her designee is not satisfactory to the appellant in whole or in part, the appellant shall have the right of appeal to the school committee. Request for such appeal shall be in writing to the chairperson of the school committee.

(4) The school committee shall within four weeks after being notified of such appeal (longer should the appellant request a delay) conduct a fair hearing to decide the issues presented by the appellant.

(a) School officials shall have the burden of proof on issues presented by the appellant.

(b) The appellant shall have the right to be represented by an advocate of his/her choosing, to cross-examine witnesses, to present evidence, to make a tape or other recording of the proceedings, and to receive a written decision within two weeks after the hearing.

(c) If the appeal concerns statements by an employee of the school committee, such person(s) shall have the right to be present and to have an advocate of his/her own choosing.

(5) Nothing in 603 CMR 23.00 shall abridge or limit any right of an eligible student or parent to seek enforcement of 603 CMR 23.00 or the statutes regarding student records, in any court or administrative agency of competent jurisdiction.

### **23.10: Notification**

(1) At least once during every school year, the school shall publish and distribute to students and their parents in their primary language a routine information letter informing them of the following:

(a) The standardized testing programs and research studies to be conducted during the year and other routine information to be collected or solicited from the student during the year.

(b) The general provisions of 603 CMR 23.00 regarding parent and student rights, and that copies of 603 CMR 23.00 are available to them from the school.

(2) In those school systems required under M.G.L. c. 71A to conduct a bilingual program, all forms, regulations, or other documents regarding 603 CMR 23.00 that a parent receives or is required to receive shall be in the language spoken in the home of the student, provided that it is a language for which the school system is required to provide a bilingual program.

### **23.11: Monitoring**

The Department of Education may, pursuant to a request by an eligible student or parent or on its own initiative, conduct reviews to insure compliance with 603 CMR 23.00. The school committee and the specific school(s) involved shall cooperate to the fullest extent with such review.

### **23.12: Severance Clause**

The provisions of 603 CMR 23.00 are severable and should any section be found upon judicial review to exceed the authority of the State Board of Education, the remaining sections shall not be affected.

Regulatory Authority:  
603 CMR 23.00: M.G.L. c. 71, 34D, 34E.

## **603 CMR 26.00: Access To Equal Educational Opportunity**

Section:

[26.01](#): Purpose and Construction of 603 CMR 26.00

[26.02](#): School Admissions

[26.03](#): Admission to Courses of Study

[26.04](#): Career and Educational Guidance

[26.05](#): Curricula

[26.06](#): Extra-Curricular Activities

[26.07](#): Active Efforts

[26.08](#): Notification and Complaint Procedure

[26.09](#): Private Right of Action

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### **26.01: Purpose and Construction of 603 CMR 26.00**

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

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

### **26.02: School Admissions**

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

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

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

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

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

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

### **26.03: Admission to Courses of Study**

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

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

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

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



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

#### **26.04: Career and Educational Guidance**

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

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

#### **26.05: Curricula**

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

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

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

#### **26.06: Extra-Curricular Activities**

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

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

encouraged by each school for all students regardless of race, color, sex, religion, national origin or sexual orientation.

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

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

(5) A school may establish or sponsor separate teams for males and females for interscholastic and intramural competition in a particular sport where selection for the team is based upon competitive skill provided that the requirements of 603 CMR 26.06(6) are satisfied.

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

## **26.07: Active Efforts**

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

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

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

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

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

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

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

(8) The opportunity to receive guidance and counseling in a student's primary language should be made available to students from homes where English is not the primary language spoken.

## **26.08: Notification and Complaint Procedure**

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

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

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

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

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

### **26.09: Private Right of Enforcement**

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

Regulatory Authority:

603 CMR 26.00: M.G.L. c. 76, § 5.

## **603 CMR 14.00: Education of English Learners Regulations**

Section:

[14.01:](#) Authority, Scope and Purpose

[14.02:](#) Identification and Assessment of Students

[14.04:](#) Placement of Students with Parental Waivers

[14.05:](#) English Literacy and Fluency Requirements for Teachers of English Language Classrooms

[14.06:](#) Parental Right of Enforcement

[View All Sections](#)

Most recently amended by Board of Education: April 29, 2003

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### **14.01: Authority, Scope and Purpose**

(1) 603 CMR 14.00 is promulgated by the Board of Education pursuant to M.G.L. c. 69, § 1B, and M.G.L. c. 71A, as amended by St. 2002, c. 386.

(2) 603 CMR 14.00 applies to publicly funded elementary and secondary education programs, including all Massachusetts public school districts, charter schools, and collaborative education programs.

(3) The requirements set forth in 603 CMR 14.00 are in addition to, or in some instances clarify or further elaborate, those contained in M.G.L. c. 71A, which governs the provision of education to public school students who are English learners, as that term is defined in M.G.L. c. 71A.

(4) For purposes of 603 CMR 14.00, the term "school district" shall include charter schools and collaborative education programs, and the term "superintendent" shall include charter school leaders and directors of collaborative education programs.

### **14.02: Identification and Assessment of Students**

(1) Each school district shall establish procedures, in accordance with Department of Education guidelines, to identify those students who may be English learners and assess their level of English proficiency upon their enrollment in the school district.

(2) The parent or guardian of any student enrolled in the school district may request that the school district assess the child's level of English proficiency.

(3) The school district shall notify the parent or guardian and place in the student's school record the following information:

- (a) the school district's determination as to whether the student is an English learner; and,
- (b) the student's program placement.

(4) Each school district shall establish criteria, in accordance with Department of Education guidelines, to identify students who may no longer be English learners.

### **14.03: Census**

(1) Each school district shall report annually to the Department of Education, the following information as of the last day of the school year for each student who is an English learner:

- (a) the school in which the student is enrolled;
- (b) the student's grade level;
- (c) the language in which the student possesses a primary speaking ability; and
- (d) the type of English learner program in which the school district has enrolled the student.

(2) When reporting information under 603 CMR 14.03(1)(d), the school district shall specify whether the English learner is enrolled in a sheltered English immersion program or in a bilingual education program.

### **14.04: Placement of Students with Parental Waivers**

(1) A school district shall provide a student who is an English learner with sheltered English immersion instruction and place the student in an English language classroom, as those terms are defined in M.G.L. c. 71A, unless the school district has granted the student a waiver in accordance with M.G.L. c. 71A, § 5.

(2) A school district may place English learners who are granted parental waivers under M.G.L. c. 71A, § 5, in a bilingual education program.

(3) Upon designation of a student as an English learner, the school district shall provide the student's parent or guardian with the school district's waiver policy and timelines, developed in accordance with M.G.L. c. 71A, § 5, and in a language that the parent or guardian can understand.

### **14.05: English Literacy and Fluency Requirements for Teachers of English Language Classrooms**

(1) School district superintendents shall provide annually to the Department of Education a written assurance that teachers of English language classrooms, as that term is defined in M.G.L. c. 71A, are literate and fluent in English.

(2) For purposes of the assurance required by 603 CMR 14.05(1), a teacher is literate in English if the teacher:

- (a) possesses a teaching license issued pursuant to M.G.L. c. 71, § 38G; or,
- (b) possesses a vocational teacher approval or a vocational technical educator license; or,
- (c) earns a passing score on the Communication and Literacy Skills portion of the Massachusetts Tests for Educator Licensure; or,
- (d) possesses a bachelor's degree from a college or university where the language of instruction was English.

(3) For purposes of the assurance required by 603 CMR 14.05(1), a teacher's fluency in English shall be determined through one or more of the following methods:

- (a) classroom observation and assessment by the teacher's supervisor, principal, or superintendent; or
- (b) an interview and assessment by the teacher's supervisor, principal or superintendent; or
- (c) the teacher's demonstration of fluency in English through a test accepted by the Commissioner of Education; or
- (d) another method determined by the superintendent and accepted by the Commissioner.

#### **14.06: Parental Right of Enforcement**

(1) The parent or legal guardian (hereafter "parent") of an English learner shall have legal standing to sue for enforcement as provided in M.G.L. c. 71A, § 6 and 603 CMR 14.06. A parent who alleges that a school district employee has failed willfully and repeatedly to implement M.G.L. c. 71A shall exhaust the review process set forth in 603 CMR 14.06(2)-(10) prior to filing a claim in court pursuant to M.G.L. c. 71A, § 6.

(2) The parent shall submit a written request to the superintendent for review of the parent's allegation. The request for review shall provide the basis for the parent's allegation, including the name(s) of the school district employee(s) involved and a description of the actions that the employee(s) took or failed to take that resulted in willful and repeated violations of M.G.L. c. 71A. Except in extenuating circumstances, the parent shall submit the request within 30 calendar days of the last incident at issue. The superintendent shall provide the school district employee with a copy of the written request within 10 calendar days after it is filed and in advance of the meeting with the superintendent.

(3) The superintendent or his designee shall review the allegation by conducting an investigation and issuing a written decision. As part of that investigation, the superintendent shall meet with the school employee(s) at issue. The school employee(s) may be represented by an attorney or other representative at the meeting, and may provide a written response to the allegations. The superintendent shall provide the parent

and the employee with a written decision within 60 calendar days of the request for review, unless extenuating circumstances require a delay.

(4) A parent or school district employee who is dissatisfied with the written decision of the superintendent under 603 CMR 14.06(3) may submit a written request to the school committee for review of the issue within 30 calendar days of the date of the decision. The school committee shall provide the non-appealing party with a copy of the request for review by the school committee within 10 days after it is filed and in advance of a meeting with the school committee.

(5) The school committee shall review the allegation and provide the parent with a written decision within 60 calendar days of the request, unless extenuating circumstances require a delay.

(6) The decision of the school committee shall be considered the final local decision on the matter.

(7) A parent or school district employee who is dissatisfied with the final local decision may submit a complaint to the Department of Education within 30 calendar days of the date of the final local decision. A copy of the final local decision shall be included with the complaint, and a copy of the complaint shall be provided to the non-appealing party.

(8) The Commissioner or his designee shall review the complaint to determine the mediation or other dispute resolution process in which the parties shall engage prior to Department of Education investigation of the complaint. Within 30 calendar days of the date of the complaint, the Commissioner or his designee shall notify the parties as to the dispute resolution process in which they shall participate.

(9) If, after engaging in the dispute resolution process for a reasonable period of time as determined by the Commissioner, the dispute is not resolved, the Commissioner shall direct the Department to investigate the parent or school employee's complaint and issue a written decision. The school district employee(s) may be represented by an attorney or other representative during the Department's investigation of the complaint, and may provide the Department with a written response to the parent's allegations.

(10) The decision of the Department shall be the final agency decision.

Regulatory Authority:

M.G.L. c.69, § 1B and M.G.L. c.71A, as amended by St. 2002, c.386



## **603 CMR 46.00: Physical Restraint**

Section:

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In effect April 2, 2001

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### **46.01: Authority, Scope, Purpose and Construction**

(1) Authority. 603 CMR 46.00 is promulgated by the Board of Education pursuant to M.G.L. c. 69, § 1B, and c. 71, § 37G.

(2) Scope. 603 CMR 46.00 governs the use of physical restraint on students in publicly funded elementary and secondary education programs, including all Massachusetts public school districts, charter schools, collaborative education programs and special education schools approved under 603 CMR 28.09, except as provided in 603 CMR 18.05(5)(h). Educational programs in facilities operated by the Department of Youth Services shall comply with the restraint requirements of 102 CMR 3.00.

(3) Purpose. The purpose of 603 CMR 46.00 is to ensure that every student participating in a Massachusetts public education program is free from the unreasonable use of physical restraint. Physical restraint shall be used only in emergency situations, after other less intrusive alternatives have failed or been deemed inappropriate, and with extreme caution. School personnel shall use physical restraint with two goals in mind:

(a) To administer a physical restraint only when needed to protect a student and/or a member of the school community from imminent, serious, physical harm; and

(b) To prevent or minimize any harm to the student as a result of the use of physical restraint.

(4) Construction. Nothing in 603 CMR 46.00 shall be construed to limit the protection afforded publicly funded students under other state or federal laws, including those laws that provide for the rights of students who have been found eligible to receive special education services. Nothing in 603 CMR 46.00 precludes any teacher, employee or agent

of a public education program from using reasonable force to protect students, other persons or themselves from assault or imminent, serious, physical harm.

## **46.02: Definitions**

As used in 603 CMR 46.00, the following terms shall have the following meanings:

(1) Extended restraint: A physical restraint the duration of which is more than twenty (20) minutes. Extended restraints increase the risk of injury and, therefore, require additional written documentation as described in 603 CMR 46.06.

(2) Physical escort: Touching or holding a student without the use of force for the purpose of directing the student.

(3) Physical restraint: The use of bodily force to limit a student's freedom of movement.

(4) Public education programs: Public schools, including charter schools, collaborative education programs, special education schools approved under 603 CMR 28.09, except as provided in 603 CMR 18.05(5)(h), and school events and activities sponsored by such programs.

(5) Restraint - Other: Limiting the physical freedom of an individual student by mechanical means or seclusion in a limited space or location, or temporarily controlling the behavior of a student by chemical means. The use of chemical or mechanical restraint is prohibited unless explicitly authorized by a physician and approved in writing by the parent or guardian. The use of seclusion restraint is prohibited in public education programs.

(a) Mechanical Restraint: The use of a physical device to restrict the movement of a student or the movement or normal function of a portion of his or her body. A protective or stabilizing device ordered by a physician shall not be considered mechanical restraint.

(b) Seclusion Restraint: Physically confining a student alone in a room or limited space without access to school staff. The use of "time out" procedures during which a staff member remains accessible to the student shall not be considered "seclusion restraint."

(c) Chemical restraint: The administration of medication for the purpose of restraint.

(6) School Working Day: Any day or partial day that students are in attendance at the public education program for instructional purposes.

## **46.03: Procedures and Training**

(1) Procedures. Public education programs shall develop written procedures regarding appropriate responses to student behavior that may require immediate intervention. Such procedures shall be annually reviewed and provided to school staff and made available to parents of enrolled students. Such procedures shall include, but not be limited to:

(a) Methods for preventing student violence, self-injurious behavior, and suicide, including de-escalation of potentially dangerous behavior occurring among groups of students or with an individual student;

(b) A school policy regarding restraint that provides a description and explanation of the school's or program's method of physical restraint, a description of the school's or program's training requirements, reporting requirements and follow-up procedures, and a procedure for receiving and investigating complaints regarding restraint practices.

(2) Required training for all staff. Each principal or director shall determine a time and method to provide all program staff with training regarding the school's restraint policy. Such training shall occur within the first month of each school year and, for employees hired after the school year begins, within a month of their employment. Training shall include information on the following:

(a) The program's restraint policy;

(b) Interventions that may preclude the need for restraint, including de-escalation of problematic behaviors;

(c) Types of restraints and related safety considerations, including information regarding the increased risk of injury to a student when an extended restraint is used;

(d) Administering physical restraint in accordance with known medical or psychological limitations and/or behavioral intervention plans applicable to an individual student; and

(e) Identification of program staff who have received in-depth training pursuant to 603 CMR 46.03(3) in the use of physical restraint.

(3) In-depth staff training in the use of physical restraint. At the beginning of each school year, the principal or director of each public education program or his or her designee shall identify program staff that are authorized to serve as a school-wide resource to assist in ensuring proper administration of physical restraint. Such staff shall participate in in-depth training in the use of physical restraint. The Department of Education recommends that such training be at least sixteen (16) hours in length.

(4) Content of in-depth training. In-depth training in the proper administration of physical restraint shall include, but not be limited to:

- (a) Appropriate procedures for preventing the need for physical restraint, including the de-escalation of problematic behavior, relationship building and the use of alternatives to restraint;
- (b) A description and identification of dangerous behaviors on the part of students that may indicate the need for physical restraint and methods for evaluating the risk of harm in individual situations in order to determine whether the use of restraint is warranted;
- (c) The simulated experience of administering and receiving physical restraint, instruction regarding the effect(s) on the person restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;
- (d) Instruction regarding documentation and reporting requirements and investigation of injuries and complaints; and
- (e) Demonstration by participants of proficiency in administering physical restraint.

#### **46.04: Determining When Physical Restraint May Be Used**

(1) Use of restraint. Physical restraint may be used only in the following circumstances:

- (a) Non-physical interventions would not be effective; and
- (b) The student's behavior poses a threat of imminent, serious, physical harm to self and/or others.

(2) Limitations on use of restraint. Physical restraint in a public education program shall be limited to the use of such reasonable force as is necessary to protect a student or another member of the school community from assault or imminent, serious, physical harm.

(3) Prohibitions. Physical restraint is prohibited in the following circumstances:

- (a) As a means of punishment; or
- (b) As a response to property destruction, disruption of school order, a student's refusal to comply with a school rule or staff directive, or verbal threats that do not constitute a threat of imminent, serious, physical harm.

(4) Referral to law enforcement or other state agencies. Nothing in these regulations prohibits:

- (a) The right of any individual to report to appropriate authorities a crime committed by a student or other individual;

(b) Law enforcement, judicial authorities or school security personnel from exercising their responsibilities, including the physical detainment of a student or other person alleged to have committed a crime or posing a security risk; or

(c) The exercise of an individual's responsibilities as a mandated reporter pursuant to MGL c. 119, § 51A. These regulations shall not be used to deter any individual from reporting neglect or abuse to the appropriate state agency.

#### **46.05: Proper Administration of Physical Restraint**

(1) Trained personnel. Only school personnel who have received training pursuant to 603 CMR 46.03(2) or 603 CMR 46.03(3) shall administer physical restraint on students. Whenever possible, the administration of a restraint shall be witnessed by at least one adult who does not participate in the restraint. The training requirements contained in 603 CMR 46.00 shall not preclude a teacher, employee or agent of a public education program from using reasonable force to protect students, other persons or themselves from assault or imminent, serious, physical harm.

(2) Use of force. A person administering a physical restraint shall use only the amount of force necessary to protect the student or others from physical injury or harm.

(3) Safest method. A person administering physical restraint shall use the safest method available and appropriate to the situation subject to the safety requirements set forth in 603 CMR 46.05(5). Floor or prone restraints shall be prohibited unless the staff member administering the restraint has received in-depth training according to the requirements of 603 CMR 46.03(3) and, in the judgment of the trained staff member, such method is required to provide safety for the student or others present.

(4) Duration of restraint. A person administering physical restraint shall discontinue such restraint as soon as possible. If, due to unusual circumstances, a restraint continues for more than twenty (20) minutes, it shall be considered an "extended restraint" for purposes of the reporting requirements in 603 CMR 46.06.

(5) Safety requirements. Additional requirements for the use of physical restraint:

(a) No restraint shall be administered in such a way that the student is prevented from breathing or speaking. During the administration of a restraint, a staff member shall continuously monitor the physical status of the student, including skin color and respiration. A restraint shall be released immediately upon a determination by the staff member administering the restraint that the student is no longer at risk of causing imminent physical harm to him or herself or others.

(b) Restraint shall be administered in such a way so as to prevent or minimize physical harm. If, at any time during a physical restraint, the student demonstrates significant physical distress, the student shall be released from the restraint immediately, and school staff shall take steps to seek medical assistance.

(c) Program staff shall review and consider any known medical or psychological limitations and/or behavioral intervention plans regarding the use of physical restraint on an individual student.

(d) Following the release of a student from a restraint, the program shall implement follow-up procedures. These procedures shall include reviewing the incident with the student to address the behavior that precipitated the restraint, reviewing the incident with the staff person(s) who administered the restraint to discuss whether proper restraint procedures were followed, and consideration of whether any follow-up is appropriate for students who witnessed the incident.

#### **46.06: Reporting Requirements**

(1) Circumstances under which a physical restraint must be reported. Program staff shall report the use of physical restraint as specified in 603 CMR 46.06(2) after administration of a physical restraint that results in any injury to a student or staff member, or any physical restraint of a duration longer than five minutes

(2) Informing school administration. The program staff member who administered the restraint shall verbally inform the program administration of the restraint as soon as possible, and by written report no later than the next school working day. The written report shall be provided to the principal or director of the program or his/her designee, except that the principal or director shall prepare the report if the principal or director has administered the restraint. The principal or director or his/her designee shall maintain an on-going record of all reported instances of physical restraint, which shall be made available for review by the Department of Education, upon request.

(3) Informing parents. The principal or director of the program or his/her designee shall verbally inform the student's parents or guardians of the restraint as soon as possible, and by written report postmarked no later than three school working days following the use of restraint. If the school or program customarily provides a parent or guardian of a student with report cards and other necessary school-related information in a language other than English, the written restraint report shall be provided to the parent or guardian in that language.

(4) Contents of report. The written report required by 603 CMR 46.06(2) and (3) shall include:

(a) The names and job titles of the staff who administered the restraint, and observers, if any; the date of the restraint; the time the restraint began and ended; and the name of the administrator who was verbally informed following the restraint.

(b) A description of the activity in which the restrained student and other students and staff in the same room or vicinity were engaged immediately preceding the use of physical restraint; the behavior that prompted the restraint; the efforts made

to de-escalate the situation; alternatives to restraint that were attempted; and the justification for initiating physical restraint.

(c) A description of the administration of the restraint including the holds used and reasons such holds were necessary; the student's behavior and reactions during the restraint; how the restraint ended; and documentation of injury to the student and/or staff, if any, during the restraint and any medical care provided.

(d) For extended restraints, the written report shall describe the alternatives to extended restraint that were attempted, the outcome of those efforts and the justification for administering the extended restraint.

(e) Information regarding any further action(s) that the school has taken or may take, including any disciplinary sanctions that may be imposed on the student.

(f) Information regarding opportunities for the student's parents or guardians to discuss with school officials the administration of the restraint, any disciplinary sanctions that may be imposed on the student and/or any other related matter.

(5) Report to the Department of Education. When a restraint has resulted in a serious injury to a student or program staff member or when an extended restraint has been administered, the program shall provide a copy of the written report required by 603 CMR 46.06(4) to the Department of Education within five school working days of the administration of the restraint. The program shall also provide the Department with a copy of the record of physical restraints maintained by the program administrator pursuant to 603 CMR 46.06(2) for the thirty day period prior to the date of the reported restraint. The Department shall determine if additional action on the part of the public education program is warranted and, if so, shall notify the public education program of any required actions within thirty calendar days of receipt of the required written report(s).

#### **46.07: Special Circumstances**

(1) Special Circumstances - Students with Disabilities. Restraint administered to a student with a disability pursuant to an Individualized Education Plan ("IEP") or other written plan developed in accordance with state and federal law to which the public education program and the student's parent or guardian have agreed shall be deemed to meet the requirements of 603 CMR 46.00, except that the limitations on chemical, mechanical, and seclusion restraint set forth in 603 CMR 46.02(5), the training requirements set forth in 603 CMR 46.03, and the reporting requirements set forth in 603 CMR 46.06 shall apply.

(2) Special Circumstances - Individual Waiver of Reporting Requirements. Public education programs may seek a parent's or guardian's consent to waive the reporting requirements of 603 CMR 46.06 for restraints administered to an individual student that do not result in serious injury to the student or a program staff member and do not constitute extended restraint. Extended restraints and restraints that result in serious

injury to a student or program staff member must be reported in accordance with the requirements of 603 CMR 46.06, regardless of any individual waiver to which the parent or guardian may have consented. Individual waivers should be sought only for students who present a high risk of frequent, dangerous behavior that may require the frequent use of restraint.

(3) Limitations on individual waivers.

(a) A public education program may not require a parent's consent to such a waiver as a condition of admission or provision of services.

(b) A parent may withdraw consent to such waiver at any time without penalty.

(4) Individual Waiver - documentation required. The program shall maintain the following documentation on site in the student's file and shall make such documentation available for inspection by the Department of Education at its request at any time:

(a) The informed written consent of the parent or guardian to the waiver, which shall specify those reporting requirements(s) in 603 CMR 46.06(1)-(4) that the parent or guardian agrees to waive; and

(b) Specific information regarding when and how the parent or guardian will be informed regarding the administration of all restraints to the individual student.

(5) Prohibition on Program or Classroom Waivers: Nothing herein shall be construed to allow a program or classroom to receive an exemption or waiver from any of the requirements of 603 CMR 46.00 on behalf of all of the students enrolled in a particular program or classroom.



## **Department of Education Comprehensive Program Review**

Every six years, each school district undergoes a comprehensive program review (“CPR”) of the districts’ programs and policies. For civil rights activities, the Massachusetts Department of Education (“DOE”) reviews our compliance with our civil rights responsibilities on the following criteria.

Compliance is measured against standardized Methods of Administration (“MOA”). These criteria are provided in this manual to focus your attention on those criteria on an on-going basis.

Any bullet points after the description are those objective measures by which compliance is reviewed.

The following are those criteria which related to Parent & Community Involvement and Curriculum & Instruction and on which teachers may be interviewed during the CPR for district compliance.

### **MOA 7 - Information to be translated into languages other than English**

Announcements and notices being distributed to parents are translated into the major languages spoken by parents or guardians with limited English skills. When a community of residents with limited English language skills exists in the area served by a school or program, school or program recruitment and promotional materials are disseminated to them in their primary language.

Title VI; EEOA: 20 U.S.C. 1703(f); M.G.L. c. 76, s. 5; 603 CMR 26.02(2)

- Copies of announcements and notices published in English and in translation
- Copies of school or program recruitment and promotional materials in English and in translation
- Description of distribution, dissemination methods

### **MOA 7a - School year schedules**

1. Before the beginning of each school year, the school district sets a school year schedule for each school. The school year includes at least 185 school days for students in grades 1-12 at each elementary, middle, and secondary school in the district, and these schools are in operation for at least 180 days a year for these students.
2. The school district ensures that unless his or her IEP or Section 504 Accommodation Plan provides otherwise, each elementary school student is scheduled for at least 900 hours of structured learning time a year and each secondary school student is scheduled for at least 990 hours of structured learning time a year, within the required school year schedule. Where the school district operates separate middle schools, it designates each one as either elementary or secondary.

3. Where the school district sets a separate school year and school day schedule for kindergarten programs, it provides at least 425 hours of structured learning time a year. If the district schedules two sessions of kindergarten a day, it ensures equal instructional time for all kindergarten students.

M.G.L. c. 69, s. 1G; 603 CMR 27.03, 27.04

### **MOA 7B - Structured learning time**

1. The school district ensures that its structured learning time is time during which students are engaged in regularly scheduled instruction, learning, or assessments within the curriculum of core subjects and other subjects as defined in 603 CMR 27.02 (including physical education, required by M.G.L. c. 71, s. 3). The district's structured learning time may include directed study (activities directly related to a program of studies, with a teacher available to assist students), independent study (a rigorous, individually designed program under the direction of a teacher, assigned a grade and credit), technology-assisted learning, presentations by persons other than teachers, school-to-work programs, and statewide student performance assessments.
2. The district ensures that its structured learning time does not include time at breakfast or lunch, passing between classes, in homeroom, at recess, in non-directed study periods (study halls), participating in optional school programs, or receiving school services such as health screening, speech, or physical and occupational therapy, except where those services are prescribed by a student's IEP or Section 504 Accommodation Plan.
3. The hours spent in any type of structured learning time are verified by the school district. Where the school district counts independent study or a school-to-work program as structured learning time, it has guidelines that explain clearly how hours spent by students are verified.

M.G.L. c. 69, s. 1G; 603 CMR 27.02, 27.04

### **MOA 8 - Accessibility of extracurricular activities**

Extracurricular activities sponsored by the district are nondiscriminatory in that:

1. the school provides equal opportunity for all students to participate in intramural and interscholastic sports;
2. Extracurricular activities or clubs sponsored by the school do not exclude students on the basis of race, sex, color, religion, national origin, sexual orientation, disability, or homelessness.

Title VI: 42 U.S.C. 2000d; 34 CFR 100.3(a), (b); Title IX: 20 U.S.C. 1681; 34 CFR 106.31, 106.41; Section 504: 29 U.S.C. 794; 34 CFR 104.4, 104.37(a), (c); Title II: 42 U.S.C. 12132; 28 CFR 35.130; NCLB: Title X, Part C, Sec. 721; Mass. Const. amend. art 114; M.G.L. c. 76, s. 5; 603 CMR 26.06

- List of intramural and interscholastic sports offerings with criteria for participation
- Extracurricular activities and clubs sponsored by the school with any criteria for participation

### **MOA 13 - Availability of information and academic counseling on general curricular and occupational/vocational opportunities**

Students from linguistic, racial, and ethnic minorities; males; females; homeless students; and students with disabilities all receive, in grades 7-12, the same information and academic counseling as other students on the full range of general curricular and any occupational/vocational opportunities available to them. *This pertains to Teachers of Vocations and Guidance Teachers*

Title VI: 42 U.S.C. 2000d; 34 CFR 100.3(a), (b); Title IX: 20 U.S.C. 1681; 34 CFR 106.31, 106.36; Section 504: 29 U.S.C. 794; 34 CFR 104.4, 104.37(b); Title II: 42 U.S.C. 12132; 28 CFR 35.130; NCLB: Title III, Part A, Sec. 3121(c)(1)(C); Title X, Part C, Sec. 721; Mass. Const. amend. art. 114; M.G.L. c. 71A, s. 7; c. 76, s. 5; 603 CMR 26.03

- Copy(ies) of course selection booklet(s)
- Description of counseling activities
- Description of information dissemination process and methods used to ensure that information is provided to all these groups

### **MOA 14 - Counseling and counseling materials free from bias and stereotypes**

To ensure that counseling and counseling materials are free from bias and stereotypes on the basis of race, color, sex, religion, national origin, sexual orientation, disability, and homelessness, all counselors:

1. encourage students to consider programs of study, courses, extracurricular activities, and occupational opportunities on the basis of individual interests, abilities, and skills;
2. examine testing materials for bias and counteract any found bias when administering tests and interpreting test results;
3. communicate effectively with limited-English-proficient and disabled students and facilitate their access to all programs and services offered by the district;
4. provide limited-English-proficient students with the opportunity to receive guidance and counseling in a language they understand;
5. support students in educational and occupational pursuits that are nontraditional for their gender.

Title VI: 42 U.S.C. 2000d; 34 CFR 100.3(a), (b); EEOA: 20 U.S.C. 1703(f); Title IX: 20 U.S.C. 1681; 34 CFR 106.31, 106.36; Section 504: 29 U.S.C. 794; 34 CFR 104.4, 104.37; Title II: 42 U.S.C. 12132; 28 CFR 35.130, 35.160; NCLB: Title III, Part A, Sec. 3121(c)(1)(C); Title X, Part C, Sec. 721; Mass. Const. amend. art. 114; M.G.L. c. 71A, s. 7; c. 76, s. 5; 603 CMR 26.04, 26.07(8)

- Examples of counseling and testing materials
- Description of steps taken to determine and rectify testing bias
- Sample(s) or description of steps taken to:
  - communicate effectively with limited-English-proficient and disabled students
  - provide limited-English-proficient students with the opportunity to receive native language counseling
  - direct students into programs in an unbiased manner, and
  - support students in pursuits non-traditional for their gender

***MOA 17A - Use of physical restraint on any student enrolled in a publicly-funded education program***

1. The district has developed and implemented staff training at least annually on the use of restraint consistent with regulatory requirements. Such training occurs within the first month of each school year and, for employees hired after the school year begins, within a month of their employment.
2. The district administers physical restraint on students only when needed to protect a student and/or a member of the school community from imminent, serious, physical harm. The district implements restraint procedures consistent with Department of Education regulations in order to prevent or minimize any harm to the student as a result of the use of physical restraint.
3. The district has developed written procedures regarding appropriate responses to student behavior that may require immediate intervention. Such procedures are annually reviewed and provided to school staff and made available to parents of enrolled students.
4. The district has developed and implemented reporting requirements and procedures for administrators, parents and the Department of Education consistent with the regulations.
5. The district has developed and implemented any applicable individual waiver procedures consistent with the regulations.

M.G.L. c. 71, s. 37G; 603 CMR 46.00

- District policies and procedures (including reporting procedures) for the implementation of Board of Education Restraint Regulations
- Standard parent notice regarding the district's restraint policies and procedures
- Name of person responsible for staff training on use of restraint
- Schedule of staff training for all existing staff and provisions for training of newly hired staff
- Outline of training topics
- Log of physical restraints lasting over five minutes or where injury to the staff or student occurs
- Copies of any individual waivers issued by the district together with parent responses

**MOA 23 - Comparability of facilities**

**Specific to Teachers of Physical Education**

Where the district provides separate facilities for members of a specific group, those facilities are comparable to those offered other students in the district, including:

1. separate facilities for disabled, limited-English-proficient or pregnant students that are comparable to the facilities for other students in the district;
2. separate toilet, locker room, and shower facilities for students of one gender that are comparable in size, condition, number and location to those provided students of the other gender.

Title VI: 42 U.S.C. 2000d; 34 CFR 100.3(b)(2); Title IX: 20 U.S.C. 1681; 34 CFR 106.33, 106.40(b)(3);  
Section 504: 29 U.S.C. 794; 34 CFR 104.34(c); Mass. Const. amend. art. 114; 603 CMR 28.03(1)(b)

#### **MOA 24 - Curriculum review**

The district ensures that individual teachers in the district review all educational materials for simplistic and demeaning generalizations, lacking intellectual merit, on the basis of race, color, sex, religion, national origin and sexual orientation. Appropriate activities, discussions and/or supplementary materials are used to provide balance and context for any such stereotypes depicted in such materials.

M.G.L. c. 76, s. 5; 603 CMR 26.05(2)

#### **MOA 26A - Confidentiality and student records**

1. In accordance with federal and state requirements, the district protects the confidentiality of any personally identifiable information that it collects, uses or maintains.
2. The district maintains and provides access to student records in accordance with federal and state requirements.

FERPA: 20 U.S.C. § 1232g; 34 CFR Part 99; M.G.L. c. 71, s. 34H; 603 CMR 23.05, 23.07

## INTERNET RESOURCES

U.S. Department of Education, Office of Special Education Programs' (OSEP's) IDEA  
<http://idea.ed.gov/explore/home>

Federal Laws and Regulations  
<http://www.doe.mass.edu/lawsregs/fedlaws.html>

Massachusetts Education Laws and Regulations  
<http://www.doe.mass.edu/lawsregs/stateregs.html>

U.S. Department of Education, NONDISCRIMINATION ON THE BASIS OF  
HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL  
ASSISTANCE  
<http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>