

CENTER FOR LAW AND EDUCATION

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November 6, 2009

BY E-MAIL

Massachusetts Board of Elementary and Secondary Education
75 Pleasant Street
Malden, MA 02148-4906

RE: Proposed Amendments to Accountability and Assistance Regulations

Dear Members of the Board of Elementary and Secondary Education:

Attached are comments submitted by the Center for Law and Education on the proposed amendments to the Board's regulations concerning accountability and assistance for schools and school districts (to be codified at 603 C.M.R. § 2.01 *et seq.*), released for public comment on September 22, 2009.

We appreciate this opportunity to comment. Thank you for your consideration.

Sincerely yours,

Joanne Karger, Staff Attorney
Kathleen B. Boundy, Co-Director
Paul Weckstein, Co-Director

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Comments on Proposed Amendments to MA Board of Elementary and Secondary Education Regulations: Accountability and Assistance for Schools and School Districts 603 C.M.R. § 2.00

The Center for Law and Education (“CLE”) is a national legal advocacy organization with offices in Boston and Washington, D.C., whose mission is to make every student’s right to a high-quality education a reality. For almost 40 years, CLE has played a major role in the shaping of education legislation and policies at the national and state level, including Title I of the Elementary and Secondary Education Act, reauthorized as the No Child Left Behind Act of 2001 (“NCLB”), and the Individuals with Disabilities Education Act (“IDEA”). In Massachusetts, through an IOLTA grant, CLE provides legal support and technical assistance to public interest and private *pro bono* counsel representing indigent students in education law-related matters. CLE has also established a *Pro Bono* Education partnership with Choate, Hall and Stewart, and the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School, to provide representation to low-income students who are subject to disciplinary exclusions, provided inappropriate educational programs, services and/or placements, or subject to other school “push-out” practices. In addition, CLE works with families and educators at several underperforming schools in Boston to carry out the Family School-Level Change Initiative. This project, which is supported by the Boston Foundation, seeks to implement the parent participation levers of Title I/NCLB so as to enable parents, as real partners in their children’s education, to collaborate with teachers, administrators, and other members of the school community in effectuating school-level change. These provisions require Title I schools to develop jointly with parents a parent involvement policy that directs how parents will be involved in program planning and improvement. 20 U.S.C. § 6318. Given our experience as a voice for the rights of children and families to a high-quality education, we offer the following comments on the proposed amendments:

First, we support the Board of Elementary and Secondary Education (the “Board”) in revising the accountability and assistance structure for schools and districts in a manner that focuses on “conditions for school effectiveness.” Identifying specific indicators of effectiveness can lead to the creation of a school learning environment in which all students are able to achieve to high levels; can enable schools and districts to target key areas for reform; and can be instructive to schools and districts with respect to the data reviews, improvement plans, self-evaluations, and intervention plans that are required under the proposed regulations and that are necessary for the effective implementation of state and federal laws. Moreover, the use of such indicators can help facilitate the process of performance-based monitoring on the part of schools and districts as well as encourage the integration of data across multiple data sources.

It is significant that many of the proposed conditions for school effectiveness in 2.04(3) are currently identified in federal law under Title I as required components of the schoolwide program plan. *See* 20 U.S.C. § 6314(b)(1); 34 C.F.R. § 200.28 (requiring, *inter alia*, the provision of “an enriched and accelerated curriculum,” “instruction by highly qualified teachers,” the provision of “high-quality and ongoing professional development,” “parental involvement,” and for “students who experience

difficulty... effective, timely additional support.”). CLE, in fact, has developed a key tool, what we call the Educational Quality Bill of Rights (“EQBR”), that addresses seven critical areas of school-level reform and delineates specific criteria for each of the core elements of program quality that are identified in Title I and other laws. Grounded in law, research, and policy, the underlying premise of the EQBR is that every student has the right to a high-quality education. The EQBR is designed, in both short and long versions, to cover seven key areas of school-level reform, each addressing a key question for which schools must be able to provide every child and every family with positive answers – “What should our children be learning?”(high standards and learning goals); “Is that what we are teaching all children?” (an accelerated and enriched curriculum); “Are we teaching it well?” (effective instructional methods provided by qualified teachers); “What about my child?” (timely and effective individual attention for struggling learners); “So are they learning what they are expected to know and be able to do?” (regular and high-quality assessments); “How do we make decisions about students?” (graduation, promotion, and other high stakes decisions); and “Who is the ‘we’”? (governance, involvement, partnership). We have found very positive reactions to organizing the issue areas and key questions in this intuitive way.

CLE has been using this tool in our school site-based work to help families, educators, and students reach agreement and common understanding of the rights connected to a high-quality education – what these rights are and what they mean – so as to enable families and students to assess what their school is or is not doing, to focus on quality issues, and to advocate for change, including greater implementation of research-based best practices. We are hopeful that the schools in which we are working will use the EQBR as part of their own program assessment and program planning (given Title I’s requirement that each school develop jointly with parents a plan for how they will provide each of several quality elements, overlapping with the EQBR, based in turn on a program assessment of the current state of that element); and hold schools and districts accountable for closing the achievement gap. The elements comprising the EQBR are similar to the “conditions for school effectiveness” identified in the Board’s proposed regulations. CLE’s long version of the EQBR elaborates on these basic elements and has the potential to serve as a resource for implementation of the new accountability and assistance provisions under proposed regulation 2.01 *et seq.* See <http://www.cleweb.org/latest/EQBR.FullVersion.pdf>.

CLE further supports the focus in the proposed regulations on “assistance” in conjunction with “accountability.” For example, proposed 2.04(5) specifies various kinds of “assistance” that will be made available to schools and districts by the Department of Elementary and Secondary Education (the “Department”), including “examples, tools, templates, protocols, and surveys” as well as “professional development opportunities.” This emphasis on assistance underscores the importance of providing schools and districts with support to meet the conditions for effectiveness. In a set of principles and recommendations that CLE submitted to the U.S. Senate HELP Committee for consideration in the context of the next reauthorization of Title I, CLE suggested a re-conceptualization of “accountability” in a manner that focuses on the components of a high-quality education, rather than on a bright line determination of Adequate Yearly Progress based primarily on test outcomes. See <http://www.cleweb.org/latest/clehelp2007.pdf>. Similarly, we encourage the Department, in implementing the proposed MA regulations, not to focus narrowly and rigidly on the graduated system of sanctions but, rather, to use these provisions as an opportunity to enforce implementation of the core elements of a high-quality education.

While we find the new inclusion of conditions for school effectiveness and the emphasis on assistance as well as accountability to be positive steps, CLE has additional comments concerning some of the language in the proposed regulations. First, we believe that clarification in several places would be helpful to reflect the emphasis on school-level accountability. Although proposed 2.04(1) states that the Department will provide “every school and district” with a data review, the regulation refers only to a “Comprehensive Annual District Data Review” and is specifically titled “District data reviews” (emphasis added). We recommend that the language in proposed 2.04(1) be changed to state: “The Department shall

provide a Comprehensive Annual School Data Review for every school and a Comprehensive Annual District Data Review for every district, including multiple data elements....” In addition, the regulation should be re-titled “School and district data reviews.” Similarly, while proposed 2.02 contains a definition of “District review” under M.G.L. c. 15, § 55A (emphasis added), an analogous definition of “School review” under M.G.L. c. 15, § 55A should also be incorporated into proposed 2.02.

We further recommend that proposed 2.04(4)(b) be changed to state: “The School Improvement Plan shall be aligned with the District Plan and shall address each of the conditions for school effectiveness in 603 C.M.R. § 2.04(3).” As noted above, many of the proposed conditions are already required in Title I schoolwide program plans. By stating explicitly that the School Improvement Plans under 2.04(4)(b), which are required under M.G.L. c. 69, § 1I, must address the conditions for school effectiveness, the proposed regulations will promote the development of more coherent and focused School Improvement Plans and will allow for more meaningful cross-school comparisons (as indicated in proposed 2.04(1)). The new language will similarly enhance the likelihood that such plans will be in compliance with the federal quality requirements of Title I. While many schools in MA are not required to meet Title I standards, the reality is that the majority of under-performing schools and school districts have high enrollments of economically disadvantaged students and do receive Title I funding.

Finally, we have some concerns about the language pertaining to “Low-Performing Mathematics Programs” that is found in proposed regulation 2.08 (current regulation 2.05). Proposed 2.08(1) states: “Any school in which 30 percent or more of the students fail the MCAS mathematics test, excluding those students who are enrolled in special education, who are classified as having limited English proficiency, or who have not been enrolled in the school for at least two school years, and which failed to make AYP in mathematics for students in the aggregate or any student subgroup during the most recent accountability cycle, shall be considered to have a low-performing mathematics program” (emphasis added). Excluding students with disabilities, limited English proficient students, and even transient students from the math failure rate that triggers identification as a low-performing mathematics program perpetuates low expectations for these students. This language also raises potential concerns under Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, and the Equal Educational Opportunities Act by depriving these students of the benefit or effect of the added incentive imposed by the regulation to ensure that students receive the instruction and support they need in order not to fail and that math teachers have the necessary content knowledge to teach to high standards. We further recommend that changes be made to the remaining provisions of proposed 2.08, which address the consequences for a school with an identified low-performing mathematics program. Rather than focusing to such a large extent on the requirement that mathematics teachers, including those who are already certified, take a content-based assessment, the regulation should identify positive programmatic changes that the school could undertake such as review of the school’s mathematics curriculum, introduction of new instructional strategies, and implementation of ongoing professional development opportunities.