

MTEL: Alternative Route to Licensure Proposed

A leading item on the agenda at the January 28 meeting of the MA Board of Elementary and Secondary Education was Commissioner Jeffrey Riley's much-anticipated proposal to offer an alternative path to licensure for teachers who repeatedly fail the MA test for licensure (MTEL).

Instead of disqualifying teachers who do not pass the exam, the Commissioner is seeking to allow teachers who repeatedly fail their exams to receive a license based on their actual work experience—vetted by an expert—instead of their test scores. His proposal would also allow educators in some instances to take another licensing test offered in 26 other states.

The MTEL exam has been the subject of increased criticism, and scrutiny, in recent years as districts statewide struggle to build a workforce that reflects their student population. One of the biggest stumbling blocks on the exam is the communication and literacy skills component. While 83% of white candidates passed that test in the 2017-2018 school year, barely 60% of Black and Latino candidates did. In cities like Boston and Springfield where, respectively, 85% and 90% of the student population are students of color, only (respectively) 42% and 19% of the workforce are teachers of color.

Under the state's 22-year-old licensing system, most educators must pass two exams—a communications test and another tied to their area of expertise—to gain a license. However, the state does allow a number of unlicensed educators to teach under waivers for a year or longer if the school

district can prove difficulty finding a better suited licensed candidate.

According to a recent article in the *Boston Globe*, a number of states have been re-examining their licensing systems in response to evidence suggesting testing requirements might be keeping too many educators of color out of classrooms. The issue has taken on more urgency in recent years as a growing body of research has shown that achievement can rise in classrooms when students of color are taught by teachers of similar demographics. Riley's proposal is part of a broader effort to help districts diversify their workforces, which includes creating grant opportunities for recruitment initiatives and programs to entice high school students to pursue teaching careers.

The Commissioner's proposal has been put out for public comment with a report due back to the Board in April. Were it to receive Board approval, the plan would be in place on a trial basis for three years.

School District Spending Plans Due April 1

Prepared by MASC Executive Director Glenn Koocher

One of the requirements of the recently enacted Student Opportunity Act stipulates that superintendents must forward to DESE by April 1, 2020 a spending plan explaining how the district plans to use the additional funding in FY 2021-FY 2023.

In brief, the plans must include an outline of how additional funds will be spent to close the achievement gaps and target those students in greatest need. For many districts, SOA represents modest additional funding, but in districts with high poverty rates and significant numbers of students at economic risk as well as English Language Learners, the new money will be greater.

MASC has been asked by our members how this will affect the budget process for FY 2021. In fact, the law did not change the school budgeting process, but it does require that key

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ALERT: Public Comment Period (and more) included in MASC Policy Newsletter

Arriving soon to members, superintendents and school secretaries/administrative assistants mailboxes is the January 2020 issue of the MASC Policy Newsletter.

Included are the texts of policies recently added to the reference manual (JBB: Educational Equity) as well important policies that have been adapted to reflect a recent MA court decision (BEDH: Public Comment at School Committee Meetings) and to ensure DESE compliance (JFABD: Homeless Students: Enrollment Rights and Services; JFABE: Educational Opportunities for Military Children; and JFABF: Educational Opportunities for Children in Foster Care).

The policies are also posted on the MASC website on the "Updated/New Policies" page and in the MASC Policy Reference Manual. www.masc.org/policy

School Committee Meetings Meets the First Amendment

By Marc Terry, Esq., Mirick O'Connell

You, your committee colleagues, school administration, staff members, and even most (let's hope) of your district's students are excited to get back to school after the winter recess. The school district has got all its ducks in a row. Everyone can feel it. This is going to be a great second half of the year.

Heading into your first school committee meeting of 2020, you are tan and relaxed from an early winter trip south. "Welcome back everyone," you say with a big smile, "I call this meeting of the school committee for The Best School District in All the Land to order. I hope everyone had a great break and is ready to get back to work. First order of business - is there any comment from the public?"

And then it happens. A citizen steps forward and says, "Yes, I'd like to make a formal complaint." The citizen then proceeds to talk about how a teacher harassed his child last year, the administrator who investigated did a lousy job, and the superintendent failed to do anything about it. Welcome back indeed.

Flustered and not sure what to do, but wanting to defend those involved, you tell the citizen you will not allow him to abuse and defame teachers and administrators in an open meeting. You tell him he should have brought his complaint to you as required by school committee policy. Frustrated by being cut off, the citizen then continues on to grumble that the school committee and administration has done nothing to replace the "state of the art" Apple II Plus with external floppy drive that finally stopped working six months ago or the social studies text books that make it sound like the wall everyone is talking about is in Germany.

That's it! You're done and so is the citizen - at least as far as you're concerned. In your best calm, but firm voice, you say, "Sir, you are out of line. I don't believe in being a stickler about these things, but our policy only allows one minute per speaker. You are out of time." For good measure, you add, "Thank you for coming. We always love to hear from the public. And we'll be sure to get right on that complaint. Bye."

You take a 10-minute break to let your blood pressure lower, and then move on to the next order of business feeling confident you did your job in defending staff and will never hear from the citizen again. Sure enough, you don't. You hear from his lawyer, who claims the school committee violated the citizen's First Amendment free speech rights. And guess what -- the lawyer is right.

Gray areas

First Amendment issues are complicated. There are a lot of gray areas in which attorneys and judges struggle to determine what speech is protected and what is

not, which makes it unfair to expect committee members or administrators to know how to handle these issues when they arise. I hope this article will help.

When a school committee allows for the public to comment, it creates a "designated public forum." This means the public generally has the right to speak regarding matters within the jurisdiction of the school committee. The committee, however, may place reasonable restrictions as to the time, place, and manner of the speech. For example, it can set time limits on speakers and when, where and how speech is allowed. Any content-based restrictions, however, must be necessary to achieve a compelling state, i.e., school committee, interest.

Issues of authority

What does this mean for the School Committee for The Best School District in All the Land? Well, one of the first things we must consider is what issues are within the authority of the school committee. In Massachusetts, school committees have the authority to hire, fire and evaluate the superintendent. Most other employees are hired by the superintendent or building principal. School committees also have the authority to set the school district's goals/direction, curriculum, budget and to set district policy.

If the School Committee in All the Land has the same authority as a school committee in Massachusetts, the school committee would have no authority over complaints against anyone in this scenario other than the superintendent. As such, refusing to allow the citizen to complain publicly at the school committee meeting about the superintendent interfered with the citizen's First Amendment right to speak about a matter over which the school committee had jurisdiction.

Concerns about defamation are legitimate. Over the years, I've received a number of calls from school committee members, superintendents, and other school administrators concerned that they or someone in their district has been defamed by a member of the community. For a public figure to prove defamation, he or she must show the speaker knew the statement was maliciously false or made with reckless disregard for the truth. The statement must also be a statement of fact and not a statement of opinion.

For our purposes, it is important to know that although an individual who has been defamed can bring a civil action, the courts rarely will uphold a prohibition on allegedly defamatory statements unless there has been a final legal determination that a statement was defamatory. This ultimately leaves school committees with limited ability to curtail false statements. The only real, immediately available response is to correct the false statements.

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First Amendment

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What about the citizen's complaint about the teacher and the other administrator's failure to investigate and the school's curriculum? If the school committee has no authority to hire or fire the teacher or administrator, prohibiting the resident from complaining publicly about them does not violate the First Amendment. The citizen's statements about the school's curriculum, however, are, like the complaint about the superintendent, squarely within the authority of the school committee, and protected by the First Amendment.

Public can speak

I hope the take-away from this article is clear. School committees must be extremely cautious about restricting what citizens say during the period set aside for public comments at school committee meetings. Generally, if a school committee is going to allow for

public comment (which is not constitutionally-required), it must allow the public to speak about any matter within the school committee's authority.

School committees can adopt policies that restrict the length of a person's statements, prohibit someone from repeating the same comments at multiple meetings, or limit the amount of time for public comment at the meeting as a whole. Any such policies, however, must be consistently enforced on a content-neutral basis.

I strongly advise school committees to confer with their counsel regarding their own policies and practices related to public comments at their committee meetings.

Marc L. Terry, a member of the Ashland School Committee, leads the School Law Group at Mirick O'Connell. He serves on the Board of Directors for the National Council of School Attorneys and Chairs its Labor Relations Committee. This article is a modified version of an article published in the October 2019 edition of the American School Board Journal.

School Districts Spending Plan due April 1

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stakeholder groups, parents, among others, be consulted to inform the process leading to the spending of the new Chapter 70 money. It is also unambiguously clear that spending plans must be approved by the school committee as part of its policy making function and budgeting authority under the law. How the school committee and superintendent get feedback from the constituencies and stakeholder groups is left to the districts with some recommendations from DESE that include using public comment period to solicit input. We also recommend that districts use readily accessible survey programs to gather feedback.

DESE is in the process of preparing guidelines, but many school committee members have been asking for preliminary guidance from us about getting feedback. Many of the budget decisions will involve new or expanded programs that represent policy, new positions and job descriptions, or matters that could impact collective bargaining, and school committees may wish to be more engaged earlier in the process to ensure that feedback is obtained, board priorities pursued, and goals for the district integrated into the spending plan.

Normally, the superintendent would be routinely gathering feedback to

inform the next year's budget prior to presenting a proposed budget to the school committee. The school committee would hold at least one public budget hearing. However, because superintendents are required to forward the spending plan for new and additional Chapter 70 funds by April 1, 2020, the process for planning the expenditure of the additional funds might need to be expedited. Also, we are still awaiting information from DESE on how the actual additional funding will be calculated, especially since inflation might impact the constant dollar levels.

We also know that district educators will want to be more engaged in discussions with both the superintendents and school committees on spending priorities, and this might involve holding more meetings. The fiduciary responsibilities of school committees give them as many opportunities to seek feedback as they wish, and, of course, school committees may schedule meetings at their discretion. Spending strategies include many initiatives that districts are already using, and may include:

- Extended learning time,
- Common planning time for teachers,
- SEL or physical health services,
- Hiring personnel to improve student performance,
- Increased or Improved Professional Development,

- Curriculum or equipment aligned to state standards,
- Early Education and Pre-K,
- Workforce diversification, and
- Pathways to strengthen college and career readiness

Other strategies are also possible subject to review.

In summary, we recommend that school committees be actively engaged in hearing from stakeholders and reviewing and approving the spending plans. However, with only 8 weeks to go before the initial plans must be submitted, a close collaboration with the superintendent is essential.

MASC will alert districts to any further guidance from DESE on the process and requirements of the spending plans for the additional funding.

NOTE: On February 3, DESE released the following preliminary guidance for use in filing district plans, noting that districts expected to receive less than \$1.5 million in incremental Chapter 70 funds in FY21 will fill out a "short form" template. Districts expected to receive over \$1.5 million in incremental Chapter 70 funds in FY21 will fill out a "long form" template that will require additional information, particularly concerning their budgets. Guidance materials for planning purposes can be accessed on the DESE website: <http://www.doe.mass.edu/commissioner/spec-advisories/soa.html>



Cape Cod Members Share Concerns with Legislators

On Friday, January 31 Division VII hosted its annual Legislative Breakfast program. More than 60 area members participated in roundtable discussions which yielded productive question and answer dialogue with the legislators present. These included **Senator Julian Cyr**, and **Representatives Sarah Peake, David Vieira, Susan Gifford, Dylan Fernandes** and **William Crocker**. The discussion focused on priorities for Cape Cod that included affordable housing, the recently enacted Student Opportunity Act, child care, allocation of the new short term rental tax proceeds by different towns, and developing robust partnerships around areas of shared interest.

MA NEWS

EXPANDED HOURS BOOST BREAKFAST PARTICIPATION

A recently released report from DESE has found that MA schools that revamped their breakfast programs last year to serve the meal after the start of the instructional day, instead of before, experienced notable increases in participation.

In the past year, state budget language mandated that schools that are required to serve breakfast and where at least 60% of students are eligible for free or reduced-price meals "shall offer school breakfast after the instructional day has

begun and the tardy bell rings."

Schools that are required to serve breakfast under state law are those that draw their attendance from areas with a high number of needy children.

By the end of June 2019, of the 688 schools in the Commonwealth meeting the breakfast mandate's eligibility criteria, 661 had either implemented or were in the process of implementing a breakfast after the bell program.

In late January the MA Senate, following an earlier-approved House bill, made the breakfast after the bell bill law.

SAVE THE DATE

Thursday, February 27

MASC Special Education Committee meeting

Marriott Courtyard, Marlborough
6:00pm

Tuesday, May 5

MASC DAY ON THE HILL

The State House, Boston

For more information: www.masc.org

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