

The Commonwealth of Massachusetts  
Department of Education

1385 Hancock Street Quincy, Massachusetts 02169-5183



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M E M O R A N D U M

TO: School Committee Chairpersons  
Superintendents of Schools

FROM: Harold Reynolds, Jr., Commissioner

DATE: July 22, 1991

RE: School Choice

In three distinct but related actions in March and July of 1991, the Great and General Court has enacted and Governor William Weld has signed into law a School Choice statute that potentially affects every school system in the Commonwealth. The three pieces of legislation, copies of which are attached, are sections 23 and 85 of Chapter 6 of the Acts of 1991, section 304 of Chapter 138 of the Acts of 1991 (the Fiscal Year 1992 budget), and section 14 of Chapter 145 of the Acts of 1991 (the Fiscal Year 1991 supplemental budget).

Under General Laws Chapter 76, section 12B, as amended and amplified by these provisions, Massachusetts now provides every student the opportunity to attend a public school in a community other than that of the student's residence if the school committee of the potential receiving district chooses to participate in the program. The cost to the receiving district will be reimbursed by the Commonwealth from funds drawn from the sending district's Chapter 70 allotment. The program is to be implemented in the 1991-1992 school year.

This informational bulletin on the new legislation is issued to each school committee in accordance with section 14 of Chapter 145. It has been prepared in consultation with members of the Massachusetts Association of School Superintendents to be sure that each school committee has adequate information to assist it in determining whether to participate in the program.

How is tuition paid?

Section 23 of Chapter 6 amended in several ways the statute providing for children to attend public schools in communities where they do not reside (G.L. c. 76, s. 12B). The most

significant change is that the Commonwealth is now to pay the tuition set by the receiving school committee.

Section 304 of Chapter 138 calls for each school district participating in the School Choice program to certify to the State Treasurer, on October 1, 1991 and April 1, 1992, "the number of such children attending its public schools, the city or town of residence of each such child, the annual amount of tuition for each such child and the total tuition owed to the district based on full or partial attendance." School committees will be advised about the process and format for submitting this information.

Please bear in mind the following points:

- o No school committee is required to accept non-resident students.
- o No school committee may prevent students from attending school in another community under this program.
- o Any school district that admitted non-resident children on a private tuition basis (e.g., at parental expense) prior to June 30, 1991 may continue to charge tuition directly to parents rather than to the Commonwealth, but only for those non-resident children who attended its schools prior to June 30, 1991 and their siblings, step-siblings and foster children residing in their homes. This provision applies whether or not the school committee decides to participate in the School Choice program. The school committee has discretion to decide whether to continue enrolling previously-enrolled non-resident students on a private tuition basis, to convert entirely to the state-funded School Choice program, to do both, or to decline to admit any non-resident students.
- o School committees that currently have or intend to adopt policies or contractual agreements allowing non-resident students to attend free of tuition charge may do so regardless of whether or not they participate in the School Choice program. In addition, two school committees may agree to exchange students under a mutual arrangement at no cost to either or, under G.L. c. 76, s. 12, a school committee may tuition students to another school system upon such terms as the two committees agree.
- o A school committee that chooses to accept non-resident students for whom the Commonwealth will be asked to pay tuition is prohibited under G.L. c. 76, s. 12B to "discriminate in the admission of any child, on the basis of race, color, religious creed, national origin, sex, age, ancestry, athletic performance, physical handicap, special

need or academic performance, or proficiency in the English language." The enforcement of these provisions is under the jurisdiction of the Massachusetts Commission Against Discrimination.

- o In a receiving school system where student assignments are under court order, or are made pursuant to a Board of Education-approved racial imbalance plan, the order or plan would govern the assignment of non-resident pupils to particular schools.
- o Students who choose to participate should be informed of the Massachusetts Interscholastic Athletic Association's policy on the one-year period of ineligibility for varsity athletes who transfer from one district to another.
- o The tuition rate set by a school committee "shall not exceed the average expense per student for such school, for such type of education as is required by such nonresident student, for the period the child shall attend." The statutory reference to "such type of education" presumably means regular, special, bilingual or vocational education.
- o When a school committee receives funds from the Commonwealth for non-resident students under G.L. c. 76, s. 12B, the statute provides that the funds are to be deposited by the treasurer in a separate account for use by the school committee without further appropriation. The statute provides further that whenever such funds are received after the submission of the annual school budget, any or all of the funds may be expended by the school committee without further appropriation, but shall be accounted for in the next annual school budget.

#### Where does the funding come from?

The Treasurer will deduct the cost of tuition payments made to the community where the child attends school from the Chapter 70 state aid that would otherwise be paid to the community where the child lives, and credit that amount to the receiving community. This means that:

- o The amount deducted from the sending community's state aid will be the tuition charged by the receiving school committee, and will not necessarily be equivalent to the amount of the sending community's state aid when calculated on a per pupil basis.
- o The sending community will have funds deducted from its Chapter 70 state aid to pay for resident students enrolled in another community under the School Choice program even if

they did not previously attend the local public schools.

The law does not address what happens in the event that the total deduction from a sending community's Chapter 70 aid exceeds the amount that was originally scheduled to be paid to the community from that account, nor what happens if the sending community is one to which no Chapter 70 state aid is allocated.

How does the admission process work?

Extensive school choice programs already operate in Massachusetts. The Metco program and the "intra-district choice" programs in sixteen cities make provisions for centralized parent information centers and for a process of assignments designed to assure equal access and to prevent racial segregation.

No such arrangements are provided under the new legislation, and it will be the responsibility of each school committee to assure that its admission process is fair and non-discriminatory. The Massachusetts Commission Against Discrimination is charged with enforcing this requirement.

A school committee that chooses to enroll non-resident students under the School Choice program should be as specific as possible in advertising the openings that exist within its system. In following this approach the school committee must take care to avoid any language that might be construed as violating the anti-discrimination clause in this law.

Experience with other school choice programs shows that special sensitivity and vigorous outreach efforts are needed to encourage equal participation by low-income and language-minority families and thus achieve equal educational opportunity.

Will transportation be provided?

The School Choice legislation does not provide for transportation. Consequently, parents who elect to enroll their children in the public schools of another community under this program will be responsible for providing transportation. The Commissioner of Education is required to conduct a study of transportation needs by August 1, 1992.

How will Metco be affected?

The state-funded Metco program, which includes funding for transportation and other services for students, continues to operate in accordance with G.L. c. 76, s. 12A. School committees may continue to participate in Metco, and if they choose to do so

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may also accept non-resident students under the new School Choice program. The Commissioner of Education is required to conduct a study of the impact of this program on Metco by August 1, 1991.

**How will pupils who already attend out-of-district schools on a privately-funded basis be affected?**

Section 304 of Chapter 138 provides that a school committee may continue to charge tuition to parents only for non-resident students who had attended its schools prior to June 30, 1991, their siblings, step-siblings and foster children residing in their homes. The school committee has discretion to decide whether to continue enrolling previously-enrolled non-resident students on a private tuition basis, to convert entirely to the state-funded School Choice program, to do both, or to decline to admit any non-resident students.

As the new School Choice program is implemented, additional questions are bound to arise. We will continue to keep you informed of new developments.

Enclosures:

Chapter 6 of the Acts of 1991 (Section 23, amending G.L. c. 76, s. 12B)

**SECTION 23.** Section 12B of chapter 76 of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:—

Notwithstanding the provisions of section twelve, or any other general or special law to the contrary, any child may attend the public school of a city or town where he does not reside upon such terms as the school committee of such city or town where he does not reside shall fix, if it chooses, to admit nonresident students; provided, that said school committee shall set and be paid by the commonwealth a tuition rate which shall not exceed the average expense per student for such school, for such type of education as is required by such nonresident student, for the period the child shall attend; and provided, further, that in the case of a regional district school, the sum set by the school committee as such tuition rate shall require the acceptance of the member of the regional district school committee who represents the town in which such school is located. The commonwealth shall pay tuition to the host community. The community in which the child resides cannot claim that child as attending its school and the receiving community cannot claim that child as residing in that community. No school committee shall discriminate in the admission of any child, on the basis of race, color, religious creed, national origin, sex, age, ancestry, athletic performance, physical handicap, special need or academic performance, or proficiency in the English language; provided that the Massachusetts commission against discrimination, established by section fifty-six of chapter one hundred and fifty-one B, shall have jurisdiction to enforce the provisions of this sentence. Two school committees may agree to exchange students under a mutual arrangement at no cost to either.

**SECTION 24.** The General Laws are hereby amended by inserting after chapter 92, the following new chapter:—

G.L. c. 76, s. 12B

76:12B. Attendance of school other than in town of residence of child; expenses: federal, state and private funds.

Amended by  
Chapter 6  
of the Acts  
of 1991  
(Section 23)

~~Section 12B. Notwithstanding the provisions of section twelve, any child may attend the public school of a town where he does not reside upon such terms as the school committee of such town where he does not reside shall fix; provided said school committee shall set and be paid a tuition rate which rate shall not exceed the average expense per student for such school for the period the child shall attend; provided, however, that in the case of a regional district school, the sum set by the school committee as such tuition rate shall require the acceptance of the member of the regional district school committee who represents the town in which such school is located.~~


The commonwealth and the school committee of any town may accept funds from the federal government for the purposes of this section. Any amounts received by the school committee of any town from the federal government, from the commonwealth or from a charitable foundation or private institution shall be deposited with the treasurer of such town and held as a separate account, and may be expended by said school committee without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four.

Whenever such funds are received after the submission of the annual school budget, all or any portion thereof may be expended by the school committee without further appropriation, but shall be accounted for in the next annual school budget.

76:13. Transfer cards

Chapter 6 of the Acts of 1991 (Section 85)

such estate.

 SECTION 85. The commissioner of education is hereby directed to conduct a study of and develop a plan, if appropriate, to address the transportation requirements of children who participate in the program established by this section. Said commissioner shall also conduct a study of the impact, if any, on the METCO program by the program established by section twenty-three of this act. Both studies shall consider the impact of the implementation of the program established by said section twenty-three for the complete school year nineteen hundred and ninety-one and nineteen hundred and ninety-two and shall be filed with the clerks of the senate and house of representatives who shall forward the same to the senate and house committees on ways and means no later than August first, nineteen hundred and ninety-two.



Chapter 138 of the Acts of 1991 (Section 304)

Adopted  
Choice

SECTION 304. Each public school district which admits children under the provisions of section twelve B of chapter seventy-six of the General Laws, as amended by section twenty-three of chapter six of the acts of nineteen hundred and ninety-one, shall certify to the state treasurer the number of such children attending its public schools, the city or town of residence of each such child, the annual amount of tuition for each such child and the total tuition owed to the district based on full or partial attendance, itemized by the amount attributable to each city or town of residence; provided that such certification shall be made on October first, nineteen hundred and ninety-one and April first, nineteen hundred and ninety-two; and provided further, that, notwithstanding the provisions of section three of this act to the contrary, including its notwithstanding clause, the state treasurer shall deduct said itemized amounts from the distributions to be made to each city or town from item 7061-0008 of section two of this act prior to said distribution; and provided further, that the amounts so deducted shall be credited to item 0610-1500 of section two of this act. Each school district submitting a certification to the state treasurer shall also submit a copy of said certification to the department of education. Said department may review said certification to determine that the amount of the individual tuition charged for each child is in accordance with the provisions of said section twelve B of said chapter seventy-six and shall inform the state treasurer of any errors. The department may also, on a post-audit basis, verify the admission and attendance of the number of children certified by each school district.

Notwithstanding the provisions of this section or any general or special law to the contrary, any school district which admitted children on a private tuition basis prior to June thirtieth, nineteen hundred and ninety-one, may continue, on that basis, to admit any child who attended its school system prior to that date, as well as any sibling or step-sibling of such child and any foster child residing in the home of such child; provided, that any school system which admits children under the terms of this provision may also choose, or not choose, to admit children for whom the commonwealth pays the tuition required by section 12B of chapter 76 of the General Laws. This paragraph shall not preclude any school system from admitting children, including those described above, under the provisions of said section 12B of said chapter 76 of the General Laws.

Item

TREASURER AND RECEIVER-GENERAL.

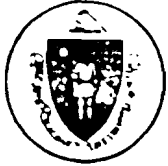
Chapter 138 of the Acts of 1991 (FY 92 budget)

School  
Choice

0610-1300 For tuition payments as required by section twelve B of chapter seventy-six of the General Laws, as amended by section twenty-three of chapter six of the acts of nineteen hundred and ninety-one; provided that notwithstanding the provisions of chapter twenty-nine of the General Laws to the contrary, the state treasurer is hereby authorized to expend in anticipation of revenue such amounts as are necessary to meet such payments; and provided further, that the state treasurer shall deduct the amount expended from this account from item 7061-0008, in accordance with section 304 of this act.

Chapter 145  
of the Acts  
of 1991  
(Section 14)

SECTION 14. Notwithstanding the provisions of any other special or general law to the contrary, the commissioner of education is hereby authorized and directed to issue informational bulletins to each school committee in the commonwealth informing them of the provisions of law contained in section twelve B of chapter seventy-six of the General Laws, as amended by section twenty-three of chapter six of the acts of nineteen hundred and ninety-one, and section three hundred and four of the general appropriation act for the fiscal year ending June thirtieth, nineteen hundred and ninety-two; provided however, that said bulletins shall include copies of said sections, this section and item 0610-1500 of section two of said general appropriation act; and provided further, that said bulletins shall not be considered rules or regulations for the purposes of chapter thirty A of the General Laws or for the purposes of any other general or special law; and provided further, that said bulletins shall be issued not later than August first, nineteen hundred and ninety-one. The provisions of this section shall survive the expiration of the fiscal year.



# The Commonwealth of Massachusetts


## Department of Education

1385 Hancock Street Quincy, Massachusetts 02169

### M E M O R A N D U M

August 19, 1991

TO: Superintendents of Schools  
School Committee Chairs  
Other Interested Parties

FROM: Harold Reynolds, Jr.   
Commissioner of Education

RE: Additional Information on School Choice

This memorandum is written to respond to additional questions concerning the implementation of the School Choice law that have arisen since my July 22, 1991 memorandum, and should be read in conjunction with it.

1. May school committees honor agreements entered into prior to June 30, 1991 to admit privately-funded non-resident students who have not actually attended school in that school district?

Yes. Section 304 of Chapter 138 states that a school committee may continue to charge tuition to parents only for non-resident students who were admitted and attended its schools prior to June 30, 1991, their siblings, step-siblings and foster children residing in their homes. The sponsors of the School Choice Law have advised us that it was not their intent to force school committees to disavow non-resident tuition agreements or contracts that were made prior to June 30, 1991. This interpretation of the law is consistent with the clause of the U.S. Constitution prohibiting impairment of contracts. Accordingly, as long as there was an agreement prior to June 30, 1991 providing for admission of a student as a non-resident privately-funded student, the school committee may continue to honor that agreement. However, for the 1991-92 school year, no agreements made after June 30, 1991 to accept privately-funded, non-resident students will be valid unless such students had previously attended the receiving school on a private tuition basis or fall within the sibling/household exemption contained in the statute.

2. **May a school committee continue to accept children of school department or other municipal employees on a tuition basis?**

The same standard applies to these children as applies to other privately-funded non-resident students. If there was either an individual agreement or a collective bargaining agreement prior to June 30, 1991 to accept such non-resident students on a private-tuition basis, such agreements may remain in effect. Our reading of the School Choice law and the provisions of G.L. c.150E, §7(d) leads us to conclude that no collective bargaining agreements made after June 30, 1991 can include a provision that would allow non-resident employees' children to attend on a private-fee basis. However, a school committee may agree to admit such children for free.

3. **May a school committee continue to admit privately-funded students from other states?**

The same standard as in question #1 applies to these students.

4. **May parents use the School Choice program to seek admission of a student to an educational collaborative or a private school?**

No. The School Choice law applies only to admission to the public schools of a city, town or regional school district.

5. **What obligation does a receiving school committee have to a non-resident student whose special needs require placement in a substantially separate special education program that is not located in a public school regular education facility (502.4(i)), or is in a private day school (502.5), or is in a private residential school (502.6)?**

The School Choice law is designed to enable a student to attend the public schools of a community other than his/her community of residence. A student whose special needs require a non-public school placement would not be attending the public schools of that community, and the School Choice law would not apply. This situation is analogous to that of students in the Metco program who require a special education program that is not ordinarily delivered within the public schools of the host community. In such cases, fiscal and programmatic responsibility for the student's program remains with the school district of residence.

6. **Who is responsible for providing special education transportation to a non-resident student admitted pursuant to School Choice?**

A school committee that accepts a non-resident student who requires special education services must provide those services (except as described in question #5). The obligation to provide special education also includes an obligation to provide all of the related services listed in the student's Individual Educational Plan (IEP), which may include special education transportation. Therefore, the receiving school district will be required to provide transportation under these conditions, even though the School Choice law does not provide for transportation.

7. **Must a school committee vote on whether or not to participate in School Choice?**

Participation in the School Choice program as a receiving community is entirely at the option of each school committee. Therefore, while a formal vote should be taken if a school committee wishes to receive non-resident students under the program, there is no need to vote not to participate. Because participation is optional, the vote to participate may contain limits as to the scope of the program, e.g., "for the 1991-1992 school year" or "on an annually renewable basis" or "as long as resident enrollment is below X" or "for grades X - Z" or "for openings in the X school."

8. **How should a school committee select non-resident students?**

The selection of students is left to the discretion of the receiving school committee as long as there is no discrimination on the basis of "race, color, religious creed, national origin, sex, age, ancestry, athletic performance, physical handicap, special need or academic performance or proficiency in the English language." In order to avoid allegations of discriminatory selection, we recommend that school committees indicate the number of openings at each grade level and that the application contain the minimum information necessary to select students, i.e. name and address of student applicant; name, address and telephone number of parent(s); prior school attended; grade completed; and grade placement requested. Additional information, including school records, may be obtained after the student is admitted. We strongly encourage superintendents of receiving districts to notify the superintendent of the district of residence when a student from that district has been accepted under the School Choice program.

9. If a non-resident student has been accepted, must the school committee keep that student until s/he graduates?

A school committee may accept students for one year at a time and require each non-resident student to reapply on the same basis as all other non-residents; or it may accept students on an annual basis with preference given to returning students; or it may guarantee non-resident students admission only until they complete the course of study offered at the particular school building they attend. While school committees have discretion in this area, we recommend the adoption of policies that minimize disruption to students' educational programs.

10. May a school committee that elects to participate in the School Choice program give preference in admissions to students who had previously attended as privately-funded students, or to siblings of current or former non-resident students?

Yes. Such a policy is neither prohibited nor required by the law.

11. Does the School Choice law affect the out-of-district vocational education program contained in G.L. c.74, §§7 - 8A?

No. Students who wish to attend out-of-district vocational education programs are still eligible to apply for such programs as provided in Chapter 74. Similarly, a school district may accept non-resident vocational education students under Chapter 74 and may or may not also participate in the School Choice program. Some of the differences between the out-of-district vocational education program and School Choice are: the Chapter 74 program is an option only if a similar program is not provided by the home district, but any student may apply under School Choice; transportation is provided under the Chapter 74 program but not under School Choice; the Chapter 74 program applies to secondary and post-secondary vocational programs, but School Choice is K-12 only; and students in the Chapter 74 program are accepted until they complete the program but students under School Choice may be admitted for only one year, depending on the school committee's policy.

12. Must school committees notify the Department of Education if they vote to participate in School Choice?

Participating school committees are required to provide information to the Department of Education and the State Treasurer by October 1 and April 1 about students in the

School Choice program, in order for the Treasurer to make the appropriate monetary adjustments. We request that school committees notify our Department in writing by September 1 if they have decided to participate in School Choice for the 1991-1992 school year. Tuition charges will be based on the costs reported for the 1990 - 1991 school year as contained in the End-of-Year Report. Therefore, we further request that receiving school districts submit their End-of-Year reports prior to September 15. If your school committee votes to participate in the School Choice program after September 1, please notify the Department as soon as possible after the vote.

We are working with the Department of Revenue and the State Treasurer to develop reporting forms that will be used. We anticipate that these will be similar to the forms previously used for the state ward tuition program. These forms will be made available to all participating school districts. The Treasurer's office has informed us that they expect to make payments and deductions under the School Choice program in December and June.

13. Since the tuition of students participating in School Choice is to be paid by a deduction from the home community's Chapter 70 state aid, what happens if that community's Chapter 70 funds are insufficient for this purpose?

Under the School Choice law as currently written, the only funding mechanism is to shift Chapter 70 funds from one community to another. If the student's community of residence has insufficient Chapter 70 funds for this purpose, legislative approval will be needed to fund this obligation from another source.

We will continue to keep you informed of further developments in the School Choice law, including any legislative amendments that may be enacted.



9/24/91

The following is a list of the schools involved in School Choice.

1. Acton
2. Acton/Boxboro
3. Avon
4. Beverly
5. Berkshire Hills
6. Douglas
7. East Longmeadow
8. Hancock
9. Holliston
10. Hopkinton
11. Lanesborough
12. Lee
13. Lenox
14. Littleton
15. Manchester
16. Mendon-Upton
17. Milford
18. North Middlesex
19. Northbridge
20. Otis
21. Pathfinder
22. Southwick-Tolland
23. Uxbridge
24. West Boylston
25. Westfield