

# SENATE . . . . . No.

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## The Commonwealth of Massachusetts

PRESENTED BY:

*None*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to educator ethics standards.

PETITION OF:

NAME:

*Ben Tobin*

DISTRICT/ADDRESS:

# SENATE . . . . . No.

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A petition (accompanied by bill, Senate, No.      ) of Ben Tobin for legislation relative to educator ethics standards.

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninety-Second General Court  
(2021-2022)  
\_\_\_\_\_

An Act relative to educator ethics standards.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1            Statement of Purpose:

2            The purpose of this legislation is to create a code of ethics that all educators in the state of  
3    Massachusetts must sign on to and abide by. Additionally, it will establish a training and a  
4    curriculum for that training to help teachers and administrators learn about the ethical guidelines  
5    and their application in the profession.

6            Preamble:

7            Massachusetts is one of a very small number of states that does not have a code of ethics  
8    and conduct established for the education profession. We have an extremely high rate of  
9    misconduct reports, and an extremely low response rate to these issues. The goal of this  
10   legislation is to provide common terminology, and a common set of ethical guidelines that all  
11   educators and administrators will be expected to follow to ensure that students and staff are safe  
12   and have their rights ensured while on and off school grounds. Currently, the language around

13 ethical expectations is not consistent, and is not equally applicable. It is important that educators  
14 and administrators are held to the same standards to ensure that the best interest of students is  
15 properly protected, and that appropriate consequences are established for when there is  
16 misconduct.

#### 17 Definitions:

18 Educational malpractice is defined as an educational professional breaching their duty to  
19 provide students with a thorough education in basic academic/foundational skills, that  
20 educational professionals misled students into believing that their skills were at the appropriate  
21 grade level, that educational professionals violate the ethical guidelines, or that professionals did  
22 not properly test children or place them in the right classes or programs. In accordance with Jami  
23 McDuffy & Others vs Secretary of The Executive Office of Education, students in Massachusetts  
24 are afforded the right to an appropriate education.

25 <https://www.doe.mass.edu/lawsregs/litigation/mcduffy-hancock.html>

26 Multiple Relationship-When a teacher knowingly engages in a boundary violating  
27 relationship with a student, a member of a student's family, a fellow staff member, an  
28 administrator, or anyone else where the relationship will have an adverse effect on a student's  
29 education. The teacher/student relationship already represents a power imbalance, and so it is  
30 vital that student wellbeing is protected in the event a teacher establishes a relationship outside of  
31 their professional capacity and advising/mentorship duties. This term has been well established  
32 in other fields, and exists for the same reason.

#### 33 IEP-Individual Education Plan

Staff member-any member of the faculty or administration in a school who will interact with a child, and who plays a role in a child's school experience and education.

603 CMR 7.00 & 603 CMR 44.00:

#### Principle I: Responsibility to the Education Profession and Educational Professionals

1. Staff, and administrators, understand student learning and development and respect the diversity in all its forms including neurodiversity of the students they teach, families they support, and professional they interact with.

2. Staff, and administrators, demonstrate mastery of skills and knowledge of the content area for which they have responsibility.

3. Special educators, related service providers, paraprofessionals, and their supervisors have received training in evidence-based practices appropriate for students in their care and consistent with the IDEA, ESSA, other federal codes, and the state's code. These individuals only utilize the evidence-based practices after having achieved licensure or certification in that evidence-based practice if such exists.

4. Staff, including administrators, understand and use multiple sources of evidence-based evaluations and Massachusetts department of elementary and secondary education approved progress monitoring systems to inform instruction, evaluate, monitor progress of a student on an individual education plan (IEP), and ensure student learning is commensurate with individual potential. Empirical data being the primary source of data rather than anecdotal evidence or other subjective measures. <https://www.doe.mass.edu/instruction/screening-assessments.html>

55           5.       Staff, including administrators, collaborate and communicate honestly with  
56 families, students, educational surrogate parents, advocates, social workers, other educators,  
57 administrators, and the community to support learning. Staff share readily, without requiring  
58 request, the data collection in its raw and summarized forms to the parent/guardian as it is  
59 collected. Neither staff nor administrators will destroy any raw data collected. These records may  
60 only be destroyed following the process and timeline identified in 603 CMR 23.06(3).

61           6.       At least two weeks must be provided for parents to review evaluations and data  
62 before holding an IEP meeting or parent/teacher conference.

63           7.       Teachers and administrators vigorously advocate for what the student requires in  
64 alignment with peer reviewed and scientific research to make progress commensurate with the  
65 student's potential irrespective of district resources constraints or preferences, or presumed  
66 placement.

67           8.       Teachers, both special and general education, use evidence-based instruction that  
68 enables each student to make progress commensurate with their potential.

69           9.       Teachers model respect for all forms of diversity including, but not limited to,  
70 religious, ethnic, race language, cultural, national origin, gender identity, sexual identity,  
71 neurodiversity, disability, and communication skills by teaching representative curricula.

72           10.      In fulfilling responsibilities to the education profession and educational  
73 professionals, staff shall exemplify honesty and integrity during professional practice and  
74 commit to providing accurate and truthful information when working with a student, their family  
75 and guardians, a family's designees, advocates, educational surrogate parents, social workers,  
76 and all other providers of support or professional services.

11. Unprofessional conduct shall include, but not be limited to:
- a) Discrimination against any individual, group of individuals, or entity that represents a form of diversity as identified above.
  - b) Discrimination against a fellow professional as specified in MGL 151B.
  - c) Failure to self-report within 5 business days if they have been arrested for any violation of offenses enumerated in 603 CMR 7.02.
  - d) Failure to self-report immediately that they have been placed on a sexual offender, violent offender, or abuse directory or listing of any kind.
  - e) Falsifying, fraudulently altering, or deliberately misrepresenting professional qualifications, including, but not limited to, certification(s), licensure(s), degree(s), academic award(s), and related employment history.
  - f) Unlawful possession of a controlled substance.
  - g) Multiple Relationships. In matters pertaining to boundaries or to dual, personal or sexual relationships, a licensee's relationship with a student shall be within the definitions of the licensees practice pursuant to 603 CMR 7.08. Licensees shall engage in relationships that maintain appropriate boundaries, avoid dual relationships, and uphold the following standards:
    - (a) licensees shall not knowingly accept as students, individuals or family members of individuals with whom the licensee has a familial, romantic, social, supervisory or professional relationship;
    - (b) licensees shall not engage in romantic, boundary inappropriate, or sexual relationships or behaviors with students, family members of their students;
    - (c) licensees shall refrain from entering into or promising a personal, professional, romantic, boundary-violating,

financial, or other relationship with any student, or family members of their student. (d) licensee shall not facilitate romantic, boundary-violating, or unprofessional relationships on behalf of their students.

h) Possessing, using, or being under the influence of alcohol or controlled substances not prescribed for the use of the licensee when on school premises or at a school sponsored activity where students are present or may reasonably be expected to be present.

i) Failure at the time of licensing application to notify the state of past criminal convictions, identification on an abuse and/or neglect registry (e.g Nicky's Law), or of revocations or suspensions of a credential or license by Massachusetts or any other jurisdiction.

j) Falsifying or deliberately misrepresenting information submitted to the Massachusetts department of secondary and elementary education, the Bureau of Special Education Appeals, the Office of Civil Rights, the Department of Justice, or any other state or federal administrative or judicial proceedings during an official inquiry, investigation, and/or due process.

k) Misrepresenting a student with disabilities in a 504, IEP, or manifest determination meeting, not speaking truthfully in a 504, IEP, or manifest determination meeting, and misrepresenting services being provided for that student.

l) Subjecting students and others to embarrassment or harassment.

m) Retaliating against any person who has made a claim or submitted a complaint or other similar filing against the staff and or the administrator.

n) Staff and administrators' failure to at any time provide a written report of all suspicions or actual witnessed incidents of assault, bullying, harassment, or discrimination. Also, failure to stop incidents of assault, bullying, harassment, or discrimination

## Principle II: Responsibility to Students

1. In fulfilling responsibilities to students, a license holder shall maintain a professional relationship with all students, both inside and outside the educational setting, and their families and guardians, and make reasonable efforts to protect students from conditions which are harmful to their health and safety.

2. Unprofessional conduct shall include, but not be limited to:

a. Discrimination against a student as specified in MGL. c. 151C.; St.2016, c.134; MGL Ch. 76, Sec. 5 refer to the above definition of discriminatory behavior.

b. Failure to provide appropriate supervision of students, pursuant to local school district policy at school or school-sponsored activities or the failure to ensure the safety and well-being of students; and maintaining appropriate boundaries

c. Establishing multiple relationships with students or their families or facilitating inappropriate relationships with students including romantic, boundary-violating, and unprofessional relationships even with parental support.

d. Furnishing alcohol or illegal or unauthorized controlled substances to any students, or allowing or encouraging a student to consume alcohol or illegal or unauthorized controlled substances.

e. Committing any of the following acts to any minor, or any student or prior student up to 10 months after the student's graduation, departure, or departure including, but not limited to:

- Abuse, including, but not limited to physical and emotional abuse.
- Cruelty or any act of endangerment.
- Establishing a multiple relationship

c. Any sexual act with or from any student; and

d. Harassment as defined by state or federal law or regulations.

- Soliciting or encouraging participation in a romantic or sexual relationship, or other professional boundary-violating relationship whether written, verbal, or physical, with a student the credential holder knows or should know is a student or prior student up to 10 months after the student's graduation, or departure; and

- Soliciting a student, or a former student up to 10 months after the student's graduation, departure, or departure to engage in any illegal activity.

### Principle III: Responsibility to The School Community

1. In fulfilling the responsibilities to the school community, a licensee or credential holder (e.g waiver) shall communicate honestly among members of the school community, while maintaining appropriate professional boundaries with students and their families or guardians.

2. Unprofessional conduct shall include, but not be limited to:

- a) Discrimination against a parent or guardian of a student or other member of the community;
- b) Accepting or soliciting gratuities, gifts, or favors for personal use or gain where there might be an actual or appearance of a conflict of interest. Gifts of a small amount shall not be deemed a conflict of interest;
- c) Engaging in multiple relationships with students and or their families or guardians;
- d) Misuse of funds intended for use by the school, to include funds which are collected from parents and students;
- e) Intentionally altering or misrepresenting individual, group, or collective student assessments, assessment results, or official school records. Abusing access to confidential student records, and;
- f) Violating student boundaries, removing professional boundaries, and compromising professional objectivity.

#### Principle IV: Responsible and Ethical Use of Technology

1. In fulfilling the responsibilities and ethical use of technology a licensee or credential holder shall consider the impact of consuming, creating, distributing, and communicating information using any and all types of technology—including the distribution of personal information to students [including texting and new technologies-no one should be texting a child or engaging with them via an app like WhatsApp or social media pages].
2. Unprofessional conduct shall include, but not be limited to:

a) Engaging in any inappropriate and non-school or mentor related activities via electronic media with a student or former student up to 24 months after the student's graduation, departure, or departure; and

b) Engaging in inappropriate communication with a student, or former student up to 24 months after the student's graduation, departure, or departure as specified in via electronic media.

c) For the purposes of this section, inappropriate communication shall be determined by considering:

(1) The intent, timing, subject matter, and amount of communication; and (2) Whether:

(2) The communication made was covert in nature.

(3) The communication could reasonably be interpreted as solicitous, sexually explicit, or romantic in nature or that would violate professional boundaries and compromise objectivity. Staff should not also, for example, share the social media or contact information of their own family members with their students directly/intentionally.

(4) The communication involved discussion(s) of the physical or sexual attractiveness or the sexual activities or fantasies of either the credential holder or the student; and

(5) The communication involved the establishment of a multiple relationship including but not limited to family members, guardians, other students, other staff members, or outside individuals.

Principle V: Special Education

1. In fulfilling responsibilities to students with disabilities, a licensee or credential holder shall maintain a professional relationship with all students, both inside and outside the educational setting, and with their families and guardians.

2. Unprofessional conduct shall include, but not be limited to:

a) Engaging in multiple relationships and writing or providing data for an Individual Education Plan while engaging with a student and/or their family or guardian.

b) Failure to provide raw and summarized progress and or evaluation data to families and guardians

c) Providing false or defamatory information at an IEP meeting, misrepresenting or manipulating student progress data, and omitting information relevant to a student's academic performance or behavior or functioning.

d) Providing programming or services that do not align or correspond to a student's diagnosed disability. Programming must be based on data-driven decision-making and upon evaluations not based on availability of the intervention, program, or services (e.g a dyslexic student provided with a reading program that has no evidence to support efficacy with remediating dyslexia)

e) Failing to notify the family or guardian or educational surrogate parent within 10 days of the failure to deliver services as represented on the 504, IEP, or individualized healthcare plan.

f) Failing to ensure that a student with a suspected disability is evaluated in accordance with chapter 71B section 3 in that every area of suspected disability is evaluated (e.g not assessing a student or providing insufficient testing to avoid a suspected diagnosis).

g) Failure to adhere to the state and federal timelines for completing student evaluations and convening team meetings.

h) Engaging in behavior that will delay or otherwise prevent a student with disabilities from receiving appropriate services.

i) Failing to consider the student's individual needs for an alternative graduation timeline.

j) Staff cannot accept caseloads which prohibit them from being able to attend annual IEP, 504, and individual healthcare plan meetings and at the same time be able to deliver all of the minutes of intervention and consultation identified on those plans as well as engage in professional development and planning.

k) The administrator cannot assign a caseload which would exceed a staff member's ability to be able to attend annual IEP, 504, and individual healthcare plan meetings as well as be able to deliver all of the minutes of intervention and consultation identified on those plans as well as engage in professional development and planning.

l) The administrator must ensure that staff assigned to a caseload will have the amount of time required to attend all of the meetings, and deliver all services, and engage in professional training, and appropriate planning.

Duty to Report:

(a) Any licensee or credential holder shall report any suspected violation of the code of conduct following the school, school district, or Massachusetts department of elementary and secondary education reporting procedures.

(b) Each principal shall report to the superintendent of the school district where the principal is employed, the chief executive officer of a chartered public school or public academy, or the headmaster of a nonpublic school including approved private special education programs established under chapter 71B, if the principal has been notified of, or is personally aware that a licensee or credential holder has violated any of the rules of professional conduct which occurred on or off duty.

(c) The superintendent, the chief executive officer of a chartered public school or public academy, or the headmaster of a nonpublic school or approved private special education school, shall each report any of the following to the office of licensing and credentialing and Massachusetts department of elementary and secondary education:

(1) When a superintendent or headmaster has knowledge that a licensee or credential holder, as defined in 603 CMR 7.00, has been arrested and charged with an offense; and

(2) When a superintendent or headmaster has knowledge that a licensee or credential holder has violated the code of conduct.

(d) If a licensee or credential holder suspects that a superintendent has violated the code of conduct, or if a licensee or credential holder has made a report and believes the local reporting procedures have not been followed, the reporting licensee or credential holder shall notify the department directly.

(e) Licensee or Credential holders who have reason to suspect that a student has been, or is being, abused or neglected, or engaged in a multiple relationship with a credential holder shall report the same to:

(1) Their immediate supervisor, superintendent, or both; and

(2) The department of children and families.

(f) If the department has reason to suspect that any violation of the code of ethics was known by a licensee or credential holder and not reported, the Massachusetts department of elementary and secondary education shall undertake an investigation against that licensee or credential holder.

(g) The Massachusetts department of elementary and secondary education shall open a case, in response to a report made pursuant to the above.

(h) The Massachusetts department of elementary and secondary education shall maintain a publicly accessible database of allegations of misconduct, ethical violations, and educational malpractice which is searchable by the public and includes both instances where allegations were proven and unproven.

#### Training:

The Massachusetts Department of Elementary and Secondary Education shall establish a publicly available training program based on the ethical guidelines that must be provided to all new faculty members and staff as well as current faculty and staff at the beginning of the academic year. This training shall also be freely available to the public on demand. The curriculum for this training course must include but not be limited to ethical practices in special

education, multiple relationships, examples of educational malpractice, appropriate use of technology, and the consequences for unprofessional conduct. On an annual basis, existing must take a recertification course. The Massachusetts department of education shall develop this curriculum with all invested parties—including but not limited to teachers, administrators, families, guardians, students, advocates for students with disabilities, and other related agencies. All protected classes shall be consulted in the design of this curriculum.

Consequences:

Engaging in any unethical behavior or violation of the guidelines shall result in consequences that are appropriate given the extent of the breach in professional conduct as determined by The Massachusetts Department of Elementary and Secondary Education's Office of Professional Practices Investigations or its successor.

(a) Licensure removal (including for multiple relationships)

(b) Licensure suspension

(c) Mandatory training in the ethical guidelines

(d) In the case of a private or residential program that receives state funds that knowingly employs staff with ethical or unprofessional conduct will lose their accreditation if it is found that administration did not provide an appropriate response or report the misconduct in a timely manner.

(e) More serious charges—including but not limited to violence sexual misconduct, and distribution of illicit substances—shall be referred to the appropriate agencies.

301 It is the expectation that there will be an appropriate investigation and that the mandated  
302 reporter shall provide accurate and factual information or be subject to the consequences above.  
303 Mandated reporters shall not face any retaliatory consequences unless it is proven by the  
304 investigation that they have provided false testimony. The subject of this inquiry shall remain  
305 strictly confidential. School administrators that do not comply with these conditions or who  
306 engage in retaliatory behavior shall also be subject to consequences above.

307 The department of education shall review protections and regulatory practices involving  
308 mandated reporters to ensure that there are no inhibitory policies or regulations that might  
309 prevent a credible witness to misconduct from stepping forward given fear of retaliation and job  
310 security.

311 The Massachusetts department of education shall devise a publicly available rubric based  
312 on the ethical guidelines to establish a clear and unambiguous correlation between a violation  
313 and a consequence, and appropriate penalties for misconduct given the degree of the misconduct  
314 with the understanding that even lesser infractions can have an adverse effect on students and  
315 their education. Consequences must be applied with more severity in special education given the  
316 vulnerable nature of the population served, and knowing that access to confidential student  
317 information creates the possibility of more severe ethical violations and the possibility of  
318 emotional manipulation.

319 The department of education shall make recommendations for the conduct of teachers in  
320 504, IEP, and manifest determination meetings to ensure that all parent and student rights are  
321 honored and that students receive appropriate services given their diagnosis and that no action is  
322 taken to impede the acquisition of a diagnosis. Furthermore, that services and programming

323 provided to a student with a disability is appropriate for that disability and meets the standard set  
324 in 20 U.S.C. § 6368(3)(4)(5)(6)(7)

325           The department of education shall review all open investigations, as well as recent  
326 investigations to determine if the conduct reported is in violation of the ethical guidelines and  
327 provide appropriate consequences.