

SENATE No.

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:

DISTRICT/ADDRESS:

Ben Tobin

SENATE No.

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

The Commonwealth of Massachusetts

**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

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

36 603 CMR 7.00 & 603 CMR 44.00:

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

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

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

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

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

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

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

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

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

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

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

115 l) Subjecting students and others to embarrassment or harassment.

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

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

121 Principle II: Responsibility to Students

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

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

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

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

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

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

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

141 • Abuse, including, but not limited to physical and emotional abuse.

142 • Cruelty or any act of endangerment.

143 • Establishing a multiple relationship

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

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

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

150 • Soliciting a student, or a former student up to 10 months after the student’s
151 graduation, departure, or departure to engage in any illegal activity.

152 Principle III: Responsibility to The School Community

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

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

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

171 Principle IV: Responsible and Ethical Use of Technology

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

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

181 b) Engaging in inappropriate communication with a student, or former student up to
182 24 months after the student's graduation, departure, or departure as specified in via electronic
183 media.

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

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

188 (2) The communication made was covert in nature.

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

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

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

198 Principle V: Special Education

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

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

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

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

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

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

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

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

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

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

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

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

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

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

238 Duty to Report:

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

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

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

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

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

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

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

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

264 (2) The department of children and families.

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

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

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

275 Training:

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

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

287 Consequences:

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

292 (a) Licensure removal (including for multiple relationships)

293 (b) Licensure suspension

294 (c) Mandatory training in the ethical guidelines

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

299 (e) More serious charges—including but not limited to violence sexual misconduct,
300 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.