

Education Laws and Regulations

Advisory on Inter-District School Choice
Pursuant to G.L. c. 76, §12B

To: School Committee Chairpersons, Superintendents of Schools, and Other Interested Parties

From: Jeffrey C. Riley, Commissioner of Elementary and Secondary Education

Date: April 23, 2019

The inter-district school choice program under [G.L. c. 76, § 12B](#), has been in place in the Commonwealth of Massachusetts since 1991.¹ School choice allows a parent or guardian to enroll his or her child in a school district other than the district in which the child lives. The purpose of this advisory is to assist districts in understanding inter-district school choice under G.L. c.76, § 12B, and includes Frequently Asked Questions and Answers. This advisory replaces the previous advisory issued in 1995. This advisory updates the previous advisory and compiles the numerous questions we have received and answered since 1995 interpreting the requirements of G.L. c.76, § 12B. The text of [G.L. c. 76, § 12B](#) is attached for easy reference.

Presumption That All School Committees Will Participate in School Choice

Under the school choice law, G.L. c.76, § 12B, as amended in 1993, all school districts in Massachusetts are presumed to participate in and to admit non-resident students through school choice. See G.L. c. 76, § 12B(d) (“Each city, town or regional school district shall enroll non-resident students at the school of such non-resident student's choice; provided, however, that such receiving district has seats available”). A receiving district can withdraw from school choice only if a school committee holds a public hearing on this issue and then votes to withdraw from the school choice program prior to June 1st.² G.L. c. 76, § 12B(d). The hearing and the school committee’s vote can occur at the same meeting and may occur at a scheduled school committee meeting provided there is notice to the public that this item will be discussed and that members of the public are afforded an opportunity to participate and make their positions known to the school committee prior to the vote. A separate meeting is not required for this purpose. A school committee that intends to continue participating in school choice is not required to hold a hearing or

¹ Other public educational choices for students include enrolling in their home district, charter schools, Commonwealth of Massachusetts virtual schools, vocational technical education programs, Metco, and the Massachusetts Academy of Math & Science at WPI. Private educational choices include private and parochial schools and home schooling. For additional information regarding educational choices in Massachusetts, please see <http://www.doe.mass.edu/finance/schoolchoice/choice-guide.html#>.

² Sending school districts cannot “withdraw” from school choice.

to vote because G.L. c. 76, § 12B, contains a presumption that all school districts will participate in school choice.

A timely decision and vote by a school committee to withdraw from school choice is effective only for the following school year. The resolution on which the school committee votes to withdraw from school choice must contain the reasons for the withdrawal. While the Department of Elementary and Secondary Education (Department) does not review decisions to withdraw from school choice, the school committee must notify the Department of its vote to withdraw and the reasons for the withdrawal as soon as reasonably possible after the vote. A school committee withdrawing from school choice must continue to serve all non-resident students previously admitted through school choice. G.L. c. 76, § 12B(d).

Student Selection Process

When admitting students through school choice under G.L. c.76, § 12B, school districts may not consider or discriminate based on race, color, religious creed, national origin, sex, gender identity, age, sexual orientation, ancestry, athletic performance, physical handicap, special need,³ academic performance, or proficiency in the English language. If the number of applicants exceeds the number of available seats, the selection of students must be on a random basis. The selection process must take place prior to July 1st and again, assuming there are seats available, prior to November 1st. Once students are selected, the receiving school district⁴ must notify the sending district⁵ of the acceptance of such students.⁶ Neither the sending nor the receiving school district may disclose publicly the identities of student participants in school choice. G.L. c. 76, § 12B(j).

Financing School Choice

The school choice tuition for students in a regular education program is \$5,000 per student.⁷ For students attending half-day kindergarten, tuition is \$2,500 per student. For students eligible for special education, an additional increment is added to the base regular education amount to cover the cost of these services. These amounts are determined using a cost calculator similar to the one used for the circuit breaker program

³ Section 12B of G.L. c. 76 uses the terms “physical handicap” and “special need” but does not use the term “disability.” Except when citing the specific portion of Section 12B, this advisory uses the term “disability.”

⁴ The receiving district is the district in which a student attends school under school choice. This is also referred to as the school choice district.

⁵ The sending district is the district in which the student lives.

⁶ Additionally, the Department notifies sending districts in December and June through school choice reports.

⁷ Section 12B of G.L. c. 76 provides that the amount is 75% of the actual per pupil spending amount for students in the receiving district in the type of program received by the student, up to \$5,000 per student. In every district, this amount has been \$5,000 for a substantial number of years.

under G.L. c. 71B, § 5B.⁸ School choice students are not eligible to receive transportation services unless a student's disability requires transportation and their Individual Education Program (IEP) includes special transportation as a related service.

The state treasurer deducts school choice tuition from the sending district's total education aid, as specified in G.L. c. 70 and G.L. c. 76, § 12B(f). If there is not enough Chapter 70 aid to fund fully the school choice tuition, the treasurer deducts the remaining tuition from other state aid appropriated for the sending district. Section 12B(a) of G.L. c. 76 additionally limits school choice participation to 2 percent of the total number of students attending public schools in the Commonwealth in a given fiscal year.

⁸ See also information posted at <http://www.doe.mass.edu/finance/circuitbreaker/>.

⁹ If school choice enrollment exceeds this statewide limit, tuition payments would be prorated.

⁹ Additional information regarding school choice and trends in enrollment through school choice can be found at <http://www.doe.mass.edu/finance/schoolchoice/>.

FREQUENTLY ASKED QUESTIONS AND ANSWERS

District Participation in School Choice

1. May a school committee vote to specify into which schools, grades, and programs it will admit students through school choice?

Yes. When determining capacity for admission of school choice students by June 1st for the upcoming school year, school committees may specify the schools and grades in which seats are available for non-resident students. See G.L. c. 76, § 12B(c). Therefore, it is permissible for a school committee to limit the admission of non-resident students through school choice to specific grades, programs, and schools.

It is important to note, however, that once a non-resident student is admitted through school choice, the school district must treat students admitted through school choice in the same manner as it treats students residing in the district. The basic premise of the school choice law is that a school choice student once admitted to the district must be treated in the same way a resident student is treated. Therefore, if students who reside in the district are permitted to transfer to other schools or programs within the district, then students admitted through school choice must also be permitted to transfer to other schools or programs in the district.

2. May a school committee rescind an earlier vote to participate in school choice?

It depends. If the new vote of the school committee occurs before June 1, it overrides the previous vote. Students who are already participating in the school choice program, or who were admitted prior to the new vote, have a right to continue attending school in the receiving district. If the new vote of the school committee occurs on or after June 1, it is ineffective and the district remains a school choice district for the upcoming school year.

3. May a school committee rescind an earlier vote to withdraw from school choice?

Yes. Consistent with statutory presumption that all school districts will participate in school choice, a school committee may rescind an earlier vote to withdraw from school choice. The new vote to participate in school choice need not occur prior to June 1st.

Provision of Information on School Choice

4. May a district advertise its status as a school choice district?

Yes. Advertising its status and seats available for admission is consistent with notifying potential applicants of the availability of seats and the process for admission through school choice. The Department annually updates and publishes the [list](#) of districts that participate in school choice on its website.

5. How should districts that participate in school choice inform potential applicants of the application process?

Districts participating in school choice are encouraged to publish the availability of school choice seats and the district's admission process and deadlines, including making such information readily available on the district's website. School districts must also must provide the information upon request.

6. Where can a family obtain information about how to apply through school choice?

Applicants should contact the district they want to attend for information on how to apply for school choice.

Admission and Continued Attendance of Students

7. Does a student need to be a Massachusetts resident to seek admission pursuant to G.L. c. 76, § 12B?

Yes. Admission through school choice is only open to residents of Massachusetts. [See](#) G.L. c. 76, § 12B(a) (definition of sending district). Additionally, a student must be a resident of Massachusetts to attend and to continue attending a receiving district through school choice.

8. Must a school district use a random selection process?

The statute requires a random selection process if there are more applications for admission than there are seats available. The statute also prohibits school districts from discriminating in the admission of any student on the basis of race, color, religion, national origin, sex, gender identity, age, sexual orientation, ancestry, athletic performance, physical handicap, special need, academic performance, or proficiency in the English language. G.L. c. 76, § 12B(j).

9. May a school choice district accept students at any time during the school year?

Yes, provided that there are fewer applicants than seats available for school choice students. If there are more applicants than seats available, the receiving

district must conduct a random selection process prior to July 1st and again, assuming there are seats available, prior to November 1st. Once names are selected during a random process, the district can maintain a waitlist of those names and admit students from that list during the year should seats become available. The same requirements regarding notice to the sending district apply to students admitted during the year as apply to students admitted before a school year begins. See the discussion under “student Selection Process” on page 2 of this advisory.

10. Must school districts establish a sibling preference policy when admitting students pursuant to G.L. c. 76, § 12B?

Yes. Under G.L. c. 76 § 12B(j), any sibling of a student currently attending school in the receiving district receives a preference for admission. Siblings are students who have a common parent, either biologically or legally through adoption. Children who live in the same household, such as step-siblings and foster children, and do not share a common parent are not siblings for purposes of receiving a sibling preference for admission. Students entitled to a sibling preference are those who have a sibling currently attending school in the receiving district when an offer of admission is made.

This preference is available to students who have a common parent regardless of whether the students live in the same household, whether the student currently attending was admitted as a resident student or through school choice, or whether the student currently attending will still be enrolled when the newly admitted student begins attending. The sibling preference is not available for students who do not share a common parent biologically or legally and live in the same household.

Receive Sibling Preference	Do Not Receive Sibling Preference
<ul style="list-style-type: none"> • Students who live in different households but share a common biological or legal parent • Siblings of students who will graduate at the end of the school year in which the admissions process occurs 	<ul style="list-style-type: none"> • Children who live in the same household but do not share a common biological or legal parent • Foster children without a common biological or legal parent • Step-siblings without a common biological or legal parent • Siblings of applicants accepted for admission who are not yet attending, including twins

The sibling preference applies only when one sibling is already attending in the school choice district. If siblings of the same family apply simultaneously and only one sibling is admitted, no preference is available for the sibling who has not yet been admitted.

11. How does sibling preference apply when a student is seeking to attend a regional vocational technical high school through school choice under G.L. c. 76, § 12B?

Siblings of students currently attending the regional vocational technical school seeking admission under G.L. c. 76, § 12B, must receive a sibling preference during the admission process for school choice. The sibling preference applies to regional vocational schools admitting students under G.L. c. 76, § 12B, in the same manner that it applies to all other schools.

12. May districts designate students as school choice who have not been admitted through the school choice process?

No. Only students admitted through the school choice process may be counted and reported as school choice students.

13. May a school district establish a preference for the children of school district or other municipal employees when admitting students through school choice?

No. A preference for admission on any basis other than for siblings is inconsistent with the random selection requirement in the statute. Outside of school choice, however, a school district may admit children of school district and municipal employees under G.L. c. 76, § 12. Also see FAQ No. 29. The receiving district is not eligible to receive school choice tuition for such students.

14. Without signed parental consent, may a receiving district contact a student's district of residence to obtain records?

During the application phase, the school choice district should not obtain or consider student records from the student's previous or current district. Once a student is admitted and accepts that offer of admission, however, the receiving district can request student records from the sending district as a matter of right under the student record regulations at [603 CMR 23.07\(4\)\(g\)](#). This regulation provides as follows.

(g) Authorized school personnel of the school to which a student seeks or intends to transfer may have access to such student's record without the consent of the eligible student or parent, provided that the school the student is leaving, or has left, gives notice that it forwards student records to schools in which the student seeks or intends to enroll. Such notice may be included in the routine information letter required under 603 CMR 23.10.

15. May a receiving district consider a student’s disciplinary record prior to accepting a student?

No. A receiving district may not consider a student’s disciplinary record during the admission process under G.L. c. 76, § 12B. In consultation with its lawyer, a district may consider beginning its own disciplinary process once a student is attending.

16. May a school district refuse to admit students through school choice who have been expelled from another school?

No. Prior to 2014, school officials had discretion to admit or not to admit a student who had been expelled. The disciplinary statutes were revised in 2014 and the language permitting public schools to refuse to admit expelled students was deleted. Therefore, public schools may no longer refuse to admit students because they were expelled from another school. While not addressing school choice explicitly, the [advisory](#) and [question and answers](#) on student discipline posted on the Department’s website provide more detailed information about student discipline laws.

17. May a receiving district rescind an offer of admission based upon a student’s disciplinary record?

No. A receiving district may not rescind an offer of admission based upon a student’s disciplinary record. In consultation with its lawyer, a district may consider beginning its own disciplinary process once a student is attending.

18. How can a selective secondary school participate in school choice and still be “selective?”

Selective secondary schools in Massachusetts, which are primarily regional vocational technical schools, admit students pursuant to an admissions plan that has been approved by the Department. Participating in school choice under G.L. c. 76, § 12B, is an additional option for regional vocational technical schools that have seats not filled by resident students.¹⁰ School choice students are accepted after resident students who meet the minimum requirements for admission.

The admission of students through school choice under G.L. c. 76, § 12B, is a separate and distinct process from the admission of students to a regional vocational school pursuant to its selective admissions plan approved by the Department. If a regional vocational technical school admits students under G.L. c. 76, § 12B, it may not consider, among other characteristics, athletic

¹⁰ Inter-district school choice under G.L. c. 76, § 12B, is separate and distinct from the nonresident student tuition process under G.L. c. 74 and 603 CMR 4.00. There are significant differences between the two programs. Additional information regarding the nonresident tuition process may be found at <http://www.doe.mass.edu/cte/admissions/>.

performance, physical handicap, special need, or academic performance. An admissions process under G.L. c. 76, § 12B, is not a selective admissions process.

19. May a child who is too young to be eligible for kindergarten entry in his or her district be admitted through school choice as a kindergarten student in another district that has a different age standard?

Yes. If the child qualifies for admission to the receiving district, the district of residence must pay the school choice tuition for this student. Additionally, if the student returns to the district of residence after completing kindergarten, the district of residence must enroll this student like any other student enrolling in the district for the first time, including grade placement.

Example

Children in District A must be five years old by September 1st to enter kindergarten. Children in District B must be five years old by December 31st to enter kindergarten. Student 1 from District A, who does not meet District A's age requirement, enrolls in kindergarten in District B through school choice. District A is responsible for this student's tuition even though the student would not be eligible to enroll in District A. The fact that the sending district has a different kindergarten entry age is irrelevant under school choice, except to the extent that it may motivate families to seek enrollment of the child in another district. Additionally, should Student 1 return to District A for a subsequent grade, District A should enroll that student as it would any other student who moves into the district for the first time and seeks to attend school.

20. May a district admit students into pre-kindergarten through school choice?

Yes, districts may admit students into pre-kindergarten programs through school choice provided they follow the admission practices required for school choice and do so after admitting all resident students. Note, however, that receiving districts will receive school choice tuition only for those pre-kindergarten students who qualify for special education and have an IEP.

21. If a resident student moves from the district but wishes to continue to attend school there, may the district enroll this student through school choice? May the district provide this student an admission preference? May the district count this student as a school choice student?

Provided it participates in school choice, the district may enroll such a student if it follows the same process that it uses for all other non-resident students, including the provisions relating to public notice. The district, however, may not provide an admission preference to this student or admit this student ahead of other students who may wish to be admitted or who are on a waitlist. Alternatively, the school

committee could allow the former student to continue to attend at no cost to the student's family or could enter into an agreement with the school committee of the new district of residence to allow that student to attend at the expense of the new school district. See G.L. c. 76, § 12 (addressing agreements between school committees for the education of students), and FAQ No. 30. If the student is not admitted through school choice following the same process that it uses for all other non-resident students, the district cannot count the student as a school choice student, receive school choice tuition for the student, or otherwise "convert" the student to school choice.

22. What happens to a school choice student's status if the student studies abroad independent of the school district's programs or otherwise stops attending school in the receiving district?

The receiving district would unenroll the student if he or she stops attending school in the receiving district. The student no longer has a right to attend school in the receiving district. Instead, if seats were available and the student wished to attend again in the receiving district, the student would need to reapply and participate in the same application process as all other non-resident students. The receiving district cannot provide an enrollment preference to this student or admit this student ahead of other students.

23. May a receiving district approve a home schooling plan for a student who does not reside in the district?

No. Under G.L. c. 76, § 1, the student's district of residence has authority to evaluate and approve home education plans. Such approval must occur in advance of withdrawing a student from school. See G.L. c. 76, § 1 (student of compulsory school age must "attend a public day [or some other approved school . . . but such attendance shall not be required of a child . . . who is being otherwise instructed in a manner approved in advance by the superintendent or the school committee.>"). Students who are home schooled in Massachusetts are considered to be privately enrolled.

Rights of Students

24. Must a student admitted under school choice reapply for admission in subsequent years?

No. Once a receiving district admits a non-resident student through school choice, that student has the right to remain in the receiving district, provided his or her enrollment is continuous, until he or she graduates from high school or completes the highest grade offered by the district. The right to continued attendance exists even if the school district decides that it will no longer participate in the school choice program.

25. Once a student is accepted through school choice, can the receiving district rescind the acceptance because of the student’s academic record?

No. A district may not rescind an offer of admission based upon a student’s academic record because that would be discriminating based upon academic performance, a practice explicitly prohibited by the school choice statute at G.L. c. 76, § 12B(j).

26. Must a school choice district admit students with disabilities who may require out-of-district placements?

Yes. The school choice law explicitly states that applicants cannot be discriminated against on the basis of disability. School districts may not consider whether students have a disability or the nature of their disabilities in determining whether to admit them under G.L. c. 76, § 12B, and similarly may not rescind any offers of admission on the basis of a student’s disability or needs.¹¹ Neither a sending district nor a receiving district may require a student who needs an out-of-district placement to unenroll from the receiving district or to re-enroll in the sending district. A student who is accepted through school choice is entitled to the same rights and privileges as if the student were a resident of the district. It is important to note that the school choice tuition for a student with disabilities is determined using a cost calculator similar to the one used for the circuit breaker program; this does not include the costs of evaluations for special education. The costs of evaluations are paid by receiving districts.

27. May a school choice student be disciplined, including suspension or expulsion, by the receiving district?

Yes. The same rules and process regarding discipline that apply to resident students also apply to non-resident students attending through school choice. See the Department’s [discipline advisory](#) for additional information regarding student discipline. If a receiving district imposes discipline on a school choice student, it must provide alternative educational services. While a student always has the right to re-enroll in the district of residence, a receiving district may not “send a student back” to the district of residence following discipline or otherwise pressure a student to re-enroll in the district of residence.

¹¹ Under the special education regulations at [603 CMR 28.10\(6\)\(b\)](#), the school choice district must invite the district of residence to Team meetings “provided such participation [does] not limit the student’s right to a timely evaluation and placement.”

28. If a student who is participating in school choice becomes homeless, may the student continue to participate in school choice?

Yes. Students who are attending through school choice under G.L. c. 76, § 12B, have a right to continue attending as school choice students through the full course of curriculum. This is true irrespective of whether they become homeless, provided they continue to reside outside the district in which they attend school through school choice. In general, however, school choice students do not have a right to transportation.

Alternatively, the student may continue to attend in the school choice district as a homeless student under the federal McKinney-Vento Act. Under McKinney-Vento, students who become homeless have a right either to remain in their “school of origin” or to attend school where they are temporarily residing. The school choice district in which the student was attending school when the student became homeless is the “school of origin.” Homeless students who choose to remain in their school of origin have the right to remain there until the end of the school year in which they get permanent housing, and have additional rights to transportation. Detailed information regarding the education rights of homeless students can be found at <http://www.doe.mass.edu/mv/>.

School choice students who become homeless and who wish to remain in school in the receiving district may choose whether to continue attending as school choice students or whether to exercise their rights to continue attending in the school choice district under McKinney-Vento. While school districts should inform parents, guardians, and students of their rights, school districts may not pressure or otherwise encourage such students to make a particular choice or to give up their rights. The consequences of such a choice are significant. If the student chooses to continue to be a school choice student, they will not have access to transportation services. If the student chooses to continue attending under McKinney-Vento, they will have access to transportation but may not be able to continue attending school in the district beyond the end of the school year in which they get permanent housing.

29. May a homeless student seek admission through school choice?

Yes, a homeless student has the same right to seek admission through school choice as any other student who resides in Massachusetts.

30. May a district report to the Department a student as “school choice” solely because the student became homeless and resides temporarily outside the school district in which the student attends school?

No. School districts may only report students to the Department as “school choice” if the students have been admitted to the district through the admission

process for school choice. Students may not be “converted” to school choice solely because they live outside the district in which they attend school.

31. Are students placed in foster care by the Department of Children and Families school choice students?

No. Students who reside in a foster home are not school choice students on that basis alone. Students in foster care, however, may seek admission through school choice to districts other than those in which they live. Detailed information regarding the education of students in foster care can be found at <http://www.doe.mass.edu/sfs/foster/>.

32. If a student lives in two school districts and attends school in one of those districts, is that student a school choice student?

No. If a student lives in two separate residences because his or her parents share physical custody, irrespective of how that time is divided, the student may choose either location as the district of residence for purposes of attending school. That student is considered a resident of whichever district in which he or she chooses to attend school. Such students are not counted or reported as school choice students.

33. If a student lives in two school districts and applies to a third districts through school choice, which district of residence is the sending district?

Both districts of residence are sending districts and the school choice tuition is split between the two districts.

Transition between Schools

34. Does a student who attends an elementary or K-8 school district through school choice have an automatic right to progress with resident students to a regional high school?

No. Effective beginning with fiscal year 2020, school year 2019-20, a school choice student admitted to an elementary or K-8 district does not have a right to attend high school in a regional school district, including a regional vocational technical district. Because regional school districts are districts separate from municipal school districts, those districts separately determine whether to participate in school choice and, if so, into which schools, grades, and programs it will admit students through school choice.¹² If the regional school district operating the high school participates in school choice, a non-resident student may seek to attend the regional high school through school choice under G.L. c. 76, § 12B.

¹² Municipalities, as opposed to school districts, are the members of regional school districts. G.L. c. 71, §15.

Note: This is a change from the Department’s prior interpretation of the school choice statute, which advised that a non-resident student admitted through school choice had an automatic right to progress to a separate regional school district for later grades. In changing its interpretation, the Department carefully examined the plain language of the statute. Recognizing this shift, students currently admitted to or attending an elementary or K-8 district through school choice will continue to have an automatic right to attend through graduation from the regional school district, consistent with our past guidance. For future students who may seek admission through school choice, the Department now requires municipal school districts to provide clear, written notice that they will not have an automatic right to progress to the regional school district for later grades. This change takes effect starting with students admitted for fiscal year 2020, school year 2019-20.

Example

Student 1 lives in District A and, beginning in fiscal year 2020, attends school in District B through school choice. District B is a municipal school district and offers grades K-8. Municipality B, the municipality in which District B is located, is a member of a regional school district, District C, for grades 9-12. Student 1 does not have an automatic right to attend high school in District C. Student 1, however, may be able to attend high school in District C if District C participates in school choice and has seats available.

35. How does the right to attend a school choice district through high school graduation apply to a district that tuitions out students in higher grades to a school district that is not a school choice district?

Under G.L. c. 71, § 6, school committees of towns not maintaining a high school enter into tuition agreements for students to attend high school. The general premise of school choice is that a receiving district must treat a school choice student in the same way it treats a resident student. Therefore, the receiving district must tuition school choice students to high school in the same manner as it tuitions resident students. The high school into which students are tuitioned will charge the tuition for all students it receives to the K-8 district, including students who were attending the K-8 district through school choice. The K-8 district includes school choice students on its school choice reports and receives the school choice tuition from the students’ communities of residence.

Example

Student 1 lives in District A and attends school in District B through school choice. District B is a municipal school district and offers grades K-8. Municipality B is not a member of a regional school district. District B, therefore, tuitions its students into District C for high school. Student 1

has a right to attend high school in District C in the same manner as students who reside in District B. District C will receive the agreed-upon tuition from District B, and District B will receive school choice tuition from District A.

Transportation and Other Tuition Arrangements

36. Must a school choice district provide transportation to non-resident students with disabilities?

Students who participate in the school choice program do not receive transportation services unless those services are included in a student's IEP. Specialized transportation is considered a "related service" under state and federal laws regarding special education and, if needed, should be included on the student's IEP. The receiving district would provide this transportation and the sending district would reimburse the receiving district for the cost of providing this service under G.L. c. 76, §12B(f).

37. May a school committee accept students from another school district on a tuition basis apart from school choice?

Yes. The school choice law does not affect G.L. c. 76 § 12, which states that

[a]ny child, with the consent of the school committee of the town where he resides, may attend, at the expense of said town, the public schools of another town, upon such terms as may be fixed by the two committees.

In addition, other statutes, including [G.L. c. 71B, § 4](#) (special education), and [G.L. c. 74, § 7](#) (non-resident vocational technical education),¹³ explicitly provide additional means for certain students to attend the schools in communities in which they do not live. School choice under G.L. c. 76, § 12B, is a separate program and does not affect these statutes.

38. May a school committee charge tuition for out-of-state residents?

Yes. School choice law under G.L. c. 76, § 12B, does not affect [G.L. c. 71, § 6A](#), which allows city, town, and regional school districts to admit non-Massachusetts residents on a tuition basis. That statute also allows school committees to vote to waive the tuition for such students.

¹³ Inter-district school choice under G.L. c. 76, § 12B, is separate and distinct from the nonresident student tuition process under G.L. c. 74 and 603 CMR 4.00. There are significant differences between the two programs. Additional information regarding the nonresident tuition process may be found at <http://www.doe.mass.edu/cte/admissions/>.

ATTACHMENT: [G.L. c. 76, § 12B](#)

Section 12B. (a) As used in this section, the following terms shall have the following meanings:

"Above foundation reimbursement amount", (i) for fiscal year nineteen hundred and ninety-four, fifty percent of the net losses due to the provisions of this section; provided, however, that if the amount lost by said district pursuant to subsection (f) is greater than two percent of the total school budget of said district, the amount of said reimbursement shall be equal to seventy-five percent of the net losses due to the provisions of this section; (ii) beginning in fiscal year nineteen hundred and ninety-five, twenty-five percent of the net losses due to the provisions of this section.

"Receiving district", any city, town or regional school district within the commonwealth in which a child does not reside, but in which that child attends public school under the provisions of this section.

"Sending district", any city, town or regional school district within the commonwealth in which a child resides, but in which that child does not attend public school under the provisions of this section.

"State school choice limit", in fiscal year nineteen hundred and ninety-four, one percent of the total number of students attending public schools in the commonwealth; in fiscal year nineteen hundred and ninety-five, one and one-half percent of the total number of students attending public schools in the commonwealth; in fiscal year nineteen hundred and ninety-six, one and three-quarters percent of the total number of students attending public schools in the commonwealth; in fiscal year nineteen hundred and ninety-seven and thereafter, two percent of the total number of students attending public schools in the commonwealth; provided, however, that students enrolled under the program for the elimination of racial imbalance as provided in section twelve A shall not be counted toward these limits.

(b) Notwithstanding the provisions of section twelve, or any other special or general law to the contrary, any child may attend a public school, in a city or town where he does not reside; provided, however, that the receiving district shall be paid by the commonwealth a tuition rate as established in subsection (f).

(c) Not later than May first of every year, the school committee of each city, town or regional school district shall submit a report to the department stating:

(1) The capacity of each school in said city, town or regional school district for the following academic year.

(2) The number of students expected to attend each school in said city, town or regional school district in the following academic year.

(3) The number of students attending said school district under the terms of this section in the prior school year and the number of those students who are expected no longer to be attending said school district in the next school year.

(4) The number of additional seats therefore available to non-resident students reduced by the number of students enrolled under the program for the elimination of racial imbalance as provided in section twelve A, in said charter school or each school in said city, town or regional school district. The board may require every district to update this report in whatever manner is required to effectuate the objectives of this section.

(d) Each city, town or regional school district shall enroll non-resident students at the school of such non-resident student's choice; provided, however, that such receiving district has seats available as stated in said report; provided, however, that this obligation to enroll non-resident students shall not apply to a district for a school year in which its school committee, prior to June first, after a public hearing, adopts a resolution withdrawing from said obligation, for the school year beginning the following September. Any such resolution of a school committee shall state the reasons therefor, and such resolution with said reasons shall be filed with the department of education; provided, however, that said department shall have no power to review any such decision by a school committee. If the city, town or regional school district operates an intra-district choice plan, non-resident students may apply for schools on the same basis as resident students, but the intra-district choice plan may give preference to resident students in assigning students to schools.

(e) Not later than the first day of July, each city, town or regional school district shall each year submit a non-resident attendance report to the board and to the state treasurer, certifying the number of non-resident applicants for each available seat in each school, the disposition of their applications, how many of said applicants will be attending the district in the next school year, the identity of the sending districts for those students, 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. The board may review said certification to determine that the amount of the individual tuition charged for each child is in accordance with the provisions of this section 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. In addition to the foregoing, all said districts shall, on October first and April first, report to the board and certify to the state treasurer accurate and up to date reports of all the information required in the non-resident attendance report. If the total number of students admitted to receiving districts pursuant to this section is greater than the state school choice limit, the board shall notify all districts that no more students may be accepted pursuant to this section.

(f) For each student enrolling in a receiving district, there shall be a school choice tuition amount. Said tuition amount shall be equal to seventy-five percent of the actual per pupil spending amount in the receiving district for such education as is required by such non-resident student, but not more than five thousand dollars; provided, however, that for

special education students whose tuition amount shall remain the expense per student for such type of education as is required by such non-resident student. The state treasurer is hereby authorized and directed to deduct said school choice tuition amount from the total education aid, as defined in chapter seventy, of said student's sending district, prior to the distribution of said aid and to deposit said aid in the School Choice Tuition Trust Fund established by section twelve C. In the case of a child residing in a municipality which belongs to a regional school district, the school choice tuition amount shall be deducted from said chapter seventy education aid of the school district appropriate to the grade level of the child. If, in a single district, the total of all such deductions exceeds the total of said education aid, this excess amount shall be deducted from other aid appropriated to the city or town. If, in a single district, the total of all such deductions exceeds the total state aid appropriated, the commonwealth shall appropriate this excess amount; provided, however, that if said district has exempted itself from the provisions of chapter seventy by accepting section fourteen of said chapter, the commonwealth shall assess said district for said excess amount.

(g) The state treasurer is further directed to disburse to the receiving district, from the School Choice Tuition Trust Fund established by section twelve C, an amount equal to each student's school choice tuition as defined in subsection (f); provided, however, that each public school district which admits children under the provisions of this section 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; and, provided further, that such certification shall be made on October first of each year and April first of each year. 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 this section 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.

(h) There shall be a parent information system established, maintained and developed by the board of education to disseminate to parents detailed and comparable information about each school system participating in the school choice program, so-called, which shall include, but not be limited to, information on special programs offered by the school, philosophy of the school, number of spaces available, transportation plans, class sizes, teacher/student ratios, and data and information on school performance that indicate its quality. Said information shall include the school profiles, so-called, developed pursuant to section one B of chapter sixty-nine. The board may include information regarding regional choice initiatives as deemed appropriate. The system shall have as its primary goal to ensure that all parents have an equal opportunity to participate in the program of interdistrict choice. The board of education, when disseminating this information shall encourage the parent and student to make at least one visit to the school of choice as part of the application procedure.

(i) Subject to appropriation, the board of education shall develop and administer a school choice transportation reimbursement program for the purpose of providing reimbursement for the transportation of pupils enrolled under the provisions of this section. Pupils eligible for said reimbursement must be eligible to receive free or reduced cost lunches under eligibility guidelines promulgated by the federal government under 42 USC section 1758. The board may limit said reimbursement to a yearly amount. The types of transportation to be reimbursed pursuant to said program shall include, but need not be limited to, the following: (1) transportation by school buses provided by the sending or receiving district; (2) transportation provided by the parent or guardian of the child; (3) transportation provided by public transportation. All eligible pupils who attend a school district contiguous to the school district of residence of such pupil shall be eligible for said reimbursement. If cost-effective transportation alternatives exist for pupils who attend districts not contiguous to the school districts of residence of such pupil, the board may provide a transportation reimbursement. Said reimbursements may be paid to the district in which the pupil is enrolled, the district of residence of the student, or the parent, guardian or person acting as guardian of the student; provided, however, that said district or parent provide documentation of the transportation expenditure. The board of education shall promulgate regulations for the program to be placed on file with the joint committee on education, arts and humanities of the general court. The board of education shall disseminate information to parents and school systems detailing the availability of said transportation reimbursements. A full description of said school choice transportation reimbursement program shall be submitted to the house and senate committees on ways and means and shall not become effective until ninety days after said submission. Notwithstanding the second paragraph of section one, nothing in this section shall confer upon any student attending a private school any right to transportation or reimbursement therefor.

(j) School committees may establish terms for accepting non-resident students; provided, however, that if the number of non-resident students applying for acceptance to said district exceeds the number of available seats, said school committee shall select students for admission on a random basis; provided, further, that said school committee shall conduct said random selection twice: one time prior to July first and one time prior to November first; provided, further, that no school committee shall discriminate in the admission of any child on the basis of race, color, religious creed, national origin, sex, gender identity, age, sexual orientation, ancestry, athletic performance, physical handicap, special need or academic performance or proficiency in the English language. The Massachusetts commission against discrimination, established by section fifty-six of chapter six, shall have jurisdiction to enforce the provisions of this section; provided, however, that all students described in subsection (m) shall be entitled to remain in the receiving districts they are attending or have been accepted to attend. Any school committee that accepts non-resident students under the provisions of this section shall notify each district from which it has accepted a non-resident student of its acceptance of that student; provided, however, that a school committee may not publicly release the names of students leaving or entering a district under the provisions of this section. Notwithstanding the preceding provisions of this paragraph, any sibling of a student

already enrolled in the receiving district shall receive priority for admission to said district.

(k) Any child accepted to attend a public school in a community other than the one in which he resides pursuant to this section shall be permitted to remain in that school system until his high school graduation, unless there is a lack of funding of the program as authorized by said sections.

(l) 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.

(m) Any student who, pursuant to the provisions of this section, has been attending or has been admitted to attend a public school of a city or town in which he does not reside and for whom the commonwealth has been paying tuition or, in the case of a student recently admitted, would be required to pay tuition in the coming year, shall be deemed to be a student admitted pursuant to paragraph (j), and shall be subject to all of the provisions of this section; provided, however, that said students shall be allowed to remain in said school notwithstanding any determination of capacity or decision by the receiving district to withdraw made pursuant to this section.

(n) Subject to appropriation, any sending district for which the provisions of subsection (f) result in a reduction in state aid shall be eligible to apply for a school choice reimbursement from the commonwealth. If net school spending in a sending district is greater than said foundation budget as defined in chapter seventy, the amount of said reimbursement shall be the above foundation reimbursement amount for that fiscal year. If net school spending in a sending district is less than said foundation budget, the amount of said reimbursement shall be equal to one hundred percent of the positive difference, if any, between (i) the amount transferred pursuant to subsection (f), and (ii) the product of the number of students leaving the sending district and the average per pupil expenditure in the sending district for such education as is required by such nonresident student, for the period the child shall attend; provided, however, that if any district has exempted itself from the provisions of said chapter seventy by accepting section fourteen of said chapter seventy, the district shall be ineligible for a reimbursement under this subsection; provided, further, that if any district in which net school spending is greater than the foundation budget becomes a sending district for the first time in fiscal year nineteen hundred and ninety-five or any year thereafter, the reimbursement amount for that district in the first year that it is a sending district shall be the fiscal year nineteen hundred and ninety-four reimbursement amount; the reimbursement amount for the district in its second year as a sending district shall be the fiscal year nineteen hundred and ninety-five reimbursement amount. Said reimbursement application shall be submitted to the department of education on or before October first of each year together with an educational corrective action plan containing information, recommendations and suggestions relative to: (1) areas needing improvement within the school system of the

applicant; (2) methods of improvement to be employed; (3) goals and objectives of said improvement; (4) evaluation and control methods to be used; (5) personnel to be engaged in such improvement; (6) results intended to be accomplished within one year from the date of application; and (7) methods of increasing parental involvement to be employed; provided, however, that any community or regional school district that has a previously approved plan need not refile said plan; and, provided further, that approval of said plan by said board shall act as a condition precedent to the distribution of said reimbursement to the applicant community or regional school district. Under no circumstances shall the total amount expended pursuant to subsections (h) and (i) and to reimburse sending districts pursuant to this paragraph, be greater than twenty million dollars. If, in any year, the total amount that would be required to reimburse said cities at said rates would be greater than twenty million dollars, then the reimbursement rates shall be reduced proportionately to those rates at which the total cost does not exceed twenty million dollars.

(o) 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.

If the student attends the public schools of another town and it is anticipated that the student shall need the services of a private day or residential school, an individual education plan team meeting shall be convened by the school district in which the child is attending school. The school district in which the student attends school shall notify the school district where the student resides of the team meeting at least five school days prior to the meeting. Personnel from the district in which the child resides shall be allowed to participate in the team meeting concerning future placement of the child.