

February 2, 2023

VIA EMAIL

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**Re: Discriminatory Admissions Policies at the Massachusetts Career Vocational
Technical Education Schools and Programs**

Dear Assistant Secretary Lhamon,

Enclosed please find our civil rights complaint filed on behalf of Juan Doe, Aaron Doe, Ingrid Doe, Elder Doe, and the Vocational Education Justice Coalition (“VEJC”) with the U.S. Department of Education (“USED”), Office for Civil Rights (“OCR”) against the Massachusetts Department of Elementary and Secondary Education (“DESE”) for permitting Career Vocational Technical Education (“CVTE”) schools and programs to use admissions criteria that disproportionately and unjustifiably exclude students from protected classes—*i.e.*, students of color, English Learners, and students with disabilities.

DESE’s actions violate numerous federal laws, including Title VI of the Civil Rights Act of 1964 (“Title VI”), Section 504 of the Rehabilitation Act of 1973 (“Section 504”), and Title II of the Americans with Disabilities Act of 1990 (“ADA”). This complaint falls within the jurisdiction of OCR because DESE is a recipient of considerable grant funding from the USED.

Lawyers for Civil Rights, Center for Law and Education, our clients, and their membership stand ready to assist in this investigation. For more information, please contact the attorneys listed below.

Sincerely,

/s/ Mirian Albert

/s/ Paul Weckstein

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cc: Massachusetts Department of Elementary and Secondary Education
Vocational Education Justice Coalition
Juan Doe
Aaron Doe
Ingrid Doe
Elder Doe

**BEFORE THE UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

_____))
VOCATIONAL EDUCATION JUSTICE COALITION,))
JUAN DOE, AARON DOE, INGRID DOE, and ELDER))
DOE,))
Complainants,))
v.))
MASSACHUSETTS DEPARTMENT OF))
ELEMENTARY AND SECONDARY EDUCATION,))
Respondent.))
_____))

**COMPLAINT UNDER
TITLE VI OF THE CIVIL
RIGHTS ACT OF 1964,
SECTION 504 OF THE
REHABILITATION ACT
OF 1973, AND THE
AMERICANS WITH
DISABILITIES ACT OF
1990**

I. Introduction

Career/vocational technical education (“CVTE”)¹ is a powerful tool that can provide students desiring to enter the workforce with a path to high-wage, high-skill professions and the knowledge, critical thinking, and transferable skills to adapt to changing labor markets. The unique hands-on, project-based learning model utilized in CVTE can also catalyze entrance into post-secondary education, particularly for those students who may have struggled in and disengaged from the traditional academic environment and who have perhaps never considered admission to college as realistic or attainable. Effective CVTE prepares students to graduate career- and college-ready by providing a comprehensive understanding of and strong experience in all aspects of an industry, as well as challenging and rigorous integrated academic/technical instruction aligned to state standards. As such, CVTE has been particularly important to many students of color, English learners (“ELs”), students with disabilities and students from low-income families who historically have not been afforded equitable access to educational resources and outcomes.

CVTE has become increasingly sought-after in Massachusetts, such that the demand for CVTE schools and programs now exceeds availability. For the 2020-21 school year, for example, more than 18,500 rising ninth graders applied to a CVTE school for 10,616 available seats.² As the popularity and demand for CVTE continued to grow in Massachusetts, however, so did an alarming trend—students of color, ELs, and students with disabilities, along with

¹ While federal law and policy, along with that of many states, has increasingly shifted terminology to “career and technical education” Massachusetts still refers “career/vocational technical education”.

² In 2020, DESE conducted a waitlist analysis that surveyed 44 CVTE schools in Massachusetts. *See* DESE, *Massachusetts Career Vocational Technical Education – Waitlist Report for 2020-2021(FY21)*, 2 (Oct. 1, 2020) https://d279m997dpfwgl.cloudfront.net/wp/2021/06/DESE_spec-item1.2-cvte-waitlist-report.pdf.

students from economically disadvantaged families, have been increasingly excluded from admission.

While deeply troubling, this exclusionary trend is unsurprising given that Respondent Massachusetts Department of Elementary and Secondary Education (“DESE”) continues to allow CVTE schools and programs³ to use admissions criteria that disproportionately and unjustifiably exclude students from vulnerable populations—the very students who often stand to benefit the most from the unique learning experiences CVTE can offer. Rather than recognizing that any student who successfully completes middle school and is deemed ready for high school is capable of participating in CVTE, DESE allows CVTE schools and programs to reject students based on factors such as grades, attendance, discipline, guidance counselor recommendations, and interviews (hereinafter “Exclusionary Admissions Criteria”) and accept only the highest-ranking students. These Exclusionary Admissions Criteria, both individually and cumulatively, disproportionately and unjustifiably exclude traditionally marginalized student populations (*i.e.*, students of color, ELs, students with disabilities) who are protected from discrimination under federal law, as well as students from economically disadvantaged families. *See infra* at pp. 11-19.

As detailed below, the deleterious effect of using the Exclusionary Admissions Criteria to make high-stakes decisions is plainly evident. For example, for students who applied to CVTE schools for the current school year (2022-23), 55% of the students of color received admissions

³ As explained in greater detail below, *see infra* at pp.10-11, in Massachusetts, there are specific CVTE programs within all CVTE high schools. In addition, there are traditional academic or comprehensive high schools that also have specific CVTE programs within them, focused on different career-technical areas. In addition to the policy that each CVTE school has for admission to the school, there are separate admissions policies for entry into specific CVTE programs that students seek to pursue – in both CVTE high schools and regular comprehensive high schools. The admission policies for both CVTE schools and CVTE programs are sent to and on public file with DESE. The same civil rights requirements addressed in this complaint are equally applicable to both CVTE schools and to specific CVTE programs, regardless of the type of high school in which they are located.

offers, compared to approximately 69% of the white students;⁴ and 54% of students from economically disadvantaged families received offers compared to 72% of their comparison peers. As to ELs and students with disabilities, out of those who applied, 44% of ELs received admissions offers compared to 64% of non-ELs, and 54% of students with disabilities received admissions offers compared to 65% of students without disabilities. *See infra* at p.18-20.

Critically, this data only scratches the surface of the disparities caused by using the Exclusionary Admissions Criteria, as it does not reflect students who are discouraged from applying to CVTE schools in the first place, knowing that they are unlikely to be accepted given the inequitable admissions criteria.

DESE is well aware of this exclusion and has allowed it to persist for years. Numerous families and community organizations, including Complainants, have documented the problem and proposed solutions that would bring DESE in line with governing civil rights law. However, DESE has persistently failed to properly interpret the civil rights laws and has allowed CVTE schools and programs to continue using unvalidated criteria that disproportionately exclude students in protected classes. The result is public school admissions processes that begin to resemble those at selective private schools—where students are “rank ordered” on various exclusionary criteria and then offered admission based on their point score. For example, CVTE schools and programs routinely award points for grades, thereby favoring admission of those with higher grades than other students; and drop students’ ranking for as few as two unexcused absences, thus potentially eliminating them from contention for admission. CVTE schools and

⁴ DESE, *CVTE/Chapter 74 Admissions & Waitlist Analysis—Final for SY 2023, State, Opportunity Gap*, <https://app.powerbigov.us/view?r=eyJrIjoiYjMzODhkZWYtYzY5Ny00Y2VlLWJkNTAtNGIxMGM0MTEwODVhIiwidCI6IjNIODYxZDE2LTQ4YjctNGEwZS05ODA2LThjMDRkODFiN2IyYSJ9> (last visited Feb.1, 2023) (indicating that 5,067 out of 9,181 students of color were offered admission versus 7,815 out of 11,402 white students).

programs also use other highly subjective factors—recommendations and interviews—despite a large and growing body of social science research demonstrating that such subjective factors create a fertile ground for bias—both implicit and explicit. *See infra* at pp. 27-35.

The continued and systematic exclusion of students of color, students with disabilities, ELs, and students from economically disadvantaged families from CVTE schools and programs is not an isolated phenomenon limited to a select few schools or programs. Rather, it is an endemic problem caused by DESE’s decades-long failure to fulfill its affirmative obligations under civil rights law to ensure that CVTE schools and programs do not use admissions criteria that disproportionately exclude students in protected classes, unless they can demonstrate that they have validated those criteria as essential to participation, and no equally valid, less-discriminatory alternatives exist.

DESE’s disregard for its legal responsibilities has robbed, and continues to rob, students from traditionally marginalized communities the opportunity to participate in CVTE schools and programs and to reap their educational benefits, thus having a long-term impact on these students’ lives. As explained below, DESE’s actions violate numerous federal laws, including Title VI of the Civil Rights Act of 1964 (“Title VI”), Section 504 of the Rehabilitation Act of 1973 (“Section 504”), and Title II of the Americans with Disabilities Act of 1990 (“ADA”).⁵

⁵ Although this complaint directly raises only those civil rights claims that are within OCR’s jurisdiction to investigate, Complainants believe that DESE’s conduct as described herein also violates the Perkins Act. Because of the substantial overlap between violations of the civil rights laws that are the subject of this complaint and the Perkins Act, Complainants note the impact of the Exclusionary Admissions Criteria on low-income students at appropriate junctures. To the extent that OCR deems it advisable to involve in any investigation others in the Department of Education with direct oversight of Perkins Act compliance, Complainants would welcome that involvement. Independent of that question, the pervasive, disproportionate exclusion of students from low-income families runs directly counter to the Commonwealth’s interests in improving career opportunities for that population, which in turn further undermines any argument that the policies meet the test of educational necessity under the civil rights acts.

Accordingly, Complainants respectfully request that the U.S. Department of Education's ("USED") Office for Civil Rights ("OCR") intercede and take all steps necessary to enforce DESE's compliance with the law. As further elaborated in the Remedies section below, *see infra* at p. 47, this should include immediately halting and prohibiting further use of selective admissions criteria for admission to CVTE schools or programs, unless and until DESE and/or the schools using such criteria first demonstrate that those criteria have been validated as essential to participation and that no less-discriminatory, equally valid alternatives exist. In addition, OCR should also require the elimination of related barriers that operate to disproportionately exclude protected classes, including barriers to admission to CVTE programs within schools and numerical limits on sending schools.

II. Jurisdictional Facts

A. The Complainants

The **Vocational Education Justice Coalition ("VEJC")** is composed of twenty Massachusetts community groups,⁶ civil rights groups,⁷ and labor unions⁸ that advocate for equitable educational opportunities for students of color, ELs, and students with disabilities in CVTE schools and programs. VEJC brings this complaint on behalf of students of color, ELs, and students with disabilities, who have been and will continue to be disproportionately and systematically excluded from CVTE schools and programs. Ending discrimination in admission

⁶ La Colaborativa (formerly the Chelsea Collaborative), Collaborative Parent Leadership Network (CPLAN), Greater Boston Latino Network, United Interfaith Action of SE MA, Worcester Interfaith, Progressive Democrats Massachusetts, Black Educators Alliance of Massachusetts, Citizens for Public Schools, Massachusetts Advocates for Children, Massachusetts Education Justice Alliance, Pioneer Valley Project, Brockton Interfaith Community, Massachusetts Communities Action Network (MCAN).

⁷ Center for Law & Education (CLE), NAACP-New England Area Conference, Lawyers for Civil Rights.

⁸ American Federation of Teachers MA, Massachusetts Teachers Association (MTA), North Atlantic States Regional Council of Carpenters, Greater Boston Building Trades Council.

to CVTE schools and programs will benefit all students regardless of race, color, national origin, language, sex, disability, or family income, who could benefit from CVTE but are excluded by the current policies employed by CVTE schools and programs which DESE has failed to prevent.

Juan Doe is a Latinx student currently attending Gardner High School. In the 2021-22 school year, Juan Doe attended Gardner Middle School and applied to his regional CVTE school. Juan is an English Learner student and learned about Montachusett Regional Vocational Technical School (“Monty Tech”) during his eighth-grade year. He was particularly interested in the carpentry program as he hoped to open his own construction business – as his uncle had done. Not only did Juan think he would enjoy the interactive learning experience of career and technical education, but he also viewed it as an opportunity to obtain a stable job in the future. Juan maintained a B-grade point average and had no disciplinary or attendance issues. In the school year 2021-22, he applied to Monty Tech. Although he believed his interview process went well, he was ultimately denied admission to Monty Tech. He still hopes to obtain access to career and technical education during his time in high school and aspires to open his own business.

Aaron Doe is a student currently attending Gardner High School. In the 2019-20 school year, he attended Gardner Middle School and applied to his regional CVTE school. Aaron is a student with disabilities and had an Individualized Education Program (IEP) while attending middle school. After working a summer with his uncle’s construction business, Aaron was determined to attend a technical high school. He was consciously aware that he thrived in a school environment with hands-on instruction versus the traditional educational environment. He could not envision himself in a space where he was required to be “glued to a desk.” In the school year 2019-20, he eagerly applied to Montachusett Regional Vocational Technical School

(“Monty Tech”). Ultimately, he was denied admission. Ironically, his current teachers now note that he would benefit from a hands-on learning environment. Despite being denied admission, Aaron Doe remains interested in career and technical education, but he will now have to incur out-of-pocket expenses for a private specialized program if he enrolls in one after he completes high school.

Ingrid Doe is a Black student currently attending Chelsea High School. In the 2018-19 school year, Ingrid Doe attended Clark Avenue Middle School and was eligible to apply to CVTE schools. She learned about Northeast Metropolitan Regional Vocational High School when she was in seventh grade. She was interested in amplifying her career opportunities and was intrigued by the hands-on educational setting. However, she learned that the admissions process was “very selective.” While she had no concerns about her attendance or disciplinary record, her grades were only average. Ultimately, she decided not to apply because she believed that she would not be accepted due to the school’s ranking system, as other students would have higher grades than her.

Elder Doe is a Latinx student currently attending Chelsea High School. In the 2015-16 school year, Elder attended Clark Avenue Middle School and was eligible to apply to CVTE schools. He learned about Northeast Metropolitan Regional Vocational High School when he was in eighth grade. He believed career and technical education would provide him with the knowledge and skills to obtain a trade job after graduation to improve his life and that of his family. As he learned about the application process, however, he became concerned that he would not be accepted due to his grade point average as he understood the process to be very competitive. As an English learner, Elder did not have a full mastery of the English language, and his middle school did not provide him with the necessary language support to succeed

academically in middle school. Ultimately, he was discouraged from even applying to Northeast Metropolitan Regional Vocational High School yet has maintained an interest in career and technical education, including specific career paths focused on carpentry and technology.

B. Timeliness

The complaint is timely in that the violations (*i.e.*, DESE allowing CVTE schools and programs to use the Exclusionary Admissions Criteria) are continuous and ongoing, thus falling within the applicable 180-day period required to bring a claim.

C. Receipt of Federal Funds

OCR has jurisdiction over this matter because DESE and all local and regional school districts in the Commonwealth continually receive federal funding, thereby subjecting the agency to the obligations contained in Title VI, Section 504, the ADA, and their attendant regulations. According to DESE’s website, the Resource Allocation Strategy and Planning Office is responsible for the administration and monitoring of major federal entitlement grants authorized by several federal laws, such as the Elementary and Secondary Education Act of 1965 (“ESEA”), as amended by the Every Student Succeeds Act (2015); Individuals with Disabilities Education Act (2004); the Carl D. Perkins Career and Technical Education Act of 2006, as amended by The Strengthening Career and Technical Education for the 21st Century Act (2018); and the Coronavirus Aid, Relief, and Economic Security Act (“CARES”).⁹ For example, for the funding year of 2020-21, DESE received \$12,789,742.00 in federal grants from the USED, authorized by the Carl D. Perkins Career and Technical Education Act.¹⁰

⁹ DESE, *Federal Grant Programs*, <https://www.doe.mass.edu/federalgrants/> (last updated Nov. 3, 2022).

¹⁰ USED, *Grant Award Notification*, <https://www.doe.mass.edu/grants/federal/2022/7043-8001.pdf> (last visited Dec. 7, 2022). Further, DESE and all regional and local districts receive ESEA funds. *See also* DESE, *Federal Grant Programs*, <https://www.doe.mass.edu/federalgrants/essa/> (last visited Feb. 1, 2023).

As a recipient of federal funds, DESE must comply with federal laws (*i.e.*, Title VI, Section 504, and the ADA) including affirmative obligations to ensure that CVTE schools and programs do not use criteria that disproportionately exclude students in protected classes unless the schools and programs have demonstrated that those criteria are essential to participation and no equally valid, less-discriminatory alternatives exist. Likewise, all local and regional school districts receive ESEA and other federal funds and are directly mandated to fully comply with that requirement in developing and using admissions policies in their CVTE schools and programs.

III. Factual Background

A. Types of CVTE in Massachusetts

High school students in Massachusetts have access to a variety of CVTE programming in a wide range of settings. Students participating in CVTE primarily do so at one of the Commonwealth's twenty-six regional vocational technical high schools ("RVTS") that draw from "member" towns in similar fashion to traditional regional academic school districts. RVTS operate pursuant to regional agreements, many of which cap the total enrollment per sending town based on a variety of metrics. Massachusetts also has two county agricultural high schools, Norfolk County and Bristol County Agricultural, that operate in the same manner as RVTS but have more limited educational programming focusing specifically on agriculture. In addition, there are a handful of cities and towns in Massachusetts that operate technical high schools serving the locality in which they are sited (*e.g.*, Worcester Technical High School). Finally, students can participate in a variety of CVTE programs at traditional academic high schools.

Through each of these avenues, students may have access to a combination of one or more "Chapter 74-approved" and/or "non-Chapter 74-approved" CVTE programs. To obtain

“Chapter 74-approved” status, a CVTE program must meet certain state regulatory requirements beyond what is required by the Carl D. Perkins Career and Technical Education Act.¹¹ Doing so allows the program to be eligible for state funding in addition to Perkins funding, whereas non-Chapter 74-approved programs receive Perkins funding only.¹² For the 2020-21 school year there were forty-eight distinct CVTE programs (forty-four Chapter 74-approved; forty-three non-Chapter 74-approved) offered at one hundred one schools across the state.¹³

B. Outcomes and Admissions Trends in CVTE

CVTE has long provided an important opportunity for students from traditionally marginalized backgrounds, particularly those who may not have succeeded in a traditional academic environment, to access proven pathways to college and career.

Over the years, Massachusetts has increased resources to vocational institutions.¹⁴ Indeed, some CVTE schools now receive even more funding per pupil than some traditional high schools.¹⁵ Additionally, academic performance at vocational institutions is comparable to, or in some cases higher than, that of traditional high schools.¹⁶ For example, in 2013, students at

¹¹ MASS. GEN. LAWS ch. 74, § 1 (2023); 603 MASS. CODE REGS. 4.03, 4.04. (2021).

¹² See Executive Office of Education, *Baker-Polito Administration Awards More Than \$450,000 in Innovation Pathways Planning Grants* (Sept. 9, 2021) <https://www.mass.gov/news/baker-polito-administration-awards-more-than-450000-in-innovation-pathways-planning-grants> (Noting that “grants are designed to support schools which are committed to seeking official designation for the programs from the Department of Elementary and Secondary Education”).

¹³ DESE, *CVTE Outcomes across Massachusetts* at 1, <https://www.doe.mass.edu/ccte/cvte/data/outcomes-across-ma.docx> (last visited Feb. 1, 2023).

¹⁴ See Emily Hanford, *The Troubled History of Vocational Education*, APM REPORTS (Sept. 9, 2014), <https://www.apmreports.org/episode/2014/09/09/the-troubled-history-of-vocational-education>.

¹⁵ The state funding formula provides CVTE schools more funds due to their unique staff and material/equipment needs compared to traditional high schools, as such CVTE schools often outspend their traditional counterparts by many thousands of dollars each year on a per-pupil basis. See Malcolm Gay, *Vocational Schools Become the Latest Front in the Battle for Educational Equity*, BOSTON GLOBE (March 7, 2020), <https://www.bostonglobe.com/2020/03/07/metro/vocational-schools-become-latest-front-battle-educational-equity/>.

¹⁶ Unfortunately, the extent to which these academic outcomes are attributable to the quality of the academic programming and its integration with career-technical education, which is certainly very real, is clouded by the fact that the admissions policies at issue here, cream students to favor entry of those who are already higher achieving.

CVTE schools scored at comparable levels of proficiency as students at traditional high schools on the Massachusetts Comprehensive Assessment System (“MCAS”) English and Language Arts test, as well as the MCAS math test.¹⁷ In fact, students who are enrolled in CVTE schools are significantly more likely to graduate from high school than those in traditional schools, and more likely to obtain economically stable jobs, with greatest benefits accruing to students from lower income families.¹⁸

From the early 2000s until June 2021, DESE required that “[e]ach selective vocational technical secondary school in Massachusetts shall use a combination of selection criteria to determine which applicants have an ability to benefit, and therefore be admitted to the school unless the school opts to use first-come-first served or a lottery for admissions.” 603 C.M.R. § 4.03(6)(a)(1) (2020).¹⁹ Schools that opted for selective admissions were further required to admit students based on specific regulatorily mandated criteria: “academic grades, attendance record, discipline/conduct record, recommendations from the sending-school school counselor, and may include a student interview, provided however, that no one criterion exceeds 50% of the total.” *Id.* These schools could also “condition admission on a student having passed courses in English Language Arts or its equivalent and mathematics for the school year immediately preceding their enrollment in a selective vocational technical school or program[.]” *Id.* Finally, before going into effect, any admissions policy “must [have been] approved by the Department.” *Id.*

¹⁷ Hanford, *supra* note 14.

¹⁸ See Matt Barnum, *One Big Upside of Career and Tech Program? They Push More Kids to Graduate*, CHALKBEAT, (April, 19, 2018), <https://www.chalkbeat.org/2018/4/19/21104795/one-big-upside-of-career-and-tech-programs-they-push-more-kids-to-graduate>.

¹⁹ DESE, *Proposed Amendments to 603 CMR 4.03(6)(a) CVTE Admissions Regulations: Initial Discussion and Vote to Solicit Public Comment* (April 9, 2021), https://www.progressivedemsofmass.org/wp-content/uploads/2021/05/2021_DESE_Voc_Admissions_Proposed_Reg.pdf.

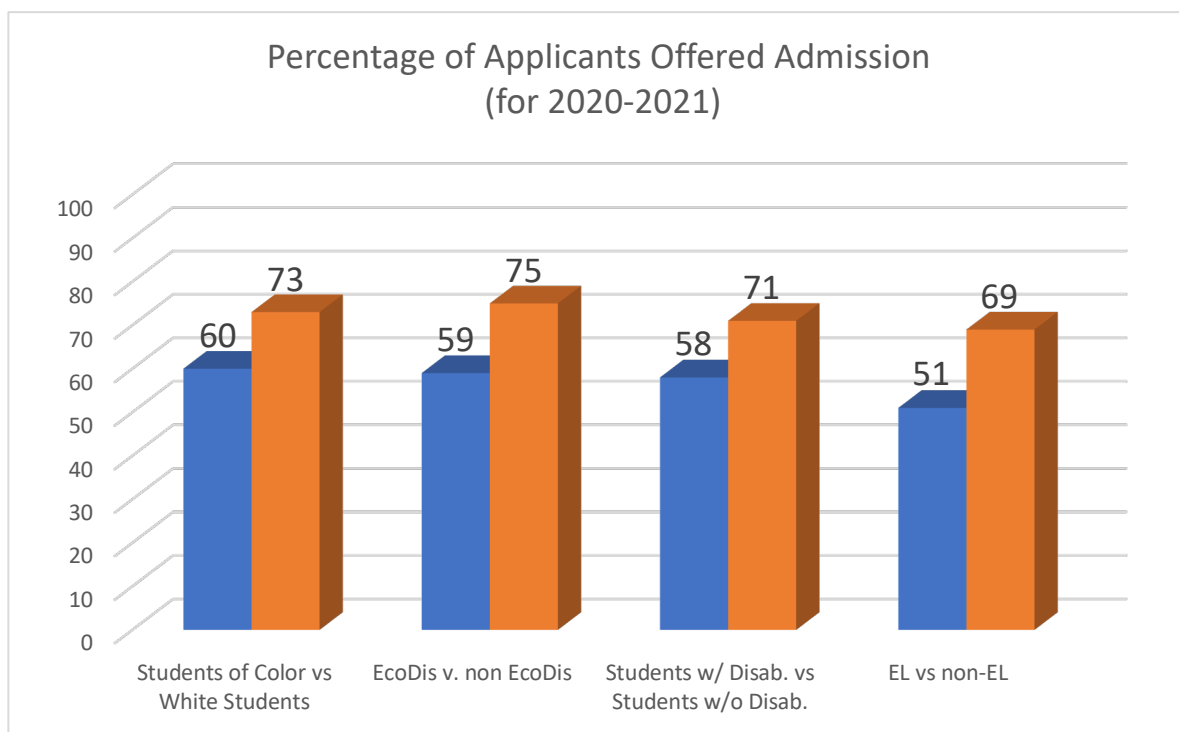
The vast majority of schools providing CVTE programs elected to use selective admissions policies and rank order students for admission based on composite scores from the required regulatory criteria. In doing so, it is clear that the regulation’s requirement to use the selection criteria for their stated purpose – “to determine which applicants have an ability to benefit” – was being ignored in the policies that schools adopted and DESE approved.”²⁰ Despite the mounting evidence – both from social science research and the actual measurable impact on Massachusetts students – that the Exclusionary Admissions Criteria (grades, attendance, discipline, recommendations, and interviews) were resulting in the disproportionate exclusion of students of color, ELs, students with disabilities, and students from economically disadvantaged families, DESE continued to approve the use of such policies.

While the effect of using the Exclusionary Admissions Criteria was evident on its face, DESE did not post system-wide data regarding admission to CVTE schools and programs until 2020.²¹ At that time, DESE comprehensively analyzed admissions demographics for the 2020-21 school year and found that students of color who applied to CVTE schools were offered admission at far lower rates than white students (60% versus 73%); students from economically disadvantaged families were offered admission at far lower rates than students not from economically disadvantage families (59% versus 75%); ELs were offered admission at far lower rates than English-speakers (51% versus 69%); and students with disabilities were offered admission at far lower rates than those without (58% versus 71%).²²

²⁰ This term is quite similar to the federal requirement at the center of this complaint – banning admissions criteria unless they are validated as “essential to participation.” And, as discussed *infra*, the disregard for both, by the schools and DESE, was the same, both before and after the change in the state regulations, is the same.

²¹ See DESE, *supra* note 2 at 2. (DESE conceding that “this waitlist data collection is the first of its kind....”).

²² *Id.* at 5.



These stark disparities – and their systemwide nature – were even more striking when looking at individual schools. For instance, all twenty-eight RVTS²³ disproportionately excluded at least three of these four vulnerable populations (students of color; economically disadvantaged students; students with disabilities; and ELs) and fifteen excluded all four.²⁴

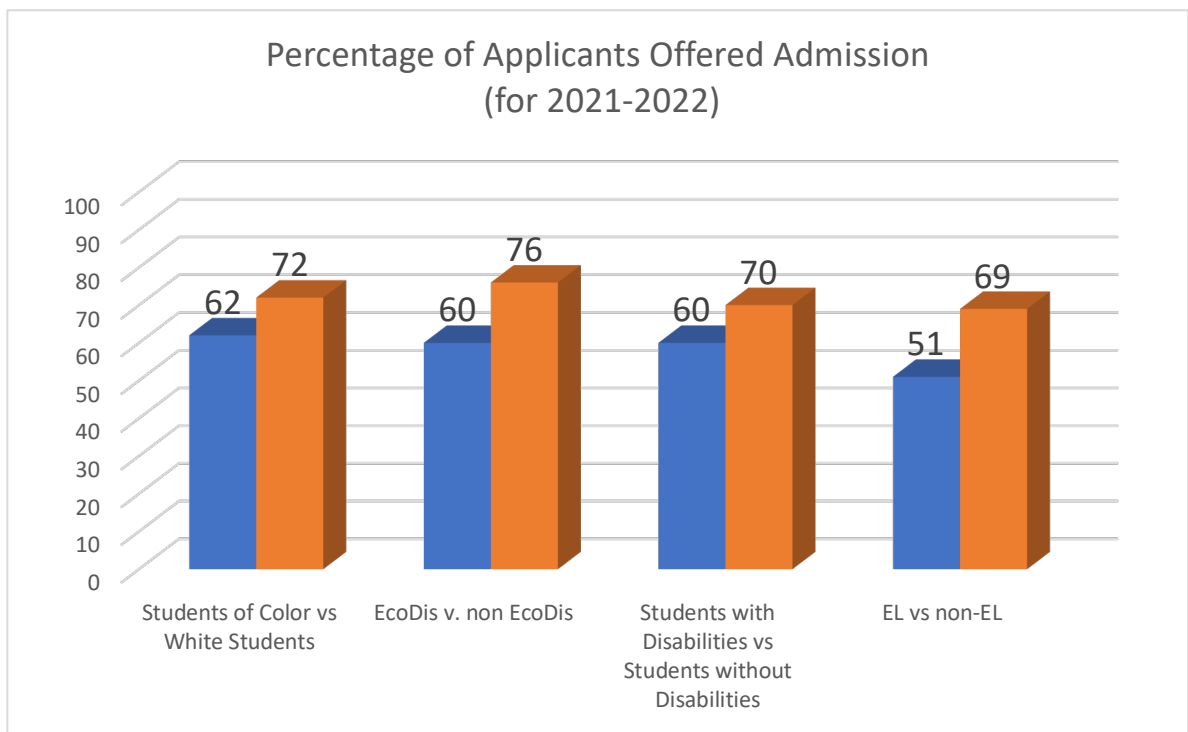
Critically, DESE’s analysis focused only on students who actually applied, and therefore it did not capture the full breadth of exclusion occurring in CVTE schools and programs, as it did not account for those students who chose not to apply in the first place, recognizing they were unlikely to be accepted given the Exclusionary Admissions Criteria.²⁵

²³ This count includes the two county agricultural schools as they function in the same way as RVTS in terms of admitting students from multiple sending towns.

²⁴ See *id.* More specifically, all 28 RVTS disproportionately excluded students of color and economically disadvantaged students; 27 of 28 disproportionately excluded students with disabilities; and 16 of 28 disproportionately excluded ELs. *Id.*

²⁵ See discussion *infra* pp. 28-35.

This pattern of disparity was virtually identical for admission to the 2021-2022 school year. For that year, approximately 62% of the students of color received admissions offers compared to approximately 72% of the white students; and 60% of students from economically disadvantaged families received admissions offers versus 76% for students not from economically disadvantaged families.²⁶ As to ELs and students with disabilities, out of those who applied, 51% of ELs received an offer of acceptance compared to 69% of non-ELs and 60% of students with disabilities received offers compared to 70% of students without disabilities.²⁷



The systemic disparities that were evident for the 2020-21 school year remained. Twenty-two RVTS disproportionately excluded students of color, twenty-six disproportionately excluded students from economically disadvantaged families, twenty-three disproportionately excluded

²⁶ DESE, *CVTE/Chapter 74 Admissions & Waitlist Analysis—Final for SY 2022, State, Opportunity Gap*, <https://app.powerbigov.us/view?r=eyJrIjoiYjMzODhkZWYtYzY5Ny00Y2VlWjkNTAtNGIxMGM0MTEwODVhIiwidCI6IjNIODYxZDE2LTQ4YjctNGEwZS05ODA2LThjMDRkODFiN2IyYSJ9> (last visited Feb.1, 2023) (indicating that 4,388 out of 7,064 students of color were admitted versus 7,468 out of 10,399 white students).

²⁷ *Id.*

students with disabilities, and thirteen disproportionately excluded ELs. As with the previous data, the 2021-22 school year data does not capture the full extent of disproportionate exclusion given that the data reflects only students who actually applied to CVTE schools and programs and not those who were discouraged from applying due to the Exclusionary Admissions Criteria.

The Coalition and its member organizations, over the course of many years, made numerous attempts to work collaboratively with DESE to halt the use of the Exclusionary Admissions Criteria, including providing detailed analyses of laws, policies, and data; attending meetings with DESE senior staff; testifying before the state Board of Education for Elementary and Secondary Education (BESE); and participating in meetings with individual board members.²⁸ The Coalition expressed serious concerns to DESE that it was permitting local admissions policies that disproportionately excluded students in protected classes without requiring the schools and programs to demonstrate, prior to their use, that they had validated their admissions criteria as essential to participation and that there were no equally valid, less-discriminatory alternatives available.

It became abundantly clear through the Coalition's advocacy efforts that not only was DESE failing to engage with its affirmative obligations under civil rights law, but that DESE fundamentally misunderstood the requirements of those obligations. Despite this significant multi-year advocacy campaign from Complainants and others – including local elected officials²⁹

²⁸ See Naomi Martin, *Civil Rights Groups Urge State to Change 'Discriminatory' Vocational School Admissions Policies to Lottery*, BOSTON GLOBE (March 18, 2021), <https://www.bostonglobe.com/2021/03/18/metro/civil-rights-groups-urge-state-change-discriminatory-vocational-school-admissions-policies-lottery/>. See also *Testimony on Barriers to Vocational Technical School Admissions*, MASS. ADVOCATES FOR CHILDREN (Jan. 21, 2021), <https://www.massadvocates.org/news/testimony-on-barriers-to-vocational-technical-school-admissions>.

²⁹ For example, in January 2020, an open letter by a variety of Massachusetts's city mayors called DESE's Commissioner, Jeffrey C. Riley, to action. The letter emphasized that disparities are particularly glaring for ELs, who lack representation in CVTE schools in regions with large immigrant populations. *MMA and Mass. Mayors Call for Reforms of Vocational School Admissions*, MASS. MUN. ASS'N (Jan. 31, 2020), <https://www.mma.org/advocacy/mma-and-mass-mayors-call-for-reforms-of-vocational-school-admissions/>; see also

– when DESE issued proposed regulations for admissions in April 2021 the proposal failed to address the major issues the Coalition identified and provide the guidance needed to ensure compliance with the legal standards. During the public comment period, the Coalition drafted still another comprehensive document – a set of recommended changes in the proposed regulations with very specific proposed language on a full range of issues, each accompanied by full explanations, with both tied very closely to the relevant law.³⁰ Neither in its response to public comment nor in its final regulations adopted in June 2021 did DESE engage with the issues the Coalition identified. Notably, DESE continued to allow schools to rank order students based on point totals from any selective criteria considered. And while DESE put into its regulations the language from the federal guidelines (i.e., the prohibition on CVTE schools and programs using criteria that disproportionately exclude students from protected classes unless the school or program can demonstrate that they have validated the criteria as essential to participation and that no less discriminatory alternatives exist), this language exists only as boilerplate. It is clear from language elsewhere in the regulation,³¹ subsequent DESE-issued guidance,³² and the fact that CVTE schools and programs continued to flout this federal prohibition, that DESE is still misinterpreting the requirements of federal law. Similar concerns exist in regard to validation, as DESE is not requiring CVTE schools and programs to demonstrate, prior to their use, that criteria that disproportionately exclude students in protected

Max Larkin, *Advocates Call for Broad Overhaul of Admissions At Vocational Schools*, WBUR (March 19, 2021), <https://www.wbur.org/news/2021/03/19/voc-tech-admissions>.

³⁰ Vocational Education Justice Coalition, *Recommended Changes in Proposed Regulations for Admission to Career/Vocational Technical Schools and Programs – Full Version (including explanations)*, May 2021 (hereinafter VEJC, *Recommended Changes*), attached as **Exhibit A**.

³¹ *E.g.* that having enrollments that mirror the populations of the middle schools can and should improperly substitute for identifying and eliminating non-validated criteria that will continue to disproportionately exclude students from protected groups.

³² *Id.*

classes have been validated. Instead, the regulations merely require schools to attest that they will comply/are in compliance with the law. Further troubling is that DESE also removed the requirement that it would review and approve admissions policies before they went into effect.

The result was what the Coalition feared and predicted in its document and testimony: for admission to the 2022-23 school year almost all schools adopted policies under the new regulations that had the same flaws (*i.e.*, were in violation of civil rights laws and continued the unjustified disparate exclusion of students from protected classes).³³ 27 of the 28 regional schools chose to continue to use Exclusionary Admissions Criteria and rank order students. The sole remaining school chose to use a lottery.³⁴ Of the 27 RVTS schools that continued to admit students selectively, 23 considered an applicant's grades, 27 considered an applicant's unexcused absences, 27 considered an applicant's disciplinary record, 24 considered recommendations, and 21 considered interviews.³⁵ RVTS most frequently assigned the highest points to interviews (and then grades) and the lowest to recommendations.³⁶ The majority of RVTS (21) used some form of a binary point system for considering disciplinary history (*e.g.*, an applicant who has been suspended for certain statutory offenses receives no points while an applicant who has not been suspended under these statutes receives full points).³⁷ Almost half (11) of the RVTS that considered grades begin deducting points when a student falls out of the "A" range, and

³³ CLE, *CVTE Admissions Policies Analysis (RVTS & County Agricultural Schools)* (March 1, 2022), attached as **Exhibit B**.

³⁴ *Id.* at 2. The sole school that uses a lottery for admission to all its seats is Assabet Valley Regional Technical High School. Assabet's admissions still contains some problematic elements. Namely, the policy provides for rescission of admissions offers for students who are subject to certain discipline during their eighth-grade year ("Students who have received disciplinary infractions for conduct for which suspension or expulsion was imposed pursuant to M.G.L. c.71 §37H or §37H1/2, or for which suspension or expulsion for more than 10 days was imposed pursuant to M.G.L. c.71 §37H3/4 within the previous school year their admission will be rescinded."). In addition, while no points are assigned, Assabet still requires students to obtain a recommendation and participate in an interview to be eligible for the lottery which may continue to present barriers to students in protected classes.

³⁵ *Id.*

³⁶ *Id.* at 23.

³⁷ *Id.* at 18.

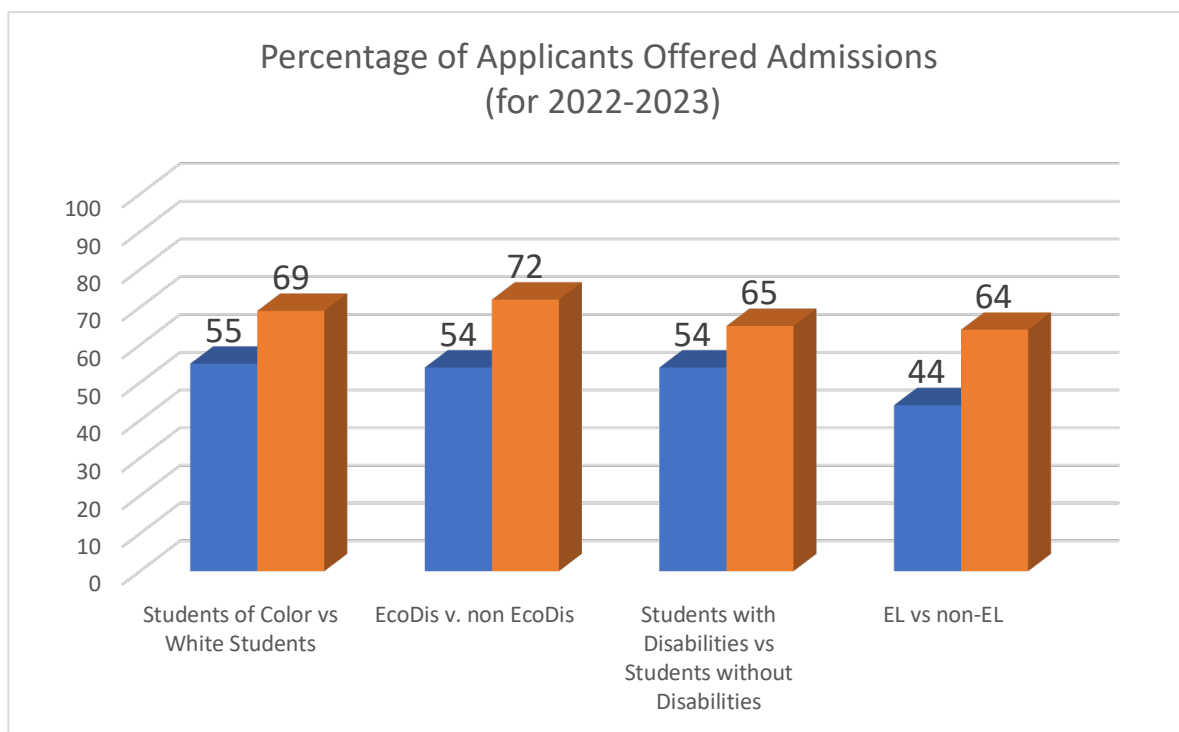
attendance requirements remain relatively rigid while most policies provided minimal, if any, guidance on completing recommendations and scoring interviews.³⁸

Given this lack of meaningful change in policies, it is unsurprising that the disparate admission rates that were seen in prior years continued to be seen for the 2022-23 school year. For the 2022-23 school year, 55% of the students of color received admissions offers, compared to approximately 69% of the white students,³⁹ and 54% of students from economically disadvantaged families received offers compared to 72% of their comparison peers. As to ELs and students with disabilities, out of those who applied, 44% of ELs received admissions offers compared to 64% of non-ELs, and 54% of students with disabilities received admissions offers compared to 65% of students without disabilities.⁴⁰ As with previous years' data, this data does not capture the full breadth of disparities as it only examines students who actually applied to CVTE schools and programs, and not those who were deterred from applying in the first place due to the Exclusionary Admissions Criteria.

³⁸ *Id.* at 2.

³⁹ DESE, *CVTE/Chapter 74 Admissions & Waitlist Analysis—Final for SY 2023, State, Opportunity Gap*, <https://app.powerbigov.us/view?r=eyJrIjoiYjMzODhkZWYtYzY5Ny00Y2VILWJkNTAtNGIxMGh0MTEwODVhIiwidCI6IjNIODYxZDE2LTQ4YjctNGEwZS05ODA2LThjMDRkODFiN2IyYSJ9> (last visited Feb.1, 2023) (indicating that 5,067 out of 9,181 students of color were offered admission versus 7,815 out of 11,402 white students).

⁴⁰ *Id.*



Notably, across all three school years of collected data (2020-21, 2021-22, and 2022-23) students of color, ELs, and students with disabilities *accepted* their offers of admission at rates comparable to, if not higher than their counterparts.⁴¹ DESE’s refusal to address the issue of Exclusionary Admissions Criteria in a meaningful way has allowed the existing disparities in CVTE schools and programs to deepen, perpetuating the educational inequities in the Commonwealth.

⁴¹ For example, DESE found that in 2020, 3,606 students of color (87.6%) accepted their offer of acceptance compared with 6,702 white students (85.6%); 2,040 students with disabilities (88.9%) accepted compared with 8,268 students without disabilities (85.6%); 473 English Learners (91.5%) accepted compared with 9,835 not English Learners (86.0%). See DESE, *supra* note 2, at 6.

IV. Legal Analysis

A. Title VI Prohibits Recipients of Federal Funding from Excluding Individuals on the Basis of Their Race, Color, or National Origin.

Title VI of the Civil Rights Act of 1964 states that recipients of federal funding may not exclude individuals from participation in their programs or activities on the basis of race, color, or national origin.⁴² Public agencies, such as DESE, that receive federal funds are subject to this mandate.⁴³

While Title VI prohibits intentional discrimination, most federal agencies – including the USED – have promulgated regulations that also prohibit policies that have a disparate impact on people of color, whether those policies are intentionally discriminatory or not.⁴⁴ Thus, the USED’s Title VI regulations prohibit a recipient of federal funds from “utiliz[ing] criteria or methods of administration *which have the effect* of subjecting individuals to discrimination because of their race, color, or national origin.”⁴⁵ ELs are also a protected class, as courts have long held that “language-based discrimination constitutes a form of national origin discrimination under Title VI.”⁴⁶

⁴² 42 U.S.C. § 2000d.

⁴³ 34 C.F.R. § 100.13(i) (2000) (defining “recipient” to include any public “agency, institution, or organization, or other entity. . . in any State, to whom Federal financial assistance is extended”); *see also* 34 C.F.R. §100.13(g)(2)(ii).

⁴⁴ *See Guardians Ass’n v. Civil Serv. Comm’n of City of New York*, 463 U.S. 582, 591-93 (1983).

⁴⁵ 34 C.F.R. § 100.3(b)(2) (As set forth in the DOJ model regulations, recipients may not “utilize criteria or methods of administration *which have the effect* of subjecting individuals to discrimination because of their race, color, or national origin, *or have the effect of defeating or substantially impairing accomplishment of the objectives of the program* as respects individuals of a particular race, color, or national origin.”) (emphasis added). 28 C.F.R. § 42.104(b)(2) (The program admission policies addressed here not only have the effect of subjecting students to discrimination but also have the effect of defeating or impairing accomplishments of these public programs’ own objectives by *explicitly* screening out students who have fared less well in traditional academic programs and whose academic as well as career futures could most gain from the approaches used in these programs.) (emphasis added).

⁴⁶ *U.S. v. Maricopa Cty.*, 915 F. Supp.2d 1073, 1079 (D. Ariz. 2012); *see also Lau v. Nichols*, 414 U.S. 563, 568 (1974) ([w]here inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program. . . the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.”).

The key civil rights standard regarding admissions policies. In a separate Appendix to its Title VI regulations, which is explicitly also made applicable to discrimination on the basis of sex and disability, USED has specifically addressed the duties of federal funding recipients to guard against discrimination in CVTE schools and programs, again incorporating disparate impact standards. 34 C.F.R. § Pt. 100, App. B. Specifically, the Appendix provides that state agency recipients “may not ... approve of ... requirements for admission to ... vocational educational programs” if those admissions criteria result in discrimination against protected classes and requires that recipients must be proactive in "prevent[ing], identify[ing], and remedy[ing]” discriminatory practices by sub-recipients. *Id.*, §§ II(A)(2), II(B).⁴⁷

The Appendix explicitly bars admissions criteria that have an unjustified disparate impact on protected classes:

“Recipients may not judge candidates for admission to vocational education programs on the basis of *criteria that have the effect of disproportionately excluding* persons of a particular race, color, national origin, sex, or handicap. However, if a recipient can demonstrate that such criteria have been validated as *essential to participation* in a given program and that alternative equally valid criteria that do not have such a disproportionate adverse effect are unavailable, the criteria will be judged nondiscriminatory. Examples of admissions criteria that must meet this test are past academic performance, record of disciplinary infractions, counselors' approval, teachers' recommendations, interest inventories, high school diplomas and standardized tests, such as the Test of Adult Basic Education (TABE).”

Id., § IV.K., “Eligibility Based on Evaluation of Each Applicant Under Admissions Criteria.” (emphasis added).

The regulations also specifically state that ELs must be afforded equal access to CVTE schools:

Recipients may not restrict an applicant's admission to vocational education programs because the applicant, as a member of a national origin minority with

⁴⁷ As noted, *supra*, with adoption of its new regulations in 2021, DESE stopped its prior practice of approving or disapproving admissions policies altogether when schools submit them, thereby allowing them to go immediately into effect regardless. This failure is blatantly contrary to the state’s responsibility inherent in OCR’s regulation.

limited English language skills, cannot participate in and benefit from vocational instruction to the same extent as a student whose primary language is English.... Recipients must take steps to open all vocational programs to these national origin minority students.

Id. § IV(L).

Both USED’s general Title VI regulations and those that are specific to CVTE schools and programs resemble the analysis that courts have long relied on in anti-discrimination law, where Plaintiffs must first demonstrate that a practice disproportionately affects members of a group protected by Title VI. If successful, the burden then shifts to the Defendant, who must show the practice has a substantial legitimate justification, often referred to in the education context as an “educational necessity.”⁴⁸ Even if the Defendant is able to make that showing, a Plaintiff can still prevail by pointing to an alternative that would achieve the same legitimate objective but with less of a discriminatory effect.⁴⁹ In the context of an administrative complaint to a federal agency such as USED, however, while Complainants present the agency with information of which they are aware, it is the agency that takes on these burdens through its investigation. Further, as is the case here, educational institutions and other recipients often have affirmative obligations to proactively prevent and remedy civil rights violations independent of a complaint, which may include important aspects of elements that would be a plaintiff’s burden in litigation.⁵⁰ In this context, recipients cannot meet their federal obligations in assuring that their CVTE schools and programs are free of discrimination without themselves determining as a first

⁴⁸ *Ga. State Conf. of Branches of NAACP v. State of Ga.*, 775 F.2d 1403, 1417-18 (11th Cir. 1985); *Larry P. v. Riles*, 793 F.2d 969, 982 (9th Cir. 1984) (“In the Title VI disproportionate impact claim in the educational situation, the defendant must therefore show that any given requirement has a manifest relationship to the education in question, *i.e.*, that the [in the practices] are required by ‘educational necessity.’”)(internal citations omitted).

⁴⁹ *Georgia State Conf. of Branches of NAACP*, 775 F.2d at 1417. See generally U.S. Department of Justice (“DOJ”) *Title VI Legal Manual* <https://www.justice.gov/crt/fcs/T6manual> (updated April 22, 2021), hereinafter cited as the “DOJ Manual.”

step whether criteria being considered have the effect of disproportionately excluding students.⁵¹ And similarly, the language in OCR’s standard for admission requirements that the *recipient* must demonstrate that equally valid alternatives without such disproportionate impact are not available is consistent with those affirmative obligations.

As the DOJ Manual emphasizes, federal funding agencies play a “critical role” in enforcing the prohibition on disparate impact discrimination because discrimination frequently results “from policies and practices that are neutral on their face but have the *effect* of discriminating” and [t]hose policies and practices must be eliminated unless they are shown to be necessary to the program’s operation and there is no less discriminatory alternative.”⁵² As the Manual continues, “agencies’ critical role only increased after the Supreme Court’s 2001 decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001),” which eliminated the ability of the victims of such discrimination to seek remedies in federal court.⁵³ For these reasons, “[f]ederal funding agencies should prioritize vigorous enforcement of their Title VI disparate impact provisions both through investigation complaints and through compliance reviews.”⁵⁴

B. Section 504 and the ADA Prohibit State and Local Government Entities and Political Subdivisions from Discriminating on the Basis of Disability.

Section 504 states “[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving

⁵¹ OCR’s explicit recognition that recipients must validate CVTE admissions criteria that have disproportionately impact “*before*” using them (and which in turn depends first having determined the existence of such disproportionate impact) are consistent with those affirmative, preventative obligations.

⁵² DOJ Manual, § VII, pages 4-5, citing Memorandum from the Assistant Attorney General to heads of Departments and Agencies that Provide Federal Financial Assistance (Jul. 14, 1994).

⁵³ *Id.* at 5.

⁵⁴ *Id.*

Federal financial assistance.”⁵⁵ The ADA expands this prohibition against discrimination to state and local government services, programs, and activities regardless of whether they are recipients of federal assistance.⁵⁶ OCR also has the authority to investigate and remedy violations of Section 504 and the ADA.⁵⁷

As noted above, the Appendix to Title VI on discrimination in CVTE explicitly extends its protections to discrimination against students with disabilities. More generally, since Title VI has served as a model for subsequent anti-discrimination statutes—such as Section 504 and the ADA—courts have relied on case law interpreting Title VI as generally applicable to these later statutes.⁵⁸ Additionally, courts and investigating agencies have held that Section 504 and ADA disparate impact cases are analyzed under the analogous Title VII standard of proof.⁵⁹ The aforementioned burden-shifting analysis used in Title VII disparate impact claims is also used to analyze disability disparate impact claims.⁶⁰ To assert a disparate impact claim, an individual must allege that a facially neutral government policy or practice has the “effect of denying meaningful access to public services” to people with disabilities.⁶¹

⁵⁵ 29 U.S.C. § 504(a).

⁵⁶ 42 U.S.C.A. § 12132.

⁵⁷ USED, *About OCR*, <https://www2.ed.gov/about/offices/list/ocr/aboutocr.html> (last updated Nov. 7, 2022).

⁵⁸ DOJ Manual, § IV at 1; *see also Payan v. Los Angeles Cmty. Coll. Dist.*, 11 F.4th 729, 735 (9th Cir. 2021) (recognizing disparate impact disability discrimination claims under the ADA and Section 504).

⁵⁹ DOJ Manual, § IV at 1.

⁶⁰ *See Quad Enterprises Co., LLC v. Town of Southold*, 369 F. App'x 202, 205–06 (2d Cir. 2010); *see also Anderson v. Duncan*, 20 F. Supp. 3d 42, 54 (D.D.C. 2013).

⁶¹ *Payan*, 11 F.4th at 738. With regard to Section 504 and the ADA, this complaint does not raise claims of an individual right to CVTE nor of a failure to meet the particular educational needs of an individual student. Rather, this complaint raises claims of systemic failures in the admission policies that unjustifiably deny students equal access to all students on the basis of race, national origin, language status, or disability.

C. Carl D. Perkins Career and Technology Education Act Prohibits Discrimination and Imposes Affirmative Equity Obligations for Various Special Populations, including Students from Low-Income Families

DESE and CVTE schools and programs are also bound by the equity and non-discrimination requirements of the Carl D. Perkins Career and Technical Education Act,⁶² which apply to “special populations” that extend beyond those protected under civil rights provisions, including students from economically disadvantaged families.⁶³ Among other state and local requirements, these special populations must be protected from discrimination and provided with equal access to programs,⁶⁴ and for whom strategies are required to overcome barriers resulting in lower rates of access.⁶⁵

Students from economically disadvantaged families are regularly identified and included in state, local, and school-level data reports of admission to CVTE in Massachusetts. Although students from economically disadvantaged families are not specifically a protected class under Title VI, the ADA, or Section 504, there is significant overlap between the populations. In

⁶² 20 U.S.C. § 2301 *et seq.*

⁶³ 20 U.S.C. § 3(48), Carl D. Perkins Career and Technical Education Act (2019). The Act funds both secondary and post-secondary education programs. Under the Act, students from economically disadvantaged families are one of the recognized “special populations” and which also include individuals with disabilities, English learners, homeless individuals, youth who are in or have aged out of the foster care system, single parents (including single pregnant women), individuals preparing for non-traditional fields, youth with a parent who is an active-duty armed forces member, and out-of-workforce individuals.

⁶⁴ 20 U.S.C. §§ 122(d)(4)(C)(iv), 122(d)(9), and 134(b)(5).

⁶⁵ *Id.* at § 134(C)(2)(E). More broadly, those equity requirements apply to the full range of “equal educational opportunities and attracting, enrolling, and retaining students in those groups.” Those obligations include a variety of equal access and non-discrimination requirements; required programs, services, activities, strategies, and accommodations to enable members of special populations to succeed and meet performance standards in career and technical education; strategies to overcome barriers that result in lower rates of access to, or success in courses and programs; and information about available programs and guidance and advisement activities in a language that students and parents can understand. *See*, for example, local requirements in 20 U.S.C. § 134(b)(2)(C), (b) (5), (c)(2)(B)(i), and (c)(2)(E), as well as state level requirements, in Section 122(d)(4)(C)(i), (iv), and (vii), (d)(9), and (d)13), that cannot be fulfilled without local action, as well as requirements for addressing student performance gaps, in sections 113 and 124(a)(2), and improvement plans, in section 123.

addition, the fact that DESE and CVTE schools have affirmative obligations under the Perkins Act to break down barriers to equal opportunity for low-income students underscores that admissions criteria that disproportionately exclude such students cannot be deemed to be "educationally necessary," as discussed below.

D. DESE's Decision to Continue to Allow CVTE Schools and Programs to Use the Exclusionary Admissions Criteria Violates Multiple Federal Laws.

The policies that have been adopted for admission to CVTE schools and programs violate federal law yet DESE has continued to allow their adoption and use.

1. The Use of the Exclusionary Admissions Criteria in Schools' Policies across Massachusetts Has a Disparate Impact on Students of Color, ELs, and Students with Disabilities, as well as on Students in Economically Disadvantaged Families.

DESE gives CVTE schools and programs broad discretion in administering their admission processes, allowing them to use the Exclusionary Admissions Criteria (*i.e.*, grades, attendance, discipline, guidance counselor recommendations, and interviews). The result is that students of color, ELs, and students with disabilities are offered admission to CVTE schools and programs at rates far below those who are not in protected classes, as the charts on pages 14, 15 and 20 illustrate.

In fact, the discriminatory impact of the Exclusionary Admissions Criteria is even greater than shown above, given that this data considers only those students who actually *applied* to CVTE schools and programs. It does not consider students such as Complainants Elder Doe and Ingrid Doe who were *deterred* from applying because of criteria they knew would systematically

work against them. Courts have routinely held that the deterrent effect of discriminatory policies should be considered in assessing disparate impact.⁶⁶

These cumulative disparities are, unfortunately, not surprising—because each of the individual Exclusionary Admissions Criteria that DESE allows are themselves well known to have a disparate exclusionary impact on students of color, ELs, and students with disabilities.

In what follows, each of the most common criteria used in the local admissions policies is examined through the lens explicitly called for in the law: looking directly at the *criterion* to determine whether they have the effect of disproportionately excluding members of a protected class. The analysis also demonstrates that the data is readily available to answer that question (in each case affirmatively), *before* the policy is adopted and used to exclude students, as the law requires. Further it provides the basis for determining whether the criteria disproportionately exclude from among the entire pool of students eligible to apply -- i.e., the 8th graders from the sending middle schools. This direct focus on the criteria themselves is in stark contrast to the approach not only permitted but fostered by DESE, which relies on data that can only be found *after* the policy has been adopted and used to exclude certain students, and which even then (for reasons explained *infra*, cannot provide an accurate measure of the extent of exclusion.

Grades reflect the achievement gaps for students of color, ELs, and students with disabilities, as well as students from economically disadvantaged families that are the endemic norm throughout Massachusetts, as in other states. The gap is readily apparent in the disaggregated student achievement data from the state’s academic assessments in the publicly

⁶⁶ See *Dothard v. Rawlinson*, 433 U.S. 321, 330 (1977) (discussing how “[t]here is no requirement ... that a statistical showing of disproportionate impact must always be based on analysis of... actual applicants” given that “[t]he application process might itself not adequately reflect the actual potential applicant pool, since otherwise qualified people might be discouraged from applying because of a self-recognized inability to meet the very standards challenged as being discriminatory”) (internal citations omitted).

available annual report cards for every school, including each of the middle schools that feed into CVTE high schools and comprehensive schools with CVTE programs.⁶⁷ That data is for the entire pool of students in the grade prior to entry into the high school – which is the correct metric for determining which students are excluded by the criteria, not only those who choose to apply.

In addition, the federal Civil Rights Data Collection required by OCR contains disaggregated data for each middle school displaying the pervasiveness of disparities in Algebra 1 enrollment and completion as well as geometry completion.⁶⁸ By allowing grade ranking for admission to CVTE schools and programs, DESE harms students like Complainant Ingrid Doe and Juan Doe, whose grades – though they may be below those of some other students – were more than sufficient to allow successful completion of middle school. If OCR wants additional evidence on whether disparities exist in grades, it certainly has the authority to ask the feeder middle schools to provide disaggregated grade data for the pool of all 8th graders – as can the schools with CVTE programs themselves. The overarching point is that whether by looking at grades themselves or at the other achievement markers in the state report cards or the OCR data collection,⁶⁹ there is more than enough data to confirm the endemic reality that use of grades

⁶⁷ See DESE, *School and District Report Cards*, <https://reportcards.doe.mass.edu/> (last visited Feb. 1, 2023).

⁶⁸ See DESE, *Civil Rights Data Collection (CRDC)*, <https://www2.ed.gov/about/offices/list/ocr/data.html> (last updated Jan. 24, 2023). Additionally, grades have been identified as unreliable measurements because teachers may use different methods to calculate grades, and teachers may include students' behavior in grades. See Laura J. Link & Thomas R. Guskey, *How Traditional Grading Contributes to Student Inequalities and How to Fix it*, Wash. State: ASCD (2019), 1, <https://wsascd.org/wp-content/uploads/2-How-Traditional-Grading-Contributes-to-Student-Inequalities.pdf>. Due to the mixture of factors weighed at a teacher's discretion, grades are often not dependable indicators of students' performance. *Id.* Further, akin to discipline, grades are often informed, at least in part, by teachers' implicit biases, resulting in students of color and boys being especially susceptible to getting lower grades. See Thomas Rudd, *Racial Disproportionality in School Discipline: Implicit Bias is Heavily Implicated*, KIRWAN INST. FOR THE STUDY OF RACE AND ETHNICITY, 1, 3 (Feb. 5, 2014), <https://kirwaninstitute.osu.edu/sites/default/files/2014-02/racial-disproportionality-schools-02.pdf>.

⁶⁹ OCR may properly rely on all that data in concluding that using grades as an admissions criterion has a disproportionately negative impact on students in protected classes. The DOJ Manual clearly contemplates the use

will disproportionately exclude students in one or more protected class *before* schools and programs use them and must therefore either abandon or properly validate them in advance.

School discipline has been studied extensively and is known to create persistent racial disparities and inequalities within the educational landscape. Research has shown that school suspensions have rapidly increased since the 1970's, and rates specifically for non-white students have more than doubled.⁷⁰ Black and Brown students in particular are disciplined and suspended at higher rates. For example, an OCR study found that Black boys were suspended at rates three times their share of the total student enrollment.⁷¹ Further, a 2009-2010 survey of 72,000 elementary and high schools showed that while Black students only made up 18% of the student population of the surveyed schools, they accounted for 35% of students who were suspended once; 46% of those suspended more than once; and 39% of students expelled.⁷² This was also true of students with disabilities, and the disparities worsened when the data was disaggregated by race.⁷³ Massachusetts is not immune from these trends.⁷⁴ A study of DESE's disciplinary data from 2012-17 found that students of color, ELs, and students with disabilities continue to exceed their counterparts in losing class time due to discipline.⁷⁵ Nevertheless, DESE's elimination of minor discipline offenses from criteria for admissions does not change the fact

of this kind of related data that has some variations from the exact criteria being used that do not undermine the association [quotes and citations].

⁷⁰ See Daniel J. Losen, *Discipline Policies, Successful Schools, and Racial Justice*, NAT'L EDUC. POLICY CTR. (Oct. 2011) 4, <http://nepc.colorado.edu/publication/discipline-policies>.

⁷¹ DOE, OCR, *An Overview of Exclusionary Discipline Practices in Public Schools for the 2017-18 School Year* (June 2021), <https://ocrdata.ed.gov/assets/downloads/crdc-exclusionary-school-discipline.pdf>.

⁷² Rudd, *supra* note 68 at 1.

⁷³ See Tamar Lewin, *Black Students Face More Discipline, Data Suggests* (Mar. 6, 2012) https://www.nytimes.com/2012/03/06/education/black-students-face-more-harsh-discipline-data-shows.html?_r=0.

⁷⁴ Joanna Taylor & Matt Cregor, *Unfinished Business: Assessing Our Progress On School Discipline Under Massachusetts Chapter 222*, LAWYERS FOR CIVIL RIGHTS (Sept. 2018) 5, <http://lawyersforcivilrights.org/our-impact/education/report-on-discipline/>.

⁷⁵ *Id.* at 15-20.

that disparities exist pervasively in imposition of more severe discipline as well. Further, “minor” offenses can continue to negatively and disparately affect the recommendations that middle school staff provide, for the same reasons discussed here, and even if not cited by the staff. Additionally, as OCR and other civil rights offices are well aware, there is a pervasive tendency, both within and outside of schools, for minor incidents to get turned into major ones for people of color, people with disabilities, and people with limited English proficiency more often than for other people.

More specifically for purposes of this complaint, both the Massachusetts school report cards and OCR’s Civil Rights Data Collection contain the disaggregated disciplinary data and extent of the disproportion for the pool of each middle school that feeds into a high school with CVTE programs.

A similar outcome is found when looking at **student attendance**. Nationally, Black and Brown students have higher rates of absenteeism, 40% and 17% higher respectively, compared to white students.⁷⁶ The reasons often cited by students for having an unexcused absence include taking care of a younger sibling, helping an elderly family member, or lack of transportation— issues that are more likely to impact students of color and economically-disadvantaged families.⁷⁷ For similar reasons, students with disabilities are about 50% more likely to be chronically absent compared to their counterparts.⁷⁸ These disparities have only grown since the advent of the COVID-19 pandemic, which has wreaked havoc in particular on communities of

⁷⁶ DOE, *Chronic Absenteeism in the Nation’s Schools: A Hidden Educational Crisis*, <https://www2.ed.gov/datastory/chronicabsenteeism.html> (last updated Jan. 2019).

⁷⁷ Carolyn Jones & Daniel J. Willis, *New California Absenteeism Data Shows Big Discrepancies Between White, Black Students*, EDSOURCE (Dec. 23, 2020), <https://edsource.org/2020/new-california-absenteeism-data-shows-big-discrepancies-between-white-black-students/645485>.

⁷⁸ *Id.*

color and immigrant communities; indeed, DESE has documented a spike in chronic absenteeism, particularly from students of color, ELs, and students with disabilities since the start of the COVID-19 pandemic.⁷⁹ Here again, specific, disaggregated data showing the disparities for each middle school in the state are found in the school’s annual report card.

The remaining two categories of the Exclusionary Admissions Criteria—guidance counselor recommendations and interviews—also are well known to disproportionately impact students from protected classes. **Recommendations** and **interviews** are criteria that can also have a disproportionately negative impact on students of color, ELs, and students with disabilities. Teachers’ implicit biases have been shown to influence their expectations for academic success.⁸⁰ For example, in a 2003 study, teachers perceived students displaying a “black walk” as lower in academic achievement, more aggressive, and more likely to need special education services.⁸¹ These teachers’ and school administrators’ lower academic expectations may influence both recommendations and evaluation of interview performance.

In the employment context, courts have repeatedly acknowledged that the “subjectivity necessarily introduced by the interview process can mask discrimination.” *Hicks v. Johnson*, 755 F.3d 738, 746 (1st Cir. 2014); *see also Hamilton v. Geithner*, 666 F3d 1344, 1357 (D.C. Cir.2012) (expressing concern “about the ease with which heavy reliance on subjective criteria may be used to ‘mask’ or ‘camouflage’ discrimination”). More broadly, courts have cautioned that “discrimination is more likely where subjective rather than objective criteria are used.” *Danville v. Regional Lab Corp.*, 292 F.3d 1246, 1252 (10th Cir. 2002).

⁷⁹ Naomi Martin, *40 Percent of Boston high School Juniors and Seniors are Chronically Absent, Raising Concerns About Their Futures*, BOSTON GLOBE (Feb. 28, 2021), <https://www.bostonglobe.com/2021/03/01/metro/40-percent-boston-high-school-juniors-seniors-are-chronically-absent-raising-concerns-about-their-futures/>.

⁸⁰ Rudd, *supra* note 68 at 3.

⁸¹ *Id.*

Such is the case here, particularly where DESE fails to provide CVTE schools and programs with objective criteria to assess guidance counselor recommendations and interviews, to the detriment of students like Complainant Juan Doe. This is especially alarming because without DESE's guidance, CVTE schools and programs are free to place considerable weight on these subjective criteria, using any factors the schools desire. Notably, many CVTE schools and programs weigh the interview component the highest, making interviews outcome-determinative for a large proportion of applicants.⁸²

Further, when CVTE admissions policies *do* spell out rubrics or other guidance for recommendations, there is often a focus on the same factors that are captured by academic performance, attendance, and discipline – factors where there clearly *are* pervasive disparities. Further, ELs, students with disabilities, students of color, as well as students from economically disadvantaged households may be disproportionately at a disadvantage in interviews, because of language, vocabulary, culture, experience and ease in an interview setting.

In sum, all of the Exclusionary Admissions Criteria – individually and cumulatively – disproportionately exclude students in protected classes. In addition, there are overarching flaws in DESE's approach to admissions policies that undermine the federal laws it is duty-bound to implement. First, neither DESE nor schools with CVTE programs that rely on the Exclusionary Admissions Criteria has ever properly analyzed the disproportionate disadvantage that *these criteria* have on students from particular groups, as the law requires, let alone validated them as essential to participation. This failure creates multiple problems that undermine the protection of students' civil rights:

⁸² Exhibit B at 23.

- At the front end, and most obviously, it undercounts the extent of disparate impact in two ways:
 - First, it fails to account for all the students who are excluded by the criteria but do not apply because they, their counselors and teachers, or their parents are aware of the criteria and believe their chances of getting admitted are not good.
 - Second, DESE's focus on the outcomes, in terms of whether the students who are admitted mirror the population of the sending schools, instead of whether *the criteria* disproportionately exclude fails to recognize that the latter, which is the legal touchstone, can be true even if there is such balance.
- But the harms and violations accumulate past that initial failure:
 - First, by misfocusing the disparate impact inquiry on the proportion of students accepted, the prohibited use of criteria that have the effect of disproportionately excluding without having been validated as essential to participation, and indeed even the recognition that there is a need to validate them, which hinges on identifying the disparity, is not recognized until *after* students have been admitted or rejected, if at all, thereby resulting in discrimination that cannot easily be undone. As described above, the required but ignored focus on *the criteria* (i.e., Exclusionary Admissions Criteria) and whether they disproportionately exclude students from protected classes can be determined in advance.
 - Second, DESE's approach permits violations to *never* be recognized and remedied. Under DESE's approach, there is no need to inquire into whether

admissions criteria are disproportionately excluding students from protected classes, so long as students in CVTE schools or programs are proportionate to those in their sending schools, regardless of how many students from protected classes might want to attend. In other words, this essentially creates a quota system, in which once that proportionate number has been reached, there are no protections against discriminatory admissions policies. Indeed, in the absence of discriminatory criteria, students of color, ELs, students with disabilities, and economically disadvantaged students, who disproportionately have fared less well in traditional academic settings, may well seek to apply to CVTE schools in greater numbers than their peers. Further, the steps that CVTE schools and programs may take to mirror the enrollment from their sending schools' populations – *i.e.*, by recruiting students from these populations who have higher scores – does absolutely nothing for the students who are excluded by those criteria or to reduce their numbers at all (and in the case of students with disabilities and ELs also becomes a form of illegal creaming in which students with greater needs are excluded). The right at stake here is not a group right to be in a CVTS school or program that mirrors the home school population. It is an individual right to a chance to attend free of any discriminatory admission criteria.

These issues are examined at greater length in the VEJC, *Recommended Changes*, in Section I.A. (“Criteria that have the effect of disproportionately excluding persons in protected classes,” at pp. 3-6), which was ignored by DESE and which Complainants urge OCR to review carefully.

2. DESE's Practice of Allowing CVTE Schools and Programs to Use the Exclusionary Admissions Criteria is Not Justified by Educational Necessity.

The current disparate impact on students of color, ELs, and students with disabilities caused by DESE's practice of permitting CVTE schools and programs to use the Exclusionary Admissions Criteria is not justified by any educational necessity.⁸³ Schools' continued, systematic adoption of admissions criteria that are contrary to law are traceable to two broad state-level failures by DESE: (1) failure to ensure that schools fully understand and implement the meaning of what it takes to demonstrate that they have validated the criteria as essential to participation; and (2) failure to recognize that using criteria to rank order applicants and select the highest-scoring ones is simply incompatible with identifying and validating criteria as essential to participation.

Lack of adequate guidance on validation. The applicable regulations are stringent in what is required to establish educational necessity for CVTE schools and programs' admissions policies under Title VI: a recipient must "*demonstrate* that such criteria have been *validated* as *essential* to participation in a given program....".⁸⁴ The fact that recipients must "demonstrate" necessity highlights that they may not rely on assumptions and suppositions in defending its practices, but rather has the burden of showing necessity. Moreover, such a demonstration must be "validated" – a term of art in anti-discrimination law that requires in-depth expert analysis.⁸⁵ Finally, the validated demonstration must show not just that the admissions criteria might be

⁸³ See 34 C.F.R. pt. 100, app. B.

⁸⁴ See 34 C.F.R. pt. 100, app. B (emphasis added).

⁸⁵ The Equal Employment Opportunity Commission (EEOC) has promulgated extensive guidelines for how to conduct validity studies in the employment context. See 29 C.F.R. §§ 1607, § 1607.14. The guidelines emphasize that such validity studies must be rigorous, and that "[u]nder no circumstances will the general reputation of ... [a] selection procedure [],... or casual reports of its validity be accepted in lieu of evidence of validity."

preferable for some reason; rather, the showing must be that the criteria have been validated as “essential” to participation. DESE cannot come close to meeting that legal standard.

Without considerable guidance from DESE, CVTE schools and programs lack the experience in carrying out this complex and rigorous task with fidelity and have become accustomed over the years to assuming, rather than proving, the legitimacy of their existing criteria, which have been regularly reviewed and accepted by DESE. Thus, the Coalition’s recommendations to DESE included the need for such comprehensive guidance and proposed a succinct set of key basic elements of that validation process for regulation and guidance, along with materials to be provided by schools in support of proposed admissions policies. These proposed elements are consistent with both legal and professional standards for validation. In fact, the section of the DOJ’s Manual on disparate impact cites with approval an earlier OCR guide to high-stakes testing that is also consistent with these recommendations.⁸⁶ None of these recommendations were adopted by DESE. Complainants request that OCR read and consider these recommendations,⁸⁷ which are not incorporated into the body of this complaint, in its investigation and its shaping of remedies.

Undoubtedly, the reliance on the Exclusionary Admission Criteria is antithetical to CVTE’s purpose (*i.e.*, an alternative path to traditional education) and counterproductive as it allows the exclusion of capable and talented students of color, ELs, and students with

⁸⁶ DOJ Manual, § VII(C)(1)(c)(iv) (noting that “in general, a test has a disproportionate adverse impact if a statistical analysis shows a significant difference from the expected random distribution of test scores and pointing out that different courts have used different methods for determining disparate impact.”) (citing DOE, OCR, *The Use of Tests as Part of High-Stakes Decision-Making for Students: A Resource Guide for Educators and Policy-Makers* (December 2000) <https://www2.ed.gov/offices/OCR/archives/pdf/TestingResource.pdf>). While the guide is archived, its descriptions of case law and legal professional standards and interpretations remain relevant, as DOJ implicitly recognizes.

⁸⁷ **Exhibit A**, Section I.C. (Elements of validating criteria as essential for participation, at pp. 6-8) and Section II.A. (Specifying the materials to be provided by schools and programs in support of proposed admission policies, at p.14).

disabilities. Historically, CVTE was a space where students like Complainant Aaron Doe who may have preferred a different method of instruction compared to the conventional education system, and students who may have had disciplinary or attendance issues could also prosper. This should remain true today: CVTE should not deviate from this tradition as these students should be precisely whom CVTE schools and programs welcome. DESE has failed to provide any information—much less a validated demonstration—as to why the Exclusionary Admissions Criteria are essential to participation in CVTE schools and programs.

Unlawful use of rank ordering. DESE’s decision to allow CVTE schools and programs to rank-order applicants is particularly contrary to governing federal law, as well as to common sense. For example, DESE allows CVTE schools and programs to rank-order based on grades, and many schools do exactly that. *See Exhibit B.* In a world of limited spots, an “A” student will often be accepted, while a “B” student will be rejected. But DESE has not shown—much less put forth a validated demonstration—that having an “A” average is *essential* to participation in CVTE. Indeed, the fact that the “B” student would be admitted if no “A” students applied demonstrates that having an “A” average is *not* essential to participation. As such, the type of rank-ordering that DESE allows CVTE schools and programs to engage in regularly—and that disproportionately impacts students of color, ELs, and students with disabilities—is a clear violation of federal law. Put another way, if schools use criteria to rank order students and select the highest scoring ones for admission, students are not being denied admission because they have been determined to lack what is “essential to participation.” They are being denied admission because of the scores of *other* students. When USED’s Title VI regulations were first promulgated, USED changed the regulatory language to address this exact issue by adding the “essential to participation” language. During the notice-and-comment period, commenters

pointed out that the proposed regulations, which required validation of criteria as “predictors of success,” would permit admissions criteria that excluded protected classes “merely by demonstrating that the students admitted were more likely to succeed in the program,” citing the case of an “A” student admitted over a student with a lesser grade. 44 Fed. Reg. 17172 (March 21, 1979) (attached as **Exhibit C**). The Department specifically accepted the suggestion to require instead that criteria be “essential to participation,” stating that:

[t]he use of criteria like grade point average, to justify priority admission of students with exceptional attainments or scores may disproportionately exclude protected group persons. If such disproportionate exclusion occurs the criteria or standards must be validated as essential to participation in a program *before* they may be used by a recipient.

Id. (emphasis in original). Yet DESE is now allowing this exact problem to persist, without any prior validation of necessity.

The same problem occurs with the other Exclusionary Admissions Criteria as well. For example, if DESE cannot validate that having perfect attendance is “essential” to participation in a CVTE program—which it cannot—then allowing CVTE schools and programs to rank-order based on a student’s attendance is contrary to federal law.

DESE cannot turn a blind eye to this unjustifiable exclusion of students of color, ELs, and students with disabilities. DESE’s sustained practice of allowing CVTE schools and programs to use the Exclusionary Admissions Criteria has no substantial legitimate justification in light of the relevant research and current reality for students of color, ELs, and students with disabilities who have an interest in CVTE.

Strong additional confirmation that the criteria being used cannot meet the test of educational necessity. Students who have been admitted to CVTE schools based on a lottery and are thriving illustrate why the problematic practice of rank-ordering is contrary to federal

law and should not be allowed to persist. For example, the experience of Edward Doe⁸⁸ vividly demonstrates the reality that the criteria being used for admissions are clearly *not* “essential for participation” in CVTE programs. Greater New Bedford Regional Technical High School’s (“GNBRTHS”) admission policy sets aside a limited number of seats for which students are selected by lottery, where every applicant has an equal chance of being admitted, with the remainder of the seats allotted through selective admission criteria of the kind used in other CVTE schools. Edward Doe did poorly in middle school, including failing his courses, having disciplinary problems, and frequently arriving at school late, but he was admitted to GNBRTHS through the lottery and has done very well there, getting B’s and C’s, attending school on time, without disciplinary issues. He is concrete proof that the selective criteria being used to screen out students are simply not essential to participation.

One other aspect of DESE’s regulations inadvertently but clearly also displays that none of the criteria considered and used by schools to exclude students, even independent of the problem of ranking them, can pass muster as essential to participation. DESE’s regulations state: “Vocational schools and programs whose admission policies include selective criteria may apply the criteria only when there are more applicants than seats.”⁸⁹ While Complainants are certainly glad for that limitation, it reveals that the criteria must not be essential for participation – since it requires that when there are enough seats, the applicants can and must be permitted to participate, whether they meet those criteria or not.

⁸⁸ Complainants can provide further information about Edward Doe (a pseudonym) during the investigative process. He is not a Complainant because, unlike the individual Complainants, he applied to and was admitted to a CVTE school.

⁸⁹ 603 C.M.R. 4.03(6)(a).

3. Even If DESE's Practice of Allowing CVTE Schools and Programs to Consider the Exclusionary Admissions Criteria Were Justified by Educational Necessity, Which it is Not, Less Discriminatory Alternatives Exist.

It is premature for Complainants, or OCR, to propose particular alternatives, since CVTE schools and programs have not identified and established any criteria that have been demonstrated to have been validated as essential to participation, and Complainants doubt that is possible. Further, were a school to do so, then *it* would also be responsible for demonstrating that no such alternatives are available.⁹⁰

The Coalition, in its recommendations to DESE on its regulations, did, however, propose two things (that were, like its other recommendations, not accepted). They would be applicable in considering alternatives to *any* criteria validated as essential to participation, in addition to those particular alternatives that would need to be tailored in light of the criteria determined to be valid:

(1) That schools, in considering whether such alternatives are available, solicit potential alternatives from a wide variety of sources;

(2) That any student who fails to meet validated criteria for admission must be provided a full opportunity to explain why they nevertheless are able to participate in the school or program. The addition of more individualized information will add to the validity of the decision, while reducing the number of students negatively impacted by the criteria; and that, for similar reasons, it should be part of the initial decision-making process, rather than only an appeal from a decision to exclude.

⁹⁰ 34 C.F.R. pt. 100, app. V § IV(K).

The full language of VEJC’s recommended regulations on these points, along with explanations, may be found in VEJC’s “*Recommended Changes*,” Sections I.C. and I.D. (pp. 9-10).

4. Selective admission policies for entry into particular CVTE programs *within* schools have similar discriminatory flaws under the same legal requirements, with serious consequences for students.

Students of color, ELs, students with disabilities, and students from low-income families face an additional barrier to their participation in CVTE: admission to specific career-technical programs.⁹¹ The civil rights requirements, on their face, apply equally to individual programs: “[r]ecipients may not judge candidates for admission to vocational education *programs* on the basis of criteria that have the effect of disproportionately excluding persons of a particular race, color, national origin, sex, or handicap...”.⁹²

Yet many CVTE schools and programs admit students using discriminatory criteria very similar to those they use to admit students to the school in the first place. They typically use a 100-point scale that incorporates consideration of such exclusionary criteria as grades and attendance. For instance, consider the following examples at RVTS:

- **Tri-County Regional Vocational Technical**. This school ranks students for admission into particular programs on a 100-point scale as follows: Overall exploratory grade average [40 possible points], grade in first choice program [20 possible points]; conduct/behavior [20 possible points]; attendance [20 possible points];

⁹¹ In all vocational technical schools and most traditional comprehensive high schools that have some CVTE programs, students first spend a half-year or full year in exploratories where they rotate among different career program areas before moving into a program in a specific area. All CVTS schools, as well as all regular high schools with CVTS programs (regardless of whether they have exploratories), have admissions policies for entry into the specific programs, which are filed with DESE.

⁹² 44 FR 17166 (March 21,1979) (emphasis added).

- **Greater Lawrence Regional Vocational Technical**: This school ranks students for admission into particular programs on a 100-point scale as follows: Arrival and Preparedness [20%]; Conduct, Safety and Respect [20%]; Participation [20%]; Completion of Project(s) and Workmanship [40%]”. Students are admitted on a ranking formula with exploratory average using the above criteria [40%]; first choice program average [30%]; second choice program average [20%]; third choice program average [10%]);
- **Greater Lowell Technical High School**: This school ranks students for admission into particular programs on a 100- point scale as follows: Safe Use of Equipment, Efficient Use of Shop Specific Tools, and Material Use [10 possible points]; Performance Assessment [50 possible points]; Coursework/Project Completion [20 possible points]; Employability Skills [20 possible points]);
- **Southeastern Regional Technical High School**: This school ranks students for admission into particular programs on a 100-point scale as follows: All first semester grades [25%]; attendance [25%]; behavior [25%]; vocational experience [25% - consists of scores on employability, work readiness and professionalism].

Similar discriminatory criteria are used within comprehensive high schools that administer

Chapter 74-approved programs. For example:

- **Waltham Public Schools** (“All students applying for Chapter 74-approved program admission will be assigned points based on their performance on the following criteria: grades [45 possible points]; safety & health [30 possible points]; student statement of interest [15 possible points]; teacher recommendation [10 possible points]”);

- **Pittsfield Public Schools** (“The grade is scored by a rubric and the categories used to arrive at the grade are set as follows: 25% for safety, 25% for daily work, 40% for project grades, and 10% for attendance. 100 is the maximum grade per rotation. At the end of the cycle of rotations, each student is asked to apply for their top three choices of the CVTE programs. They will receive a composite score for placement that is arrived at by adding the number grade from all rotations together and then adding the number grade of the three programs the student chose. The larger the number the more likely a student will get his or her choice.”).

Whether students are able to enroll in the particular career area of their interest, or instead are told that they can participate only in an entirely different career field, is no small matter. While enrollment into a non-desired program should not ultimately be limiting in terms of a student acquiring higher-order critical thinking and transferable academic and technical skills⁹³ that is not always the reality, as career program areas within a school can and do differ in program quality, academic strength, and the career pathways to which they may lead in terms of income, professional responsibility, authority, and room for advancement. Program placement is a potentially momentous decision for the career direction of these students’ lives, a decision that students have a right to make free from discrimination.

It is critical that OCR address the existing use of discriminatory criteria in admission to specific CVTE programs simultaneously with admission to schools, as the history of school desegregation has taught us that opening the school door to previously excluded students can lead to greater segregation *within* the school. To truly allow students of color, ELs, students with

⁹³ Presuming the student was in a program that provided, among other things, a comprehensive understanding of and strong experience in all aspects of an industry and integrated academic/technical instruction and curricula.

disabilities, and students from low-income families to gain equitable access to CVTE programming, OCR must address not only the elimination of discriminatory barriers in admission to CVTE schools and programs, but also discrimination at the program-level.

F. Disregard for Violations of 34 C.F.R. Part 100, Appendix B Subsection (IV)(F) [Eligibility for Admission to Secondary Vocational Education Centers Based on Numerical Limits Imposed on Sending Schools]

Many regional CVTE schools also allocate fixed numbers of slots for admission to each of the sending schools based on the enrollments in those sending schools, without regard to whether that allocation system disproportionately excludes students on the basis of race, sex, national origin, or disability. This too is explicitly barred by civil rights law:

“A recipient may not adopt or maintain a system for admission to a secondary vocational education center or program that limits admission to a fixed number of students from each sending school included in the center’s service area if such a system disproportionately excludes students from the center on the basis of race, sex, national origin or handicap.”⁹⁴

To give a concrete example, assume 25 percent of a school district’s students are Black and that most of those Black students are enrolled in one high school; the white students, 75 percent of the district’s total enrollment, are generally enrolled in the five remaining high schools. This paragraph prohibits a system of admission to the secondary vocational education

⁹⁴ 34 C.F.R. pt.100, app. B, § (IV)(F).

center that limits eligibility to a fixed and equal⁹⁵ number of students from each of the district's six high schools.”⁹⁶

Evidence of this violation is readily apparent in the rates of regional schools' acceptance of students broken down by sending middle schools. The differences between schools in this situation are not based on admissions criteria; they are based strictly on how many students in a middle school apply relative to their allotment of seats. In one school that is allotted 40 seats, only 39 students apply, so everyone who applies has a 100% chance of being accepted. In another, also allotted 40 seats but 60 apply, the acceptance rate is only 67% -- one of every three students will be rejected. Whenever the acceptance rate at a middle school that has higher proportions of students of color, ELs, or students with disabilities is lower than the acceptance rates of other feeder schools for that high school, the prohibited violation is occurring, and applicants from that school have a lower chance of getting in than others. In other words, in that case, students in a school with higher concentrations of students of color, ELs, or students with disabilities.

Higher application rates (and thus lower rates of acceptance) can occur for reasons not entirely random. To the very real degree that students who have struggled more in the academic programs of their home schools are (a) more likely to be interested in the alternative path of integrating academic and vocational-technical education, (b) are disproportionately students of color, ELs, or students with disabilities (as well as students from economically disadvantaged

⁹⁵Note: The addition of the words “and equal” in the example, and which do not appear in the mandate itself, may be misleading. Some sending schools are much larger than others, in which case the fixed number (the operative feature) allotted to each sending school may not be equal. But the issue is whether the fixed number of seats results in students in the predominantly Black school having a lower chance of being accepted in the CVTE school. If a greater percentage of the students in the predominantly Black sending school want to go to the CVTE school in the predominantly white sending schools, then applicants from the predominantly Black school will have a lower rate of being accepted.

⁹⁶ 34 C.F.R. pt.100, app. B, § (IV)(F). § (IV)(G) provides that if OCR finds a violation of § (IV)(F) in allocating seats to schools, the recipient must implement an alternative that does not result in any such disparate exclusion.

students), and (c) are concentrated in particular middle schools within a region—as is often the case – the allocation rules produce disproportionate exclusion.⁹⁷

This problem currently exists, with seats allocated to sending schools without regard to the civil rights prohibition. It is also likely to grow once the discriminatory individual admissions criteria are eliminated, since – as noted above – those criteria artificially depress the numbers of students who apply because they or their teachers and counselors believe they will not score high enough on those criteria.

V. Conclusion and Relief Requested

Notwithstanding the advocacy surrounding this issue and potential alternatives at its fingertips, DESE has failed to secure equitable access to all students. DESE’s practice of allowing CVTE schools and programs to use the Exclusionary Admissions Criteria is completely at odds with Title VI, Section 504, the ADA, and implementing regulations. The disproportionate exclusion of students of color, ELs, and students with disabilities is long-standing and significant.

DESE has failed to demonstrate that allowing use of the Exclusionary Admissions Criteria is educationally necessary; to the contrary, all available evidence indicates that use of the criteria is harmful from an educational perspective.

⁹⁷ Additional related factors contributing to this phenomenon can include (i) greater satisfaction by students and parents with the prospect of the local comprehensive high school in local districts serving more affluent, disproportionately white, families and often having better resources, more individual attention, and/or higher academic results than the high school serving lower predominantly lower-income families that are disproportionately of color; (ii) a greater degree of assumption among many more affluent families that of course their children are on an academic track with baccalaureate and graduate school aspiration, in which the notion of vocational programs is not given much thought (which still exists despite the fact that the appeal and academic success of high-quality CVTE programming has drawn more students to them as a path to college than in an earlier era); and (iii) to the extent that the more affluent, whiter local school districts within a region are sometimes smaller suburbs with fewer students and fewer elementary and middle schools feeding into a single local high school, students may have a greater reluctance to leave their long-time friends.

In light of DESE's failure to identify and address this blatant pattern of discrimination and exclusion of students of color, ELs, and students with disabilities, and the continued adoption and submission to DESE of local policies for admission to CVTE schools and programs across the entire state that are in violation of federal law, Complainants respectfully request that the USED:

- 1) conduct a comprehensive investigation of DESE's policies and practices regarding admission to CVTE schools and programs;
- 2) issue declaratory relief in finding that the admissions policies now in use violate the civil rights requirements addressed in this complaint;
- 3) ensure DESE's and CVTE schools and programs' compliance with Title VI, Section 504, the ADA, and their implementing regulations, including prohibiting the use of the Exclusionary Admissions Criteria;
- 4) require the immediate prohibition of (a) any further use by CVTE schools and programs of policies that use the Exclusionary Admissions Criteria and (b) any subsequent adoption or implementation of such policies, until DESE ensures equitable admissions exist in CVTE schools and programs to all students, as required by federal civil rights law;
- 5) incorporate VEJC's "Recommended Changes" as a road-map to required remedial steps by DESE; and
- 6) remove numerical limits on sending schools to the extent those limits disproportionately exclude students from protected classes.

Dated: February 2, 2023

Respectfully submitted,

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EXHIBIT A

Vocational Education Justice Coalition

Recommended Changes in the Proposed Regulations for Admission to Career/Vocational Technical Schools and Programs

Full Version (including explanations)

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Vocational Education Justice Coalition

Recommended Changes in the Proposed Regulations for Admission to Career/Vocational Technical Schools and Programs

Full Version

Introduction

The Vocational Education Justice Coalition is comprised of 19 community, civil rights, and labor union groups. The coalition formed more than two years ago with the express purpose of eliminating discriminatory state regulations that enable vocational schools to use exclusionary, selective admissions criteria to enroll students, which has resulted in disproportionate numbers of students of color, students with disabilities, students from economically disadvantaged families, English language learners, and students with disabilities being denied entry into vocational schools and programs.

Under the Department's existing regulations, vocational technical schools and programs are allowed to select students for admission based on their middle school grades, attendance records, and disciplinary records, along with guidance counselor recommendations, and, in some cases, interviews. These factors are well established as disproportionately excluding students of color, students with disabilities, students from economically disadvantaged families, and English language learners. As a result, data collected by the Department demonstrate that students from these populations who apply to vocational programs are consistently admitted at lower rates than students from more privileged backgrounds. In addition, the use of these admissions criteria deters students from these backgrounds from even applying to these programs because of their reduced likelihood of being admitted. The resulting exclusion from these public schools of many students of color, economically disadvantaged students, English Learners, and students with disabilities contravenes fundamental norms of social and economic justice and violates well established legal protections of civil rights.

In response to widespread concern about use of these discriminatory policies, the Department has proposed significant revisions of its regulations governing vocational technical school admission policies. The most crucial aspect of the Department's proposed regulations is its explicit incorporation of the federal civil rights standard that has long applied to vocational-technical programs and schools but has not been implemented and enforced in Massachusetts:

“[V]ocational schools and programs using selective criteria shall not use criteria that have the effect of disproportionately excluding persons in protected classes unless they can demonstrate that (1) the criteria have been validated as essential to participation and (2) alternative equally valid criteria that do not have such a disproportionate adverse effect are unavailable.”¹

¹ This language comes from 34 C.F.R. Part 100, Appendix B (Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs), Section IV.K.: ““Recipients [of federal funds] may not judge candidates for admission to vocational education programs on the basis of criteria that have the effect of disproportionately excluding persons of a particular race, color, national

The Vocational Education Justice Coalition is pleased with the Department’s focus on this vital standard that has long been ignored. In a society stratified by race, income, language, and disability, the Coalition believes that as public schools the one criterion that is likely to meet this civil rights standard is graduation from eighth grade, with a lottery held for all rising ninth grade students who apply.

If BESE and the Commissioner reject this solution, in our best efforts to work with DESE’s proposal, we see possible amendments to the proposal which would at least reduce some of the current discrimination that is likely to continue. However, we must be clear that the revised regulations, even with these amendments, allow schools to selectively exclude students who have been determined ready for 9th grade and thus are unlikely to fully eliminate historic discrimination or fully satisfy the civil rights standard, which must be adhered to.

Any selective criteria proposed by a school must face rigorous scrutiny by the Department, with the burden on the school to show that the criteria meet the civil rights standard. It is crucial that the regulations include provisions that will assure that vocational schools developing admissions policies and Department personnel reviewing them have a clear and accurate understanding of the practical meaning of the relevant standard, as well as clear procedures to ensure that the standard is met. Without these, the Coalition fears that, despite the regulation’s adoption of the crucial standard, submitted admissions policies are at risk of failing to meet that standard. Unfortunately, some elements of the proposed regulations and some explanations offered by Department staff raise serious doubts about whether Department staff will accurately and fully interpret, administer, and enforce that civil rights standard.

To ensure successful implementation of the Department’s new policy, we recommend, at a minimum, the following important additions and modifications to the Proposed Regulations. The proposed changes are accompanied by detailed explanations of the rationale for these recommendations.

I. Adding Clarification to the Content of the Civil Rights Standard: Each element of the civil rights standard has a specific meaning, which should be understood by DESE and vocational school administrators who will be responsible for drafting and administering the admission regulations. Regulatory language is needed to clarify these meanings for each element.

origin, sex, or handicap. However, if a recipient can demonstrate that such criteria have been validated as essential to participation in a given program and that alternative equally valid criteria that do not have such a disproportionate adverse effect are unavailable, the criteria will be judged nondiscriminatory. Examples of admissions criteria that must meet this test are past academic performance, record of disciplinary infractions, counselors’ approval, teachers’ recommendations, interest inventories, high school diplomas and standardized tests, such as the Test of Adult Basic Education (TABE).” The proposed DESE regulation adopts the first two sentences but replaces “sex, or handicap” with “sex, gender identity, sexual orientation, religion, or disability.”

As discussed below, there are also relevant requirements for non-discrimination and equal access in the federal Carl D. Perkins Career and Technical Education Act (20 U.S.C. § 2301 *et seq.*) for “special populations” that extend to other groups, including students from economically disadvantaged families.

A. “Criteria that have the effect of disproportionately excluding persons in protected classes”:

The language of the civil rights standard is clear on its face, and taking these words literally should be a relatively straightforward matter: Are the students who are *excluded by any criteria* disproportionately members of one or more protected groups? Using criteria – such as grades, attendance, or discipline records – to determine which students will, and which will not, be admitted will exclude a set of students from participation. For example, a minimum C average will exclude students in the relevant population with lower averages. The question is then whether those students in the pool who are excluded by this criterion are disproportionately members of one or more protected groups.

In the case of admission to vocational technical schools at the 9th grade, the relevant population is the entire body of 8th graders in the sending middle schools. For criteria that rely on student records – including grades, attendance, and discipline – the data already exist as to who will be excluded by the criteria and whether students in protected groups will be disproportionately among those who are excluded.² Looking at the admissions rates for students who apply cannot substitute for looking directly at the impact on the entire pool of students who could apply. Students who know -- and whose counselors, teachers, and parents know – that the criteria give them little or no chance of being admitted are less likely to apply.

Accompanying proposed regulatory language, plus subsequent comments by DESE personnel, however, suggest that the Department may not interpret this legal standard that way. Instead of looking at the students who are *excluded* by any criteria, as called for, DESE may look to whether the students who are *admitted* are “representative” of their home school populations (which can be determined without looking at the impact of any criterion). These are not at all the same thing. The right at stake here is not a group right to “representation” in the school or program, i.e., a set number of seats that mirrors the home school population. It is an individual right to have an equal opportunity to participate, free of any discriminatory criteria that have not been validated as essential to participation.

Students who may have struggled in middle school, and who are disproportionately members of protected populations, may in many cases be more interested than others in vocational technical schools that create a different learning environment and different modes for mastering academic as well as technical skills and that also offer pathways into the middle class for students that are particularly important for students who may not pursue a college degree.³ Once unnecessary barriers to their

² Where criteria are set in terms of minimum requirements, it’s easy to tell precisely how many students in each eligible population fall below that minimum and will be excluded by each such criteria. Where criteria are instead used for ranking students against one another based on total points, the minimum score necessary for admission depends on who applies, but (a) wherever the precise cut score lands, disparities between groups’ performance on the relevant criteria tell us which groups will be disproportionately excluded, and (b) prior years’ data will show the precise levels of disparity for those years.

³ Students from protected classes may also be more interested in their regional CVTE school because the comprehensive high schools available to them may be more likely to be under-resourced and less academically successful in comparison with the local comprehensive high schools available to middle school students in other, wealthier local districts in the region and who thus may be less motivated to seek an alternative.

attendance are removed, equal chances of admission thus may in some instances result in applications and admission of such students that exceed “representative” share.⁴

The problem with failing to focus on the students who are excluded by the criteria (i.e., those who don’t meet them) is not only that it ignores the disparities that may exist in those who are excluded, and thus may not trigger the required obligation to validate those criteria as essential to participation. Even where there are disparities in “representation,” schools would still be allowed to continue ignoring those students who have been disproportionately excluded and the criteria that have excluded them. In particular, schools could seek to avoid or remedy “under-representation” through a recruitment campaign to boost the applications from high-scoring students within the “under-represented groups” who meet the exclusionary criteria.⁵ Such recruitment would do absolutely *nothing* to reduce the numbers of, and disparities in the pool of, students who are excluded by the criteria.⁶

As part of the practical implications of this, we note that the three areas of students’ records that are currently used – grades, attendance, and disciplinary records – are rife with disparities everywhere in Massachusetts and beyond. Thus, the use of any of these factors will clearly continue to disqualify a disproportionate number of students of color, English learners, and students with disabilities, along with students from economically disadvantaged families.⁷ Yet, under regulatory language and DESE’s subsequent comments that focus on representativeness rather than on who is excluded, these pervasive disparities are not things that appear to trigger the obligation in the law to justify and validate their use.

A focus on whether those admitted are “representative” of their home school populations, instead of the required focus on the students who are excluded by the criteria as the measure of disproportionate exclusion, essentially endorses what amounts to a quota system: Once a school achieves an enrollment that is “representative,” it is free to use whatever exclusionary criteria it chooses, without having to make any showing that they are essential to participation, regardless of the extent to which they disproportionately exclude members of protected classes, and regardless of how many students from those classes would be interested in attending in the absence of discriminatory criteria.⁸ And no matter how many higher-scoring students, from whatever demographic groups, are offered places, these

⁴ In other cases, it may be lower, without necessarily creating a legal issue. In any event, while recruitment and outreach to underrepresented groups are very important, they cannot substitute for elimination of admissions criteria that disproportionately exclude but are not essential for participation.

⁵ This form of “creaming” within groups not only perpetuates the failure to implement the required focus on disparities among those who are excluded. It creates additional potential civil rights problems -- particularly in terms of excluding lower-scoring students with disabilities and English learners whose needs are greater and have been less successful – again without having to show that the criteria that excluded them have been validated as essential for participation.

⁶ In fact, if paired with the continuation of selecting students in rank order, it will actually *increase* the numbers of students excluded by the criteria. The more high-scoring students who apply (regardless of their demographics), the higher the cut-off score for filling the limited number of seats becomes, thereby excluding greater numbers than before.

⁷ See section 1.H below on inclusion of economically disadvantaged students.

⁸ Stated differently, if the proportion of Black students who want to be in a CVTE program was 50% higher than the proportion of White students, for example, but criteria screened out Black students at a rate that was 50% higher, the “representation” approach to disproportionate exclusion would conclude that the criteria do not have the effect of disproportionately excluding Black students, when they clearly do.

students remain excluded from participation, based on criteria that will not have not been validated as essential to participation.

Even if the language of the legal standard were not as clear on its face as it is here (e.g., a vaguer, more general effects standard), focusing on the selection criteria and their effects in making certain students in the pool ineligible for admission would make the most sense as a matter of logic, equity, and the wider interests of the Commonwealth in removing barriers to admission that unnecessarily exclude students who could benefit from vocational technical education.⁹ But here, the plain language is clear: Surely some members of the otherwise eligible pool are being excluded by the current criteria from the opportunity to attend. That's the purpose and effect of any selection criteria – to distinguish who is actually eligible from who is not – whether they are used singly to create minimum thresholds or combined to create a minimum score or a rank ordering of preference among students. And surely whether certain classes of students are disproportionately among those who are excluded by those criteria is the determination the standard asks for, is readily discernible, and is the determination that the standard says must be made for any selective criterion proposed.

Proposed regulatory language [to be inserted immediately after the second paragraph of section 4 of the proposed regulations:

“(a) Whether any criterion being considered for inclusion in the admissions policy will have the effect of disproportionately excluding members of one or more protected groups shall be determined based on the best available evidence of disparities in whom the criterion will exclude among the relevant pool of potential applicants. For example, if a factor based on students’ middle school records is being considered as a criterion for admission to a regional VTE school, are there disparities in that factor disfavoring any of the protected population groups within the pool of 8th graders in the middle schools that feed into the regional school?

“(b) Accessing the data to determine the impact of the criteria:

“(i) Where relevant evidence already exists as to whether a criterion being considered will have the effect of disproportionately excluding members of any protected group, it shall be collected and used in the development of the admission policy, rather than waiting to see the impact of the criterion after it is used to select students and only then seeking to validate any criteria that have had that impact. This requirement applies to, but is not limited to, criteria based on grades, attendance, or discipline.¹⁰

⁹ There are situations where the distinction being made here between impact *on who is excluded* and the “representativeness” *of who is selected* does not meaningfully exist – for example, in examining the impact of the use of a test for promotion or graduation where all students are tested. But that is not this situation, where the distinction clearly makes a difference.

¹⁰ Since the question is whether a *criterion* being considered disproportionately excludes students from particular groups in the relevant population, there is no need to wait. As indicated earlier (in footnote 2 and accompanying text), the data already exist. And doing this analysis before adopting and implementing the criteria is *required* because to wait would mean a violation of the civil rights requirement – it would result in the use of criteria that have this disproportionate effect without the school demonstrating that it has validated the criteria as essential for participation and that other valid alternatives without such impact are unavailable. Indeed, OCR’s commentary accompanying the release of the final version of the federal guidelines states: “If such disproportionate exclusion occurs the criteria or standards must be validated as essential to participation in a program *before* they may be used by a recipient.” 52 Fed. Reg. 17162, 17172 (March 21, 1979) [emphasis in original]. Keep in mind that the

“(ii) Where criteria using middle school information are being considered, middle schools shall cooperate in either (A) providing the relevant data in anonymous but disaggregated form or (B) conducting the analysis of the criteria’s impact itself and reporting the results to the high school.

“(iii) Alternatively, schools considering use of selective criteria may presume that a criterion will have disproportionate impact rather than collecting data to determine it, thereby moving directly to the question of whether the criterion can be validated as essential to participation. In the case of an admissions policy submitted for approval that contains any criterion whose impact has not been determined, the criterion will be presumed to have disproportionate impact and will therefore need to meet the requirements for validation and consideration of alternatives.”¹¹

B. “The criteria have been validated as essential to participation”:

1. Elements of validating criteria as essential to participation:

There is good reason to be concerned about the fidelity with which the complex validation task will be carried out by schools that are not accustomed to implementing it and that have over the years become accustomed to assuming the legitimacy of their existing criteria, which have been regularly reviewed and accepted by the Department. Thus, the regulations need to provide clarity to ensure that the process for validating that any criterion that disproportionately excludes is truly “essential to participation” is as rigorous as it should be – i.e., that it will accurately determine whether or not a student *actually* lacks what is *actually* essential to participation as set out below.

Proposed regulatory language [to be inserted immediately after previous provisions (a) and (b) above]:

(Note: Because of the need for clarity and rigor in this complex process, we believe that the indented language under each numbered item should be incorporated into the regulations. However, we are open to the indented language appearing in guidance, while leaving the numbered items in the regulations, provided that the guidance is clear on these indented points.)

“(c) Validation that a criterion is essential to participation shall include at a minimum the following elements:

- i. Validation of any qualities or characteristics as essential to participation.
- ii. Validation of the criteria to be used as measures for determining those essential qualities or characteristics.

question here is only whether a criterion will have the effect of disproportionately excluding members of at least one group, which triggers the requirement to validate and consider alternatives; so complete measurement of how much disparity for every group will generally not be needed.

¹¹ This provision reduces unnecessary burden while recognizing that disparities in some areas of student performance – including grades, attendance, and discipline – are endemic and others are likely to be.

In selecting the measures for determining whether a student has met an essential criterion, it is important to recognize that:

- The higher the stakes for individual students (such as decisions that will affect the education programs that a student can enter), the less the room for error and the higher the degree of validity and reliability that is required; and
- At the same time, the standard measure of error for any assessment becomes much greater for the results of individuals than for aggregate results.

For these reasons, the use of multiple valid methods and sources of information regarding that determination -- in order to reduce erroneous determinations that a student does not have the ability to benefit and cannot participate even with assistance -- becomes important.

- iii. Validation that the specific decision-making methods (such as cut-off scores) for determining whether a student meets the criteria validly and reliably distinguish students who have and students who lack those essential qualities or characteristics.

The ultimate question is whether the process being used results in valid and reliable decisions about whether a student does or does not have the ability to participate in the program (when provided with any needed assistance).

Where more than one criterion is being used, does the method for combining them into that single judgment result in an accurate determination of whether the student has the ability to benefit, and does it minimize the risk of an erroneous judgment that he or she does not?

For the same reason, where only a single criterion is being used, or where there is more than one criterion, any one of which can disqualify a student, the method (such as cut score or point on a rubric) that is used to make the binary decision about whether a student is or is not qualified needs to result in a valid and reliable decision that minimizes the risk of students erroneously being disqualified.

- iv. As part of validating each of the above, identifying each of the various assumptions or inferences that are being made in deciding that certain criteria are essential to participation and that the methods chosen for determining whether those criteria are being met are valid and reliable; and carefully examining the validity of each of those assumptions.

Has sufficient evidence been provided and analyzed to demonstrate the validity of each of those assumptions? What about counter-evidence that challenges those assumptions?

- v. Ensuring validity and reliability in all the above aspects across all population groups.

For students in some population groups, certain measures may not provide sufficiently valid and reliable information about their ability to participate or whether they have essential, validated characteristics, in which case either changing the overall measures to ones that are more universally valid and reliable across groups and/or adjustments, modifications, accommodations, alternative measures, etc. may be necessary in order to produce valid and reliable information.

- vi. Ensuring that students are not deemed unable to participate because of the absence of services and supports that would enable them to participate and that are required under the civil rights laws, the Perkins Act, Title I, or other laws and programs.

Stated positively, determination of whether a student is able to participate must be made with the assumption that all such services and supports to enable them to participate will be available within the vocational-technical school and program.

- vii. For any criteria that are demonstrated to be essential to participation, including any pre-requisites for program participation, ensuring that the school system¹² provides full, equal and non-discriminatory, effective access to the means of meeting those criteria.”

2. Criteria that are essential for participation vs. ranking students against each other:

Current selective school admission policies assign various points for grades, attendance, disciplinary records, counselor recommendations, and, in some cases, interviews (with variations from school to school on both the number of points assigned to any category and the way those points are counted). The points are totaled and then students are selected for admission based on rank order, with the highest scoring student admitted first, etc., until all seats are filled. (Admission to particular programs, where selective, is most typically also based on rank ordering students’ scores on various criteria, which may or may not be the same criteria as used for school admission.)

We anticipated that, in embracing the long-standing civil rights requirement for validating criteria that have disproportionate impact as “essential to participation,” DESE regulations would clearly state that selecting students in rank order of scores on criteria that have disparate impact cannot be used. Even if some minimum level of a characteristic can be validated as essential to participation, when students are excluded based not on whether they lack that characteristic but on whether or not, for example, 150 other applicants have a higher score (where 150 seats are available), then the latter – the relative scores of other students – become the criterion on which a student will be admitted or excluded. The criterion is then simply *not* distinguishing between who does and who does not have the characteristic(s) essential to participation. Using rank ordering, the potential is enormous for large numbers of students to be rejected despite having all characteristics validated as essential to participation simply because

¹² We have framed this requirement as a responsibility of the “school system” because we realize that the high school is not responsible for the educational opportunities and assistance provided to students before they arrive. *However:* (A) These are obligations of the school system and the state educational system of which the school is a part (whether this is a CVTE program within a comprehensive high school or a CVTE high school that is part of a local education agency); in the case of a regional CVTE school governed by a regional educational agency whose committee members are from the sending towns and which is funded by those towns, it is unacceptable to have a situation where the regional school has admission criteria which the sending local education agencies fail to provide students with the means of meeting on the terms above. (B) This does become a part of the CVTE school’s responsibility as well when applied to admission to particular CVTE programs after a student has been enrolled in the CVTE school. (C) To the extent that some students seeking to apply may not have had equal, effective access to meeting those criteria (whether because of student characteristics, differences in opportunities among sending schools, or for other reasons), it is particularly important to avoid basing eligibility on those factors unless clearly necessary on the terms above and there are no other alternatives to determine ability to benefit. And it becomes particularly incumbent upon the school system and the state to remedy that unequal access – both in the sending schools and in services and assistance for the affected students in the CVTE program to enable them to participate – rather than allow it to become the basis for ineligibility.

other students have outscored them. And a student who would be deemed as having what is essential to participation based on one pool of competing applicants could suddenly be deemed as lacking it if a few other students, with higher scores, apply.

In this regard, it is worth noting that this issue was explicitly addressed in the development of the federal standard. The *proposed* federal Office for Civil Rights guidelines¹³ originally stated that criteria that disproportionately excluded members of particular populations were prohibited unless the institution could demonstrate that the criteria have been validated as “predictors of success in the program.” However, in the final version,¹⁴ OCR noted that “Commenters suggested that the proposed validation standard of paragraph IV-K would permit recipients to use criteria that disproportionately exclude minorities or handicapped persons merely by demonstrating that the students admitted were more likely to succeed in the program. This would allow recipients, for example, to exclude protected persons from the attractive trade and technical programs through evidence that a ‘C’ average student is less likely to excel in a program than an ‘A’ average student. The commenters suggested that screening criteria to be permissible, must be ‘essential to participation’ in a program.” OCR’s response was that “This suggestion is accepted,” and it changed the language in the final rule to require validation of criteria as “essential to participation” specifically in order to eliminate that concern.

Yet despite both the obvious logic and the history, it appears that DESE may not be prepared to rule out selecting students based on rank ordering of scores on criteria with disparate impact. The regulations must thus be clear and explicit on this point, with the language proposed here. Moreover, the apparent lack of clarity on even this simple, straightforward point reinforces concerns about the extent to which the more challenging and complex task of validating particular criteria as essential to participation will be implemented with the rigor it demands. It thus underscores the importance of providing very clear guidance to vocational programs about the analysis and evidence required, as we have set out in our proposed language on key elements of validating criteria as essential to participation¹⁵ and on material that needs to be submitted in support of proposed admissions policies.¹⁶

Proposed regulatory language: [to be inserted immediately after previous provision (c) above]:

“(d) Admitting students in rank order of scores on criteria that have the effect of disproportionately excluding members of protected groups is prohibited because it excludes students based on other students having higher scores rather than on the basis of minimum criteria validated as essential to participation.”

C. “Alternative equally valid criteria that do not have such a disproportionate effect are unavailable”:

In generating and considering possible alternative criteria that may be equally valid and do not have such a disparate adverse impact, it is important to draw on a range of sources.

¹³ 43 Fed. Reg. 59105, 59108 (December 19, 1978).

¹⁴ 44 Fed. Reg. 17162, 17172 (March 21, 1979).

¹⁵ I.B.1, immediately above.

¹⁶ II.A, below.

Proposed regulatory language [to be inserted immediately after previous provision (d) above]:

“(e) In considering whether alternative criteria that may be equally valid and do not have such a disproportionate adverse effect are available, schools shall widely solicit such potential alternative criteria from school staff, students, parents, and advocates and organizations that represent students, including, in the case of regional schools, those within sending schools and districts.”

D. Providing any student who fails to meet validated criteria for admission a full opportunity to explain why they nevertheless are able to participate in the school or program:

This opportunity must always be provided, since it is an alternative to using the measure(s) in the school’s admission policy alone, and it not only is equally valid but actually adds to the validity of the determination by bringing in additional, more individualized information, while reducing the number of students negatively impacted by the criteria. (It does not, however, eliminate the need to consider other valid alternatives to the criteria that might further reduce disparities.)

This opportunity should be provided as part of the initial determination of students’ eligibility to participate, not just as part of an appeal to the superintendent seeking to overturn a determination that has already been made.

The determination is whether the student is able to participate. It is not a decision to admit. If the student is able to participate, they then will be placed in the pool of all students able to participate. (See I.E. below regarding admission decisions when the pool of applicants able to participate exceeds the number of available seats.)

Any other use of interviews, recommendations, or written submissions in the admission process will have to meet the requirements of these regulations, including those related to disproportionate impact and validation as essential to participation. (VEJC does not support any such other use that would result in additional exclusion of otherwise eligible students from vocational technical education.)

Proposed regulatory language: [to be inserted immediately after the previous provision (e) above]:

“(f) Each student who fails to meet validated criteria for admission shall have a full opportunity -- including submission in writing, interviews, and written or oral recommendations from others – to explain why the student nevertheless is able to participate in the school or program. This information shall be considered in the initial determination of whether the student is able to participate, as well as in any appeal of that decision to the superintendent. Schools and programs shall, in coordination with a student’s home school, provide effective assistance in overcoming barriers that students may face in availing themselves of this opportunity.”

E. Providing all applicants who meet minimum criteria an equal chance to be selected:

There should be a lottery or similar method for assuring that all applicants who meet the school’s or program’s minimum validated criteria, if any, have an equal chance of being admitted.

The regulations should prohibit selecting students on the basis of first-come, first-served. There are a number of factors that can pose barriers and put students covered under the provisions of the Civil Rights Acts and the special populations provisions of Perkins at a severe disadvantage in getting their applications in ahead of others – including, for example, the literacy level, English language skills, or disabilities of those students and their parents; experience in successfully dealing with similar application processes, along with ease and skills in dealing with administrators and others; possible understaffing, relative to student needs, to help students apply in the schools they attend in comparison with schools serving more privileged students; etc.

Proposed regulatory language [to be inserted immediately after the previous provision (f) above:]

“(g) If the number of applicants to a school or program who meet minimum criteria, if any, validated as essential to participation exceeds the available seats, then seats shall be awarded through a lottery or similar method that assures that all such qualified applicants have an equal chance of getting admitted. Seats shall not be allocated on a first-come, first-served basis.”

F. Clarifying that the school’s plan and strategies for promoting equal educational opportunities (a) cannot substitute “representativeness” for non-discrimination and (b) must include the full range of equity obligations and special populations identified in the Perkins Act:

We support DESE’s inclusion of language for an equity plan and strategies that extend beyond admission criteria, to include attracting, enrolling and retaining students. However, it needs two significant changes:

First, for all the reasons set out in our discussion of “disparities” in I.A, stating the goal here as attracting, enrolling, and retaining “a student population that, when compared to students in similar grades in sending districts, has a comparable academic and demographic profile” is the wrong focus and cannot be the touchstone for equity. That language should be removed from the proposed regulations. The focus should, instead, be on overcoming and removing the barriers to access and equal education opportunities to historically marginalized groups (which may or may not result in a student demographic profile that mirrors the sending districts).

Second, this plan must be consistent with and incorporate not only provisions of the Civil Rights Acts but of the required equity provisions that are set forth in the federal Perkins Career and Technical Education Act¹⁷ (providing federal funds for career and technical education), and that apply to “special populations”¹⁸ who are indeed historically marginalized groups. Those equity requirements apply to the full range of “equal educational opportunities and attracting, enrolling, and retaining students in those groups.” Those obligations include a variety of equal access and non-discrimination requirements; required programs, services, activities, strategies, and accommodations to enable members of special

¹⁷ 20 U.S.C. § 2301 *et seq.*

¹⁸ Defined as students from economically disadvantaged families, individuals with disabilities, English learners, homeless individuals, youth who are in or have aged out of the foster care system, single parents (including single pregnant women), individuals preparing for non-traditional fields, youth with a parent who is an active-duty armed forces member, and out-of-workforce individuals. Perkins Act Section 3(48).

populations to succeed and meet performance standards in career and technical education; strategies to overcome barriers that result in lower rates of access to, or success in courses and programs; and information about available programs and guidance and advisement activities in a language that students and parents can understand.¹⁹ We are proposing that the regulation on this issue does not have to spell out all such obligations, just the need to incorporate them into the required plan. But that does put the onus on DESE to issue guidance and provide help in understanding the full range of those obligations and their implications.

Proposed regulatory language

The regulations should modify paragraph 2. of the proposed regulation on the required admission policy as follows:

“2. A plan that includes deliberate, specific strategies to promote equal education opportunities and to attract, enroll, and retain a student population that, when compared to students in similar grades in sending districts, has a comparable academic and demographic profile students from historically marginalized groups. Such plan and strategies shall also ensure non-discrimination and equal opportunity consistent with the requirements of civil rights laws and the specific equity requirements for special populations under the Perkins Act.”

G. Clarifying the discussion of discipline, attendance, and grades to avoid unintended suggestion that any aspect of these factors can be used:

As noted in I.A. and B. (as well as in previous comments by members of VEJC), disparities in these three areas are endemic, and thus the students who are disqualified from gaining admission based on these criteria are disproportionately members of protected groups (regardless of the make-up of the applicants who are not excluded), thereby triggering the requirement to rigorously validate the use of any of these criteria as essential to participation. That is required whenever it is true for even one protected group – let alone the pervasive disparities in these factors for multiple groups. So, we are asking DESE to recognize that statewide reality.

Beyond that, however, VEJC believes it is also time to recognize another reality: If a student has been promoted to, and is now deemed ready for, the next grade and will be enrolled in a public school, the student’s middle school grades, attendance record, or discipline record cannot validly determine that the student would not be able to participate in CVTE, particularly in light of the potential for students who have struggled in their traditional academic setting to be more successful and engaged in an integrated academic and technical-vocational program.

That second reality, combined with the vagueness (concerning what’s a major offense), subjectivity, and bias in disciplinary infractions (and in other aspects of treating students), the extent to which unexcused absences for low-income students are often due to life circumstances, and the extent to which lower grades are connected to the disproportionate ineffectiveness of instructional methods and failure to meet the learning needs of particular groups (on top of the changes young adolescents themselves go

¹⁹ See, for example, local requirements in Perkins Act section 134(b)(2)(C), (b) (5), (c)(2)(B)(i), and (c)(2)E), as well as state level requirements, in Section 122(d)(4)(C)(i), (iv), and (vii), (d)(9), and (d)13), that cannot be fulfilled without local action, as well as requirements for addressing student performance gaps, in sections 113 and 124(a)(2), and improvement plans, in section 123.

through across these years), compels us to ask DESE to take these middle school measures off the table as not being capable of validation as essential to participation in CVTE, and which otherwise will continue to unnecessarily exclude students who can in fact participate. We ask that of DESE even if it allows for the possibility that other measures might be properly validated.

Proposed regulatory language (to be inserted immediately before the last sentence of the first paragraph of section (a)):

“Moreover, in light of the clear and pervasive evidence that disciplinary records, grades, and attendance reflect stark disparities disfavoring protected classes, use of any criteria relating to discipline, grades, or attendance is presumed to have a disproportionate impact. Because these criteria exclude students who can participate in and benefit from CVTE, they are prohibited for use as admissions criteria.”

H. Expanding the list of protected groups of students to include economically disadvantaged students, as required by the Perkins Act:

Under the federal Perkins Act, students from economically disadvantaged families are one of the recognized “special populations” recognized that must be protected from discrimination and provided with equal access to programs,²⁰ and for whom strategies are required to overcome barriers resulting in lower rates of access.²¹

Thus, the core provision – prohibiting schools and programs from using selective admission criteria that have the effect of disproportionately excluding students from particular groups unless they demonstrate that the criteria have been validated as essential to participation and that alternative equally valid criteria that do not have such a disproportionate adverse effect are unavailable – should apply to measures that disproportionately exclude economically disadvantaged students. Existing disaggregated data within the state typically includes disaggregation by family income status, which will be helpful in implementing this requirement.²²

Proposed regulatory language

In the paragraph on use of criteria that disproportionately exclude students, after “disability” insert: “or members of economically disadvantaged families.”

²⁰ Perkins Sections 122(d)(4)(C)(iv), 122(d)(9), and 134(b)(5).

²¹ Id. Section 134(C)(2)(E).

²² This proposal is distinct from the proposed language in I.F. above to incorporate the broader set of Perkins equity obligations for special populations into the regulations’ equal educational opportunity plan. Here we are focusing specifically on the key standard for identifying and validating admissions criteria that disproportionately exclude protected groups. We are singling out economically disadvantaged students for attention on that specific task given that it is a very large group, sufficient to reveal significant long-standing disparities down to the school level, encompassing some of the other special populations within it that are not already listed for that task, and is regularly treated and reported on as a major subgroup for many other purposes, along with race, disability, and language status.

II. Adding provisions to ensure a thorough and reliable process for preparation, submission, and review of proposed admissions policies: While the Coalition recognizes the value of giving VTE schools and programs responsibility for proposing appropriate admission policies, it is vital for the regulations to provide clear guidelines to ensure that the purposes of the new regulations are achieved, both in the schools' preparation of admission policies and in the department's review of them.

A. Specifying the materials to be provided by schools and programs in support of proposed admission policies:

It is essential that schools have taken and documented all the steps needed to develop an admissions policy that will meet the requirements of the law and the regulations *before* submitting it for approval by the school committee and DESE. To accomplish this and ensure that fully compliant policies are properly reviewed and approved in time for students to apply for the school year beginning in September 2022, it will be critical that schools fully and thoroughly understand these requirements, including each of the elements described in I.A.-D. above. Toward these ends, the regulations should spell out what schools need to submit in order to obtain approval:

Proposed regulatory language (to be inserted immediately before the second-to-last paragraph of the proposed regulation):

“The proposal submitted to the Department shall contain:

- a. The specific selection criteria, if any, and the specific ways they will be used in selecting students.
- b. The data that were used to determine whether each criterion will or will not have a disproportionate impact on particular groups, unless it is conceded that the criterion will have such a disproportionate impact.
- c. For each criterion that will have a disproportionate impact, detailed demonstration of:
 - i. how it validated that the criterion is essential to participation, addressing all the elements in (c) above, including the evidence and reasoning to support the conclusions; and
 - ii. Alternatives it considered as potentially equally valid with less disparate impact and why it rejected those alternatives.
- d. Where there are not enough seats for all applicants who have been deemed eligible for participation (i.e., who have met any validated criteria), the process for selecting among them, including the process for selecting students from any waiting list, consistent with (g) above.
- e. Detailed description of participation in the development of the policy by school staff, students, parents, and advocates and organizations that represent students, including, in the case of regional schools, those within sending schools and districts -- identifying the parties involved, the nature of their participation, any comments on the draft policy, and the school's response to those comments.”

B. Specifying the process for the Department’s review of proposed admission policies:

First, it is essential that the process be open, with interested and affected parties and those who represent them having access to the proposals and the supporting evidence in a timely way. Second, there should be sufficient time for schools to implement necessary changes, especially when they are substantial, so that they get implemented for students being admitted into the following school year. Third, when proposed admissions policies and practices do not comply with applicable state and federal law, intervention by the Department cannot be optional.

Proposed regulatory language (to replace the first sentence of the second-to-last paragraph of the proposed regulation):

“The Department shall publicly post all proposed admissions policies and supporting evidence as soon as they are submitted.

[**UPDATE:** The Department’s 6/14 proposed revision states that “DESE appreciates the utility of collecting CVTE schools’/programs’ admission policies in one location and will examine the feasibility of doing so on DESE’s website.” However, it does not include the supporting evidence. (See II.A. above.)]

“The Department shall review and respond to all proposed admissions policies no later than October 15 of the year in which the policies are to be utilized. The Department shall ~~may~~ intervene in cases where the admissions policies and practices of vocational technical schools and programs do not comply with applicable state and federal laws and regulations, and order compliance actions, including revisions to, or replacement of, existing admission policies.”

[UPDATES:

(1) On the first sentence, the Department’s 6/14 proposed revision does not address DESE’s review and response, so this is still relevant, but the revision would change the schools’ deadline for submission from August 15th to October 1st, which may necessitate moving the date for DESE’s review and response back to some extent as well.

(2) Regarding the second sentence, the Department’s 6/14 proposed revision now addresses our concern by replacing “may intervene in cases” with “will take actions it deems necessary to address cases”.]

C. Providing for earlier submission of proposed admission policies in future years:

The Department needs to allow enough time – in advance of the period when schools’ information dissemination, recruitment, and application processes begin -- to rigorously review each submitted admissions policy, solicit and consider community stakeholder feedback, engage in a dialogue with schools and programs that submit problematic admissions policies, and take affirmative corrective action where necessary to bring admissions policies into compliance with state and federal law. While we agree with the Department that is essential to use an expedited process this year, so that new and legally appropriate admissions policies can be in place for the classes admitted for fall of 2022 (rather than continue to maintain unnecessary barriers to participation for another year), for future years there is no reason not to allow more ample time for the Department’s review process.

Proposed regulatory language (to be inserted immediately after the first sentence of the second paragraph of the proposed regulation):

“After the 2021-22 school year, all future proposed admissions policies shall be submitted to the Department by March 31st.”

Conclusion:

Career vocational/technical schools are public schools, and the Vocational Education Justice Coalition believes that they should be open to all students who are promoted and deemed ready for the applicable grade on an equal basis, relying on a lottery to select students when there are fewer seats than interested students. We are quite doubtful that any other set of selective criteria can meet the requirements of the civil rights laws, but we have no objection to a school exploring selective admissions criteria and implementing policies that are shown to meet those requirements. In order for that process to treat students fairly and to meet the state’s legal obligations, it is essential that the Department’s regulations ensure that the process of exploring, proposing, and approving any such selective admissions policies be clear and rigorous. The purpose of the above proposed revisions to the Department’s proposed regulation is to achieve that goal.

EXHIBIT B

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March 1, 2022

Re: Career Vocational Technical Education Admissions Policies Analysis (Regional Vocational Technical Schools & County Agricultural Schools)

The following is a review of admissions policies submitted by regional vocational technical high schools to the Massachusetts Department of Elementary and Secondary Education (“DESE” or “the Department”) and publicly posted on the Department’s website as of February 18, 2022. To that date, all 26 regional vocational technical high schools had submitted policies to the Department as had 2 agricultural schools.¹ This review identifies and analyzes the type of selection process (selective admission, lottery, etc.) and admissions criteria regional schools use to admit students for the 2022-23 school year. While all policies contain relatively similar language about admitting transfer students already enrolled in another high school we confined our review at this stage solely to policies affecting students seeking admission prior to their 9th-grade academic year.

Sections (I) through (VI) of the review each contain a roughly one-page narrative “Overview” of the key analytical points in the regional schools’ policies, and each is followed by a table detailing the relevant data upon which we drew for our analysis. In addition, each of Sections (I) through (VI) has an accompanying appendix located at the end of this document. The appendices realign the data points in response to different categories in the original tables to generate additional insight about the submitted policies. Each appendix also contains relevant text related to the content of the appendix from the regional schools’ actual policies (with slight edits for clarity and presentation). Section (VII), the final section of the review before the appendices, contains selected excerpts of public comments the Vocational Education Justice Coalition (“VEJC”) submitted to DESE in response to DESE’s proposed changes to 603 C.M.R. § 4.03(6) in April 2021. These excerpts focus on the components of a key civil rights requirement in the *Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap in Vocational Education Programs* contained in 34 C.F.R. Part 100, Appendix B. This civil rights standard prohibits career/vocational technical education (“CVTE”) schools and programs from adopting criteria that have the effect of disproportionately excluding students in protected groups unless they have first demonstrated that (1) such criteria have been validated as essential to participation; and (2) alternative equally valid criteria that do not have such a disproportionate adverse effect are unavailable. VEJC’s submitted comments addressed the requirements of the civil rights standard and were designed to ensure CVTE schools and programs and the Department implemented that standard with fidelity. None of VEJC’s comments and related proposed changes were adopted, leading directly to the discriminatory admissions policies submitted by 27 of the 28 regional schools and described in this report. [A link to VEJC’s full comments in their

¹ Bristol County Agricultural School and Norfolk County Agricultural School are established under M.G.L. c 74 § 25. Smith Vocational and Agricultural High School, established under M.G.L. c 74 § 24 and serving Northampton, will be included in subsequent analysis with city technical schools. Not included here are comprehensive high schools with Chapter 74-approved programs which must also develop admissions policies consistent with 603 C.M.R. 4.03(6). This review’s total schools (28) and nomenclature (“regional schools”) include the two agricultural schools because both the agricultural schools and regional vocational technical schools draw students from member towns.

original form as submitted to the Department can be found [here](#).]

Some broad takeaways from the review are as follows: 27 of the 28 regional schools reviewed use selective admission and rank order students based on point totals from weighted criteria – i.e., they assign points to various criteria and then select students with the highest point totals until all seats are filled. The sole remaining school uses a lottery. 23 of the 27 regional schools that use selective admission consider an applicant’s grade average in English, math, science, and social studies (with 2 additional school considering only English, math, and science), 27 consider an applicant’s unexcused absences, 27 consider an applicant’s disciplinary record, 24 consider recommendations, and 21 consider interviews. Regional schools most frequently assign the highest points to interviews (and then grades) and the lowest to recommendations. At least 10 and possibly 14 schools are out of compliance with the specific prohibitions in 603 C.M.R. § 4.03(6) on considering certain types of student discipline. Almost half (11) of the regional schools that consider grades begin deducting points when a student falls out of the “A” range, and attendance requirements remain relatively rigid. Most policies provide minimal, if any, guidance on completing recommendations and scoring interviews.

To the extent that middle school students of color, English learners, or students with disabilities (as well as students from lower-income families) have lower grades, more absences, or more applicable disciplinary incidents – a reality well-known to the Department and schools throughout the state and supported by social science research – the use of these criteria disproportionately excludes them (regardless of whether they apply and are rejected or fail to apply because they, or their parents, teachers, and counselors believe, with good reason, that they will be rejected). Yet, contrary to the explicit requirements of the federal civil rights standard all but one of the regional schools have now adopted “new” policies that continue to use these factors that disproportionately exclude students in protected populations without having demonstrated, before using any such criterion, that they have validated the criterion as essential to participation in the program and that equally valid alternatives that have less disparate impact are unavailable. Further, even if one or more of these schools could demonstrate that some minimum criterion truly is essential to participation the civil rights standard prohibits the use of that criterion to rank order students, a process utilized by all 27 regional schools employing selective admissions, because rank ordering rejects students not because they actually lack something essential to participation but instead because other students have higher scores.

The Department has failed to point out that these criteria disproportionately exclude students in protected classes in the absence of a middle-school population that has no disparities in grades, attendance, or discipline. The Department has failed to require that schools provide it with the required demonstration of validity and lack of alternatives before using any such criteria. And the Department has failed to prohibit rank ordering despite the incompatibility of the practice with the civil rights standard. The Department’s failures have resulted in CVTE schools adopting “new” discriminatory policies that leave students of color, English learners, students with disabilities, and students from economically disadvantaged families unjustifiably excluded from participation in CVTE schools and programs. These failures to properly implement the civil rights requirements are discussed in Section (VII).

Note: This review does not encompass analysis of policies for admitting students into specific CVTE programs, which have also been submitted to DESE and raise the same civil rights issues as the policies for admission to CVTE schools. Both the federal civil rights standard and the Department’s own regulations explicitly apply not only to admission to CVTE schools (e.g., regional technical schools, city technical schools) but also admission to specific CVTE programs within schools including those within comprehensive academic high schools. Policies for admission to specific CVTE programs tend to consider some combination of selective criteria (though not necessarily the same as those used for

admission to the school) coupled with a student's desired choice of program to determine where that student is placed – i.e., students who score higher are admitted to their program of choice before students who are also interested in that specific program but score lower. Under this system, even if students from protected classes are equitably admitted to the school through, e.g., a lottery, they will likely be disproportionately excluded from enrolling in high-wage career paths and gaining transferable skills and knowledge.

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I. Selection Process

a. Overview

27 of the 28 schools reviewed rank order students based on point totals from weighted criteria, with the sole remaining school using a lottery.² Greater New Bedford RVTS uses a partial lottery but is included in the analysis of schools using selective admissions criteria because it fills 88% of its seats (500 out of 565) using rank order. 603 C.M.R. § 4.03(6)(a) states that CVTE schools and programs may only use selective criteria “when there are more applicants than available seats.”

The following 27 regional vocational schools **rank order students** and accept applicants in order of their point total with students accumulating higher total points admitted before those with lower totals:

- Blackstone Valley RVTS
- Blue Hills RVTS
- Bristol County Agricultural
- Bristol-Plymouth RVTS
- Cape Cod Regional Technical
- Essex North Shore
- Franklin County Technical
- Greater Fall River RVTS (Diman)
- Greater Lawrence RVTS
- Greater Lowell RVTS
- Greater New Bedford RVTS
- Minuteman RVTS
- Montachusett RVTS
- Nashoba Valley Technical
- Norfolk County Aggie
- Northeast Metropolitan RVTS
- Northern Berkshire (McCann)
- Old Colony RVTS
- Pathfinder RVTS
- Shawsheen Valley RVTS
- South Middlesex (Keefe)
- South Shore RVTS
- Southeastern RVTS
- Southern Worcester (Bay Path)
- Tri-County RVTS
- Upper Cape Cod RVTS
- Whittier RVTS

18 of the 27 regional schools using selective admission consider the following five criteria: attendance, grades, discipline, recommendation, and an interview. The remaining 9 use at least three of the five criteria and all consider discipline and attendance (2 do not consider grades; 2 do not consider a recommendation; 6 do not consider an interview). More than half (13) of the 21 regional schools, and 16 when including those schools that co-weight the interview as the heaviest criteria, most heavily weight the interview (between 30% and 70%) with 8 counting the interview for 40% or more of an application. Grades are the next most heavily weighted criteria with 11 schools (6 weighting it heaviest outright; 5 co-weighting) weighting grades between 25% and 50%. Regional schools most frequently assign the least points to recommendations (between 5% and 20%) and recommendations accounted for 10% or less of a student’s application in 13 instances.

Assabet Valley RVTS uses a **lottery** to select students for admission when it receives more applications than available seats. Students who apply must submit a complete application, attend an informational interview, and submit a letter of recommendation. The recommendation may be written by a counselor, teacher, advisor, coach, family member, or community member. Applicants with completed

² The full admissions policies for all schools discussed in this review can be accessed on the Department’s website [here](#). This hyperlink is “live” and may include revisions to admissions policies submitted by regional schools and posted by the Department after February 18, 2022 (in which case those revisions would not be reflected in this review). All policies discussed in this review are current through February 18, 2022 with the exceptions of Assabet Valley, Southeastern Regional, Southern Worcester, Tri-County, and Upper Cape Cod Regional which are current through February 22, 2022.

requirements within the timeline will be assigned a lottery number. The policy does not expressly state that the admissions requirements have no bearing on an applicant's lottery number. The policy does specify that students may only be enrolled to Assabet if they have been promoted to the grade they are seeking to enter. **Despite using a lottery**, Assabet's admissions scheme rescinds the admission of any student who has been given a lottery seat but received a suspension or expulsion under M.G.L. c.71 §37H (possession of drugs or weapons or assault on school staff on school premises or at school-sponsored or school-related event) or §37H1/2 (felony or felony delinquency complaint or conviction), or a suspension or expulsion for more than 10 days under M.G.L. c.71 §37H3/4 (all other disciplinary offenses not covered under 37H and 37H½) within the previous school year. In this way, certain types of discipline act as an absolute bar to admission.

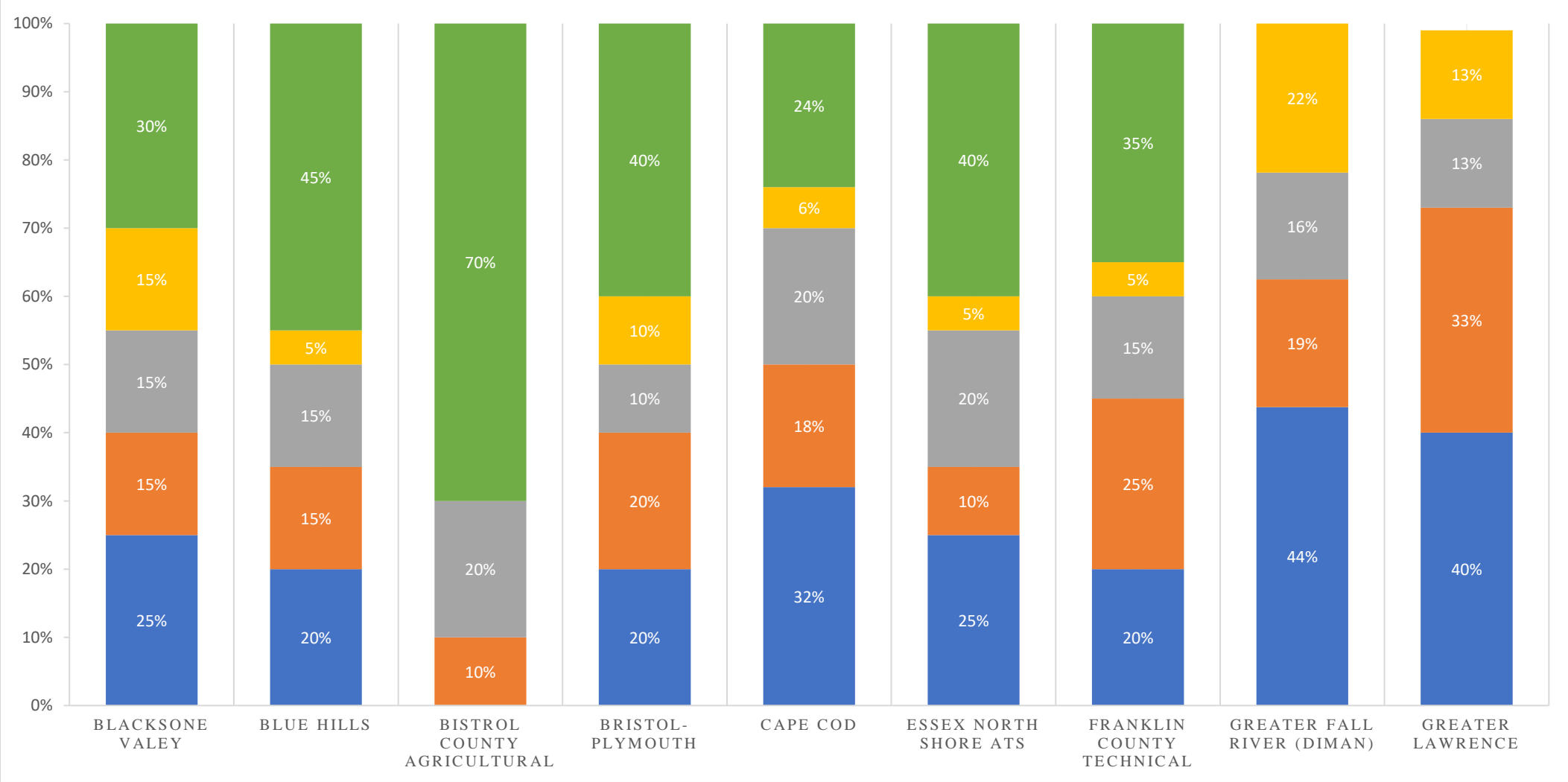
b. Selection Process Table Alphabetical

Alphabetical						
School Name	Most Weighted Criteria		Least Weighted Criteria		Criteria Not Considered	Tiebreaker
Blackstone Valley RVTS	Interview	30%	Attendance; disc.; rec.	15%	--	Mitigate fluctuations in enrollment from prior SY
Blue Hills RVTS	Interview	45%	Attendance; discipline	15%	--	Earlier application date
Bristol County Agricultural	Interview	70%	Attendance	10%	Grades; rec.	Disc.; interview; attend.
Bristol-Plymouth RVTS	Interview	40%	Discipline; recommendation	10%	--	Int; gr.; disc; att; rec.; lottery
Cape Cod Regional Technical	Grades	32%	Recommendation	6%	--	--
Essex North Shore	Interview	40%	Recommendation	5%	--	--
Franklin County Technical	Interview	35%	Recommendation	5%	--	--
Greater Fall River (Diman)	Grades	43%	Discipline	16%	Interview	--
Greater Lawrence RVTS	Grades	40%	Discipline; recommendation	13%	Interview	--
Greater Lowell RVTS	Grades; attendance	40%	Recommendation	5%	Interview	--
Greater New Bedford RVTS	Recommendation	26%	Grades	24%	Interview	Rec.; disc.; attendance; grades
Minuteman RVTS	All equal	20%	All equal	20%	--	Lottery
Montachusett RVTS	Grades	25%	Recommendation	15%	--	--
Nashoba Valley Technical	Interview	40%	Recommendation	8%	--	Earlier application date
Norfolk County Aggie	Interview	70%	Attendance	10%	Grades; rec.	Discipline; interview; attendance
Northeast Metropolitan RVTS	Grades; attend.; disc.	30%	Recommendation	10%	Interview	--
Northern Berkshire (McCann)	Grades; attendance	30%	Discipline; recommendation	20%	Interview	Recommendation; grades
Old Colony RVTS	Attendance	30%	Recommendation	5%	--	Int.; gr.; disc.; attend.; rec.
Pathfinder RVTS	Interview	70%	Attendance; discipline	2%	--	--
Shawsheen Valley RVTS	Interview	30%	Grades; attendance	15%	--	Attend. + interview; lottery
South Middlesex (Keefe)	Interview	36%	Discipline; recommendation	10%	--	--
South Shore RVTS	Grades	30%	Recommendation	10%	--	Interview; grades; attend.
Southeastern RVTS	Interview	35%	Recommendation	5%	--	Lottery
Southern Worcester (Bay Path)	Grades	25%	Interview	15%	--	--
Tri-County RVTS	Discipline; interview	25%	Recommendation	10%	--	--
Upper Cape Cod RVTS	Interview	60%	Attendance; discipline	20%	Recommendation	--
Whittier RVTS	Grades; interview	30%	Discipline; recommendation	10%	--	--

c. Graphical Overview of All RVTs Selective Admission Policies

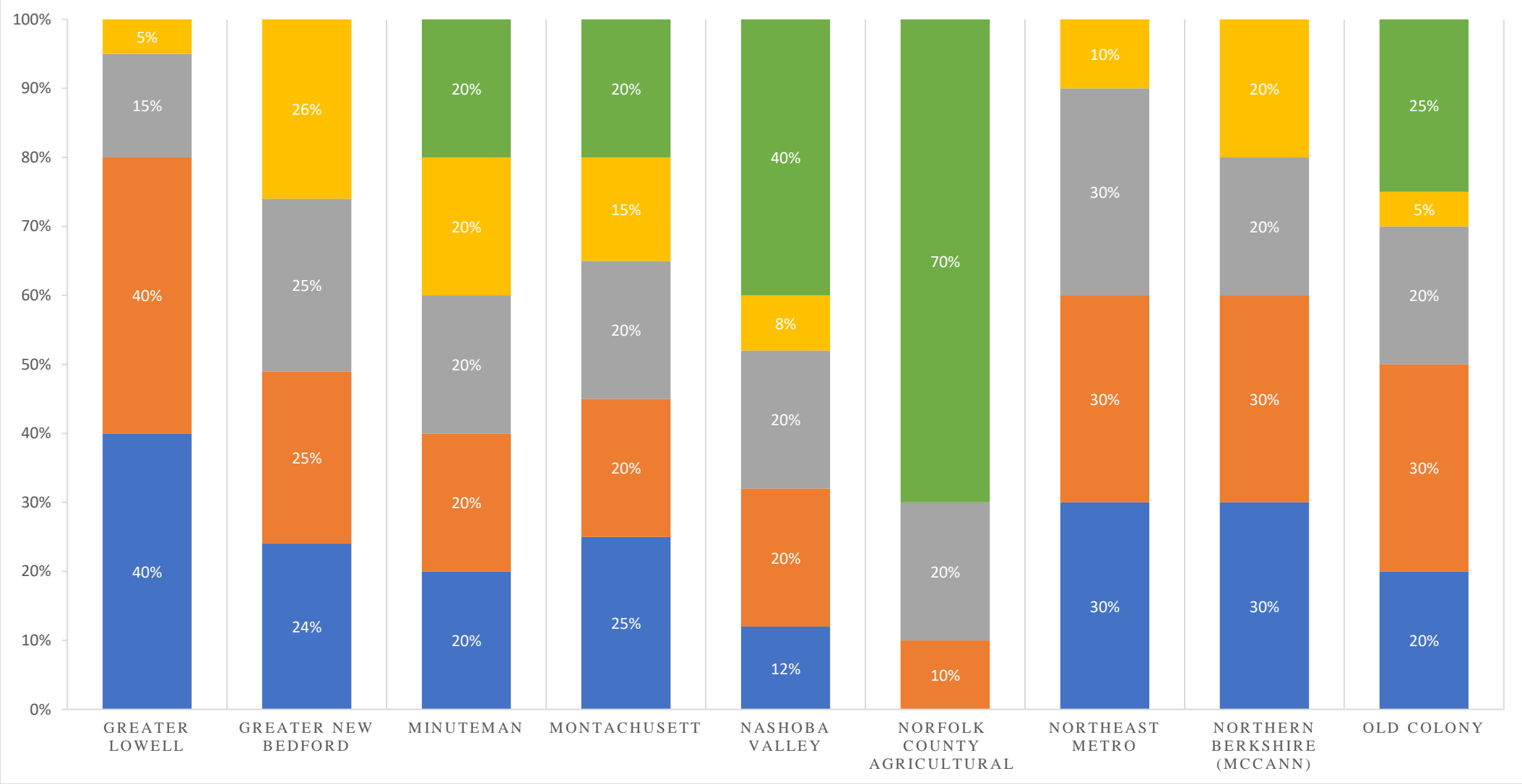
OVERVIEW (A-G)

■ Grades ■ Attendance ■ Discipline ■ Recommendation ■ Interview



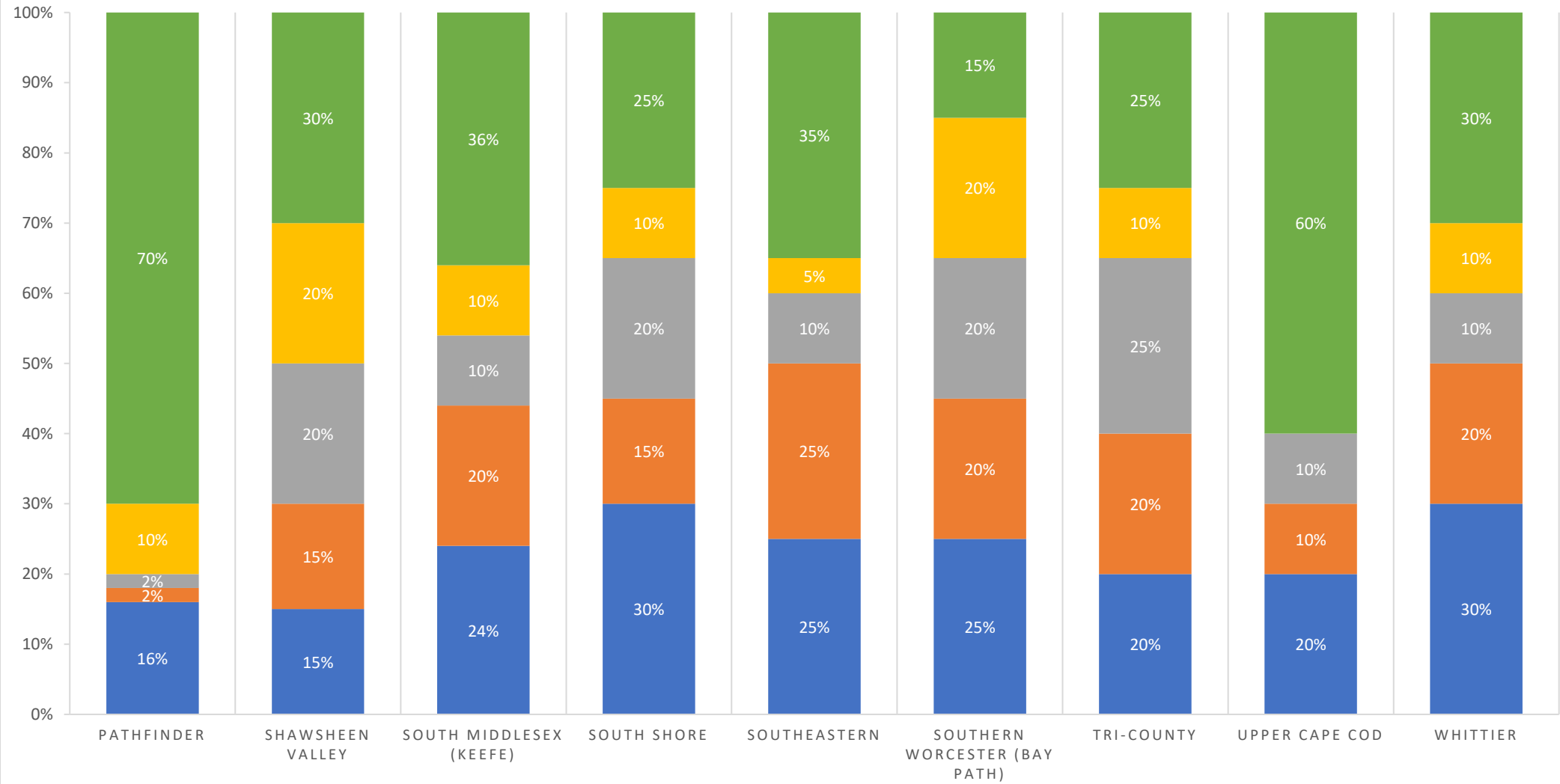
OVERVIEW (M-P)

■ Grades
 ■ Attendance
 ■ Discipline
 ■ Recommendation
 ■ Interview



OVERVIEW (S-W)

Grades Attendance Discipline Recommendation Interview



II. Grades

a. Overview

25 of the 27 regional schools that use selective admissions criteria consider some combination of an applicant's grade average in English, math, science, and social studies from 7th and 8th grade; Greater New Bedford and Shawsheen Valley are the only schools not to consider all four subjects, taking into account English, math, and science but not social studies. No RVTS considers additional subjects beyond the four "core" courses. Almost all of the regional schools consider the entirety of 7th grade and a portion of 8th grade, with the exceptions of Franklin County, South Shore, and Upper Cape Cod considering only portions of 8th grade. There is slight variation among the regional schools as to the period of grades considered within a student's 8th grade year (e.g., some regionals consider 8th-grade "Term 1" and "Term 2" grade reports while others consider only "Term 1"). The regional schools typically do not include their definition of what constitutes a "Term" for purposes of their grade period although some specify an exact date or make a somewhat more explicit reference to quarters/trimesters. Minuteman additionally provides that "[t]ranscripts that use a standards based, narrative, or other grading system will be translated into a letter grade by the admissions team."

The regional schools either assign points for grades based on individual subject scores (e.g., 5 points per core subject for an A; 20 possible points total) or average grades across the core subjects (e.g., an A average across all courses measured is awarded 20 points). The **grade range** at which the regional schools begin to deduct points is also variable. On the low end, 3 schools essentially operate on a pass/fail system with full points for a "pass" (scores in the low mid-60s), 2 schools provide full points for any grade score/average of 70 or above, a third provides full points for 75 or above, and a fourth at a "C" average. In the middle, 7 regional schools provide full points for any grade score/average of 80 or above. However, almost half of the regional schools that consider grades (11 out of 25) require students to have a score/average of 90 or above to receive full points.

Grade average comprises 20% or less of the weighted admissions criteria for the following 9 schools:

- Blue Hills RVTS
- Bristol-Plymouth RVTS
- Franklin County Technical
- Minuteman RVTS
- Nashoba Valley Technical
- Old Colony RVTS
- Pathfinder RVTS
- Shawsheen Valley RVTS
- Upper Cape Cod RVTS

Grade average comprises 24-40% of the weighted admissions criteria for the following 15 schools

- Blackstone Valley RVTS
- Cape Code Regional Technical
- Essex North Shore
- Greater Lawrence RVTS
- Greater Lowell RVTS
- Greater New Bedford RVTS
- Montachusett RVTS
- Northeast Metropolitan RVTS
- Northern Berkshire (McCann)
- South Middlesex (Keefe)
- South Shore RVTS
- Southeastern RVTS
- Southern Worcester (Bay Path)
- Tri-County RVTS
- Whittier Regional RVT

Grade average comprises 43% of the weighted admissions criteria for Diman Regional (Fall River). Diman also provides that "[d]ue to the extenuating circumstances that existed in 2019-2020, the area[] of...academic record will only be scored for the period of time leading up to March 13, 2020. [This]

categor[y] will not be scored from March 16, 2020 through June of 2020. Pass-Fail grades from 2019-2020 will not be utilized. A return to...academic recording has been put back in place effective 2020-2021, per guidance from the Commissioner of Education, and will be utilized as part of the admissions process moving forward.

Bristol County Agricultural and Norfolk County Agricultural High School **do not consider grades** as part of its weighted admissions criteria.

b. Grade Table Alphabetical

Alphabetical			
School Name	Percentage of Application	Period of 8th Grade Grades Considered (assume all 7th considered unless noted)	Lowest Grade Average to Receive Full Points
Blackstone Valley RVTS	25%	Terms 1 and 2	80
Blue Hills RVTS	20%	Term 1	80
Bristol County Agricultural	N/A	--	--
Bristol-Plymouth RVTS	20%	One half of the current year	65 (Pass/Fail)
Cape Cod Regional Technical	32%	Terms 1 and 2	80
Essex North Shore	25%	Terms 1 and 2	80
Franklin County Technical	20%	Terms 1 and 2 of 8 th grade only	C* (scale unclear)
Greater Fall River (Diman)	43%	Terms 1 and 2 or first trimester	90
Greater Lawrence RVTS	40%	Term 1	80
Greater Lowell RVTS	40%	Quarter/Trimester 1 and 2	90
Greater New Bedford RVTS	24%	Marking period 1 and 2	75
Minuteman RVTS	20%	Term 1	70
Montachusett RVTS	25%	Terms 1 and 2	80
Nashoba Valley Technical	12%	To current date	70
Norfolk County Aggie	N/A	--	--
Northeast Metropolitan RVTS	30%	Terms 1 and 2	90
Northern Berkshire (McCann)	30%	One half of the current year	80
Old Colony RVTS	20%	One half of the current year	90
Pathfinder RVTS	16%	To current date	Pass/Fail
Shawsheen Valley RVTS	15%	One half of the current year	61 (Pass/Fail)
South Middlesex (Keefe)	24%	Term 1	90
South Shore RVTS	30%	Term 1 of 8 th grade only	90
Southeastern RVTS	25%	Term 1	90
Southern Worcester (Bay Path)	25%	To current date	90
Tri-County RVTS	25%	Prior to February 1	90
Upper Cape Cod RVTS	20%	Terms 1 and 2 of 8 th grade only	90
Whittier RVTS	30%	Terms 1 and 2	90

III. Attendance

a. Overview

All schools (27) that use selective admissions criteria consider an applicant's number of unexcused absences. Like with grades, almost all of the regional schools consider the entirety of 7th grade and a portion of 8th grade, with the exceptions of Franklin County, Old Colony, South Shore, and Upper Cape Cod considering only portions of 8th grade. There are again slight variations between the regional schools as to the period of attendance considered within a student's 8th grade year (e.g., some regionals consider 8th-grade "Term 1" and "Term 2" grade reports while others consider only "Term 1"). The regional schools typically do not include their definition of what constitutes a "Term" for purposes of their attendance period although some specify an exact date or make a somewhat more explicit reference to quarters/trimesters.

Only two regional schools, Whittier and Diman, include their definition of what type of constitutes an "unexcused" absence. Diman provides that "[a]n unexcused absence is defined as an absence that is not school approved. Examples of school approved absences are: medical appointments, funeral leave, court appearances, religious observances or any other reason approved by the school." Whittier's policy states that "parent/guardians, may excuse their child from school up to seven days per a school year. Absences beyond seven days will be marked as unexcused, unless there is documented illness."

Attendance comprises 25-40% of the weighted admissions policy for 8 schools (Franklin County Technical; Greater Lawrence Technical; Greater Lowell; Greater New Bedford; Northeast Metropolitan Regional Vocational; Northern Berkshire Regional Vocational; Old Colony Regional Vocational Technical; Southeastern Vocational Regional Technical) with the remaining 19 schools **weighting attendance 20% or less.** 5 schools (Greater Lawrence, Greater Lowell, Northeast Metro, McCann, and Old Colony) weight attendance at 30% or above while Pathfinder assigns the lowest weight of any regional school to attendance (2%).

10 of the regional schools allow students to accumulate at least 8 unexcused absences over the covered period, which varies based on the policy, and still receive full points for attendance (with some policies allowing for unexcused absences in the low and upper teens prior to point deduction). For instance, a student applying to Northeast Metro will receive full points up to 15 unexcused absences (roughly 8% of the school year). Conversely, there are a handful of schools that begin deducting points almost immediately (e.g., Blue Hills permits no more than 1 absence for full points; Franklin County and Diman allow up to 3).

The majority of schools (21) that count attendance from both 7th and 8th grade count total absences (or produce an average to satisfy a score threshold) and do not assign separate values to a student based on what grade that student was absent in. Tri-County and Cape Cod Regional use a tardy system and count three "unexcused tardy" (undefined) as one unexcused absence. Southeastern Regional and Diman have specific attendance provisions that apply to varying time periods during the COVID-19 Pandemic. Southeastern states that "[i]n light of the COVID Pandemic and difficulty many schools have had the last two year maintaining accurate attendance, all students seeking admissions in September 2022 will be awarded 25 Points for Attendance." Diman provides that for the class of 2026 "[d]ue to the extenuating circumstances that existed in 2019-2020, the area[] of attendance...will only be scored for the period of time leading up to March 13, 2020. [This] categor[y] will not be scored from March 16, 2020 through June of 2020...A return to regular attendance...recording has been put back in place effective 2020-2021, per guidance from the Commissioner of Education, and will be utilized as part of the admissions process moving forward.

3 regional schools (Blackstone Valley, Bristol County Aggie, and Greater New Bedford) offer some **variation of an “appeal”** for students with a number of unexcused absences. Blackstone Valley allows “[f]or applicants receiving a score of 8 points or less in the category of Attendance...to submit a letter of evidence indicating the extenuating circumstances surrounding the unexcused absences.” The Admissions Committee can “excuse” any previously unexcused absences upon review. Bristol County Aggie provides less detail, but states that “[e]xcessive absences will be evaluated by the Admissions Coordinator.” Bristol County neither defines what an “excessive” number of absences is nor provides insight into the role of the Admissions Coordinator in this evaluation. Greater New Bedford’s policy states that “[a] student or their parent/guardian will be given an opportunity to submit documentation that disputes the unexcused attendance record from their sending school and/or explains the context of their attendance record.” Minuteman does not appear to offer an appeal but states in its admissions policy that “[r]ecognizing that students may have adverse circumstances, the District will review the number of unexcused absences and the reasons for them.”

b. Attendance Table Alphabetical

Alphabetical			
School Name	Percentage of Application	Period of Attendance for 8th grade (assume all 7th considered unless noted)	Most Excused Absences Eligible for Full Points
Blackstone Valley RVTS	15%	Terms 1 and 2	Unclear. Between 0-5 total (average out of 6)
Blue Hills RVTS	15%	Term 1	1
Bristol County Agricultural	10%	Terms 1 and 2	6. "Excessive absences" evaluated by staff
Bristol-Plymouth RVTS	20%	Terms 1 and 2 (midyear)	2
Cape Cod Regional Technical	18%	Terms 1 and 2	5 for grade 7; 3 for Terms 1 and 2 of grade 8. Includes unexcused "tardy." 3 tardy = 1 absence
Essex North Shore	10%	Terms 1 and 2 or 50% of grade	5
Franklin County Technical	25%	Terms 1 and 2 of current year only	3
Greater Fall River (Diman)	18.75%	Terms 1 and 2 or first trimester	3
Greater Lawrence RVTS	33.3%	Term 1	4
Greater Lowell RVTS	40%	Quarter/Trimester 1 and 2	2
Greater New Bedford RVTS	25%	Marking periods 1 and 2	9 days for grade 7; 4 days for grade 8
Minuteman RVTS	20%	Current year to date	10
Montachusett RVTS	20%	Terms 1 and 2	6
Nashoba Valley Technical	20%	Current year to date	9 per year (average out of 2)
Norfolk County Aggie	10%	Terms 1 and 2	3 days for grade 7; 3 days Terms 1 and 2 of grade 8
Northeast Metropolitan RVTS	30%	Terms 1 and 2	15
Northern Berkshire (McCann)	30%	One half of current year	6
Old Colony RVTS	30%	Terms 1 and 2	3 days for grade 7; 3 days for grade 8
Pathfinder RVTS	2%	Past two school years	9 per year (points for each year)
Shawsheen Valley RVTS	15%	Terms 1 and 2	5
South Middlesex (Keefe)	20%	Terms 1 and 2	10
South Shore RVTS	15%	Most recent marking per. only	Unclear. 5 per year
Southeastern RVTS	25%	Prior to February 1	2 per year. Full points for Sept. 2022 applicants because of COVID.
Southern Worcester (Bay Path)	20%	Current year to date	6
Tri-County RVTS	20%	Terms 1 and 2	5 for grade 7; 3 for first half of grade 8. Includes unexcused "tardy." 3 tardy = 1 absence
Upper Cape Cod RVTS	10%	Terms 1 and 2 only	5
Whittier Regional RVTS	20%	Terms 1 and 2	10

IV. Discipline

a. Overview

All schools (27) that use selective admissions criteria consider an applicant’s disciplinary record. Pursuant to 603 CMR § 4.03(6), vocational technical schools can only consider conduct for which suspension or expulsion was imposed pursuant to:

- Massachusetts General Laws c 71, § 37H: possession of drugs or weapons or assault on school staff on school premises or at school-sponsored or school-related event;
- Massachusetts General Laws c 71, § 37H½: felony or felony delinquency complaint or conviction;
- Suspension or expulsion for more than 10 days was imposed pursuant to Massachusetts General Laws c 71, § 37H¾ (all other disciplinary offenses not covered under the previous two bullets).

Regional schools are specifically prohibited from considering “minor behavior or disciplinary infractions” which includes any suspension or expulsion for less than 10 days under M.G.L. c.71 §37H¾.³

At least 10, and possibly 14, schools are out of compliance with this specific piece of the regulation.

- Bristol County Agricultural
- Bristol-Plymouth RVTS
- Essex North Shore
- Greater Fall River (Diman)
- Greater New Bedford (unclear)
- Norfolk County Agricultural
- Northeast Metropolitan RVTS
- Old Colony RVTS
- Pathfinder RVTS (unclear)
- Southeastern RVTS (unclear)
- Southern Worcester (Bay Path)
- Tri-County RVTS
- Upper Cape Cod
- Whittier RVTS (unclear)

Of these 14 regional schools, some include ambiguous or unacceptable terms such as “infractions,” “referrals,” “conduct,” “detentions,” while others use the word “suspension” without defining it. Some schools also deduct points for any suspension under General Laws c 71, § 37H¾ regardless of the length of time excluded from school, which is inconsistent with the regulatory language that schools may not consider “minor” disciplinary offenses. While not included in the above list, it is also worth noting that 12 of the remaining 13 regional schools deduct points for suspensions under G.L. c 71, § 37H¾ that fall within the prohibited “minor behavior or disciplinary infractions” category when multiple offenses in the aggregate lead to a student having been excluded from school for more than 10 days cumulatively.

The majority of the regional schools (21) use some form of a **binary point system** for considering disciplinary history (e.g., an applicant who has been suspended under M.G.L. c.71 § 37H or § 37H½ receives no points, while an applicant who has not been disciplined under these statutes receives full points). A majority of schools also weight discipline between 20% and 30% of the total score.

Two schools, Blue Hills and Greater New Bedford, offer a **variation of an appeal** for students who

³ See 603 C.M.R. § 4.03(6)(a) (“Such criteria may not consider a student's record of excused absences from school, or minor behavior or disciplinary infractions. For purposes of 603 CMR 4.03(6)(a), a “minor behavior or disciplinary infraction” means any student conduct other than conduct for which suspension or expulsion was imposed pursuant to M.G.L. c.71 §37H or §37H½, or for which suspension or expulsion for more than 10 days was imposed pursuant to M.G.L. c.71 §37H¾.”).

score 0 points in this category.⁴ Blue Hills provides students “the opportunity to present mitigating evidence and an explanation of the suspension(s), in writing to the principal”, who “will have the authority to adjust the awarded points” based on the principal’s assessment of whether the student provided a reasonable explanation and assurance of changed behavior.” Greater New Bedford gives students “an opportunity to explain and clarify the suspensions or pattern of incidents to admissions personnel.” Minuteman does not appear to offer an appeal but states in its admissions policy that “[r]ecognizing that students may have adverse circumstances, the District will review not only the number and length of suspensions, but the documented facts related to the suspensions.”

Unlike with grades and attendance, some regional schools are less clear about the period of time over which they will consider discipline (e.g., 7th and 8th grade, only the most recent term). Several schools are silent as to the period of time or vaguely request a student’s disciplinary history or record.

⁴ Here and elsewhere in this document references to an “appeal” are intended to capture instances where a regional school offers students some way to qualify, contextualize, etc. their personal circumstances in relation to specific admissions criteria. Policies that contain such language appear to frame this appeal as distinct from and in addition to the “appeal” required by the regulations. *See* 603 C.M.R. § 4.03(6)(a) (“Each policy shall include the following...A process for prospective students and parents/guardians to appeal to the superintendent or their designee the decision to deny the prospective student admission to the school or program. The superintendent or their designee shall maintain documentation as to the specific admission requirements that were used to deny admission, and shall provide such documentation to the Department or to the prospective student’s parent/guardian upon request.”).

b. Discipline/Conduct Table Alphabetical

Alphabetical			
School Name	Percentage of Application	Binary?	In Compliance with the Regulatory Prohibition in 603 CMR 4.03(6) on Considering Certain Discipline?
Blackstone Valley RVTS	15%	Yes	Yes. Considers cumulative offenses for 37H¾
Blue Hills Regional Technical	15%	Yes	Yes. Cumulative* offenses for 37H¾. Appeal for score of “0”
Bristol County Agricultural	20%	Yes for 37H & 37H½	No. Deducts points for a 10-day suspension under 37H¾
Bristol-Plymouth RVTS	10%	No	No. Awards 0 points for “2 or more incidents resulting in 2 or more suspensions”
Cape Cod Regional Technical	20%	Yes	Yes (previously non-compliant)
Essex North Shore	20%	Yes for any exp. or for ≥ 2 sus.	No. Deducts points for any 37H¾ suspension
Franklin County Technical	15%	No	Yes (previously non-compliant)
Greater Fall River (Diman)	15.625%	Yes	No. Deducts points for any “incident” and any 37H¾ suspension
Greater Lawrence RVTS	13.3%	No	Yes. Considers cumulative* offenses for 37H¾
Greater Lowell RVTS	15%	Yes	Yes. Considers cumulative* offenses for 37H¾
Greater New Bedford RVTS	25%	No	Unclear. May deduct points for “pattern of multiple incidents of major discipline (37H¾) which may reflect upon the student’s likelihood of success or safety in the...program”
Minuteman RVTS	20%	Yes	Yes. Cumulative* offenses for 37H¾. Reviews mitigating factors
Montachusett RVTS	20%	No	Yes (previously non-compliant)
Nashoba Valley Technical	20%	Yes	Yes. Considers cumulative offenses for 37H¾
Norfolk County Aggie	20%	Yes for 37H & 37H½	No. Deducts points for a 10-day suspension under 37H¾
Northeast Metropolitan RVTS	30%	Yes	No. Reviews applications where “[p]attern of school suspensions less than 10 days in length that demonstrate safety risk in vocational school setting essential to participation”
Northern Berkshire (McCann)	20%	Yes	Yes. Considers cumulative* offenses for 37H¾
Old Colony RVTS	20%	Yes	No. Deducts points for any 37H¾ suspension
Pathfinder RVTS	2%	Yes	Unclear. May consider exactly 10 day suspensions under 37H¾
Shawsheen Valley RVTS	20%	Yes	Yes. Considers cumulative* offenses for 37H¾
South Middlesex (Keefe)	10%	Yes	Yes. Considers cumulative offenses for 37H¾
South Shore RVTS	20%	Yes	Yes. Considers cumulative* offenses for 37H¾
Southeastern RVTS	10%	Yes	Unclear (previously non-compliant). May consider under 10 day suspensions for 37H¾
Southern Worcester (Bay Path)	20%	No	No. Deducts points for any suspension
Tri-County RVTS	25%	Yes	No. Considers “any action” from “discipline referral under 37H/37H½”
Upper Cape Cod RVTS	10%	Yes for 37H expulsion	No. Full points awarded only if no “references to discipline”
Whittier RVTS	10%	Yes	Unclear. May deduct points for any 37H¾ suspension

V. Sending School's Recommendation

a. Overview

Of the 27 regional schools that use weighted admissions criteria, 24 of them consider recommendations. (Bristol Aggie, Norfolk Aggie, and Upper Cape Cod do not.) Only 6 regional schools weigh recommendations at 20% or more (Greater Fall River, Greater New Bedford; Minuteman; Northern Berkshire; Shawsheen Valley; Southern Worcester). Regional schools most frequently assign the least points to recommendations, and recommendations accounted for 10% or less of a student's application in 13 instances.

Slightly more than half (13) of the 24 regional schools **provide any guidance** in the admission policy to the recommender about how to complete the recommendation. Even then, much of that guidance is sparse or ambiguous (e.g., from Tri-County: "A maximum of 10 points is derived from the recommendation of the sending school counselor and/or other sending school personnel who know the applicant best. A student's performance at his/her current grade level is being evaluated. The recommendation is based on a student's effort and motivation regarding his/her education. Points are awarded as follows: Excellent [10], Good [8], Average [6], Fair [4], Poor [0]"). Some policies imply that the school will provide additional guidance to recommenders outside of the admissions policy itself (e.g., Blackstone Valley's admissions policy states that "[a]n equitable recommendation form is used and completed by the sending school" but the policy does not include the referenced form).

6 of the 24 regional schools continue to **limit the recommender** to the school guidance counselor. The remaining 18 regional schools use a wider range and fall somewhere between schools like Cape Cod on the more restrictive end allowing the guidance counselor or principal to provide the recommendation and schools like Nashoba Valley on the less restrictive end allowing the guidance counselor or any other school personnel selected by the student to complete the recommendation. Greater Fall River is an outlier in that it requires three recommendations: one from the school guidance department and two from "anyone other than a school Guidance Counselor".

One school, Greater New Bedford, provides that "[i]f there are any extenuating circumstances affecting grades, attendance or discipline, an explanation letter from the middle school counselor or administrator will be accepted."

b. Recommendation Table Alphabetical

Alphabetical			
School Name	Percentage of Application	Who Can Provide the Recommendation (most open to most restrictive)	Guidance in Policy?
Blackstone Valley RVTS	15%	Member of the guidance department	No
Blue Hills RVTS	5%	Guidance counselor, teacher, or designee	No
Bristol County Agricultural	N/A	--	--
Bristol-Plymouth RVTS	10%	Guidance counselor	Yes
Cape Cod Regional Technical	6%	School counselor or principal	Yes
Essex North Shore	5%	School counselor or principal	No
Franklin County Technical	5%	School counselor	No
Greater Fall River (Diman)	21.875%	One from the guidance dept. + two from anyone not in guidance dept.	Yes
Greater Lawrence RVTS	13.3%	Guidance counselor	No
Greater Lowell RVTS	5%	Member of the school counseling department	Yes
Greater New Bedford RVTS	26%	School personnel	Yes
Minuteman RVTS	20%	Any school staff or other adult (non-family member) qualified to assess potential for success in CTE	No
Montachusett RVTS	15%	Counselor or teacher	Yes
Nashoba Valley Technical	8%	Guidance counselor or any other school personnel selected by student	No
Norfolk County Aggie	N/A	--	--
Northeast Metropolitan RVTS	10%	Guidance counselor or school personnel	No
Northern Berkshire (McCann)	20%	Guidance counselor	Yes
Old Colony RVTS	5%	Guidance counselor	No
Pathfinder RVTS	10%	Counselor	No
Shawsheen Valley RVTS	20%	Guidance counselor or teacher selected by the applicant	Yes
South Middlesex (Keefe)	10%	School counselor or representative	Yes
South Shore RVTS	10%	Guidance counselor or teacher who worked with the applicant within the past two years	Yes
Southeastern RVTS	5%	Counselor and/or other school personnel who know applicant best	Yes
Southern Worcester (Bay Path)	20%	Unclear	Yes
Tri-County RVTS	10%	Counselor and/or other school personnel who know applicant best	Yes
Upper Cape Cod RVTS	N/A	--	--
Whittier RVTS	10%	Counselor and/or other school personnel who know applicant best	No

VI. Interview

a. Overview

Of the 27 schools that use weighted admissions criteria, 21 consider student interviews. More than half (13) of the 21 regional schools, and 16 when including those schools that co-weight the interview as the heaviest criteria, **most heavily weight the interview** (between 30% and 70%). The sheer amount of points regional schools award for interviews has the potential to be outcome determination for a noticeable portion of applications (14 schools weighted interviews at 30% or more, 8 schools at 40% or more, and 4 schools at 60% or more; 3 schools at 70%).

Even more so than with recommendations, **guidance** on conducting interviews and rubrics for scoring them were noticeably absent, with only 6 schools providing some semblance of instruction to the interviewer. Only 2 schools, and possibly a third that offers “sample questions,” provide the applicant with access to the **interview questions** ahead of time.

Greater Fall River, Greater Lawrence, Greater Lowell, Greater New Bedford, Northeast Metro, and Northern Berkshire Regional Vocational **do not consider interviews** as part of their selective admissions criteria.

b. Interview Table Alphabetical

Alphabetical			
School Name	Percentage of Application	Questions Provided to Applicants?	Scoring Guidance Provided to Interviewers?
Blackstone Valley RVTS	30%	Yes*	No
Blue Hills RVTS	45%	No	No
Bristol County Agricultural	70%	No	No
Bristol-Plymouth RVTS	40%	Yes	Yes
Cape Cod Regional Technical	24%	No	No
Essex North Shore	40%	No	No
Franklin County Technical	35%	No	No
Greater Fall River Regional	N/A	--	--
Greater Lawrence RVTS	N/A	--	--
Greater Lowell RVTS	N/A	--	--
Greater New Bedford RVTS	N/A	--	--
Minuteman RVTS	20%	No	No
Montachusett RVTS	20%	No	No
Nashoba Valley Technical	40%	No	No
Norfolk County Aggie	70%	No	No
Northeast Metropolitan RVTS	N/A	--	--
Northern Berkshire (McCann)	N/A	--	--
Old Colony RVTS	25%	No	No
Pathfinder RVTS	70%	No	No
Shawsheen Valley RVTS	30%	Yes	Yes
South Middlesex (Keefe)	36%	No	Yes
South Shore RVTS	25%	No	Yes
Southeastern RVTS	35%	No	No
Southern Worcester (Bay Path)	15%	No	Yes
Tri-County RVTS	25%	No	Yes
Upper Cape Cod RVTS	60%	No	No
Whittier RVTS	30%	No	No

VII. The Civil Rights Standard Admissions Policies Must Comply With

[This section is adapted from a portion of the extensive comments that the Vocational Education Justice Coalition (“VEJC”) submitted on the Department’s proposed regulations. None of VEJC’s comments and related proposed changes were adopted, leading directly to the discriminatory admissions policies submitted by 27 of the 28 regional schools and described in this report. VEJC was concerned that additional regulatory language was needed to ensure fidelity to the civil rights standard given that schools were not accustomed to implementing it and had over the years become accustomed to assuming the legitimacy of their existing criteria, which have been regularly reviewed and accepted by the Department, and the Coalition’s comments and proposed changes sought to ensure that clarity. VEJC feared from the Department’s regulations and response to public comment (including its adoption of none of VEJC’s proposed changes) that the Department neither fully understood the meaning of the civil rights standard nor was committed to rigorous and consistent enforcement of that standard. Subsequent Department guidance and “new” admissions policies submitted by CVTE schools and programs, of which the Department has absolved itself of responsibility to review and correct by removing language from the previous regulations requiring it to approve submitted policies⁵, have borne out the Coalition’s fears.]

The following excerpts of VEJC’s comments have been adapted to reflect the present state of admissions to CVTE schools in the Commonwealth. A link to VEJC’s full comments in their original form, including proposed amendments, as submitted to the Department can be found [here](#).]

a. Overview

The Department recently amended 603 C.M.R. § 4.03(6) to include an important civil rights standard contained in the *Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap in Vocational Education Programs* contained in 34 C.F.R. Part 100, Appendix B (“Voc Ed Guidelines”). The new regulation provides that:

“Vocational schools and programs that use selective criteria shall not use criteria that have the effect of disproportionately excluding persons of a particular race, color, national origin, sex, gender identity, sexual orientation, religion, or disability unless they demonstrate that (1) such criteria have been validated as essential to participation in vocational programs; and (2) alternative equally valid criteria that do not have such a disproportionate adverse effect are unavailable.”

This language is derived from Section (IV)(K) of the Voc Ed Guidelines which states “Recipients [of federal funds] may not judge candidates for admission to vocational education programs on the basis of criteria that have the effect of disproportionately excluding persons of a particular race, color, national origin, sex, or handicap. However, if a recipient can demonstrate that such criteria have been validated as essential to participation in a given program and that alternative equally valid criteria that do not have

⁵ The Department has general oversight responsibilities under 603 C.M.R. § 4.04(2) (“The Department shall periodically monitor compliance of an approved program with applicable laws and regulations.”). However, such oversight, which can be delayed in implementation and/or reactive, is not sufficient to ensure compliance with the requirement in the civil rights standard that CVTE schools and programs demonstrate they have validated any criteria that disproportionately exclude students in protected classes *prior* to their use. Whereas 603 C.M.R. § 4.03(6)(a) previously provided that admissions policies “must be *approved* by the Department prior to implementation” the Department removed that language in June 2021 and the regulation now states that “[b]eginning with the 2021-22 school year, each school and program shall *submit* its admissions policy to the Department by October 1.” (emphasis added).

such a disproportionate adverse effect are unavailable, the criteria will be judged nondiscriminatory.” The Voc Ed Guidelines explicitly provide that “[e]xamples of admissions criteria that must meet this test are past academic performance, record of disciplinary infractions, counselors’ approval, teachers’ recommendations, interest inventories, high school diplomas and standardized tests, such as the Test of Adult Basic Education (TABE).”

The Department’s new regulation adopts the first two sentences of the Voc Ed Guidelines but replaces “sex, or handicap” with “sex, gender identity, sexual orientation, religion, or disability.” There are also relevant requirements for non-discrimination and equal access in the federal Carl D. Perkins Career and Technical Education Act (20 U.S.C. § 2301 et seq.) for “special populations” that extend to other groups, including students from economically disadvantaged families.

b. Criteria that Have the Effect of Disproportionately Excluding Persons in Protected Classes

The language of the civil rights standard is clear on its face, and taking these words literally should be a relatively straightforward matter: Are the students who are *excluded by any criteria* disproportionately members of one or more protected groups? Using criteria – such as grades, attendance, or discipline records – to determine which students will, and which will not, be admitted will exclude a set of students from participation. For example, a minimum C average will exclude students in the relevant population with lower averages. The question is then whether those students in the pool who are excluded by this criterion are disproportionately members of one or more protected groups.

In the case of admission to vocational technical schools at the 9th grade, the relevant population is the entire body of 8th graders in the sending middle schools. For criteria that rely on student records – including grades, attendance, and discipline – the data already exist as to who will be excluded by the criteria and whether students in protected groups will be disproportionately among those who are excluded.⁶ Instead of looking at the students who are *excluded by any criteria*, as called for, the Department has indicated that it may look to whether the students who are *admitted* are “representative” of (1) those who apply and (2) their home school populations (both of which can be determined without looking at the impact of any criterion).⁷ These are not at all the same thing. The right at stake here is not a group right to “representation” in the school or program, i.e., a set number of seats that mirrors the home school population. It is an individual right to have an equal opportunity to participate, free of any discriminatory criteria that have not been validated as essential to participation.

⁶ Where criteria are set in terms of minimum requirements, it’s easy to tell precisely how many students in each eligible population fall below that minimum and will be excluded by each such criteria. Where criteria are instead used for ranking students against one another based on total points, the minimum score necessary for admission depends on who applies. However, that does not mean a school must wait to see who applies to determine whether criteria have the effect of disproportionately excluding students from protected groups. Wherever the precise cut score lands, disparities between groups’ performance on the relevant criteria tell us which groups will be disproportionately excluded, and prior years’ data will show the precise levels of disparity for those years.

⁷ See 603 C.M.R. § 4.03(6)(a) (“Each policy shall include...[a] plan that includes deliberate, specific strategies to promote equal educational opportunities and attract, enroll, and retain a student population that, when compared to students in similar grades in sending districts, has a comparable academic and demographic profile”); *Chapter 74 CVTE Equitable Student Access Guidelines: Local Data Review and Reflection* (“As CVTE schools/programs analyze and improve their practices to admit, enroll, and retain students, it is critically important that they use their student data to drive this process. Data-driven conversations may focus on these questions: Are enrolled students representative of the sending districts’ student population? Is the incoming class representative of the sending districts’ student population? Do particular groups of students have higher rates of admission than others?...”).

Looking at the admissions rates for students who apply and/or representativeness of admitted/enrolled students cannot substitute for looking directly at the impact on the entire pool of students who could apply. Students who know – and whose counselors, teachers, and parents know – that the criteria give them little or no chance of being admitted are less likely to apply in the first place. On the other end of the spectrum, once unnecessary barriers to their attendance are removed, equal chances of admission thus may in some instances result in applications and admission of such students that exceed their “representative” share.⁸ Students who may have struggled in middle school, and who are disproportionately members of protected populations, may in many cases be more interested than others in vocational technical schools that create a different learning environment and different modes for mastering academic as well as technical skills and that also offer pathways into the middle class for students that are particularly important for students who may not pursue a college degree.⁹

Failing to focus on the students who are excluded by the criteria (i.e., those who don’t meet them) ignores the disparities that may exist in those who are excluded, and thus may not trigger the required obligation to validate those criteria as essential to participation. Even where there are disparities in “representation,” schools would still be allowed to continue ignoring those students who have been disproportionately excluded and the criteria that have excluded them. In particular, schools could seek to avoid or remedy “under-representation” through a recruitment campaign to boost the applications from high-scoring students within the “under-represented groups” who meet the exclusionary criteria.¹⁰ Such recruitment might produce “representativeness” but would do absolutely *nothing* to reduce the numbers of, and disparities in the pool of, students who are excluded by the criteria themselves.¹¹

As part of the practical implications of this, we note that research consistently shows that three areas of students’ records currently used by the vast majority of regional schools – grades, attendance, and disciplinary records – have a discriminatory impact on students of color, English learners, students with disabilities, and students from economically disadvantaged families. Thus, the use of any of these factors will clearly continue to disqualify a disproportionate number of students of color, English learners, students with disabilities, and students from economically disadvantaged families and triggers a school’s obligation in the law to justify and validate their use as essential to participation. Yet, under regulatory language and the Department’s subsequent comments that the focus should be on representativeness rather than on who is excluded by the criteria, these pervasive disparities do not appear sufficient to trigger a school’s legal obligations under the civil rights standard. The Department seems to be suggesting that when determining which criteria must be validated as essential to

⁸ In other cases, it may be lower, without necessarily creating a legal issue. In any event, while recruitment and outreach to underrepresented groups are very important, they cannot substitute for elimination of admissions criteria that disproportionately exclude but are not essential for participation.

⁹ Students from protected classes may also be more interested in their regional CVTE school because the comprehensive high schools available to them may be more likely to be under-resourced and less academically successful in comparison with the local comprehensive high schools available to middle school students in other, wealthier local districts in the region and who thus may be less motivated to seek an alternative.

¹⁰ This form of “creaming” within groups not only perpetuates the failure to implement the required focus on disparities among those who are excluded. It creates additional potential civil rights problems – particularly in terms of excluding lower-scoring students with disabilities and English learners whose needs are greater and have been less successful – again without having to show that the criteria that excluded them have been validated as essential for participation.

¹¹ In fact, if paired with the continuation of selecting students in rank order, it will actually *increase* the numbers of students excluded by the criteria. The more high-scoring students who apply (regardless of their demographics), the higher the cut-off score for filling the limited number of seats becomes, thereby excluding greater numbers than before.

participation the effect the criteria themselves have on disproportionately excluding students in protected classes is irrelevant.

A focus on admission rates and whether those admitted are “representative” of their home school populations, instead of the required focus on the students who are excluded by the criteria as the measure of disproportionate exclusion, essentially endorses what amounts to a quota system: once a school achieves an enrollment that is “representative,” it is free to use whatever exclusionary criteria it chooses, without having to make any showing that they are essential to participation, regardless of the extent to which they disproportionately exclude members of protected classes, and regardless of how many students from those classes would be interested in attending in the absence of discriminatory criteria.¹² No matter how many higher-scoring students, from whatever demographic groups, are offered places, a pool of students remain excluded from participation based on criteria that will not have not been validated as essential to participation.

Even if the language of the legal standard were not as clear on its face as it is here (e.g., a vaguer, more general effects standard), focusing on the selection criteria and their effects in making certain students in the pool ineligible for admission would make the most sense as a matter of logic, equity, and the wider interests of the Commonwealth in removing barriers to admission that unnecessarily exclude students who could benefit from vocational technical education.¹³ But here, the plain language is clear. Some members of the otherwise eligible pool are being excluded by the current criteria from the opportunity to attend regional schools. That’s the purpose and effect of any selection criteria – to distinguish who is actually eligible from who is not – whether they are used singly to create minimum thresholds or combined to create a minimum score or a rank ordering of preference among students. Whether certain classes of students are disproportionately among those who are excluded by those criteria is the determination the standard asks for, readily discernible from its plain language, and is the determination that the standard says *must* be made for any selective criterion proposed. Massachusetts, like other states, would be hard-pressed to find an area in the state where the selective criteria used by the regional schools does not disproportionately exclude students in protected classes.

c. Validating Criteria as Essential to Participation

If criteria have the effect of disproportionately excluding students from protected classes then prior to using those criteria the school must “demonstrate that such criteria have been validated as essential to participation in a given program and that alternative equally valid criteria that do not have such a disproportionate adverse effect are unavailable.” This is a complex task. Unfortunately, the Department’s regulations solely restate the requirements of the civil rights standard and do not provide the needed clarity to ensure that the process for validating that any criterion that disproportionately excludes is truly “essential to participation” is as rigorous as it should be – i.e., that it will accurately determine whether or not a student *actually* lacks what is *actually* essential to participation. There is also currently no indication that these schools or the Department have done what the law actually requires before allowing the adoption of criteria that disproportionately exclude students in protected groups –

¹² Stated differently, if the proportion of Black students who want to be in a CVTE program was 50% higher than the proportion of White students, for example, but criteria screened out Black students at a rate that was 50% higher, the “representation” approach to disproportionate exclusion would conclude that the criteria do not have the effect of disproportionately excluding Black students, when they clearly do.

¹³ There are situations where the distinction being made here between impact *on who is excluded* and the “representativeness” *of who is selected* does not meaningfully exist – for example, in examining the impact of the use of a test for promotion or graduation where all students are tested. But that is not this situation, where the distinction clearly makes a difference.

i.e. “demonstrate that (1) such criteria have been validated as essential to participation in vocational programs; and (2) alternative equally valid criteria that do not have such a disproportionate adverse effect are unavailable.” Instead, the Department relies on a Superintendent’s “attestation” – not actual evidence that the school has complied with the civil rights standard – that the district is complying with the law through submission of a form with the following signed statement: “I, as superintendent/director, attest that the admissions policy of [insert school/district name here] complies with federal and state law and any relevant guidelines issued by the Department or the U.S. Department of Education.”¹⁴ This raises serious concerns about both the Department’s own understanding of and willingness to enforce the complex validation task required by the civil rights standard.

d. Criteria that are Essential for Participation vs. Ranking Students against Each Other

Current selective school admission policies assign various points for some combination of grades, attendance, disciplinary records, counselor recommendations, and interviews (with variations from school to school on both the number of points assigned to any category and the way those points are counted). The points are totaled and then students are selected for admission based on rank order, with the highest scoring student admitted first, etc., until all seats are filled. (Admission to particular programs, where selective, also tend to consider some combination of selective criteria (though not necessarily the same as those used for admission to the school) coupled with a student’s desired choice of program to determine where that student is placed.). We anticipated that, in embracing the long-standing civil rights requirement for validating criteria that have disproportionate impact as “essential to participation,” DESE regulations and guidance would clearly state that selecting students in rank order of scores on criteria that have disparate impact cannot be used. However, the Department has not done so, and all regional schools that use selective admission (27) rank order students on the basis of weighted admissions criteria.

Even if some minimum level of a characteristic can be validated as essential to participation, when students are excluded based not on whether they lack that characteristic but on whether or not, for example, 150 other applicants have a higher score (where 150 seats are available), then the latter – the relative scores of other students – become the criterion on which a student will be admitted or excluded. The criterion is then simply *not* distinguishing between who does and who does not have the characteristic(s) essential to participation. Using rank ordering, the potential is enormous for large numbers of students to be rejected despite having all characteristics validated as essential to participation simply because other students have outscored them. And a student who would be deemed as having what is essential to participation based on one pool of competing applicants could suddenly be deemed as lacking it if a few other students, with higher scores, apply.

In this regard, it is worth noting that this issue was explicitly addressed in the development of the federal standard. The *proposed* federal Office for Civil Rights guidelines¹⁵ originally stated that criteria that disproportionately excluded members of particular populations were prohibited unless the institution could demonstrate that the criteria have been validated as “predictors of success in the program.” However, in the final version,¹⁶ OCR noted that “Commenters suggested that the proposed validation standard of paragraph IV-K would permit recipients to use criteria that disproportionately exclude minorities or handicapped persons merely by demonstrating that the students admitted were more likely

¹⁴ The attestation form can be found on the Department’s website [here](#).

¹⁵ 43 Fed. Reg. 59105, 59108 (December 19, 1978).

¹⁶ 44 Fed. Reg. 17162, 17172 (March 21, 1979).

to succeed in the program. This would allow recipients, for example, to exclude protected persons from the attractive trade and technical programs through evidence that a ‘C’ average student is less likely to excel in a program than an ‘A’ average student. The commenters suggested that screening criteria to be permissible, must be ‘essential to participation’ in a program.” OCR’s response was that “This suggestion is accepted,” and it changed the language in the final rule to require validation of criteria as “essential to participation” specifically in order to eliminate that concern.

Yet despite both the obvious logic and the history, the Department has not ruled out selecting students based on rank ordering of scores on criteria with disparate impact. Moreover, the Department’s failure to highlight this simple, straightforward point reinforces concerns about the extent to which the more challenging and complex task of validating particular criteria as essential to participation will be implemented with the rigor it demands.

Appendix A: Selection Criteria

a. Most Weighted Criteria

Most Weighted Criteria						
School Name	Most Weighted Criteria		Least Weighted Criteria		Criteria Not Considered	Tiebreaker
Old Colony RVTS	Attendance	30%	Recommendation	5%	--	Int.; gr.; disc.; attend.; rec.
Greater New Bedford RVTS	Recommendation	26%	Grades	24%	Interview	Rec.; disc.; attendance; grades
Greater Fall River (Diman)	Grades	43%	Discipline	16%	Interview	--
Greater Lawrence RVTS	Grades	40%	Discipline; recommendation	13%	Interview	--
Cape Cod Regional Technical	Grades	32%	Recommendation	6%	--	--
South Shore RVTS	Grades	30%	Recommendation	10%	--	Interview; grades; attend.
Montachusett RVTS	Grades	25%	Recommendation	15%	--	--
Southern Worcester (Bay Path)	Grades	25%	Interview	15%	--	--
Bristol County Agricultural	Interview	70%	Attendance	10%	Grades; rec.	Disc.; interview; attend.
Norfolk County Aggie	Interview	70%	Attendance	10%	Grades; rec.	Disc.; interview; attendance
Pathfinder RVTS	Interview	70%	Attendance; discipline	2%	--	--
Upper Cape Cod RVTS	Interview	60%	Attendance; discipline	20%	Recommendation	--
Blue Hills RVTS	Interview	45%	Attendance; discipline	15%	--	Earlier application date
Bristol-Plymouth RVTS	Interview	40%	Discipline; recommendation	10%	--	Int; gr.; disc; att; rec.; lottery
Essex North Shore	Interview	40%	Recommendation	5%	--	--
Nashoba Valley Technical	Interview	40%	Recommendation	8%	--	Earlier application date
South Middlesex (Keefe)	Interview	36%	Discipline; recommendation	10%	--	--
Franklin County Technical	Interview	35%	Recommendation	5%	--	--
Southeastern RVTS	Interview	35%	Recommendation	5%	--	Lottery
Blackstone Valley RVTS	Interview	30%	Attendance; disc.; rec.	15%	--	Mitigate fluctuations in enrollment from prior SY
Shawsheen Valley RVTS	Interview	30%	Grades; attendance	15%	--	Attend. + interview; lottery
Greater Lowell RVTS	Grades; attendance	40%	Recommendation	5%	Interview	--
Northern Berkshire (McCann)	Grades; attendance	30%	Discipline; recommendation	20%	Interview	Recommendation; grades
Whittier RVTS	Grades; interview	30%	Discipline; recommendation	10%	--	--
Tri-County RVTS	Discipline; interview	25%	Recommendation	10%	--	--
Northeast Metropolitan RVTS	Grades; attend.; disc.	30%	Recommendation	10%	Interview	--
Minuteman RVTS	All equal	20%	All equal	20%	--	Lottery

b. Least Weighted Criteria

Least Weighted Criteria						
School Name	Most Weighted Criteria		Least Weighted Criteria		Criteria Not Considered	Tiebreaker
Greater New Bedford RVTS	Recommendation	26%	Grades	24%	Interview	Rec.; disc.; attendance; grades
Greater Fall River (Diman)	Grades	43%	Discipline	16%	Interview	--
Southern Worcester (Bay Path)	Grades	25%	Interview	15%	--	
Bristol County Agricultural	Interview	70%	Attendance	10%	Grades; rec.	Disc.; interview; attend.
Norfolk County Aggie	Interview	70%	Attendance	10%	Grades; Recommendation	Discipline; interview; attendance
Essex North Shore	Interview	40%	Recommendation	5%	--	--
Franklin County Technical	Interview	35%	Recommendation	5%	--	--
Greater Lowell RVTS	Grades; attendance	40%	Recommendation	5%	Interview	--
Southeastern RVTS	Interview	35%	Recommendation	5%	--	Lottery
Old Colony RVTS	Attendance	30%	Recommendation	5%	--	Int.; gr.; disc.; attend.; rec.
Cape Cod Regional Technical	Grades	32%	Recommendation	6%	--	--
Nashoba Valley Technical	Interview	40%	Recommendation	8%	--	Earlier application date
South Shore RVTS	Grades	30%	Recommendation	10%	--	Interview; grades; attend.
Tri-County RVTS	Discipline; interview	25%	Recommendation	10%	--	--
Northeast Metropolitan RVTS	Grades; attend.; disc.	30%	Recommendation	10%	Interview	--
Montachusett RVTS	Grades	25%	Recommendation	15%	--	--
Shawsheen Valley RVTS	Interview	30%	Grades; attendance	15%	--	Attend. + interview; lottery
Pathfinder RVTS	Interview	70%	Attendance; discipline	2%	--	--
Blue Hills RVTS	Interview	45%	Attendance; discipline	15%	--	Earlier application date
Upper Cape Cod RVTS	Interview	60%	Attendance; discipline	20%	Recommendation	--
Bristol-Plymouth RVTS	Interview	40%	Discipline; recommendation	10%	--	Int; gr.; disc; att; rec.; lottery
South Middlesex (Keefe)	Interview	36%	Discipline; recommendation	10%	--	--
Whittier RVTS	Grades; interview	30%	Discipline; recommendation	10%	--	--
Greater Lawrence RVTS	Grades	40%	Discipline; recommendation	13%	Interview	--
Northern Berkshire (McCann)	Grades; attendance	30%	Discipline; recommendation	20%	Interview	Recommendation; grades
Blackstone Valley RVTS	Interview	30%	Attendance; disc.; rec.	15%	--	Mitigate fluctuations in enrollment from prior SY
Minuteman RVTS	All equal	20%	All equal	20%	--	Lottery

Appendix B: Grades

a. Grade Table by Weight

By Weight			
School Name	Percentage of Application	Period of 8th Grade Grades Considered (assume all 7th considered unless noted)	Lowest Grade Average to Receive Full Points
Greater Fall River (Diman)	43%	Terms 1 and 2 or first trimester	90
Greater Lawrence RVTS	40%	Term 1	80
Greater Lowell RVTS	40%	Quarter/Trimester 1 and 2	90
Cape Cod Regional Technical	32%	Terms 1 and 2	80
Northeast Metropolitan RVTS	30%	Terms 1 and 2	90
Northern Berkshire (McCann)	30%	One half of the current year	80
South Shore RVTS	30%	Terms 1 and 2 of 8 th grade only	30
Whittier RVTS	30%	Terms 1 and 2	90
Blackstone Valley RVTS	25%	Terms 1 and 2	80
Essex North Shore	25%	Terms 1 and 2	80
Montachusett RVTS	25%	Terms 1 and 2	80
Southeastern RVTS	25%	Term 1	90
Southern Worcester (Bay Path)	25%	To current date	90
Tri-County RVTS	25%	Prior to February 1	90
Greater New Bedford RVTS	24%	Marking period 1 and 2	75
South Middlesex (Keefe)	24%	Term 1	90
Blue Hills RVTS	20%	Term 1	80
Bristol-Plymouth RVTS	20%	One half of the current year	65 (Pass/Fail)
Franklin County Technical	20%	Terms 1 and 2 of 8 th grade only	C* (scale unclear)
Minuteman RVTS	20%	Term 1	70
Old Colony RVTS	20%	One half of the current year	90
Upper Cape Cod RVTS	20%	Terms 1 and 2 of 8 th grade only	90
Pathfinder RVTS	16%	To current date	Pass/Fail
Shawsheen Valley RVTS	15%	One half of the current year	61 (Pass/Fail)
Nashoba Valley Technical	12%	To current date	70
Bristol County Agricultural	N/A	--	--
Norfolk County Aggie	N/A	--	--

b. Period of Grades Considered (least current to most current)

Period of Grades Considered			
School Name	Percentage of Application	Period of 8th Grade Grades Considered (assume all 7th considered unless noted)	Lowest Grade Average to Receive Full Points
Greater Lawrence RVTS	40%	Term 1	80
Southeastern RVTS	25%	Term 1	90
South Middlesex (Keefe)	24%	Term 1	90
Blue Hills RVTS	20%	Term 1	80
Minuteman RVTS	20%	Term 1	70
Greater Fall River (Diman)	43%	Terms 1 and 2 or first trimester	90
Cape Cod Regional Technical	32%	Terms 1 and 2	80
Northeast Metropolitan RVTS	30%	Terms 1 and 2	90
Whittier RVTS	30%	Terms 1 and 2	90
Blackstone Valley RVTS	25%	Terms 1 and 2	80
Essex North Shore	25%	Terms 1 and 2	80
Montachusett RVTS	25%	Terms 1 and 2	80
Greater Lowell RVTS	40%	Quarter/Trimester 1 and 2	90
Greater New Bedford RVTS	24%	Marking period 1 and 2	75
Northern Berkshire (McCann)	30%	One half of the current year	80
Bristol-Plymouth RVTS	20%	One half of the current year	65 (Pass/Fail)
Old Colony RVTS	20%	One half of the current year	90
Shawsheen Valley RVTS	15%	One half of the current year	61 (Pass/Fail)
Tri-County RVTS	25%	Prior to February 1	90
Southern Worcester (Bay Path)	25%	To current date	90
Pathfinder RVTS	16%	To current date	Pass/Fail
Nashoba Valley Technical	12%	To current date	70
Franklin County Technical	20%	Terms 1 and 2 of 8 th grade only	C* (scale unclear)
South Shore RVTS	30%	Terms 1 and 2 of 8 th grade only	30
Upper Cape Cod RVTS	20%	Terms 1 and 2 of 8 th grade only	90
Bristol County Agricultural	N/A	--	--
Norfolk County Aggie	N/A	--	--

c. **Lowest Grade Average to Receive Full Points**

Lowest Grade Average to Receive Full Points			
School Name	Percentage of Application	Period of 8th Grade Grades Considered (assume all 7th considered unless noted)	Lowest Grade Average to Receive Full Points
Shawsheen Valley RVTS	15%	One half of the current year	61 (Pass/Fail)
Bristol-Plymouth RVTS	20%	One half of the current year	65 (Pass/Fail)
Pathfinder RVTS	16%	To current date	Pass/Fail
Minuteman RVTS	20%	Term 1	70
Nashoba Valley Technical	12%	To current date	70
Greater New Bedford RVTS	24%	Marking period 1 and 2	75
Franklin County Technical	20%	Terms 1 and 2 of 8 th grade only	C* (scale unclear)
Greater Lawrence RVTS	40%	Term 1	80
Cape Cod Regional Technical	32%	Terms 1 and 2	80
Northern Berkshire (McCann)	30%	One half of the current year	80
Blackstone Valley RVTS	25%	Terms 1 and 2	80
Essex North Shore	25%	Terms 1 and 2	80
Montachusett RVTS	25%	Terms 1 and 2	80
Blue Hills RVTS	20%	Term 1	80
Greater Fall River (Diman)	43%	Terms 1 and 2 or first trimester	90
Greater Lowell RVTS	40%	Quarter/Trimester 1 and 2	90
Northeast Metropolitan RVTS	30%	Terms 1 and 2	90
South Shore RVTS	30%	Terms 1 and 2 of 8 th grade only	90
Whittier RVTS	30%	Terms 1 and 2	90
Southeastern RVTS	25%	Term 1	90
Southern Worcester (Bay Path)	25%	To current date	90
Tri-County RVTS	25%	Prior to February 1	90
South Middlesex (Keefe)	24%	Term 1	90
Old Colony RVTS	20%	One half of the current year	90
Upper Cape Cod RVTS	20%	Terms 1 and 2 of 8 th grade only	90
Bristol County Agricultural	N/A	--	--
Norfolk County Aggie	N/A	--	--

d. Individual Schools' Grade Policies for Fall Admission

Blackstone Valley Regional Vocational Technical (25% of application)

For applications to grade 9 (fall admission), the average of grade 7 and terms 1 & 2 grade 8 marks in English language arts, social studies, mathematics, and science from the local school report card/transcript are used.

Grade Averages	Points
80 - 100	25
70 - 79	20
65 - 69	15
60 - 64	10
0 - 59	0

Blue Hills Regional Technical (20% of application)

For applications for grade 9 (fall admission), the average of grade 7 and term 1 grade 8 marks in English, social studies, mathematics and science from the sending school report card are required.

Grade Averages	Points
80 - 100	20
60 - 79	10
0 - 59	0

Bristol County Agricultural

N/A

Bristol-Plymouth Regional Vocational Technical (20% of application)

For applications to grade 9 (fall admission), the average of grade 7 and terms 1 & 2 (midyear) grade 8 grades earned in English, social studies, mathematics and science from the local school report card are used.

Grade	Average	Points
Pass Course	100-65	2.5
Fail Course	64-0	0

Cape Cod Regional Technical (32% of application)

For applications to grade nine (fall admission), the averages of grade seven and terms 1 & 2 of grade eight marks in English, math, science, and social studies from the local school report card are used.

Grade Averages	Points
A (90-100)	8
B (80-89)	8
C (70-79)	4
D (60-69)	2
F (59 and below)	0

Essex North Shore Agricultural and Technical School (25% of application)

For applications to grade 9 (fall admission), the average of each quarter/trimester of grade 7 grades and 1 and 2 quarters/trimester in grade 8 in English language arts, social studies, mathematics, and science from the local school report card/transcript are used.

Academic grade	Points
A+ to B- (100-80)	25
C+ to C- (79-70)	20
D+ to D (69-65)	15
D- (64-60)	10
F (59 and below)	0

Franklin County Technical (20% of application)

For grade 8 applicants for fall admission into grade 9 student report card of grades in English Language Arts, Mathematics, Science and Social Studies for terms 1 and 2 of the current year.

Grade Scale	Points
A	5
B	5
C	5
D	3
F	2

Grade Averages	Points
90 – 100	8
80 – 89	6
70 – 79	4
60 – 69	2
0 – 59	0

Greater Fall River Regional (Diman) (43.75% of application)

For applications to grade nine (fall admission) the final grade seven and Terms 1 and 2 grade eight marks (or first trimester marks) in English, Social Studies, Mathematics and Science from the local school report card/transcript are used.

Grade Average	Points
Final grades of A (100-90)	17
Final grades of B (89-80)	12
Final grades of C (79-70)	7
Final grades of D (69-60)	2
Final grades of F (Below 60)	0

Greater Lawrence Technical School (40% of application)

For applications to grade 9 (fall admission) the final grades for 7th and Quarter/Trimester 1 8th grade grades in English Language Arts, Social Studies, Math and Science are required.

Scholastic Achievement	Maximum 30 Points
A-B (80 – 100)	30
C (70-79)	25
D (60-69)	10
F below 60	1

Greater Lowell Regional Vocational Technical (40% of application)

Maximum 10 points per course in English Language Arts, Mathematics, Science, and Social Studies. For application to grade 9 (fall admission), the final grades for grade 7 and 1st and 2nd Quarter/Trimester grades for grade 8 in English Language Arts, Mathematics, Science, and Social Studies from the local school report card/transcript are used.

Grade Averages	Points
90-100 (A)	10
80-89 (B)	8
70-79 (C)	5
60-69 (D)	2
0-59 (F)	0

Greater New Bedford Regional Vocational Technical (24% of application)

For applications to Grade 9 (fall admission), the average of Grade 7 and marking periods one and two Grade 8 marks in English, mathematics, and science from the local school report card are used.

Grade Average	Points for Each of the Three Subjects	Total Points Possible
75-100	8	24
65-74	5	15
0-64	0	0

Minuteman Regional Vocational Technical (20% of application)

For applications to grades 9, 10 or 11, (fall admission) grades from the previous school year and first marking period of the current school year in English, social studies, math and science from the local school report card are used.

Grade Averages	Points
70-100 (A-C)	5
60-69 (D)	2
0-59 (F)	0

Montachusett Regional Vocational Technical (25% of application)

For applications to grade 9 (fall admission), the average of each quarter of grade 7 grades and 1 and 2 quarters in grade 8 in English, social studies, mathematics and science from the sending school report card/transcript are used.

Grade Averages	Points
A+ to B- (100-80)	25
C+ to C- (79-70)	20
D+ to D (69-65)	15
D to D- (64-60)	10
F (00-59)	0

Nashoba Valley Technical (12% of application)

Scholastic records for the past two school years (for example, for an 8th grade student applying for 9th grade would require documentation for 7th and 8th grade).

Maximum 12 points (6 points per year, 1.5 points per subject)	
Scholastic Achievement Averages	Points
70-100	1.5
60-69	1
0-59	0

Norfolk County Agricultural High School

N/A

Northeast Metropolitan Regional Vocational (30% of application)

For applications to grade 9 (fall admission), the final average of grade 7 and grades from terms I & 2 of grade 8 in English, social studies, mathematics and science from the local school report cards are used.

Grade Averages	Points
A (90 – 100)	30
B (80 – 89)	25
C (70 – 79)	20
D (60 – 69)	10
F (00 – 59)	00

Northern Berkshire Regional Vocational (McCann) (30% of application)

Applications will be considered using the cumulative average for the prior year and one half of school in English, mathematics, and science. For 9th grade applications this would mean the entirety of 7th grade and the first half of 8th grade.

80-100 = 30 pts	70-79 = 25 pts	60-69 = 20 pts	50-59 = 15 pts	0-49 = 10 pts
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Old Colony Regional Vocational Technical (20% of application)

Transcripts are required for all applications. For fall admission, the final grades of the previous school year along with mid-year grades for the current school year in English language arts, social studies, math and science from the local school report card/transcript are required.

Academic Record: Maximum 20 points (10 points each year) [taken from English, math, social studies and science grades]
10 points - A/A- average (90-100%)
8 points - B/B- average (80-89%)
6 points - C/C- average (70-79%)
4 points - D/D- average (60-69%)
0 points - F average (below 60%)

Pathfinder Regional Vocational Technical (16% of application)

Grades, attendance, and discipline records for the past two school years (for example, for an 8th grade student applying for 9th grade would require documentation for 7th and 8th grade).

GRADES (4 core subjects Math/ELA/SocSt/Sci) = 16 points max [7th & 8th]
P = 2 each core, each year
F = 0 each core, each year

Shawsheen Valley Regional Vocational Technical (15% of application)

Grade 9 fall admissions points will be calculated as follows:

- Grade 7 final average in Math, Science and English (2 points per subject)
- Grade 8 average in Math, Science, and English for the first half of the school year (3 points per subject)

Grade	Subject	Points if Average Grade is:	
		Pass (>=60)	Not passing (59 or less)
7	Math	2	0
7	Science	2	0
7	English	2	0
8	Math	3	0
8	Science	3	0
8	English	3	0

South Middlesex Vocational Technical (Keefe) (24% of application)

For applications to grade 9 (fall admissions), the average marks of grade 7 and term 1 of grade 8 in English, Social Studies, Mathematics and Science from the local school report card are used.

Grade Averages	Grade Averages Points
90 – 100	6
80 – 89	5
70 – 79	4
60 – 69	3
0 – 59	0

South Shore Vocational Technical (30% of application)

For applicants seeking admission for the following school year grades will be based on the most recent marking period (report card) of the school year in which the application is submitted (e.g. For an 8th grader, this means that the first 8th grade marking period is needed for admission as a 9th grader.). In the event that a student applies after a subsequent marking period (e.g. the second quarter report card), the Admissions Office will use the report card for the most recent marking period only for grade evaluation.

Current year grades (20 points) and prior year grades (10 pts) in English, Mathematics, Science and Social Studies			
Letter Grade	% Grade	“Previous Year” Points	“Current Year” Points
A	90-100	2.5	5
B	80-89	2	4
C	70-79	1.5	3
D	60-69	1	2
F	<60	0	0

Southeastern Vocational Regional Technical (25% of application)

A maximum of 25 points is derived from the previous full year grades and all grades prior to through the first semester or first trimester for the current school year in English, math, social studies, and science from the local report card. Each class is given the appropriate letter grade (when numerical grades are not available, students are given the average of A-95, B-85, C-75, D-69, F-65 or below); the four course grades are averaged to give the overall score.

Grade Averages	7 th Grade Points	8 th Grade Point
90 – 100	13	12
80 – 89	10	10
70 – 79	8	8
65 – 69	5	5
0 – 64	1	1

Southern Worcester County Regional (Bay Path) (25% of application)

Scholastic Achievement: Maximum 25 points (sum of previous year and present year to date) including grades to date of the application, in English language arts, or its equivalent, social studies, math and science.

Grade Averages	Points
90-100	25
80-89	20
70-79	15
65-69	10
64-60	5
59 and below	0

Tri-County Regional Vocational Technical (20% of application)

A maximum of 20 points is derived from the previous full year grades and all grades prior to February 1 for the current school year in English, math, social studies, and science from the local report card. Each class is given the appropriate letter grade (when numerical grades are not available, students are given the average of A-95, B-85, C-75, D-69, F-65 or below); the four course grades are averaged to give the overall score.

Grade Averages	7th Grade Points	8th Grade Points
90-100	10	10
80-89	8	8
70-79	5	5
65-69	3	3
0-64	0	0

Upper Cape Cod Regional Technical (20% of application)

For applications to grade 9 (fall admission), terms 1 & 2 grade 8 marks in English, social studies, mathematics and science from the local school report card/transcript are used.

Grade Averages	Points
90 – 100	5
80 – 89	4
70 – 79	3
60 – 69	2
0 - 59	0

Whittier Regional Vocational Technical (30% of application)

For applications to grade 9 (fall admission), the average of grade 7 and terms 1 & 2 of grade 8 marks in English, social studies, mathematics and science from the local school report card are used.

Grade Averages	Points
90-100 (A- to A+)	30
80-89 (B- to B+)	25
70-79 (C)	20
65-69 (D or D+)	15
60-64 (D-)	10
0-59 (F)	0

Appendix C: Attendance

a. Attendance Table by Weight

By Weight			
School Name	Percentage of Application	Period of Attendance for 8th grade (assume all 7th considered unless noted)	Most Excused Absences Eligible for Full Points
Greater Lowell RVTS	40%	Quarter/Trimester 1 and 2	2
Greater Lawrence RVTS	33.3%	Term 1	4
Northeast Metropolitan RVTS	30%	Terms 1 and 2	15
Northern Berkshire (McCann)	30%	Terms 1 and 2	6
Old Colony RVTS	30%	Terms 1 and 2	3 days for grade 7; 3 days for grade 8
Franklin County Technical	25%	Terms 1 and 2 of current year only	3
Greater New Bedford RVTS	25%	Marking periods 1 and 2	9 days for grade 7; 4 days for grade 8
Southeastern RVTS	25%	Prior to February 1	2 per year. Full points for Sept. 2022 applicants because of COVID.
Bristol-Plymouth RVTS	20%	Terms 1 and 2 (midyear)	2
Minuteman RVTS	20%	Current year to date	10
Montachusett RVTS	20%	Terms 1 and 2	6
Nashoba Valley Technical	20%	Current year to date	9 per year (average out of 2)
South Middlesex (Keefe)	20%	Terms 1 and 2	10
Southern Worcester (Bay Path)	20%	Current year to date	6
Tri-County RVTS	20%	One half of current year	5 for grade 7; 3 for first half of grade 8. Includes unexcused "tardy." 3 tardy = 1 absence
Whittier Regional RVTS	20%	Terms 1 and 2	10
Greater Fall River (Diman)	18.75%	Terms 1 and 2 or first trimester	3
Cape Cod Regional Technical	18%	Terms 1 and 2	5 for grade 7; 3 for Terms 1 and 2 of grade 8. Includes unexcused "tardy." 3 tardy = 1 absence
Blackstone Valley RVTS	15%	Terms 1 and 2	Unclear. Between 0-5 total (average out of 6)
Blue Hills RVTS	15%	Term 1	1
Shawsheen Valley RVTS	15%	Terms 1 and 2	5
South Shore RVTS	15%	Most recent marking per. only	Unclear. 5 per year
Bristol County Agricultural	10%	Terms 1 and 2	6. "Excessive absences" evaluated by staff
Essex North Shore	10%	Terms 1 and 2 or 50% of grade	5
Norfolk County Aggie	10%	Terms 1 and 2	3 days for grade 7; 3 days Terms 1 and 2 of grade 8
Upper Cape Cod RVTS	10%	Terms 1 and 2 of current year only	5
Pathfinder RVTS	2%	Past two school years	9 per year (points for each year)

b. Period of Attendance Considered (least current to most current)

Period of Attendance Considered			
School Name	Percentage of Application	Period of Attendance for 8th grade (assume all 7th considered unless noted)	Most Excused Absences Eligible for Full Points
Greater Lawrence RVTS	33.3%	Term 1	4
Blue Hills RVTS	15%	Term 1	1
Northeast Metropolitan RVTS	30%	Terms 1 and 2	15
Bristol-Plymouth RVTS	20%	Terms 1 and 2 (midyear)	2
Montachusett RVTS	20%	Terms 1 and 2	6
South Middlesex (Keefe)	20%	Terms 1 and 2	10
Whittier Regional RVTS	20%	Terms 1 and 2	10
Greater Fall River (Diman)	18.75%	Terms 1 and 2 or first trimester	3
Cape Cod Regional Technical	18%	Terms 1 and 2	5 for grade 7; 3 for Terms 1 and 2 of grade 8. Includes unexcused "tardy." 3 tardy = 1 absence
Blackstone Valley RVTS	15%	Terms 1 and 2	Unclear. Between 0-5 total (average out of 6)
Shawsheen Valley RVTS	15%	Terms 1 and 2	5
Bristol County Agricultural	10%	Terms 1 and 2	6. "Excessive absences" evaluated by staff
Essex North Shore	10%	Terms 1 and 2 or 50% of grade	5
Norfolk County Aggie	10%	Terms 1 and 2	3 days for grade 7; 3 days Terms 1 and 2 of grade 8
Greater Lowell RVTS	40%	Quarter/Trimester 1 and 2	2
Greater New Bedford RVTS	25%	Marking periods 1 and 2	9 days for grade 7; 4 days for grade 8
Northern Berkshire (McCann)	30%	One half of current year	6
Tri-County RVTS	20%	One half of current year	5 for grade 7; 3 for first half of grade 8. Includes unexcused "tardy." 3 tardy = 1 absence
Southeastern RVTS	25%	Prior to February 1	2 per year. Full points for Sept. 2022 applicants because of COVID.
Pathfinder RVTS	2%	Past two school years	9 per year (points for each year)
Minuteman RVTS	20%	Current year to date	10
Nashoba Valley Technical	20%	Current year to date	9 per year (average out of 2)
Southern Worcester (Bay Path)	20%	Current year to date	6
Old Colony RVTS	30%	Terms 1 and 2	3 days for grade 7; 3 days for grade 8
Franklin County Technical	25%	Terms 1 and 2 of current year only	3
Upper Cape Cod RVTS	10%	Terms 1 and 2 of current year only	5
South Shore RVTS	15%	Most recent marking per. only	Unclear. 5 per year

c. Most Excused Absences Eligible for Full Points

Most Excused Absences Eligible for Full Points			
School Name	Percentage of Application	Period of Attendance for 8 th grade (assume all 7 th considered unless noted)	Most Excused Absences Eligible for Full Points
Northeast Metropolitan RVTS	30%	Terms 1 and 2	15
Minuteman RVTS	20%	Current year to date	10
South Middlesex (Keefe)	20%	Terms 1 and 2	10
Whittier Regional RVTS	20%	Terms 1 and 2	10
Northern Berkshire (McCann)	30%	One half of current year	6
Montachusett RVTS	20%	Terms 1 and 2	6
Southern Worcester (Bay Path)	20%	Current year to date	6
Bristol County Agricultural	10%	Terms 1 and 2	6. "Excessive absences" evaluated by staff
Shawsheen Valley RVTS	15%	Terms 1 and 2	5
Essex North Shore	10%	Terms 1 and 2 or 50% of grade	5
Upper Cape Cod RVTS	10%	Terms 1 and 2 of current year only	5
Greater Lawrence RVTS	33.3%	Term 1	4
Franklin County Technical	25%	Terms 1 and 2 of current year only	3
Old Colony RVTS	30%	Terms 1 and 2	3 days for grade 7; 3 days for grade 8
Greater Fall River (Diman)	18.75%	Terms 1 and 2 or first trimester	3
Greater Lowell RVTS	40%	Quarter/Trimester 1 and 2	2
Bristol-Plymouth RVTS	20%	Terms 1 and 2 (midyear)	2
Blue Hills RVTS	15%	Term 1	1
Blackstone Valley RVTS	15%	Terms 1 and 2	Unclear. Between 0-5 total (average out of 6)
Nashoba Valley Technical	20%	Current year to date	9 per year (average out of 2 years)
Pathfinder RVTS	2%	Past two school years	9 per year (points for each year)
South Shore RVTS	15%	Most recent marking per. only	Unclear. 5 per year
Greater New Bedford RVTS	25%	Marking periods 1 and 2	9 days for grade 7; 4 days for grade 8
Tri-County RVTS	20%	One half of current year	5 for grade 7; 3 for first half of grade 8. Includes unexcused "tardy." 3 tardy = 1 absence
Cape Cod Regional Technical	18%	Terms 1 and 2	5 for grade 7; 3 for Terms 1 and 2 of grade 8. Includes unexcused "tardy." 3 tardy = 1 absence
Norfolk County Aggie	10%	Terms 1 and 2	3 days for grade 7; 3 days Terms 1 and 2 of grade 8
Southeastern RVTS	25%	Prior to February 1	2 per year. Full points for Sept. 2022 applicants because of COVID.

d. Individual Schools' Attendance Policies for Fall Admission

Blackstone Valley Regional Vocational Technical (15% of application)

Absences for all excused reasons by the sending district will not be counted. The absences from Grade 7 are added to the absences from the first 2 terms of Grade 8 and then divided by six (6) to establish a final average of absences per term.

For applicants receiving a score of 8 points or less in the category of Attendance have the opportunity to submit a letter of evidence indicating the extenuating circumstances surrounding the unexcused absences. This letter will be reviewed by the Admissions Committee to determine if the absences or a portion of the absences will be excused for the purposes of the application.

Average Days Absent Per Term	Points
0	15 points
1	12 points
2	10 points
3	8 points
4	5 points
5+	0

Blue Hills Regional Technical (15% of application)

For applications to grade 9 (fall admission), the sum of grade 7 and term 1 grade 8 unexcused absences from the school report card are used.

Number of Unexcused Absences	Points
0	15
1	15
2	14
3	13
4	12
5	11
6	10
7	9
8	8
9	7
10	6
11	5
12	4
13	3
14	2
15	1
16	0

Bristol County Agricultural (10% of application)

10 points possible (5 possible points for each grade); *Excessive absences will be evaluated by the Admissions Coordinator.

Unexcused Absence in Grade 7 & 8
5 points - 0-3 days absent
3 Points - 4 - 6 days absent
2 Points - 7 - 9 days absent
1 Points - 10 - 12 days absent
0 Points - 13 or more days absent

Bristol-Plymouth Regional Vocational Technical (20% of application)

For applications to grade 9 (fall admission), the sum of grade 7 and terms 1 & 2 (midyear) grade 8 unexcused absences from the local school report card are used.

Number of Unexcused Absences	Points
0-2	20
3-5	16
6-8	12
9-11	8
12-14	4
15 plus	0

Cape Cod Regional Technical (18% of application)

Applications to grade nine (fall admission), the sum of grade seven and terms 1 & 2 grade eight unexcused absences and unexcused tardy days from the local school report card are used.

Number of Unexcused Absences Each Full Year (Note: Three [3] unexcused tardy days equals one [1] absence and is added to the absence tally)	Points
0-5 Absences	9
6-10 Absences	5
11-15 Absences	3
16+	0

Number of Unexcused Absences Current Year and/or terms 1 and 2 (Note: Three [3] unexcused tardy days equals one [1] absence and is added to the absence tally)	Points
0-3 Absences	9
4-5 Absences	5
6-8 Absences	3
9+	0

Essex North Shore Agricultural and Technical School (10% of application)

For applications to grade 9 (fall admission), the total of all unexcused absences from grade 7 and Semester 1 (Term 1 and Term 2) or the beginning 50% of grade 8 school year as documented on the local school report card or attendance record are used.

Number of Unexcused Absences	Points
0-5 Absences	10
6-10 Absences	5
11+ Absences	0

Franklin County Technical (25% of application)

Record of the applicant's unexcused absences for terms 1 and 2 of the current school year.

Number of Unexcused Absences	Points
0 – 3	25
4 – 7	15
8 – 11	5
12 – 15	2
Over 15	0

Greater Fall River Regional (Diman) (18.75% of application)

For the class of 2026

Due to the extenuating circumstances that existed in 2019-2020, the areas of attendance and academic record will only be scored for the period of time leading up to March 13, 2020. These two categories will not be scored from March 16, 2020 through June of 2020. Pass-Fail grades from 2019-2020 will not be utilized. A return to regular attendance and academic recording has been put back in place effective 2020-2021, per guidance from the Commissioner of Education, and will be utilized as part of the admissions process moving forward.

For applications to grade nine (fall admission), grade seven and Terms 1 and 2 grade eight unexcused absences or first trimester unexcused absence from the local school report card/transcript are used. For applications to grades ten, eleven and twelve (fall admission) the previous school year and current school year unexcused absences from the local school report card/transcript are used.

An unexcused absence is defined as an absence that is not school approved. Examples of school approved absences are: medical appointments, funeral leave, court appearances, religious observances or any other reason approved by the school. A copy of the student's attendance record must accompany the application.

Days Absent	Points
0 to 3	60
4 to 6	40
7 to 9	30
10 or more	0

Greater Lawrence Technical School (33.3% of application)

For applications to grade 9 (fall admission), the sum of unexcused absences in grade 7 plus grade 8 unexcused absences from quarter/trimester 1 are required.

Attendance	Maximum 25 Points
0-4	25
5-9	20
10-14	15
15-19	10
20-24	5
25+	1

Greater Lowell Regional Vocational Technical (40%)

For application to grade 9 (fall admission), the sum of grade 7 and 1st and 2nd Quarter/Trimester grade 8 unexcused absences from the local school report card/transcript are used.

Number of Unexcused Absences	Points
0-2	40
3-5	35
6-8	30
9-11	25
12-14	20
15-17	15
18-20	10
21+	0

Greater New Bedford Regional Vocational Technical (25%)

Maximum 25 points. For applications to Grade 9 (fall admission), the sum of the unexcused absences from Grade 7 and marking periods one and two of Grade 8 from the local school report card are used.

7th Grade	
Number of Unexcused Absences	Points
0-9	7
10-17	3.5
18+ (Chronic Absenteeism)	0

8th Grade	
Number of Unexcused Absences	Points
0-4	18
5-8	9
9+ (Chronic Absenteeism)	0s

Minuteman Regional Vocational Technical (20% of application)

For applications to grade 9 (fall admission), unexcused absences for the 7th and 8th grade to date from the local school report card are used and considered. Each years individual scores are averaged together.

Unexcused Absences	Points
0 – 5	20
6 – 10	15
11 – 15	10
16 – 20	5
21 plus	0

Montachusett Regional Vocational Technical (20% of application)

For applications to grade 9 (fall admission), the total number of unexcused absences of grade 7 and quarters 1 and 2 of grade 8 from the sending school report card are used.

Number of Unexcused Absences	Points
0-6 days	20
7-13 days	15
14-20 days	10
21-26 days	5
27+ days	0

Nashoba Valley Technical (20% of application)

All applicants will have an attendance review, where a Maximum of 20 points can be earned (10 points per year, previous year and present year to date) Nashoba Valley Technical High School will only consider unexcused absences when determining applicants' attendance score.

Number of Unexcused Absences per year	Points (Per Year)
0-9 unexcused absences	10
10-18 unexcused absences	5
19 or more	0

Norfolk County Agricultural High School (10% of application)

Unexcused Absence in Grade 7 & 8.

Points	Days Absent
5 points	0-3 days absent
3 points	4-6 days absent
2 points	7-9 days absent
1 points	10-12 days absent
0 points	13 or more days absent

Northeast Metropolitan Regional Vocational (30% of application)

For applications to grade 9 (fall admission), the sum of grade 7 and terms 1 & 2 grade 8 total unexcused absences from the local school report card/transcript are used.

Number of Unexcused Absences	Points
0 – 15	30
15 – 25	20
25 – 35	10
35 – 40	5
41 plus	0

Northern Berkshire Regional Vocational (McCann) (30% of application)

Student attendance will be evaluated based on the number of unexcused absences only. Applicants will be scored on the number of unexcused absences accumulated from the prior year and one half of school. For 9th grade applications this would mean the total of unexcused absences for 7th grade and the first half of 8th grade.

0-6 Unexcused Absences = 30 pts	7-13 Unexcused Absences = 25 pts	14-20 Unexcused Absences = 20 pts	21-26 Unexcused Absences = 15 pts	27+ Unexcused Absences = 10 pts
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Old Colony Regional Vocational Technical (30% of application)

Attendance records are required for all applications. For applications to grade nine (fall admission), the sum of grade seven and terms one & two grade eight unexcused absences from the local school report card/transcript are required.

Attendance: Cumulative Unexcused Absences - Maximum 30 points (15 points each year)
15 points – 0 to 3 days absent
10 points - 4 to 6 days absent
5 points - 7 to 9 days absent
0 points – 10 or more days absent

Pathfinder Regional Vocational Technical (2% of application)

Grades, attendance, and discipline records for the past two school years (for example, for an 8th grade student applying for 9th grade would require documentation for 7th and 8th grade).

ATTENDANCE = 2 points max (7th & 8th)
Unexcused absences <10 = 1 each year
Unexcused absences 10+ = 0 each year

Shawsheen Valley Regional Vocational Technical (15% of application)

For applications for fall admissions to Grade 9, the sum of unexcused absences from Grade 7 and the first and second quarter of Grade 8 will be used.

Number of Unexcused Absences	Points
0-5	15
6-10	10
11-15	5
16+	0

South Middlesex Vocational Technical (Keefe) (20% of application)

For application to grade 9 (fall admission), the sum of unexcused absences of grade 7 and terms 1 and 2 of grade 8 from the local school report card are used.

Number of Unexcused Absences	Points
0 – 10	20
11 – 20	15
21 – 30	10
31 – 40	5
41 plus	0

South Shore Vocational Technical (15% of application)

For applicants seeking admission for the following school year attendance will be based on the most recent marking period (report card) of the school year in which the application is submitted (e.g. For an 8th grader, this means that the first 8th grade marking period is needed for admission as a 9th grader.). Attendance records will be cumulative.

Current year and prior year attendance record of unexcused absences (15 pts)		
# of Unexcused Absences	“Previous Year” Points	“Current Year” Points
0-5	5	10
6-10	3	5
11+	0	0

Southeastern Vocational Regional Technical (25% of application)

A maximum of 25 points derived from the total number of absences from the previous full year and February 1 for the current school year from the local school report card/school records. In light of the COVID Pandemic and difficulty many schools have had the last two year maintaining accurate attendance, all students seeking admissions in September 2022 will be awarded 25 Points for Attendance.

Number of Unexcused Absences	7th Grade Points	8th Grade Point
0 – 2	15	10
3 – 4	12	8
5 – 6	10	6
7 – 9	5	3
10+	2	1

Southern Worcester County Regional (Bay Path) (20% of application)

Attendance: Maximum 20 points (sum of previous year and present year to date)

Number of Unexcused Absences	Points
0-6	20
7-13	15
14-20	10
21-26	5
27+	0

Tri-County Regional Vocational Technical (20% of application)

Attendance, based on the total number of unexcused absences and tardies (3 tardies = 1 absence), constitute the attendance category. Points are awarded and totaled for grade 7 and the first half of grade 8. For students applying for Grade 10, 11, or 12, points are awarded for the previous two years using the full year point value chart.

7th Grade		8th Grade	
Full Year	Point Value	Half-Year	Point Value
0 – 5 (absences)	10	0 – 3	10
6 – 10	8	4 – 6	8
11 – 15	6	7 – 8	6
16 – up	0	9 – up	0

Upper Cape Cod Regional Technical (10% of application)

For applications to grade 9 (fall admission) terms 1 & 2 of grade 8 unexcused absences from the local school report card/transcript are used.

Number of Unexcused Absences	Points
0 – 5	10
6 – 12	05
13 and over	00

Whittier Regional Vocational Technical (20% of application)

For applications to grade 9 (fall admission), the sum of grade 7 and terms 1 & 2 grade 8 unexcused absences from the local school report card are used. Whittier Tech recognizes that on occasion parents may need to keep their child out of school for legitimate reasons. Therefore, in accordance with M.G.L. Chapter 76, Section 1 parent/guardians, may excuse their child from school up to seven days per a school year. Absences beyond seven days will be marked as unexcused, unless there is documented illness. Whittier Tech does not consider a student's record of excused absences from school.

Total Days Absent – Unexcused	Points
0 – 10	20
11 – 15	15
16 – 20	10
21 – 25	7
26 – 30	4
31+	0

Appendix D: Discipline

a. Discipline/Conduct Table by Weight

By Weight			
School Name	Percentage of Application	Binary?	In Compliance with the Regulatory Prohibition in 603 CMR 4.03(6) on Considering Certain Discipline?
Northeast Metropolitan RVTS	30%	Yes	No. Reviews applications where “[p]attern of school suspensions less than 10 days in length that demonstrate safety risk in vocational school setting essential to participation
Greater New Bedford RVTS	25%	No	Unclear. May deduct points for “pattern of multiple incidents of major discipline (37H¾) which may reflect upon the student’s likelihood of success or safety in the...program”
Tri-County RVTS	25%	Yes	No. Considers “any action” from “discipline referral under 37H/37H½”
Bristol County Agricultural	20%	Yes for 37H & 37H½	No. Deducts points for a 10-day suspension under 37H¾
Cape Cod Regional Technical	20%	Yes	Yes (previously non-compliant)
Essex North Shore	20%	Yes for any exp. or for ≥ 2 sus.	No. Deducts points for any 37H¾ suspension
Minuteman RVTS	20%	Yes	Yes. Cumulative* offenses for 37H¾. Reviews mitigating factors
Montachusett RVTS	20%	No	Yes (previously non-compliant)
Nashoba Valley Technical	20%	Yes	Yes. Considers cumulative* offenses for 37H¾
Norfolk County Aggie	20%	Yes for 37H & 37H½	No. Deducts points for a 10-day suspension under 37H¾
Northern Berkshire (McCann)	20%	Yes	Yes. Considers cumulative* offenses for 37H¾
Old Colony RVTS	20%	Yes	No. Deducts points for any 37H¾ suspension
Shawsheen Valley RVTS	20%	Yes	Yes. Considers cumulative* offenses for 37H¾
South Shore RVTS	20%	Yes	Yes. Considers cumulative* offenses for 37H¾
Southern Worcester (Bay Path)	20%	No	No. Deducts points for any suspension
Greater Fall River (Diman)	15.625%	Yes	No. Deducts points for any “incident” and any 37H¾ suspension
Blackstone Valley RVTS	15%	Yes	Yes. Considers cumulative* offenses for 37H¾
Blue Hills Regional Technical	15%	Yes	Yes. Cumulative* offenses for 37H¾. Appeal for score of “0”
Franklin County Technical	15%	No	Yes (previously non-compliant)
Greater Lowell RVTS	15%	Yes	Yes. Considers cumulative* offenses for 37H¾
Greater Lawrence RVTS	13.3%	No	Yes. Considers cumulative* offenses for 37H¾
Bristol-Plymouth RVTS	10%	No	No. Awards 0 points for “2 or more incidents resulting in 2 or more suspensions”
South Middlesex (Keefe)	10%	Yes	Yes. Considers cumulative* offenses for 37H¾
Southeastern RVTS	10%	Yes	Unclear (previously non-compliant). May consider under 10 day suspensions for 37H¾
Upper Cape Cod RVTS	10%	Yes for 37H expulsion	No. Full points awarded only if no “references to discipline”
Whittier RVTS	10%	Yes	Unclear. May deduct points for any 37H¾ suspension
Pathfinder RVTS	2%	Yes	Unclear. May consider exactly 10 day suspensions under 37H¾

b. Binary Policy for Full or No Points

Binary Policy for Full or No Points			
School Name	Percentage of Application	Binary?	In Compliance with the Regulatory Prohibition in 603 CMR 4.03(6) on Considering Certain Discipline?
Northeast Metropolitan RVTS	30%	Yes	No. Reviews applications where “[p]attern of school suspensions less than 10 days in length that demonstrate safety risk in vocational school setting essential to participation
Tri-County RVTS	25%	Yes	No. Considers “any action” from “discipline referral under 37H/37H½”
Cape Cod Regional Technical	20%	Yes	Yes (previously non-compliant)
Minuteman RVTS	20%	Yes	Yes. Cumulative* offenses for 37H¾. Reviews mitigating factors
Nashoba Valley Technical	20%	Yes	Yes. Considers cumulative* offenses for 37H¾
Northern Berkshire (McCann)	20%	Yes	Yes. Considers cumulative* offenses for 37H¾
Old Colony RVTS	20%	Yes	No. Deducts points for any 37H¾ suspension
Shawsheen Valley RVTS	20%	Yes	Yes. Considers cumulative* offenses for 37H¾
South Shore RVTS	20%	Yes	Yes. Considers cumulative* offenses for 37H¾
Greater Fall River (Diman)	15.625%	Yes	No. Deducts points for any “incident” and any 37H¾ suspension
Blackstone Valley RVTS	15%	Yes	Yes. Considers cumulative* offenses for 37H¾
Blue Hills Regional Technical	15%	Yes	Yes. Cumulative* offenses for 37H¾. Appeal for score of “0”
Greater Lowell RVTS	15%	Yes	Yes. Considers cumulative* offenses for 37H¾
South Middlesex (Keefe)	10%	Yes	Yes. Considers cumulative* offenses for 37H¾
Southeastern RVTS	10%	Yes	Unclear (previously non-compliant). May consider under 10 day suspensions for 37H¾
Whittier RVTS	10%	Yes	Unclear. May deduct points for any 37H¾ suspension
Pathfinder RVTS	2%	Yes	Unclear. May consider exactly 10 day suspensions under 37H¾
Bristol County Agricultural	20%	Yes for 37H & 37H½	No. Deducts points for a 10-day suspension under 37H¾
Norfolk County Aggie	20%	Yes for 37H & 37H½	No. Deducts points for a 10-day suspension under 37H¾
Upper Cape Cod RVTS	10%	Yes for 37H expulsion	No. Full points awarded only if no “references to discipline”
Essex North Shore	20%	Yes for any exp. or for ≥ 2 sus.	No. Deducts points for any 37H¾ suspension
Greater New Bedford RVTS	25%	No	Unclear. May deduct points for “pattern of multiple incidents of major discipline (37H¾) which may reflect upon the student’s likelihood of success or safety in the...program”
Montachusett RVTS	20%	No	Yes (previously non-compliant)
Southern Worcester (Bay Path)	20%	No	No. Deducts points for any suspension
Franklin County Technical	15%	No	Yes (previously non-compliant)
Greater Lawrence RVTS	13.3%	No	Yes. Considers cumulative* offenses for 37H¾
Bristol-Plymouth RVTS	10%	No	No. Awards 0 points for “2 or more incidents resulting in 2 or more suspensions”

c. Compliance with Regulatory Prohibition on Considering Certain Discipline

Compliance with Regulatory Prohibition on Considering Certain Discipline			
School Name	Percentage of Application	Binary?	In Compliance with the Regulatory Prohibition in 603 CMR 4.03(6) on Considering Certain Discipline?
Cape Cod Regional Technical	20%	Yes	Yes (previously non-compliant)
Minuteman RVTS	20%	Yes	Yes. Cumulative offenses* for 37H¾. Reviews mitigating factors
Montachusett RVTS	20%	No	Yes (previously non-compliant)
Nashoba Valley Technical	20%	Yes	Yes. Considers cumulative offenses for 37H¾
Northern Berkshire (McCann)	20%	Yes	Yes. Considers cumulative* offenses for 37H¾
Shawsheen Valley RVTS	20%	Yes	Yes. Considers cumulative* offenses for 37H¾
South Shore RVTS	20%	Yes	Yes. Considers cumulative* offenses for 37H¾
Blackstone Valley RVTS	15%	Yes	Yes. Considers cumulative* offenses for 37H¾
Blue Hills Regional Technical	15%	Yes	Yes. Cumulative* offenses for 37H¾. Appeal for score of “0”
Franklin County Technical	15%	No	Yes (previously non-compliant)
Greater Lowell RVTS	15%	Yes	Yes. Considers cumulative* offenses for 37H¾
Greater Lawrence RVTS	13.3%	No	Yes. Considers cumulative* offenses for 37H¾
South Middlesex (Keefe)	10%	Yes	Yes. Considers cumulative* offenses for 37H¾
Greater New Bedford RVTS	25%	No	Unclear. May deduct points for “pattern of multiple incidents of major discipline (37H¾) which may reflect upon the student’s likelihood of success or safety in the...program”
Southeastern RVTS	10%	Yes	Unclear (previously non-compliant). May consider under 10 day suspensions for 37H¾
Whittier RVTS	10%	Yes	Unclear. May deduct points for any 37H¾ suspension
Pathfinder RVTS	2%	Yes	Unclear. May consider exactly 10 day suspensions under 37H¾
Northeast Metropolitan RVTS	30%	Yes	No. Reviews applications where “[p]attern of school suspensions less than 10 days in length that demonstrate safety risk in vocational school setting essential to participation
Tri-County RVTS	25%	Yes	No. Considers “any action” from “discipline referral under 37H/37H½”
Southern Worcester (Bay Path)	20%	Yes	No. Deducts points for any suspension
Bristol County Agricultural	20%	Yes for 37H & 37H½	No. Deducts points for a 10-day suspension under 37H¾
Norfolk County Aggie	20%	Yes for 37H & 37H½	No. Deducts points for a 10-day suspension under 37H¾
Essex North Shore	20%	Yes for any exp. or for ≥ 2 sus.	No. Deducts points for any 37H¾ suspension
Old Colony RVTS	20%	Yes	No. Deducts points for any 37H¾ suspension
Greater Fall River (Diman)	15.625%	No	No. Deducts points for any “incident” and any 37H¾ suspension
Upper Cape Cod RVTS	10%	Yes for 37H expulsion	No. Full points awarded only if no “references to discipline”
Bristol-Plymouth RVTS	10%	No	No. Awards 0 points for “2 or more incidents resulting in 2 or more suspensions”

d. Individual Schools' Discipline/Conduct Policies for Fall Admission

Blackstone Valley Regional Vocational Technical (15% of application)

Applications will consider student discipline in a binary method. If a student has been suspended for any infractions under M.G.L. c.71, § 37H or M.G.L. c.71, § 37H-½ or been suspended or expelled for more than 10 days cumulative under M.G.L. c.71, § 37H-¾ they will receive 0 points in this category. Otherwise full points will be awarded to the applicant.

Blue Hills Regional Technical (15% of application)

For applications to Grade 9 (fall admission), the sum of Grade 7 and Term 1 of Grade 8 discipline records from the sending school are used. For applications to Grade 10 (fall admission) the sum of the previous school year and Term 1 of the current school year's discipline records from the sending school are used. For applications to Grades 9 and 10 (admission during the school year), the school discipline records from the five previous completed terms will be used.

Any student whose application indicates disciplinary infractions resulting in 0 (zero) awarded points will be given the opportunity to present mitigating evidence and an explanation of the suspension(s), in writing to the principal. The principal will have the authority to adjust the awarded points according to the following guidelines.

Discipline Reported by Sending School	Points
1 or more 37H or 37H ½ infractions	0
1 or more 37H ¾ infraction resulting in 10+days of suspension either for a single infraction or cumulatively	0
No 37H, 37H ½ and/or 37H ¾ infractions resulting in 10+ days of suspension, either for a single infraction or cumulatively	15

Appeal	Points
Evidence provides a reasonable explanation and assurance of changed behavior	10
Evidence provides a limited explanation and partial assurance of changed behavior	5
Evidence does not provide a reasonable assurance of changed behavior	0

Bristol County Agricultural (20% of application)

20 Max for cumulative discipline report. Cumulative for Grade 5, 6, 7, 8.

Discipline in Grades 5, 6, 7 & 8
20 points - 0 days or fewer than 10 days of suspension
10 points - ≥ 10 days of suspension for 37H ¾
0 points - Any 37H & 37H ½ incident

Bristol-Plymouth Regional Vocational Technical (10% of application)

For applications to grade 9 (fall admission), the grade 7 and terms 1 & 2 (midyear) grade 8 conduct from the local school report card or from the local school guidance counselor's assessment are used.

School Discipline/Conduct Rating	Points
Excellent – 0 long term suspension	10
Average – 1 incident resulting in 1 long term suspension	5
Poor – 2 or more incidents resulting in 2 or more suspensions	0

Cape Cod Regional Technical (20% of application)

Applications will consider student discipline in a binary method. If a student has not been suspended for any infractions under M.G.L. c.71, § 37H or M.G.L. c.71, § 37H-½ nor has been suspended or expelled for more than 10 days under M.G.L. c.71, § 37H-¾ then they will receive the maximum number of 10 points available in this category per year. If a student has been suspended for any infractions under M.G.L. c.71, § 37H or M.G.L. c.71, § 37H-½ or has been suspended or expelled for more than 10 days under M.G.L. c.71, § 37H-¾ they will receive 0 points in this category per year.

Discipline Incidents for Current Year/Terms 1 and 2 (same scale for previous full year)	Points
No Incidents	10
Suspensions or any incident that would fall under 37H, 37H ½, or accumulating in over 10 days of 37H ¾	0

Essex North Shore Agricultural and Technical School (20% of application)

The local school out-of-school suspension* and/or or expulsion* records are required from all of the previous school year and Terms 1 and 2 or the beginning 50% of the current school year. *Consistent with M.G.L. c. 71 s. 37H, 37H½ and/or 37H¾

Discipline	Points
No Suspensions*	20
One Suspension*	10
More than one suspension or any Expulsion(s)	0

Franklin County Technical (15% of application)

Applications will consider student discipline in a tiered method. If a student has not been suspended for any infractions under M.G.L. c.71, § 37H or M.G.L. c.71, § 37H-½ or been suspended or expelled for more than 10 days under M.G.L. c.71, § 37H-¾ then they will receive points based upon the following tiered method as indicated in table JC-3. A maximum number of 15 points are available in this category. If a student has been suspended for any infractions under M.G.L. c.71, § 37H or M.G.L. c.71, § 37H-½ or been suspended or expelled for more than 10 days under M.G.L. c.71, § 37H-¾ they may receive 0-10 points depending on the incidences of suspensions.

Discipline/Conduct/Rating	Points
0 suspensions	15
1-2 suspensions	10
3-5 suspensions	5
6 or more suspensions	0

Greater Fall River Regional (Diman) (15.625% of application)

50 points --Zero suspensions or incidents imposed pursuant to MGL c.71 37H, 37H½, 37H¾. 0 points - One or more incidents resulting in suspension imposed pursuant to MGL c.71 37H, 37H½, 37H¾. A copy of the student's disciplinary record must accompany the application.

Greater Lawrence Technical School (13.3% of application)

An official school record of student discipline must be submitted as part of the application process. Points will be deducted only for infractions that resulted in suspensions or expulsion pursuant to M.G.L. c.71, § 37H or M.G.L. c.71, § 37H-½, or resulted in suspension or expulsion for more than 10 days for a single infraction or cumulatively pursuant to M.G.L. c.71, § 37H-¾.

School Discipline/Conduct	Maximum 10 Points
0 Suspensions	10
1 Suspension	5
2+ Suspensions	1

Greater Lowell Regional Technical (15% of application)

An official school record of student discipline must be submitted as part of the application process. Points will be deducted only for infractions that resulted in suspensions or expulsion pursuant to M.G.L. c.71, § 37H or M.G.L. c.71, § 37H-½, or resulted in suspension or expulsion for more than 10 days for a single infraction or cumulatively pursuant to M.G.L. c.71, § 37H-¾. For application to grade 9 (fall admission), an official school record of disciplinary infractions for grades 7 and 8 are used.

Suspensions/Expulsions	Points
0 Suspensions/Expulsions	15
1 or more infractions that resulted in suspensions or expulsion pursuant to M.G.L. c.71, § 37H or M.G.L. c.71, § 37H-½, or resulted in suspension or expulsion for more than 10 days for a single infraction or cumulatively pursuant to M.G.L. c.71, § 37H-¾.	0

Greater New Bedford Regional Technical (25% of application)

In accordance with 603 CMR 4.03(6)(a), “minor behavior or disciplinary infractions” for the purpose of this policy shall mean any student conduct other than conduct for which suspension or expulsion is imposed pursuant to M.G.L. c 71, 37H or 37H 1/2, or for which suspension or expulsion for more than 10 days was imposed to M.G.L. c 71, 37H ¾. Each suspension or infraction will be reviewed to determine a pattern of multiple incidents of major discipline (37H ¾) which may reflect upon the student’s likelihood of success or safety in the vocational school or program. Students who receive zero (0) points will be given an opportunity to explain and clarify the suspensions or pattern of incidents to admissions personnel.

7th Grade	
Number of Suspensions	Total Points
0	5
1	3.75
2	2.5
3+	0

8th Grade	
Number of Suspensions	Total Points
0	20
1	15
2	10
3+	0

Minuteman Regional Vocational Technical (20% of application)

The District will not consider student conduct other than infractions that resulted in suspensions or expulsion pursuant to M.G.L. c.71, §37 H or M.G.L. c. 71 §37 H ½, or conduct that resulted in suspension for more than 10 days for a single infraction or cumulatively pursuant to M.G.L. c. 71 § 37H ¾.

Recognizing that students may have adverse circumstances, the District will review not only the number and length of suspensions, but the documented facts related to the suspensions.

For applications to grade 9 (fall admission), the cumulative discipline record for the 7th and 8th grades from the local school report card or from the local school Guidance Counselor’s assessments is used.

Discipline/Conduct Rating	Points
0 Suspensions	20
1 or more Suspension	0

Montachusett Regional Vocational Technical (20% of application)

For applications to grade 9 (fall admission), the student's discipline record, documenting the number of out-of-school suspensions from grade 7 and quarters 1 and 2 of grade 8, is used.

Montachusett Regional Vocational Technical School District will only consider student conduct that resulted in suspensions or expulsion pursuant to M.G.L. c.71, § 37H or M.G.L. c.71, § 37H-½, or resulted in suspension or expulsion for more than 10 days for a single infraction or cumulatively pursuant to M.G.L. c.71, § 37H-¾ when determining applicants' conduct rating.

Discipline/ Conduct Rating	Points
No suspensions	20
1 suspension	15
2 suspensions	10
3-4 suspensions	5
5+ suspensions	0

Nashoba Valley Technical (20% of application)

All applicants will have a school discipline review, where a Maximum of 20 points can be earned.

Nashoba Valley Technical High School will only consider student conduct that resulted in suspensions or expulsion pursuant to M.G.L. c.71, § 37H or M.G.L. c.71, § 37H-½, or resulted in suspension or expulsion for more than 10 days for a single infraction or cumulatively pursuant to M.G.L. c.71, § 37H-¾ when determining applicants' conduct rating.*

Discipline Rating*	Points
No incidents	20
1 or more incident	0

Norfolk County Agricultural High School (20% of application)

20 Maximum for cumulative discipline report. Cumulative for Grade 5, 6, 7, 8.

Discipline in Grades 5, 6, 7 & 8
20 points - 0 days or fewer than 10 days of suspension
10 points - ≥ 10 days of suspension for 37H ¾
0 points - Any 37H & 37H ½ incident

Northeast Metropolitan Regional Vocational (30% of application)

Maintaining safety for all in vocational schools is essential to participation. An applicant's minor behavior or disciplinary infractions will not be considered as part of this admissions criteria. In accordance with 603 CMR 4.03(6)(a), "minor behavior or disciplinary infractions" for the purpose of this policy shall mean any student conduct other than conduct for which suspension or expulsion is imposed pursuant to M.G.L. c 71, § 37H or § 37H½. or for which suspension or expulsion for more than 10 days was imposed pursuant to M.G.L. c 71. §37H¾.

Each discipline record will be reviewed for infractions that resulted in suspensions or expulsion pursuant to M.G.L. c.71, § 37H or M.G.L. c.71, § 37H½. or resulted in suspension or expulsion for more than 10 days for a single infraction or cumulatively pursuant to M.G.L. c.71. § 37H

Students who receive zero (0) points will be given an opportunity to explain and clarify the suspensions or pattern of suspensions to admissions personnel.

Discipline/Conduct Rating	Points
No suspensions	30
1 or more suspensions greater than 10 days under 37H, 37H½, or 37H¾	0
Pattern of school suspensions less than 10 days in length that demonstrate safety risk in vocational school setting essential to participation	Review by committee

Northern Berkshire Regional Vocational (McCann) (20% of application)

Applications will consider student discipline in a binary method. If a student has not been suspended for any infractions under M.G.L. c.71, § 37H or M.G.L. c.71, § 37H-½ or been suspended or expelled for more than 10 days under M.G.L. c.71, § 37H-¾ then they will receive the maximum number of 20 points available in this category. If a student has been suspended for any infractions under M.G.L. c.71, § 37H or M.G.L. c.71, § 37H-½ or been suspended or expelled for more than 10 days under M.G.L. c.71, § 37H-¾ they will receive 0 points in this category.

Old Colony Regional Vocational Technical (20% of application)

Disciplinary records are required for all applications. For applications to grade nine (fall admission), the average of grade seven and terms one & two grade eight assessments of behavior from the local school report card or from the local school guidance counselor's assessment are required.

Conduct: Maximum 20 points (10 points each year)
10 points - Zero suspensions or incidents imposed pursuant to MGL c 71 37H, 37H½, 37H¾
0 points - One or more incidents resulting in suspension imposed pursuant to MGL c 71 37H, 37H½, 37H¾

Pathfinder Regional Vocational Technical (2% of application)

Grades, attendance, and discipline records for the past two school years (for example, for an 8th grade student applying for 9th grade would require documentation for 7th and 8th grade).

DISCIPLINE = 2 points max 7th & 8th
No 10+ day suspension or expulsion = 1 each year
One or more 10+ day suspension or expulsion (cumulative) = 0 each year

Shawsheen Valley Regional Vocational Technical (20% of application)

Any applicant who has been suspended or expelled pursuant to MGL Chapter 71, Section 37H or MGL Chapter 71 Section 37H1/2 or who has been suspended or expelled for greater than 10 days pursuant to MGL Chapter 71, Section 37H3/4 in either the current school year or at any time in their previous school year will receive 0 points in this category. All other applicants will receive 20 points.

South Middlesex Vocational Technical (Keefe) (10% of application)

For applications to grade 9 (fall admission), the average of grade 7 and terms 1 and 2 of grade 8 assessments from the local school report card or from the local school Guidance Counselor’s assessment are used.

Discipline/Conduct Rating	Points
Applicant has no conduct infractions that resulted in suspensions or expulsion pursuant to M.G.L. c.71, § 37H or M.G.L. c.71, § 37H-½, or resulted in suspension or expulsion for more than 10 days for a single infraction or cumulatively pursuant to M.B.L. c.71, § 37H-¾	10
Applicant has one or more conduct infractions that resulted in suspensions or expulsion pursuant to M.G.L. c.71, § 37H or M.G.L. c.71, § 37H-½, or resulted in suspension or expulsion for more than 10 days for a single infraction or cumulatively pursuant to M.B.L. c.71, § 37H-¾	0

South Shore Vocational Technical (20% of application)

For applicants seeking admission for the following school year discipline will be based on the most recent marking period (report card) of the school year in which the application is submitted (e.g. For an 8th grader, this means that the first 8th grade marking period is needed for admission as a 9th grader.). Discipline records will be cumulative.

Current year and prior year attendance record of unexcused absences (20 pts)		
Discipline Record	“Previous Year” Points	“Current Year” Points
Zero Suspensions under MGL 37H or MGL 37H1/2	5	15
1+ suspension under MGL 37H or MGL 37H1/2 or more than 10 days suspension under MGL 37H3/4	0	0

Southeastern Vocational Regional Technical (10% of application)

A maximum of 10 points is derived from the sending school discipline report/records for the previous full year and through the first semester or first trimester for the current school year from the local school record. Discipline referrals include suspensions and exclusions were imposed pursuant to M.G.L. c. 71 37H or 37H ½, or for which suspension or expulsion for more than 10 days was imposed pursuant to M.G.L. c. 71 37H ¾.

<i>Discipline Rating</i>	<i>7th Grade Points</i>	<i>8th Grade Point</i>
No infractions pursuant to M.G.L. c. 71 37H, 37H ½, and/or 37H ¾	5	5
One or more infraction pursuant to M.G.L. c. 71 37H, 37H ½, and/or 37H¾	0	0

Southern Worcester County Regional (Bay Path) (20% of application)

Discipline/Conduct: Maximum 20 points (sum of previous year and present year to date)

Disciplinary Incidents	Points
No suspensions	20
1 suspension	15
2 suspensions	10
3-4 suspensions	5
5+ suspensions	0

Tri-County Regional Vocational Technical (25% of application)

Conduct/Behavior - This criterion is a measure of the student’s rating in conduct and citizenship as determined by the student discipline record.

Rating	Point Value
Less than 10 days suspensions/expulsion under 37H3/4	25
More than 10 days suspended or expulsion under 37H3/4	0
Discipline referral under Chapter 37H resulting in any action	0
Discipline Referral under 37H1/2 resulting in any action	0

Upper Cape Cod Regional Technical (10% of application)

For applications to grade 9 (fall admission), the conduct report from terms 1 & 2 grade 8 from the local school report card/transcript or the discipline report are used.

Discipline/Conduct Rating	Points
Excellent - no references to discipline	10
Long term suspension lasting over 10 days	5
37 H violation resulting in expulsion for current school year	0

Whittier Regional Vocational Technical (10% of application)

Whittier Tech does not consider a student's record of excused absences from school, or minor behavior or disciplinary infractions. Whittier may consider student's conduct for which a suspension or expulsion was imposed pursuant to M.G.L. c.71 §37H or §37H1/2, or for which suspension or expulsion for more than 10 days was imposed pursuant to M.G.L. c.71 §37H3/4.

Discipline Rating	7th Grade Points	8th Grade Points
No suspensions or expulsions pursuant to M.G.L. c. 71 37H, 37H ½, and/or 37H ¾	5	5
1 or more suspensions or expulsions pursuant to M.G.L. c. 71 37H, 37H ½, and/or 37H ¾.	0	0

Appendix E: Sending School's Recommendation

a. Recommendation Table by Weight

By Weight			
School Name	Percentage of Application	Who Can Provide the Recommendation (most open to most restrictive)	Guidance in Policy?
Greater New Bedford RVTS	26%	School personnel	Yes
Greater Fall River (Diman)	21.875%	One from the guidance dept. + two from anyone not in guidance dept.	Yes
Minuteman RVTS	20%	Any school staff or other adult (non-family member) qualified to assess potential for success in CTE	No
Northern Berkshire (McCann)	20%	Guidance counselor	Yes
Shawsheen Valley RVTS	20%	Guidance counselor or teacher selected by the applicant	Yes
Southern Worcester (Bay Path)	20%	Unclear	Yes
Blackstone Valley RVTS	15%	Member of the guidance department	No
Montachusett RVTS	15%	Counselor or teacher	Yes
Greater Lawrence RVTS	13.3%	Guidance counselor	No
Bristol-Plymouth RVTS	10%	Guidance counselor	Yes
Northeast Metropolitan RVTS	10%	Guidance counselor or school personnel	No
Pathfinder RVTS	10%	Counselor	No
South Middlesex (Keefe)	10%	School counselor or representative	Yes
South Shore RVTS	10%	Guidance counselor or teacher who worked with the applicant within the past two years	Yes
Tri-County RVTS	10%	Counselor and/or other school personnel who know applicant best	Yes
Whittier RVTS	10%	Counselor and/or other school personnel who know applicant best	No
Nashoba Valley Technical	8%	Guidance counselor or any other school personnel selected by student	No
Cape Cod Regional Technical	6%	School counselor or principal	Yes
Blue Hills RVTS	5%	Guidance counselor, teacher, or designee	No
Essex North Shore	5%	School counselor or principal	No
Franklin County Technical	5%	School counselor	No
Greater Lowell RVTS	5%	Member of the school counseling department	Yes
Old Colony RVTS	5%	Guidance counselor	No
Southeastern RVTS	5%	Counselor and/or other school personnel who know applicant best	Yes
Bristol County Agricultural	N/A	--	--
Norfolk County Aggie	N/A	--	--
Upper Cape Cod RVTS	N/A	--	--

b. Who can Provide Recommendation

Who Can Provide the Recommendation			
School Name	Percentage of Application	Who Can Provide the Recommendation (most open to most restrictive)	Guidance in Policy?
Minuteman RVTS	20%	Any school staff or other adult (non-family member) qualified to assess potential for success in CTE	No
Greater New Bedford RVTS	26%	School personnel	Yes
Greater Fall River (Diman)	21.875%	One from the guidance dept. + two from anyone not in guidance dept.	Yes
Northeast Metropolitan RVTS	10%	Guidance counselor or school personnel	No
Nashoba Valley Technical	8%	Guidance counselor or any other school personnel selected by student	No
Tri-County RVTS	10%	Counselor and/or other school personnel who know applicant best	Yes
Whittier RVTS	10%	Counselor and/or other school personnel who know applicant best	No
Southeastern RVTS	5%	Counselor and/or other school personnel who know applicant best	Yes
Blue Hills RVTS	5%	Guidance counselor, teacher, or designee	No
Shawsheen Valley RVTS	20%	Guidance counselor or teacher selected by the applicant	Yes
South Shore RVTS	10%	Guidance counselor or teacher who worked with the applicant within the past two years	Yes
South Middlesex (Keefe)	10%	School counselor or representative	Yes
Montachusett RVTS	15%	Counselor or teacher	Yes
Blackstone Valley RVTS	15%	Member of the guidance department	No
Greater Lowell RVTS	5%	Member of the school counseling department	Yes
Cape Cod Regional Technical	6%	School counselor or principal	Yes
Essex North Shore	5%	School counselor or principal	No
Northern Berkshire (McCann)	20%	Guidance counselor	Yes
Greater Lawrence RVTS	13.3%	Guidance counselor	No
Bristol-Plymouth RVTS	10%	Guidance counselor	Yes
Pathfinder RVTS	10%	Counselor	No
Franklin County Technical	5%	School counselor	No
Old Colony RVTS	5%	Guidance counselor	No
Southern Worcester (Bay Path)	20%	Unclear	Yes
Bristol County Agricultural	N/A	--	--
Norfolk County Aggie	N/A	--	--
Upper Cape Cod RVTS	N/A	--	--

c. **Guidance in Admissions Policy for Completing the Recommendation**

Guidance in Admissions Policy for Completing the Recommendation			
School Name	Percentage of Application	Who Can Provide the Recommendation (most open to most restrictive)	Guidance in Policy?
Greater New Bedford RVTS	26%	School personnel	Yes
Greater Fall River (Diman)	21.875%	One from the guidance dept. + two from anyone not in guidance dept.	Yes
Northern Berkshire (McCann)	20%	Guidance counselor	Yes
Shawsheen Valley RVTS	20%	Guidance counselor or teacher selected by the applicant	Yes
Southern Worcester (Bay Path)	20%	Unclear	Yes
Montachusett RVTS	15%	Counselor or teacher	Yes
Bristol-Plymouth RVTS	10%	Guidance counselor	Yes
South Middlesex (Keefe)	10%	School counselor or representative	Yes
South Shore RVTS	10%	Guidance counselor or teacher who worked with the applicant within the past two years	Yes
Tri-County RVTS	10%	Counselor and/or other school personnel who know applicant best	Yes
Cape Cod Regional Technical	6%	School counselor or principal	Yes
Greater Lowell RVTS	5%	Member of the school counseling department	Yes
Southeastern RVTS	5%	Counselor and/or other school personnel who know applicant best	Yes
Minuteman RVTS	20%	Any school staff or other adult (non-family member) qualified to assess potential for success in CTE	No
Blackstone Valley RVTS	15%	Member of the guidance department	No
Greater Lawrence RVTS	13.3%	Guidance counselor	No
Northeast Metropolitan RVTS	10%	Guidance counselor or school personnel	No
Pathfinder RVTS	10%	Counselor	No
Whittier RVTS	10%	Counselor and/or other school personnel who know applicant best	No
Nashoba Valley Technical	8%	Guidance counselor or any other school personnel selected by student	No
Blue Hills RVTS	5%	Guidance counselor, teacher, or designee	No
Essex North Shore	5%	School counselor or principal	No
Franklin County Technical	5%	School counselor	No
Old Colony RVTS	5%	Guidance counselor	No
Bristol County Agricultural	N/A	--	--
Norfolk County Aggie	N/A	--	--
Upper Cape Cod RVTS	N/A	--	--

d. Individual Schools' Recommendation Policies for Fall Admission

Unless otherwise specified, the school does not appear to make publicly available any forms and/or rubrics school staff use to complete the recommendation portion of a student's application. It is possible this information is sent directly to recommenders or only available to a student upon applying.

Blackstone Valley Regional Vocational Technical (15% of application)

For applications to grade 9, 10, 11 and 12 (fall admission), the local school Guidance Counselor's recommendation for each candidate is required. A member of the Guidance Department in each member town will complete a recommendation based on a rubric on the application form.

Rating	Points
Excellent	15
Above Average	10
Average	5
Below Average	0

Blue Hills Regional Technical (5% of application)

For Grade 9 completed and signed Recommendation Form which provides equitable standards for measuring the sending school's recommendation. An equitable recommendation form is used and completed by the sending school. The sending school guidance counselor, teacher or designee will complete the form based on the applicant's potential for success in a vocational school environment. There are ten (10) tasks rated in ability/skill. Each task is given points ranging from .5 points for Excellent; .4 points for Above Average; .3 points for Average; .2 points for below Average and .1 points for Poor.

Rating	Points
Excellent	5 – 4.5
Above Average	4 – 3.5
Average	3 – 2.5
Below Average	2 – 1.5
Poor	1 – 0.0

Bristol County Agricultural

N/A

Bristol-Plymouth Regional Vocational Technical (10% of application)

For applications to grades 9, 10, 11 and 12, the local school guidance counselor's recommendation is required.

Highest Recommendation (10 pts); Moderate Recommendation (8 pts); Recommend (6 points); Limited Recommendation (4 points); Low Recommendation (2 points)					
	Points	Points	Points	Points	Points
Study/Work Habits					
Classroom Participation					
Perseverance/Effort					
Personal Responsibility					

Cape Cod Regional Technical (6% of application)

For applications to grade nine fall admissions, Recommendations from the school counselor or principal at the local school, must be completed. Students are evaluated by their sending school counselor or the local school Principal/ Director in the areas of: effort, conduct and work habits. This form is located in the student application.

Rating	Points
Excellent, Above Average	6
Good, Average	4
Below Average, Needs Improvement	2
Minimal Performance	0

Essex North Shore Agricultural and Technical School (5% of application)

For all applicants, a recommendation rating is to be completed and submitted by the applicant's sending School Counselor (or Principal's designee). The recommendation rating consists of five statements relating to the applicant and career technical and agricultural education. Each statement receives a rating: 5 points (Excellent) or 4 points (Above Average) or 3 points (Average) or 1 points (Below Average) or 0 points (Poor).

Recommendation	Points
Excellent	5
Above Average	4
Average	3
Below Average Interest	1
Poor	0

Franklin County Technical (5% of application)

Input from the applicant's local school counselors is an appreciated and important component of gaining insight into students' motivations and interests in a vocation/technical education. Points are assigned based on the following scale:

Rating	Points
Excellent	5
Above Average	4
Average	3
Below Average	2
Poor	1

Greater Fall River Regional (Diman) (21.875% of application)

For application to grades nine, ten, eleven and twelve (fall admission and admission during the school year) the assessment of a student's overall performance within his/her school is used for the recommendation. Applying students must submit 3 recommendations, one must be from the school's Guidance Department, the final 2 will be from anyone other than a school Guidance Counselor. Maximum 70 Points (max of 30 from School Guidance, max of 20 each of other 2 required recommendations).

Recommendation	Points (Total)
Strongly Recommended	55-70
Recommended	30-54
Recommended with Reservations	10-29
Do Not Recommend	Below 10

Rubric for Recommendation from Guidance Counselor		
Vocational Interest	Maturity Level	Motivation
Strong Interest in Vocational Education (10 Points) i.e. Has a specific shop in mind, knows they want to work with their hands.	Maturity level above peers (10 points) i.e. Appears established, and conducts themselves in an adult-like manner	Highly motivated and proactive (10 Points) i.e. Has improved grades, attendance, and behavior from grade 7 to 8.
Moderate Interest in Vocational Education (6 Points)	Maturity level with peers (6 Points)	Motivated and action-oriented (6 Points)
Some Interest in Vocational Education (3 Points)	Maturity level below most peers (3 Points)	Takes action only when required (3 Points)
No Interest in Vocational Education (0 Points)	Maturity level significantly lower than peers (0 Points)	Lacks motivation and willingness to take action without direction (0 Points)
Scoring for Guidance Counselor Recommendation		
Totals from Each Column	Total Points Earned	
Vocational Interest:	21-30 Strongly Recommend	
Maturity Level:	11-20 Recommended	
Motivation:	1-9 Recommended with Reservation	
Total Points Earned:	0 Not Recommended	

Recommendation rubric and scoring for “other” recommenders is the same as that for the guidance counselor but with a different points scale (7 → 5 → 3 → 0 instead of 10 → 6 → 3 → 0).

Greater Lawrence Technical School (13.3% of application)

All applications must also include a recommendation by sending school personnel.

Local Guidance Counselor's Recommendation	
Recommendation	Rating Points
Excellent	10
Above Average	8
Average	5
Below Average	3
Poor	1

Greater Lowell Regional Technical (5% of application)

A member of the School Counseling Department in each member town will complete a recommendation based on a rubric in the application packet. For application to grades 9, 10, 11 & 12 (fall admissions and admission during the school year if applicable), recommendation from the local school counselor is required.

Rating	Points
Ability to Benefit	1
Classroom Participation	1
Perseverance	1
Study/Work Habits	1
Positive Collaboration	1

Greater New Bedford Regional Technical (26% of application)

Recommendations from a student’s school are extremely important in the admissions process. The purpose of the recommendation is to provide a complete picture of the student and show the level of interest a student has in career vocational/technical education, the student’s strengths, work performance, areas to improve upon and personal qualities that will prove meaningful to their success. Students will have the opportunity to obtain a recommendation from any staff member at their sending school.

School representatives will be asked to rate the student based on the following criteria. They will also have the ability to write comments to explain or support their ratings when applicable.

Rating	Points
Excellent/Above Average	2
Average	1
Below Average/Poor	0

- _____ Study habits and work completion
- _____ Personal responsibility
- _____ Positive attitude
- _____ Respect for teachers, peers and others
- _____ Ability to work as a productive team member
- _____ Independent work skills
- _____ Demonstrates leadership qualities
- _____ Adheres to school rules and displays safe behavior
- _____ Level of interest in career vocational technical education
- _____ Maturity level in comparison to peers
- _____ Motivation to do well
- _____ Is always prepared and passionate about their education
- _____ Is able to persevere through difficult situations

- If there are any extenuating circumstances affecting grades, attendance or discipline, an explanation letter from the middle school counselor or administrator will be accepted.

Minuteman Regional Vocational Technical (20% of application)

Any school staff or other adult (non-family member) qualified to assess the student’s potential for success in vocational technical education may complete the Minuteman Recommendation Form. Other letters of recommendation will not be assessed as part of their student’s application for admissions.

Rating	Points
Far Above Average	20
Above Average	16
Average	12
Below Average	8
Well Below Average	4

Montachusett Regional Vocational Technical (15% of application)

For applications to grade 9, 10, 11 and 12 (fall admission), the sending school recommendation is required. To be completed by the applicant's counselor/teacher. Please assess the applicant in each of the following categories, as compared to his/her peers:

Rating	Points (0-3) Above Average = 3 Average = 2 Fair = 1 Poor = 0
Achievement in Relation to Ability	0-3
Classroom Involvement	0-3
Study/Work Habits	0-3
Motivation	0-3
Personal Responsibility	0-3

Nashoba Valley Technical (8% of application)

For students applying to grades 9, 10, 11 and 12, applications must include a recommendation form completed by the local school Guidance Counselor or any other school personnel selected by the student.

Rating	Points
Excellent	8
Above Average	6
Average	4
Below Average	2
Poor	0

Norfolk County Agricultural High School

N/A

Northeast Metropolitan Regional Vocational (10% of application)

Local guidance counselor or school personnel recommendation.

Rating	Points
Excellent	10
Above Average	8
Average	6
Below Average	4
Poor	2

Northern Berkshire Regional Vocational (McCann) (20% of application)

A recommendation from the sending school’s guidance counselor will be completed using a specific rubric that aligns with McCann’s core educational philosophy of R.E.A.C.H. (Respect, Effort, Accountability, Communication, and Honor). Students will receive a score from their guidance counselor for each category with a detailed rubric defining the criteria. Students can receive up to 4 points for each of the 5 categories resulting in the possible accumulation of 20 points in this category.

	Exemplary	Proficient	Developing	Limited
	4 points	3 points	2 points	1 point
Respect	Shows due regard for the feelings, wishes, rights or traditions of others as well as due regard for property and material in all instances.	Shows due regard for the feelings, wishes, rights or traditions of others as well as due regard for property and materials in most instances.	Occasionally shows disregard for the feelings, wishes, rights, or traditions of others and for property and materials.	Routinely shows disregard for the feelings, wishes, rights, or traditions of others as well as for property and materials.
Effort	Demonstrates the ability to put forth their best effort in every task they complete and often look to take on extra work for the benefit of enrichment and growth.	Generally puts forth their best effort in every task they complete and is usually willing to take on extra work for the benefit of enrichment and growth.	Occasionally looks to take the easiest path to complete tasks even at the risk of losing quality. Is generally not interested in taking on extra work for the benefit of enrichment and growth.	Routinely looks for ways to get out of completing tasks and shows no interest in completing assigned work, never-mind extra work for enrichment.
Accountability	Follows rules, takes personal responsibility, and is accountable for their academic expectations in all instances.	Follows rules, takes personal responsibility, and is accountable for their academic expectations in most instances.	Occasionally breaks rules, does not comprehend their personal responsibility in situations and is not accountable in meeting their academic expectations.	Regularly breaks rules, shows no personal responsibility for their actions, and is rarely accountable in meeting their academic expectations.
Communication	Communicates effectively and appropriately with peers and adults in all opportunities.	Communicates effectively and appropriately with peers and adults in most opportunities.	Occasionally needs assistance or redirection in communicating effectively and appropriately with peers and adults.	Is frequently incapable of communicating effectively and appropriately with others.
Honor	Acts with integrity, shows resiliency, and maintains a positive attitude in all situations.	Acts with integrity, shows resiliency, and maintains a positive attitude in most situations.	Occasionally acts without integrity, displays a poor attitude, and occasionally gives up when faced with challenging tasks.	Often acts with a lack of integrity, displays a poor attitude, and rarely works through challenging tasks.

Old Colony Regional Vocational Technical (5% of application)

For applications to grades nine and ten (fall admission), the local school guidance counselor's recommendation is required.

Counselor Recommendation: Maximum 5 points
5 points - Excellent candidate
4 points - Above average candidate
3 points - Average candidate
2 points - Below average candidate
0 points - Poor candidate/Not recommended

Pathfinder Regional Vocational Technical (10% of application)

Requires a completed PRVTHS Counselor Recommendation Form

COUNSELOR RECOMMENDATION = 10 points max
5 questions = 2 each

See next page for Shawsheen Valley – Large Chart

Shawsheen Valley Regional Vocational Technical (20% of application)

Local Guidance Counselors or a teacher selected by the applicant will be asked to assess each applicant using five (5) character traits that Shawsheen considers important in predicting the applicant’s success at Shawsheen. In addition, the local Guidance Counselor or teacher will be asked to answer (not to exceed 250 words) the following question: “In what ways do you think this student would benefit from the unique features of Shawsheen Tech?” Local Guidance Counselor or teacher recommendation will be reviewed by a member of the Shawsheen admissions and student recruitment team who holds a valid license as an educator from the Massachusetts Department of Elementary and Secondary Education and assigned points as follows:

Trait Assessment				
	Guidance Counselor/Teacher Assessment			
Trait	Above Average	Average	Below Average	Poor
Achievement in Relation to Ability	3	2	1	0
Work Ethic	3	2	1	0
Contributes to a Safe and Positive Learning Environment	3	2	1	0
Character and Citizenship	3	2	1	0
Personal Responsibility	3	2	1	0

Narrative Question			
0 Points	1 Point	3 Points	5 Points
Poor/No Benefit	Below Average Benefit	Average Benefit	Above Average Benefit
No direct benefit of attending Shawsheen noted.	Little direct benefit of attending Shawsheen noted, or benefit is not directly linked to a unique feature of Shawsheen	Direct benefit of attending Shawsheen noted. Benefit directly linked to unique feature of Shawsheen	Significant benefit of attending Shawsheen noted. Benefit strongly tied to unique feature of Shawsheen.

South Middlesex Vocational Technical (Keefe) (10% of application)

For application to grades 9, 10, 11 or 12 (fall admissions), recommendations from the local School Counselor or representative are required.

Rating by School Counselor or other appropriate school faculty member	Points
Excellent: Student is highly motivated, demonstrates excellent leadership skills, has outstanding work and study habits, maintains excellent citizenship, has respect for school policy and career/technical learning, and is a good example for peer mentoring.	10
Above Average: Student is motivated, has a good attitude toward school and demonstrates leadership and independence regarding academic and career/technical learning. Student is responsible and a self-starter.	8
Average: Student successfully completes tasks, is attentive and motivated with a good attitude toward school and career/technical learning. Student will follow directions.	6
Below Average: Student is not motivated and attitude toward school and/or behavior is problematic. Student may not follow rules and directions consistently. Student's level of independence and responsibility is inconsistent	4

South Shore Vocational Technical (10% of application)

Recommendation from local school guidance counselor or teacher who worked with the applicant within the past two years. South Shore will provide a recommendation form that will be based on the criteria and scoring below.

Criteria	Points
The student's interests and future goals clearly align with pursuing a vocational education and the student would thrive in such an environment.	10
The student may benefit from a vocational education and/or may thrive in such an environment.	7
It is unclear if the student would benefit from a vocational education or that the student would thrive in such an environment.	3

Southeastern Vocational Regional Technical (5% of application)

A maximum of 5 points is derived from the recommendation of the sending school counselor and/or other sending school personnel who know the applicant best. The recommendation is a required section of the application. A student's performance at his/her current grade level is being evaluated. The recommendation is based on a student's effort and motivation regarding his/her education.

Rating	Points
Well Above Average	5
Above Average	4
Average	3
Below Average	2
Poor	1

Southern Worcester County Regional (Bay Path) (20% of application)

Applying for Grade 9, 10, 11, 12 the sending school recommendation is required.

Rating	Points (1-4) Above Avg = 4 Avg = 3 Fair = 2 Poor = 1
Study habits/work habits	1-4
Classroom participation	1-4
Ability to benefit	1-4
Perseverance	1-4
Personal responsibility	1-4

Tri-County Regional Vocational Technical (10% of application)

A maximum of 10 points is derived from the recommendation of the sending school counselor and/or other sending school personnel who know the applicant best. A student’s performance at his/her current grade level is being evaluated. The recommendation is based on a student’s effort and motivation regarding his/her education. Points are awarded as follows:

Rating	Point Value
Excellent	10
Good	8
Average	6
Fair	4
Poor	0

Upper Cape Cod Regional Technical

N/A

Whittier Regional Vocational Technical (10% of application)

A maximum of 10 points will be given from the recommendation of the sending school counselor and/or other sending school personnel who knows the candidate best.

Rating	Points
Excellent	10
Above Average	7
Average	4
Below Average	2
Poor	0

Appendix F: Interviews

a. Interview Table by Weight

By Weight			
School Name	Percentage of Application	Questions Provided to Applicants?	Scoring Guidance Provided to Interviewers?
Bristol County Agricultural	70%	No	No
Norfolk County Aggie	70%	No	No
Pathfinder RVTS	70%	No	No
Upper Cape Cod RVTS	60%	No	No
Blue Hills RVTS	45%	No	No
Bristol-Plymouth RVTS	40%	Yes	Yes
Essex North Shore	40%	No	No
Nashoba Valley Technical	40%	No	No
South Middlesex (Keefe)	36%	No	Yes
Franklin County Technical	35%	No	No
Southeastern RVTS	35%	No	No
Blackstone Valley RVTS	30%	Yes*	No
Shawsheen Valley RVTS	30%	Yes	Yes
Whittier RVTS	30%	No	No
Old Colony RVTS	25%	No	No
Tri-County RVTS	25%	No	Yes
South Shore RVTS	25%	No	Yes
Cape Cod Regional Technical	24%	No	No
Minuteman RVTS	20%	No	No
Montachusett RVTS	20%	No	No
Southern Worcester (Bay Path)	15%	No	Yes
Greater Fall River Regional	N/A	--	--
Greater Lawrence RVTS	N/A	--	--
Greater Lowell RVTS	N/A	--	--
Greater New Bedford RVTS	N/A	--	--
Northeast Metropolitan RVTS	N/A	--	--
Northern Berkshire (McCann)	N/A	--	--

b. Questions Provided to Applicants

Questions Provided to Applicants			
School Name	Percentage of Application	Questions Provided to Applicants?	Scoring Guidance Provided to Interviewers?
Bristol-Plymouth RVTS	40%	Yes	Yes
Blackstone Valley RVTS	30%	Yes*	No
Shawsheen Valley RVTS	30%	Yes	Yes
Bristol County Agricultural	70%	No	No
Norfolk County Aggie	70%	No	No
Pathfinder RVTS	70%	No	No
Upper Cape Cod RVTS	60%	No	No
Blue Hills RVTS	45%	No	No
Essex North Shore	40%	No	No
Nashoba Valley Technical	40%	No	No
South Middlesex (Keefe)	36%	No	Yes
Franklin County Technical	35%	No	No
Southeastern RVTS	35%	No	No
Whittier RVTS	30%	No	No
Old Colony RVTS	25%	No	No
Tri-County RVTS	25%	No	Yes
South Shore RVTS	25%	No	Yes
Cape Cod Regional Technical	24%	No	No
Minuteman RVTS	20%	No	No
Montachusett RVTS	20%	No	No
Southern Worcester (Bay Path)	15%	No	Yes
Greater Fall River Regional	N/A	--	--
Greater Lawrence RVTS	N/A	--	--
Greater Lowell RVTS	N/A	--	--
Greater New Bedford RVTS	N/A	--	--
Northeast Metropolitan RVTS	N/A	--	--
Northern Berkshire (McCann)	N/A	--	--

c. Scoring Guidance Provided to Interviewers

Scoring Guidance Provided to Interviewers			
School Name	Percentage of Application	Questions Provided to Applicants?	Scoring Guidance Provided to Interviewers?
Bristol-Plymouth RVTS	40%	Yes	Yes
South Middlesex (Keefe)	36%	No	Yes
Shawsheen Valley RVTS	30%	Yes	Yes
Tri-County RVTS	25%	No	Yes
South Shore RVTS	25%	No	Yes
Southern Worcester (Bay Path)	15%	No	Yes
Bristol County Agricultural	70%	No	No
Norfolk County Aggie	70%	No	No
Pathfinder RVTS	70%	No	No
Upper Cape Cod RVTS	60%	No	No
Blue Hills RVTS	45%	No	No
Essex North Shore	40%	No	No
Nashoba Valley Technical	40%	No	No
Franklin County Technical	35%	No	No
Southeastern RVTS	35%	No	No
Blackstone Valley RVTS	30%	Yes*	No
Whittier RVTS	30%	No	No
Old Colony RVTS	25%	No	No
Cape Cod Regional Technical	24%	No	No
Minuteman RVTS	20%	No	No
Montachusett RVTS	20%	No	No
Greater Fall River Regional	N/A	--	--
Greater Lawrence RVTS	N/A	--	--
Greater Lowell RVTS	N/A	--	--
Greater New Bedford RVTS	N/A	--	--
Northeast Metropolitan RVTS	N/A	--	--
Northern Berkshire (McCann)	N/A	--	--

d. Individual Schools' Interview Policies for Fall Admission

Unless otherwise specified, the school does not appear to make publicly available any forms and/or rubrics school staff use to complete the interview portion of a student's application. It is possible this information is sent directly to interviewers or only available to a student upon applying.

Blackstone Valley Regional Vocational Technical (30% of application)

Licensed teaching staff and administration from Blackstone Valley Tech will conduct personal interviews with all students who apply. The interviewer will award a maximum of 30 points for the applicant's answer to 5 questions. Questions range in point value from 1 to 10 points. The same five interview questions are asked of each applicant and are scored using a rubric.

Blackstone Valley Tech provides a document of helpful interview techniques and a bank of sample interview questions to all applicants. This resource is provided in multiple languages. For students whose first language is not English or is more comfortable answering in another language, interviews will be conducted in the applicant's native language.

Rating	Points
Excellent	30
Above Average	23
Average	18
Below Average	10
Poor	0

Unclear from the policy but it's possible the following are four of the five questions:

1. What CTE career paths that Blackstone Valley Tech offers are you interested in?
2. Please describe qualities about yourself that would help you at Blackstone Valley Tech.
3. What are your interests or activities? Tell me a little about why you enjoy doing them.
4. Describe a project you enjoyed in the last two years either inside or outside of school.

Blue Hills Regional Technical (45% of application)

Upon receipt of a completed application packet, each applicant will have an interview. An interview form is used and completed by Admission Interviewers. Each student is asked the same sets of questions and rated according to a standard rubric.

Rating	Points
Excellent	37 – 45
Above Average	28 – 36
Average	19 – 27
Below Average	10 – 18
Poor	0 – 9

Bristol County Agricultural (70% of application)

Maximum 70 points.

Bristol-Plymouth Regional Vocational Technical (40% of application)

An interview is required as part of the selection process. Strong Candidate (36-40 points); Above Average Candidate (31-35 points); Average Candidate (26-30 points); Below Average Candidate (21-25 points); Minimal Candidate (20 points or lower).

4 Points	5 Points	6 Points	7 Points	8 Points
1. Why do you want to attend Bristol-Plymouth Regional Technical School and what program offered at B-P most interests you? Why? (Write technical program)				
Poor/No Interest Doesn't want to attend their local high school; Friends are attending B-P. No expression of personal interest to attend a technical program.	Below Average Interest Doesn't like academic studies. Little or no interest in technical education. No area(s) identified.	Average Interest General expression of interest in a technical area but with no reasoning behind choices.	Above Average Interest Desires hands on/applied learning. Mentions specific areas interested in with some reasoning.	Identifies related occupations or possible job opportunities. Desires hands on/applied learning. Expresses some understanding of the career field. Specific interest in a cluster area. Gives reasons for choice.
2. What are your interests/activities outside of school? (Example: sports/community service/volunteer work)				
No outside interests or activities Can't identify any extracurricular activities	Limited interests Interests only related to television or playing video games.	General interests Spare time is spent in areas of interest. No specifics.	Specific interest One area that student is highly engaged in. Can describe area and why they like it.	Variety of interests Student has more than one outside interest and can describe why they like it.
3. Describe a project you enjoyed this year. What did you do?				
No project Can't think of anything they did.	Student identifies but cannot describe project or process.	Identifies and describes project but not the process to complete it.	Student identifies and describes the process of a project they did.	Student expresses their interests related to the project , as well as what they did.
4. What are your future career goals or dream job?				
No career or job goals expressed. Don't know.	No alignment with technical education.	General alignment with technical program.	Aligns with career cluster area offered.	Strongly aligns with course program offerings at B-P.
5. Tell me one or two things about yourself that would support your application.				
No Answer. They don't want to go to their local high school.	No personal interest. Parent/other thinks they should come.	Interest in attending B-P but not specifically CVTE program.	Describes at least one thing that makes them a good candidate.	Describes two things. Strong personal interest in attending and participating in a program of study.

Cape Cod Regional Technical (24% of application)

Each student (fall and mid-year admissions) is interviewed by a member of the Cape Cod Regional Technical High School Admissions Team. Two appointments are scheduled at each student’s school. If students are absent for both appointments, they are asked to schedule an appointment at their convenience at Cape Cod Tech. Transportation may be provided by parent/guardian/family member and is also provided, as needed, by Cape Cod Tech. Interviewers use a standard interview form with standardized questions. Each applicant is asked every question the same way. Interviewers are instructed not to vary the questions as to preserve validity.

Essex North Shore Agricultural and Technical School (40% of application)

An interview consists of five (5) questions using a scoring rubric for each question (0–8 points per question).

Rating	Points
Strong	8
Above Average	6
Average	4
Below Average Interest	2
Poor	0

Franklin County Technical (35% of application)

All applicants are interviewed and scored on a uniform standard. Points will be assigned based on the following scale:

Rating	Points
Excellent	35
Above Average	20
Average	15
Below Average	5
Poor	1

Greater Fall River Regional (Diman)

N/A

Greater Lawrence Technical School

N/A

Greater Lowell Regional Vocational Technical

N/A

Greater New Bedford Regional Vocational Technical

N/A

Minuteman Regional Vocational Technical (20% of application)

Any applicant and/or parent/guardian requesting interpretation assistance or other reasonable accommodations will be provided with such assistance. If the applicant or parent/guardian cannot provide transportation to Minuteman for the interview, a representative from Minuteman will go the local school to interview the applicant or coordinate arrangements for an interview. Interviewers are the Assistant Principal and at times other members of the admission team. They use a standard interview form with standardized questions. Each applicant is asked every question the same way. Interviewers are instructed not to vary the questions to preserve validity. The five interview questions were independently reviewed for inclusiveness and anti-bias.

Montachusett Regional Vocational Technical (20% of application)

For applications to grade 9, 10, 11 and 12 (fall admission), students must complete an interview.

Rating	Points (1-4) Positive = 4 Average = 3 Fair = 2 Poor = 1
Interest in Vocational Education	1-4
Interest in a Trade	1-4
Attitude/Motivation	1-4
Career Goals	1-4
Overall Impression	1-4

Nashoba Valley Technical (40% of application)

All applicants for grades 9, 10, 11 & 12 must participate in an interview with a member of the admissions team. All applicants will have an admissions interview and be rated on a scale with 40 points being the highest possible score for the interview.

Rating	Points
Excellent	31-40
Above Average	21-30
Average	11-20
Below Average	6-10
Poor	0-5

Norfolk County Agricultural High School (70% of application)

Maximum 70 points.

Northeast Metropolitan Regional Vocational

N/A

Northern Berkshire Regional Vocational (McCann)

N/A

Old Colony Regional Vocational Technical (25% of application)

Old Colony staff members who interview students as part of the Admission Policy requirements will adhere to the following protocol.

- Participate in a training for interviewing techniques;
- Maintain confidentiality;
- Ask only the questions on the interview form;
- Score the interview based on the Admission Policy criteria;
- Submit all scoring and interview documentation to the Guidance Department to ensure safe and confidential storage; and
- Documentation will be reviewed by the Admissions Team.

Interview: Maximum 25 points
25 points - Excellent candidate
20 points - Above average candidate
15 points - Average candidate
10 points - Below average candidate
0 points - Poor candidate/Not recommended

Pathfinder Regional Vocational Technical (70% of application)

70 points maximum total.

See next page for Shawsheen Valley – Long Entry

Shawsheen Valley Regional Vocational Technical (30% of application)

Each applicant will be interviewed by a member of the Shawsheen admissions and student recruitment team. All interviewers must hold a valid license as an educator from the Department of Elementary and Secondary Education. Each applicant will be asked the same questions and rated using a uniform standard. The interview is designed to gather information regarding the applicant’s: reason for seeking admission to Shawsheen and ability to benefit from the unique features of a Shawsheen education; current program interest; career goals; and interest and motivation. Interview questions will be provided to all students in advance of the interview.

All members of the Shawsheen admissions and student recruitment team will meet annually prior to when interviews begin to review the assessment criteria to ensure inter-rater reliability. In addition, the team should annually review both the questions and the rating standards for bias and make any adjustments deemed necessary.

Interview Questions:

1. Why do you want to attend Shawsheen?
2. What vocational program(s) offered at Shawsheen most interest you and why?
3. Assuming you attend Shawsheen, what do you see yourself doing after you graduate?
4. Tell me about a challenging situation you faced either in or out of school and how you approached it?
5. We hope that students who attend Shawsheen want to be active members of the RamFam and want to contribute to our community. What are some possible ways that you could positively impact Shawsheen during your four years here?
6. Do you have any questions for me or anything else you’d like to add or any closing comments you’d like to make?

Shawsheen Valley Technical High School Interview: Scoring Rubric				
?	0 Points	1 Point	3 Points	5 Points
1	Does not respond.	Provides a limited or irrelevant response.	Indicates the desire to attend Shawsheen but does not discuss the technical/vocational environment.	Indicates the desire to learn in a technical/vocational environment.
2			Indicates knowledge of technical/vocational programs but provides no reasoning.	Indicates knowledge of technical/vocational programs with reasoning.
3			Indicates a specific technical/vocational program that will lead to career/college readiness with no reasoning.	Indicates a specific technical/vocational program that will lead to career/college readiness with reasoning.
4			Provides a general example with limited explanation of how they approached the challenge.	Provides a specific example and explains the approach used to overcome the challenge.
5			Provides a general example with limited explanation of how they would positively contribute to the school environment.	Provides specific personal characteristics and interests that indicate positively contributing to the school environment.
6			Maintains a dialogue but does not ask a question or offer comments that indicate a high level of interest in attending Shawsheen Tech.	Maintains a dialogue by asking a question or offering comments that indicate a high level of interest in attending Shawsheen Tech.

South Middlesex Vocational Technical (Keefe) (36% of application)

A Keefe Regional Technical School staff member will interview each applicant. A maximum of 36 points with 6 maximum points per question may be awarded to applicants. The applicant’s interest in career-technical education, motivation toward school and their future, and the thought given to the selection of career-technical programs will be taken into consideration in assigning points to individual questions, which will give each applicant a total interview score.

Rating	Points
Excellent	30 – 36
Above Average	24 – 29
Average	18 – 23
Below Average	8 – 17
Poor	0 – 7

South Shore Vocational Technical (25% of application)

All resident applicants will be interviewed by the Admissions Counselor or designee. Applicants’ scores in this category are based on standard questions about applicants’ interest in vocational technical education and in attending South Shore, their career goals, and their preferred learning style.

Southeastern Vocational Regional Technical (35% of application)

A maximum of 35 points is derived from the interviewer’s rating. The interview will be given by a member of the Southeastern Admission Team. Interviews may take place at the sending school or on the Southeastern campus when necessary. The following criterion is used to total the overall interview score:

Rating	Points
Excellent	35
Above Average	25
Average	20
Below Average	15
Poor	1

Southern Worcester County Regional (Bay Path) (15% of application)

Applying for Grade 9, 10, 11, 12 an interview is required.

Rating	Points (0-3) Positive = 3 Average = 2 Fair = 1 Poor = 0
Interest in vocational education	0-3
Interest in a trade	0-3
Attitude/Motivation	0-3
Career goals	0-3
Overall impression	0-3

Tri-County Regional Vocational Technical (25% of application)

Each applicant will be interviewed by the Guidance Department Head or designee. Each applicant is asked the same questions and rated with a uniform standard. The interview will provide information regarding the student’s reason for attending Tri-County and ability to benefit there from, the student’s choice of program area, career goals, and his/her interests and motivation.

Rating	Point Value	Rubric
Excellent	25	Answered all questions complete and thoroughly
Average	15	Answered all questions, needed some prompting
Poor	0	Did not answer all questions/Needed a lot of prompting

Upper Cape Cod Regional Technical (60% of application)

Maximum 60 points. [note: the chart displays this way in the actual admissions policy]

Rating	Points
Excellent	60
Above Average	
Average	
Below Average	
Poor	0

Whittier Regional Vocational Technical (30% of application)

The interview permits applicants an opportunity to provide context for their application and allows Whittier Tech to assess applicants' motivation and realism relating to a technical/vocational education.

Rating	Points
Excellent	30
Above Average	23
Average	18
Below Average	10
Poor	0

EXHIBIT C

mission of individuals to training programs.

§ 57.1211 How must grantees account for grant funds received?

(a) *Accounting for grant award payments.* The grantee must record all payments made by the Secretary in accounting records separate from the records of all other funds, including funds derived from other grant awards. The grantee must account for the sum total of all amounts paid by presenting or otherwise making available, evidence satisfactory to the Secretary of funds spent for costs meeting the requirements of this subpart.

(b) *Grant closeout.*—(1) *Date of final accounting.* A grantee must submit, with respect to each grant under this subpart, a full account, in accordance with this subpart, as of the date of the termination of grant support. The Secretary may require other special and periodic accounting.

(2) *Final settlement.* The grantee may pay to the Federal Government as final settlement with respect to each grant under this subpart the total sum of (i) any amount not accounted for under paragraphs (a) and (b) of this section; and (ii) any other amounts due in accordance with 45 CFR Part 74, except as provided in § 57.1213, and the terms and conditions of the grant award. This total sum constitutes a debt owed by the grantee to the Federal Government and is recoverable from the grantee or its successors or assigns by set off or other lawful action.

§ 57.1212 What recordkeeping, audit, and inspection requirements apply to grantees?

Each school which receives a grant under this subpart must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act, concerning recordkeeping, audit, and inspection.

§ 57.1213 What additional regulations apply to grantees?

The provisions of 45 CFR Part 74, establishing uniform administrative procedures and cost principles apply to all awards granted under this subpart, except that, in the case of grants awarded to assist schools unable to pay for incurred costs, the following provisions of 45 CFR Part 74, Subpart Q, Appendix D are modified as listed below:

(a) Costs normally not allowed under the following sections will be allowed: Part I—sections J.2; J.5; J.16 (a), (b), and (c); J.18; J.25; J.29; J.38; J.40; J.41; J.42(a)(2) and J.44(f); Part II—section I (1), (4), and (5).

(b) Costs normally allowed under the following section will not be allowed: Part I—section J.10.

§ 57.1214 What additional conditions apply to grantees?

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his or her judgment these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 79-8054 Filed 3-20-79; 8:45 am]

[4110-12-M]

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

VOCATIONAL EDUCATION PROGRAMS

Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap

AGENCY: Office for Civil Rights, Department of Health, Education, and Welfare.

ACTION: Final Guidelines for Vocational Education Programs.

SUMMARY: These guidelines explain the civil rights responsibilities of recipients of Federal funds offering or administering vocational education programs. They derive from and provide guidance supplementary to Title VI of the Civil Rights Act of 1964 and the implementing departmental regulation (45 CFR Part 80), Title IX of the Education Amendments of 1972 and the implementing departmental regulation (45 CFR Part 86), and Section 504 of the Rehabilitation Act of 1973 and the implementing departmental regulation (45 CFR Part 84).

EFFECTIVE DATE: March 15, 1979.

FOR FURTHER INFORMATION CONTACT:

David Gerard, Office of Standards, Policy, and Research, Department of Health, Education and Welfare, Office for Civil Rights, 330 Independence Avenue, S.W., Washington, D.C. 20201 (telephone 202-245-9177).

SUPPLEMENTARY INFORMATION: The following Guidelines explain how civil rights laws and Department regulations apply to vocational education programs. They are issued as a result of injunctive orders entered by the United States District Court for the District of Columbia in *Adams v. Califano*. They are also issued because the Department has found evidence of

continuing unlawful discrimination in vocational education programs.

A. LEGAL BASIS FOR THE GUIDELINES

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in any program or activity receiving Federal financial assistance. The Department of Health, Education, and Welfare issued regulations implementing Title VI in 1965. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs receiving or benefiting from Federal financial assistance. The Department issued regulations implementing Title IX in 1975. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in any program or activity receiving Federal financial assistance. The Department issued regulations implementing Section 504 in 1977. These civil rights statutes and their implementing regulations apply to vocational education programs.

In 1973, the Department of Health, Education, and Welfare was sued for its failure to enforce Title VI in a number of education areas, including vocational education (*Adams v. Califano*). As a result of this litigation, the Department was directed to enforce civil rights requirements in vocational education programs through compliance reviews, a survey of enrollments and related data, and the issuance of guidelines explaining the application of Title VI regulations to vocational education. The Guidelines that follow are issued to meet a requirement of the *Adams* court orders.

B. FACTUAL BASIS FOR THE GUIDELINES

The Guidelines are also adopted because it is apparent that many vocational education administrators engage in unlawfully discriminatory practices. They need additional guidance and support from the Department to meet their obligations under civil rights authorities.

Information provided by the Office of Education's Bureau of Occupational and Adult Education for 1976 and 1977 reveals that male and female students are concentrated in programs traditionally identified as intended for them:

	Percent of total enrollment			
	1976		1977	
	Male	Female	Male	Female
Health occupations.....	21.2	78.8	21.2	78.8
Occupational home economics.....	15.3	84.7	16.1	83.9
Consumer and homemaking.....	16.8	83.2	18.4	81.6
Office occupations.....	24.9	75.1	24.9	75.1
Technical.....	88.7	11.3	83.0	17.0

	Percent of total enrollment			
	1976		1977	
	Male	Female	Male	Female
Trade and industrial	87.3	12.7	85.6	14.4
Vocational agriculture	88.7	11.3	85.2	14.8

In recent years vocational education administrators have addressed unlawful discrimination in their programs. Generally, they have taken advantage of the affirmative action provisions of the Vocational Education Amendments of 1976. Administrative procedures to implement these provisions are in place and are contributing to equal opportunity. Thus the above chart suggests that between 1976 and 1977, female participation increased in technical, trade and industrial, and vocational agriculture programs. There was also an increase in male participation in Consumer and Homemaking programs and Occupational Home Economics programs.

Current information on the enrollment of handicapped and minority students in specific vocational programs is not available. This deficiency will be corrected through the Office for Civil Rights Vocational Education Survey of 1979 and the Vocational Education Data System (VEDS) required by the Vocational Education Amendment of 1976. However, compliance reviews conducted by OCR investigative staff from 1973 to 1978 consistently found civil rights violations in vocational schools. For example:

1. Eligibility requirements such as residence within a geographic area or admissions tests deny vocational education opportunities on the basis of race, color, national origin and handicap;
2. Handicapped students are impermissibly assigned to separate annexes or branches; they are also denied equal vocational education opportunities as a result of inaccessible facilities and inadequate evaluation procedures;
3. Vocational schools established for students of one race, national origin or sex continue as essentially segregated facilities;
4. National origin minorities with limited proficiency in English are denied equal opportunity to participate in vocational programs;
5. Vocational education administrators often fail to adequately protect against discrimination in the placement of students with employers;
6. Faculty and staff are assigned to vocational programs on the basis of race, national origin, sex and handicap.

Reports from advocate groups have identified other possible civil rights violations. For example, the N.A.A.C.P. Legal Defense Fund (LDF)

has alleged that State agencies engage in unlawful discrimination against urban areas in the allocation of Federal vocational education funds.

C. SCOPE OF GUIDELINES

The Guidelines primarily address the civil rights violations listed immediately above as found in compliance reviews. They do not identify every civil rights violation that may arise in a vocational education setting. The Guidelines derive from and supplement and must be read in conjunction with civil rights laws and Department regulations.

Section III of the Guidelines, which prohibits discrimination in the allocation of vocational education funds, derives in part from and must be read in conjunction with, the Vocational Education Act and Office of Education implementing regulations. These Guidelines, particularly Section III, have been reviewed by the Department's Office of Education and found consistent with its policies.

D. STATE AGENCY RESPONSIBILITIES

Most comments on the Guidelines sought deletion or clarification of, or a change to, a stated paragraph or subparagraph. However, Section II, which records the responsibilities of State agency personnel, was questioned in its entirety as imposing a new burden more reasonably assigned to the Office for Civil Rights.

Section II contains two requirements. First, State agencies in performing any activity required under State or Federal law, must be certain that they do not "require, approve of, or engage in" any unlawful discrimination. For example, State agencies are often required to review or approve the site selected by or the building specifications approved by local school district officials to assure that the project is fiscally sound. The Guidelines provide that in such cases the State agency must also examine whether the site location will result in the denial of access to minority group persons and whether the building and programs will be inaccessible to handicapped persons. If it finds such violations the State agency cannot approve the project. The second requirement of Section II is generally addressed to the agency referred to in the Vocational Education Amendments of 1976 as the "State Board or agency . . . solely responsible for the administration or . . . supervision of the programs [conducted in the State] under the Act." These agencies are required by the Guidelines to monitor subrecipients for civil rights compliance through technical assistance, analyses of already compiled information and data, and periodic compliance reviews.

These are not new requirements. The first merely restates what has become axiomatic—a recipient cannot engage or participate in unlawful discrimination. The second requirement—monitoring subrecipients for compliance—derives from the Department's Title VI regulation which provides in subparagraph 80.4(b):

Every application by a State or State agency to carry out a program involving continuing Federal financial assistance * * * shall * * * provide or be accompanied by provision for such methods of administration * * * as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this regulation.

Thus the Department's Title VI regulation requires State agency recipients to adopt and obtain Department approval for methods and procedures through which subrecipients can be monitored for compliance with civil rights authorities.¹

It was suggested that it is "unrealistic" to expect closely aligned officials—State agency and local personnel—to work at odds with each other. This is neither the intent nor the expected result of the final Guidelines. Many forms of impermissible discrimination are caused by misunderstandings or lack of information and guidance on the requirements of the law. State agency personnel should therefore be of assistance to and not in conflict with local personnel. Moreover, there is a need for additional conciliatory rather than adversarial compliance activity.

State agencies also argued that the Office for Civil Rights cannot and should not delegate its responsibilities for civil rights enforcement to recipients. Such a result is neither intended nor expected. The Guidelines contemplate adding, not substituting, resources for civil rights compliance activity. The Bureau of Occupational and Adult Education presently monitors State agencies for compliance with the Vocational Education Act. Under the Guidelines, BOAE and State agencies will engage in activities supplementary to those of the Office for Civil Rights.² These Guidelines do

¹Although the regulations for Title IX and Section 504 do not assign a similar responsibility to State agencies, the Department intends to issue a Notice of Proposed Rulemaking to eliminate this inconsistency with Title VI. If revisions to the Title IX and Section 504 regulations are not adopted by the Department, these Guidelines must be revised.

²State agencies will require additional assistance from OCR and BOAE to understand and meet their responsibilities under the Guidelines. Such assistance will be provided through memoranda to be issued during the next 90 days. See comment and response number 9, below.

not contemplate any reduction of OCR compliance and enforcement activity. And OCR will lead, assist and monitor BOAE and State agencies in their civil rights activities. This approach derives from the Department's commitment to bring all of its agencies and recipients to the critical task of obtaining compliance with civil rights laws and regulations. It is also supported by the United States Civil Rights Commission.³

CONCLUSION

Vocational education is a critical and growing sector of the Nation's education system. It is offered in over 14,000 school districts and in community and junior colleges. It is also provided through more than 2,000 secondary and postsecondary vocational education centers (often known as Area Vocational Education Schools, or AVES), that have as their primary or sole objective the teaching of skills that lead to employment. The variations of programs and courses number in the thousands. They include, for example, "work study" for students needing part-time employment to support their vocational studies; "cooperative education" for students who receive credit for work at jobs related to their vocational field; and "apprentice training" for students affiliated with a labor union or another sponsor. Whatever the organization of vocational education, it is closely tied to the skill development needs of communities, States, and regions. Obtaining compliance with civil rights authorities in these diverse programs will require the participation and cooperation of all vocational education administrators and all agencies of the Department of Health, Education and Welfare. These Guidelines are designed to encourage that cooperation and compliance activity. They are provided with the expectation that they will contribute to bringing an end to unlawful discrimination against persons seeking the skills necessary for gainful and meaningful employment.

PART 80—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. In 45 CFR Part 80 Appendix B is added to read as follows:

³United States Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974, Vol. VI, To Extend Federal Financial Assistance*. 1975, p. 809.

APPENDIX B—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

I. SCOPE AND COVERAGE

A. APPLICATION OF GUIDELINES

These Guidelines apply to recipients of any Federal financial assistance from the Department of Health, Education, and Welfare that offer or administer programs of vocational education or training. This includes State agency recipients.

B. DEFINITION OF RECIPIENT

The definition of "recipient" of Federal financial assistance is established by Department regulations implementing Title VI, Title IX, and Section 504 (45 CFR 80.13(i), 86.2(h), 84.3(f)).

For the purposes of Title VI:

The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary (e.g., students) under any such program. (45 CFR 80.13(i)).

For the purpose of Title IX:

"Recipient" means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof. (45 CFR 86.2(h)).

For the purposes of Section 504:

"Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. (45 CFR 84.3(f)).

C. EXAMPLES OF RECIPIENTS COVERED BY THESE GUIDELINES

The following education agencies, when they provide vocational education, are examples of recipients covered by these Guidelines:

1. The board of education of a public school district and its administrative agency.

2. The administrative board of a specialized vocational high school serving students from more than one school district.

3. The administrative board of a technical or vocational school that is used exclusively or principally for the provision of vocational education to persons who have completed or left high school (including persons seeking a certificate or an associate degree through a vocational program offered by the school) and who are available for study in preparation for entering the labor market.

4. The administrative board of a postsecondary institution, such as a technical institute, skill center, junior college, community college, or four year college that has a department or division that provides vocational education to students seeking immediate employment, a certificate or an associate degree.

5. The administrative board of a proprietary (private) vocational education school.

6. A State agency recipient itself operating a vocational education facility.

D. EXAMPLES OF SCHOOLS TO WHICH THESE GUIDELINES APPLY

The following are examples of the types of schools to which these Guidelines apply.

1. A junior high school, middle school, or those grades of a comprehensive high school that offers instruction to inform, orient, or prepare students for vocational education at the secondary level.

2. A vocational education facility operated by a State agency.

3. A comprehensive high school that has a department exclusively or principally used for providing vocational education; or that offers at least one vocational program to secondary level students who are available for study in preparation for entering the labor market; or that offers adult vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market.

4. A comprehensive high school, offering the activities described above, that receives students on a contract basis from other school districts for the purpose of providing vocational education.

5. A specialized high school used exclusively or principally for the provision of vocational education, that enrolls students from one or more school districts for the purpose of providing vocational education.

6. A technical or vocational school that primarily provides vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market, including students seeking an associate degree or certificate through a course of vocational instruction offered by the school.

7. A junior college, a community college, or four-year college that has a department or division that provides vocational education to students seeking immediate employment, an associate degree or a certificate through a course of vocational instruction offered by the school.

8. A proprietary school, licensed by the State, that offers vocational education.

NOTE.—Subsequent sections of these Guidelines may use the term *secondary vocational education center* in referring to the institutions described in paragraphs 3, 4 and 5 above or the term *postsecondary vocational education center* in referring to institutions described in paragraphs 6 and 7 above or the term *vocational education center* in referring to any or all institutions described above.

II. RESPONSIBILITIES ASSIGNED ONLY TO STATE AGENCY RECIPIENTS

A. RESPONSIBILITIES OF ALL STATE AGENCY RECIPIENTS

State agency recipients, in addition to complying with all other provisions of the Guidelines relevant to them, may not require, approve of, or engage in any discrimi-

nation or denial of services on the basis of race, color, national origin, sex, or handicap in performing any of the following activities:

1. Establishment of criteria or formulas for distribution of Federal or State funds to vocational education programs in the State;
2. Establishment of requirements for admission to or requirements for the administration of vocational education programs;
3. Approval of action by local entities providing vocational education. (For example, a State agency must ensure compliance with Section IV of these Guidelines if and when it reviews a vocational education agency decision to create or change a geographic service area.);
4. Conducting its own programs. (For example, in employing its staff it may not discriminate on the basis of sex or handicap.)

B. STATE AGENCIES PERFORMING OVERSIGHT RESPONSIBILITIES

The State agency responsible for the administration of vocational education programs must adopt a compliance program to prevent, identify and remedy discrimination on the basis of race, color, national origin, sex or handicap by its subrecipients. (A "subrecipient," in this context, is a local agency or vocational education center that receives financial assistance through a State agency.) This compliance program must include:

1. Collecting and analyzing civil rights related data and information that subrecipients compile for their own purposes or that are submitted to State and Federal officials under existing authorities;
2. Conducting periodic compliance reviews of selected subrecipients (i.e., an investigation of a subrecipient to determine whether it engages in unlawful discrimination in any aspect of its program); upon finding unlawful discrimination, notifying the subrecipient of steps it must take to attain compliance and attempting to obtain voluntary compliance;
3. Providing technical assistance upon request to subrecipients. This will include assisting subrecipients identify unlawful discrimination and instructing them in remedies for and prevention of such discrimination;
4. Periodically reporting its activities and findings under the foregoing paragraphs, including findings of unlawful discrimination under paragraph 2, immediately above, to the Office for Civil Rights.

State agencies are not required to terminate or defer assistance to any subrecipient. Nor are they required to conduct hearings. The responsibilities of the Office for Civil Rights to collect and analyze data, to conduct compliance reviews, to investigate complaints and to provide technical assistance are not diminished or attenuated by the requirements of Section II of the Guidelines.

C. STATEMENT OF PROCEDURES AND PRACTICES

Within one year from the publication of these Guidelines in final form, each State agency recipient performing oversight responsibilities must submit to the Office for Civil Rights the methods of administration and related procedures it will follow to comply with the requirements described in paragraphs A and B immediately above. The Department will review each submission and will promptly either approve it, or return it to State officials for revision.

III. DISTRIBUTION OF FEDERAL FINANCIAL ASSISTANCE AND OTHER FUNDS FOR VOCATIONAL EDUCATION

A. AGENCY RESPONSIBILITIES

Recipients that administer grants for vocational education must distribute Federal, State, or local vocational education funds so that no student or group of students is unlawfully denied an equal opportunity to benefit from vocational education on the basis of race, color, national origin, sex, or handicap.

B. DISTRIBUTION OF FUNDS

Recipients may not adopt a formula or other method for the allocation of Federal, State, or local vocational education funds that has the effect of discriminating on the basis of race, color, national origin, sex, or handicap. However, a recipient may adopt a formula or other method of allocation that uses as a factor race, color, national origin, sex, or handicap for an index or proxy for race, color, national origin, sex, or handicap e.g., number of persons receiving Aid to Families with Dependent Children or with limited English speaking ability] if the factor is included to compensate for past discrimination or to comply with those provisions of the Vocational Education Amendments of 1976 designed to assist specified protected groups.

C. EXAMPLE OF A PATTERN SUGGESTING UNLAWFUL DISCRIMINATION

In each State it is likely that some local recipients will enroll greater proportions of minority students in vocational education than the State-wide proportion of minority students in vocational education. A funding formula or other method of allocation that results in such local recipients receiving per-pupil allocations of Federal or State vocational education funds lower than the State-wide average per-pupil allocation will be presumed unlawfully discriminatory.

D. DISTRIBUTION THROUGH COMPETITIVE GRANTS OR CONTRACTS

Each State agency that establishes criteria for awarding competitive vocational education grants or contracts must establish and apply the criteria without regard to the race, color, national origin, sex, or handicap of any or all of a recipient's students, except to compensate for past discrimination.

E. APPLICATION PROCESSES FOR COMPETITIVE OR DISCRETIONARY GRANTS

State agencies must disseminate information needed to satisfy the requirements of any application process for competitive or discretionary grants so that all recipients, including those having a high percentage of minority or handicapped students, are informed of and able to seek funds. State agencies that provide technical assistance for the completion of the application process must provide such assistance without discrimination against any one recipient or class of recipients.

F. ALTERATION OF FUND DISTRIBUTION TO PROVIDE EQUAL OPPORTUNITY

If the Office for Civil Rights finds that a recipient's system for distributing vocational education funds unlawfully discriminates on the basis of race, color, national origin, sex, or handicap, it will require the recipient to adopt an alternative nondiscriminatory

method of distribution. The Office for Civil Rights may also require the recipient to compensate for the effects of its past unlawful discrimination in the distribution of funds.

IV. ACCESS AND ADMISSION OF STUDENTS TO VOCATIONAL EDUCATION PROGRAMS

A. RECIPIENT RESPONSIBILITIES

Criteria controlling student eligibility for admission to vocational education schools, facilities and programs may not unlawfully discriminate on the basis of race, color, national origin, sex, or handicap. A recipient may not develop, impose, maintain, approve, or implement such discriminatory admissions criteria.

B. SITE SELECTION FOR VOCATIONAL SCHOOLS

State and local recipients may not select or approve a site for a vocational education facility for the purpose or with the effect of excluding, segregating, or otherwise discriminating against students on the basis of race, color, or national origin. Recipients must locate vocational education facilities at sites that are readily accessible to both nonminority and minority communities, and that do not tend to identify the facility or program as intended for nonminority or minority students.

C. ELIGIBILITY FOR ADMISSION TO VOCATIONAL EDUCATION CENTERS BASED ON RESIDENCE

Recipients may not establish, approve or maintain geographic boundaries for a vocational education center service area or attendance zone, (hereinafter "service area"), that unlawfully exclude students on the basis of race, color, or national origin. The Office for Civil Rights will presume, subject to rebuttal, that any one or combination of the following circumstances indicates that the boundaries of a given service area are unlawfully constituted:

1. A school system or service area contiguous to the given service area, contains minority or nonminority students in substantially greater proportion than the given service area;
2. A substantial number of minority students who reside outside the given vocational education center service area, and who are not eligible for the center reside, nonetheless, as close to the center as a substantial number of non-minority students who are eligible for the center;
3. The over-all vocational education program of the given service area in comparison to the over-all vocational education program of a contiguous school system or service area enrolling a substantially greater proportion of minority students: (a) provides its students with a broader range of curricular offerings, facilities and equipment; or (b) provides its graduates greater opportunity for employment in jobs: (i) for which there is a demonstrated need in the community or region; (ii) that pay higher entry level salaries or wages; or (iii) that are generally acknowledged to offer greater prestige or status.

D. ADDITIONS AND RENOVATIONS TO EXISTING VOCATIONAL EDUCATION FACILITIES

A recipient may not add to, modify, or renovate the physical plant of a vocational education facility in a manner that creates, maintains, or increases student segregation on the basis of race, color, national origin, sex, or handicap.

E. REMEDIES FOR VIOLATIONS OF SITE SELECTION AND GEOGRAPHIC SERVICE AREA REQUIREMENTS

If the conditions specified in paragraphs IV, A, B, C, or D, immediately above, are found and not rebutted by proof of nondiscrimination, the Office for Civil Rights will require the recipient(s) to submit a plan to remedy the discrimination. The following are examples of steps that may be included in the plan, where necessary to overcome the discrimination: (1) redrawing of the boundaries of the vocational education center's service area to include areas unlawfully excluded and/or to exclude areas unlawfully included; (2) provision of transportation to students residing in areas unlawfully excluded; (3) provision of additional programs and services to students who would have been eligible for attendance at the vocational education center but for the discriminatory service area or site selection; (4) reassignment of students; and (5) construction of new facilities or expansion of existing facilities.

F. ELIGIBILITY FOR ADMISSION TO SECONDARY VOCATIONAL EDUCATION CENTERS BASED ON NUMERICAL LIMITS IMPOSED ON SENDING SCHOOLS

A recipient may not adopt or maintain a system for admission to a secondary vocational education center or program that limits admission to a fixed number of students from each sending school included in the center's service area if such a system disproportionately excludes students from the center on the basis of race, sex, national origin or handicap. (Example: Assume 25 percent of a school district's high school students are black and that most of those black students are enrolled in one high school; the white students, 75 percent of the district's total enrollment, are generally enrolled in the five remaining high schools. This paragraph prohibits a system of admission to the secondary vocational education center that limits eligibility to a fixed and equal number of students from each of the district's six high schools.)

G. REMEDIES FOR VIOLATION OF ELIGIBILITY BASED ON NUMERICAL LIMITS REQUIREMENTS

If the Office for Civil Rights finds a violation of paragraph F, above, the recipient must implement an alternative system of admissions that does not disproportionately exclude students on the basis of race, color, national origin, sex, or handicap.

H. ELIGIBILITY FOR ADMISSION TO VOCATIONAL EDUCATION CENTERS, BRANCHES OR ANNEXES BASED UPON STUDENT OPTION

A vocational education center, branch or annex, open to all students in a service area and predominantly enrolling minority students or students of one race, national origin or sex, will be presumed unlawfully segregated if: 1) it was established by a recipient for members of one race, national origin or sex; or 2) it has since its construction been attended primarily by members of one race, national origin or sex; or 3) most of its program offerings have traditionally been selected predominantly by members of one race, national origin or sex.

I. REMEDIES FOR FACILITY SEGREGATION UNDER STUDENT OPTION PLANS

If the conditions specified in paragraph IV-H are found and not rebutted by proof

of nondiscrimination, the Office for Civil Rights will require the recipient(s) to submit a plan to remedy the segregation. The following are examples of steps that may be included in the plan, where necessary to overcome the discrimination:

(1) elimination of program duplication in the segregated facility and other proximate vocational facilities; (2) relocation or "clustering" of programs or courses; (3) adding programs and courses that traditionally have been identified as intended for members of a particular race, national origin or sex to schools that have traditionally served members of the other sex or traditionally served persons of a different race or national origin; (4) merger of programs into one facility through school closings or new construction; (5) intensive outreach recruitment and counseling; (6) providing free transportation to students whose enrollment would promote desegregation.

[Paragraph J omitted]

K. ELIGIBILITY BASED ON EVALUATION OF EACH APPLICANT UNDER ADMISSIONS CRITERIA

Recipients may not judge candidates for admission to vocational education programs on the basis of criteria that have the effect of disproportionately excluding persons of a particular race, color, national origin, sex, or handicap. However, if a recipient can demonstrate that such criteria have been validated as essential to participation in a given program and that alternative equally valid criteria that do not have such a disproportionate adverse effect are unavailable, the criteria will be judged nondiscriminatory. Examples of admissions criteria that must meet this test are past academic performance, record of disciplinary infractions, counselors' approval, teachers' recommendations, interest inventories, high school diplomas and standardized tests, such as the Test of Adult Basic Education (TABE).

An introductory, preliminary, or exploratory course may not be established as a prerequisite for admission to a program unless the course has been and is available without regard to race, color, national origin, sex, and handicap. However, a course that was formerly only available on a discriminatory basis may be made a prerequisite for admission to a program if the recipient can demonstrate that: (a) the course is essential to participation in the program; and (b) the course is presently available to those seeking enrollment for the first time and to those formerly excluded.

L. ELIGIBILITY OF NATIONAL ORIGIN MINORITY PERSONS WITH LIMITED ENGLISH LANGUAGE SKILLS

Recipients may not restrict an applicant's admission to vocational education programs because the applicant, as a member of a national origin minority with limited English language skills, cannot participate in and benefit from vocational instruction to the same extent as a student whose primary language is English. It is the responsibility of the recipient to identify such applicants and assess their ability to participate in vocational instruction.

Acceptable methods of identification include: (1) identification by administrative staff, teachers, or parents of secondary level students; (2) identification by the student in postsecondary or adult programs; and (3) appropriate diagnostic procedures, if necessary.

Recipients must take steps to open all vocational programs to these national origin minority students. A recipient must demonstrate that a concentration of students with limited English language skills in one or a few programs is not the result of discriminatory limitations upon the opportunities available to such students.

M. REMEDIAL ACTION IN BEHALF OF PERSONS WITH LIMITED ENGLISH LANGUAGE SKILLS

If the Office for Civil Rights finds that a recipient has denied national origin minority persons admission to a vocational school or program because of their limited English language skills or has assigned students to vocational programs solely on the basis of their limited English language skills, the recipient will be required to submit a remedial plan that insures national origin minority students equal access to vocational education programs.

N. EQUAL ACCESS FOR HANDICAPPED STUDENTS

Recipients may not deny handicapped students access to vocational education programs or courses because of architectural or equipment barriers, or because of the need for related aids and services or auxiliary aids. If necessary, recipients must: (1) modify instructional equipment; (2) modify or adapt the manner in which the courses are offered; (3) house the program in facilities that are readily accessible to mobility impaired students or alter facilities to make them readily accessible to mobility impaired students; and (4) provide auxiliary aids that effectively make lectures and necessary materials available to postsecondary handicapped students; (5) provide related aids or services that assure secondary students an appropriate education.

Academic requirements that the recipient can demonstrate are essential to a program of instruction or to any directly related licensing requirement will not be regarded as discriminatory. However, where possible, a recipient must adjust those requirements to the needs of individual handicapped students.

Access to vocational programs or courses may not be denied handicapped students on the ground that employment opportunities in any occupation or profession may be more limited for handicapped persons than for non-handicapped persons.

O. PUBLIC NOTIFICATION

Prior to the beginning of each school year, recipients must advise students, parents, employees and the general public that all vocational opportunities will be offered without regard to race, color, national origin, sex, or handicap. Announcement of this policy of non-discrimination may be made, for example, in local newspapers, recipient publications and/or other media that reach the general public, program beneficiaries, minorities (including national origin minorities with limited English language skills), women, and handicapped persons. A brief summary of program offerings and admission criteria should be included in the announcement; also the name, address and telephone number of the person designated to coordinate Title IX and Section 504 compliance activity.

If a recipient's service area contains a community of national origin minority persons with limited English language skills, public notification materials must be disseminated to that community in its lan-

guage and must state that recipients will take steps to assure that the lack of English language skills will not be a barrier to admission and participation in vocational education programs.

V. COUNSELING AND PREVOCAATIONAL PROGRAMS

A. RECIPIENT RESPONSIBILITIES

Recipients must insure that their counseling materials and activities (including student program selection and career/employment selection), promotional, and recruitment efforts do not discriminate on the basis of race, color, national origin, sex, or handicap.

B. COUNSELING AND PROSPECTS FOR SUCCESS

Recipients that operate vocational education programs must insure that counselors do not direct or urge any student to enroll in a particular career or program, or measure or predict a student's prospects for success in any career or program based upon the student's race, color, national origin, sex, or handicap. Recipients may not counsel handicapped students toward more restrictive career objectives than nonhandicapped students with similar abilities and interests. If a vocational program disproportionately enrolls male or female students, minority or nonminority students, or handicapped students, recipients must take steps to insure that the disproportion does not result from unlawful discrimination in counseling activities.

C. STUDENT RECRUITMENT ACTIVITIES

Recipients must conduct their student recruitment activities so as not to exclude or limit opportunities on the basis of race, color, national origin, sex, or handicap. Where recruitment activities involve the presentation or portrayal of vocational and career opportunities, the curricula and programs described should cover a broad range of occupational opportunities and not be limited on the basis of the race, color, national origin, sex, or handicap of the students or potential students to whom the presentation is made. Also, to the extent possible, recruiting teams should include persons of different races, national origins, sexes, and handicaps.

D. COUNSELING OF STUDENTS WITH LIMITED ENGLISH-SPEAKING ABILITY OR HEARING IMPAIRMENTS

Recipients must insure that counselors can effectively communicate with national origin minority students with limited English language skills and with students who have hearing impairments. This requirement may be satisfied by having interpreters available.

E. PROMOTIONAL ACTIVITIES

Recipients may not undertake promotional efforts (including activities of school officials, counselors, and vocational staff) in a manner that creates or perpetuates stereotypes or limitations based on race, color, national origin, sex or handicap. Examples of promotional efforts are career days, parents' night, shop demonstrations, visitations by groups of prospective students and by representatives from business and industry. Materials that are part of promotional efforts may not create or perpetuate stereotypes through text or illustration. To the

extent possible they should portray males or females, minorities or handicapped persons in programs and occupations in which these groups traditionally have not been represented. If a recipient's service area contains a community of national origin minority persons with limited English language skills, promotional literature must be distributed to that community in its language.

VI. EQUAL OPPORTUNITY IN THE VOCATIONAL EDUCATION INSTRUCTIONAL SETTING

A. ACCOMMODATIONS FOR HANDICAPPED STUDENTS

Recipients must place secondary level handicapped students in the regular educational environment of any vocational education program to the maximum extent appropriate to the needs of the student unless it can be demonstrated that the education of the handicapped person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Handicapped students may be placed in a program only after the recipient satisfies the provisions of the Department's Regulation, 45 CFR Part 84, relating to evaluation, placement, and procedural safeguards. If a separate class or facility is identifiable as being for handicapped persons, the facility, the programs, and the services must be comparable to the facilities, programs, and services offered to nonhandicapped students.

B. STUDENT FINANCIAL ASSISTANCE

Recipients may not award financial assistance in the form of loans, grants, scholarships, special funds, subsidies, compensation for work, or prizes to vocational education students on the basis of race, color, national origin, sex, or handicap, except to overcome the effects of past discrimination. Recipients may administer sex restricted financial assistance where the assistance and restriction are established by will, trust, bequest, or any similar legal instrument, if the overall effect of all financial assistance awarded does not discriminate on the basis of sex. Materials and information used to notify students of opportunities for financial assistance may not contain language or examples that would lead applicants to believe the assistance is provided on a discriminatory basis. If a recipient's service area contains a community of national origin minority persons with limited English language skills, such information must be disseminated to that community in its language.

C. HOUSING IN RESIDENTIAL POSTSECONDARY VOCATIONAL EDUCATION CENTERS

Recipients must extend housing opportunities without discrimination based on race, color, national origin, sex, or handicap. This obligation extends to recipients that provide on-campus housing and/or that have agreements with providers of off-campus housing. In particular, a recipient postsecondary vocational education program that provides on-campus or off-campus housing to its nonhandicapped students must provide, at the same cost and under the same conditions, comparable convenient and accessible housing to handicapped students.

D. COMPARABLE FACILITIES

Recipients must provide changing rooms, showers, and other facilities for students of one sex that are comparable to those provided to students of the other sex. This may be accomplished by alternating use of the

same facilities or by providing separate, comparable facilities.

Such facilities must be adapted or modified to the extent necessary to make the vocational education program readily accessible to handicapped persons.

VII. WORK STUDY, COOPERATIVE VOCATIONAL EDUCATION, JOB PLACEMENT, AND APPRENTICE TRAINING

A. RESPONSIBILITIES IN COOPERATIVE VOCATIONAL EDUCATION PROGRAMS, WORK-STUDY PROGRAMS, AND JOB PLACEMENT PROGRAMS

A recipient must insure that: (a) it does not discriminate against its students on the basis of race, color, national origin, sex, or handicap in making available opportunities in cooperative education, work study and job placement programs; and (b) students participating in cooperative education, work study and job placement programs are not discriminated against by employers or prospective employers on the basis of race, color, national origin, sex, or handicap in recruitment, hiring, placement, assignment to work tasks, hours of employment, levels of responsibility, and in pay.

If a recipient enters into a written agreement for the referral or assignment of students to an employer, the agreement must contain an assurance from the employer that students will be accepted and assigned to jobs and otherwise treated without regard to race, color, national origin, sex, or handicap.

Recipients may not honor any employer's request for students who are free of handicaps or for students of a particular race, color, national origin, or sex. In the event an employer or prospective employer is or has been subject to court action involving discrimination in employment, school officials should rely on the court's findings if the decision resolves the issue of whether the employer has engaged in unlawful discrimination.

B. APPRENTICE TRAINING PROGRAMS

A recipient may not enter into any agreement for the provision or support of apprentice training for students or union members with any labor union or other sponsor that discriminates against its members or applicants for membership on the basis of race, color, national origin, sex, or handicap. If a recipient enters into a written agreement with a labor union or other sponsor providing for apprentice training, the agreement must contain an assurance from the union or other sponsor: (1) that it does not engage in such discrimination against its membership or applicants for membership; and (2) that apprentice training will be offered and conducted for its membership free of such discrimination.

VIII. EMPLOYMENT OF FACULTY AND STAFF

A. EMPLOYMENT GENERALLY

Recipients may not engage in any employment practice that discriminates against any employee or applicant for employment on the basis of sex or handicap. Recipients may not engage in any employment practice that discriminates on the basis of race, color, or national origin if such discrimination tends to result in segregation, exclusion or other discrimination against students.

B. RECRUITMENT

Recipients may not limit their recruitment for employees to schools, communities, or companies disproportionately composed of persons of a particular race, color, national origin, sex, or handicap except for the purpose of overcoming the effects of past discrimination. Every source of faculty must be notified that the recipient does not discriminate in employment on the basis of race, color, national origin, sex, or handicap.

C. PATTERNS OF DISCRIMINATION

Whenever the Office for Civil Rights finds that in light of the representation of protected groups in the relevant labor market there is a significant underrepresentation or overrepresentation of protected group persons on the staff of a vocational education school or program, it will presume that the disproportion results from unlawful discrimination. This presumption can be overcome by proof that qualified persons of the particular race, color, national origin, or sex, or that qualified handicapped persons are not in fact available in the relevant labor market.

D. SALARY POLICIES

Recipients must establish and maintain faculty salary scales and policy based upon the conditions and responsibilities of employment, without regard to race, color, national origin, sex or handicap.

E. EMPLOYMENT OPPORTUNITIES FOR HANDICAPPED APPLICANTS

Recipients must provide equal employment opportunities for teaching and administrative positions to handicapped applicants who can perform the essential functions of the position in question. Recipients must make reasonable accommodation for the physical or mental limitations of handicapped applicants who are otherwise qualified unless recipients can demonstrate that the accommodation would impose an undue hardship.

F. THE EFFECTS OF PAST DISCRIMINATION

Recipients must take steps to overcome the effects of past discrimination in the recruitment, hiring, and assignment of faculty. Such steps may include the recruitment or reassignment of qualified persons of a particular race, national origin, or sex, or who are handicapped.

G. STAFF OF STATE ADVISORY COUNCILS OF VOCATIONAL EDUCATION

State Advisory Councils of Vocational Education are recipients of Federal financial assistance and therefore must comply with Section VIII of the Guidelines.

H. EMPLOYMENT AT STATE OPERATED VOCATIONAL EDUCATION CENTERS THROUGH STATE CIVIL-SERVICE AUTHORITIES

Where recruitment and hiring of staff for State operated vocational education centers is conducted by a State civil service employment authority, the State education agency operating the program must insure that recruitment and hiring of staff for the vocational education center is conducted in accordance with the requirements of these Guidelines.

IX. PROPRIETARY VOCATIONAL EDUCATION SCHOOLS

A. RECIPIENT RESPONSIBILITIES

Proprietary vocational education schools that are recipients of Federal financial assistance through Federal student assistance programs or otherwise are subject to all of the requirements of the Department's regulations and these Guidelines.

B. ENFORCEMENT AUTHORITY

Enforcement of the provisions of Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973 is the responsibility of the Department of Health, Education, and Welfare. However, authority to enforce Title VI of the Civil Rights Act of 1964 for proprietary vocational education schools has been delegated to the Veterans Administration.

When the Office for Civil Rights receives a Title VI complaint alleging discrimination by a proprietary vocational education school it will forward the complaint to the Veterans Administration and cite the applicable requirements of the Department's regulations and these Guidelines. The complainant will be notified of such action.

PART 84—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

2. In 45 CFR Part 84 Appendix B is added to read as follows:

APPENDIX B—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

NOTE.—For the text of these guidelines, see 45 CFR Part 80, Appendix B.

PART 86—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

3. In 45 CFR Part 86 Appendix A is added to read as follows:

APPENDIX A—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

NOTE.—For the text of these guidelines, see 45 CFR Part 80, Appendix B.

DAVID S. TATEL,

Director, Office for Civil Rights,
Department of Health, Education,
and Welfare.

MARCH 15, 1979.

COMMENTS AND RECOMMENDATIONS

Over 130 comments and recommendations were received by the Office for Civil Rights in response to the December 19, 1978 publication of proposed Guidelines. (43 FR 59105) Many identified

deficiencies that resulted in significant changes to the Guidelines. Each comment was carefully considered before a response was prepared. The following comments and responses are adopted by the Department as a part of the Guidelines.

SUPPLEMENTARY INFORMATION

1. *Comment:* Commenters stated that the Supplementary Information section was unfairly critical of vocational education administrators, relied too heavily on outdated and suspect data, and ignored the advances achieved under the Vocational Education Amendments of 1976.

Response: The objections have merit and changes have been made. The Supplementary Information section has been revised to include current data, to delete outdated and suspect data, to place greater emphasis on OCR investigations and compliance reviews and to acknowledge that vocational education administrators have responded to antidiscrimination measures of the Vocational Education Amendments of 1976.

SECTION I—SCOPE AND COVERAGE

2. *Comment:* Commenters recommended that paragraph I-A state with clarity that the Guidelines apply to all recipients of financial assistance from the Department of Health, Education, and Welfare and not merely to recipients of Federal vocational education funds.

Response: The recommendation is accepted and paragraph I-A has been modified.

3. *Comment:* One commenter suggested that OCR establish a single definition of "recipient" in its Title VI, Title IX and Section 504 regulations to the extent permitted by the underlying legislation.

Response: A single definition of "recipient" would be helpful. However, the change proposed is beyond the scope of the Guidelines project.

4. *Comment:* Commenters requested that the Guidelines state the responsibilities of recipients under the Age Discrimination Act of 1975.

Response: Regulations under the Age Discrimination Act have not yet been issued. The Guidelines will ultimately include coverage of age discrimination.

5. *Comment:* A commenter recommended that paragraph I-C include as an education agency providing vocational education, "the State Board of Vocational Education and/or a State board or body providing vocational education."

Response: Paragraph I-A states that State agency recipients are covered by the Guidelines. Paragraph I-C provides examples of recipients covered by the Guidelines and lists, at I-C(6),

"a State agency . . . operating a vocational education facility."

6. *Comment:* Commenters requested that paragraph I(D)(6) and (7) be amended to include "certificate programs."

Response: The suggested change has been adopted.

7. *Comment:* Commenters requested that paragraph I-D list as recipients vocational rehabilitation centers and residential centers.

Response: Paragraph I-D provides examples of covered schools. The Guidelines also apply to vocational rehabilitation centers and residential vocational education centers.

8. *Comment:* One commenter requested a definition of the term "subrecipient."

Response: The term "subrecipient" is defined in paragraph II-B.

SECTION II—RESPONSIBILITIES OF STATE AGENCIES

9. *Comment:* Commenters found paragraph II-B incomplete and vague.

Response: This objection has merit. The paragraph has been substantially revised to clarify State agency responsibilities. Definitions of "technical assistance" and of "compliance review" have been added (paragraph (B)(2) and (3)). The Guidelines now state that the Department, not the State agency, has the responsibility and authority to make formal fact findings and terminate and defer Federal funds.

While these additions to the final Guidelines answer several of the specific questions raised by the commenters much more needs to be done. Within 90 days, the Office for Civil Rights and the Bureau of Occupational and Adult Education will issue memoranda that provide the additional detail necessary for successful State agency compliance activity.

10. *Comment:* Commenters argued that paragraph II-B imposes new requirements on State agency recipients.

Response: State agencies, as well as other recipients of Federal financial assistance, are prohibited from conducting their programs through subrecipients or contractors that discriminate. See for example, 45 CFR Sections 80.3(b), 84.4(b)(4), 86.32(b),(d). The Title VI regulations clearly include a State agency obligation to adopt "methods of administration" for monitoring subrecipients for civil rights compliance.¹ However, this requirement has not been enforced against State education agencies. The Department believes that this must be

corrected. To be effective, civil rights compliance activity cannot be the exclusive province of Federal civil rights agencies; it must include Department program agencies (in this case the Bureau of Occupational and Adult Education) and State agencies.

11. *Comment:* Commenters argued that the requirements imposed on State agencies by paragraph II-B are unduly burdensome and costly.

Response: Subparagraph B(1) has been revised to insure that no significant additional data collection or record keeping requirement is imposed on recipients. In addition, the requirement that State agencies investigate complaints has been deleted. Civil rights enforcement, however, must be recognized as important enough to merit the allocation of necessary funds. Federal, State, and local funds and resources available for vocational education must be used for civil rights compliance activities in vocational education programs. The obligations imposed are therefore not unreasonably burdensome.

12. *Comment:* Commenters stated that OCR, through paragraph II-B, is assigning or delegating its enforcement responsibilities to the States.

Response: The Guidelines contemplate a cooperative effort among OCR, the Bureau of Occupational and Adult Education, and State agencies. Their purpose is to add, not substitute, resources for civil rights compliance activity. The Guidelines now clearly state what was always intended: The Office for Civil Rights will not decrease its compliance activity in vocational education programs.

13. *Comment:* Commenters stated that proposed paragraph II-D, which attempted to establish a clear division between State and local responsibilities, was confusing and inconsistent with other sections of the Guidelines. They asked that the paragraph be deleted. It was also suggested that the heading of Section II and the first sentence of paragraph II-A should state that the enumerated requirements are only one aspect of a State agency's responsibilities under the Guidelines.

Response: The suggested changes are adopted as consistent with the intent of the Guidelines.

SECTION III—DISTRIBUTION OF FEDERAL FINANCIAL ASSISTANCE AND OTHER FUNDS FOR VOCATIONAL EDUCATION

14. *Comment:* Commenters argued that protected group persons must be provided "equal opportunity" not merely "opportunity" (paragraph III-A).

Response: This suggestion is accepted. The opportunity for vocational training must be equal for all students without regard to race, color, national origin, sex, or handicap. The provision

of unequal facilities, for example, cannot be excused because it is a less than total denial of opportunity.

15. *Comment:* Commenters questioned whether the purpose of proposed paragraph III-B was to prohibit discrimination in the development of a formula (input standard) or in the allocation of funds (output standard). The policy statement in proposed paragraph III-B controlled factors in the formula while the example cited in the paragraph was based on fund allocations.

Response: The Office for Civil Rights may review a formula's components. However, its primary inquiry will be whether the formula has a discriminatory effect on the allocation of funds. Accordingly, the first sentence in paragraph III-B has been rewritten to delete the reference to "factors."

16. *Comment:* Commenters suggested rephrasing paragraph III-B to permit the use of factors that remedy the effects of past discrimination. Others suggested that the Department uphold the use of indicia that enable the State to identify communities entitled to priority under the Vocational Education Act. For example, a State vocational education distribution formula may refer to the number of persons residing in a school district receiving aid to families with dependent children or with limited English speaking ability. The purpose of such a reference is to identify areas either economically depressed or with high concentrations of low-income people.

Response: The suggestions are accepted. Judicial precedent requires recipients to undertake affirmative or remedial action when directed by Congress or in response to a finding of past discrimination. In addition, the adoption of the recommended language confirms that a recipient's use of data on AFDC or LESA populations to comply with the Vocational Education Act is consistent with civil rights authorities.

17. *Comment:* Commenters asked for an explanation of the second sentence in proposed paragraph III-B: "State agencies must apply formula provisions under the Vocational Education Amendments of 1976 in a manner consistent with civil rights authorities." They believe that the statement suggests an inconsistency between civil rights authorities and the targeting provisions of the Vocational Education Act.

Response: The sentence does suggest a tension between the provisions of the Vocational Education Act and civil rights authorities. In fact, they are complementary. Paragraph III-B, as revised, contains the essential language prohibiting discrimination in the application of a formula. The chal-

¹HEW plans to propose an amendment to its regulations that confirms that recipients have an identical obligation under Title IX and Section 504. See "Supplementary Information, Part C, State Agency Responsibilities," above.

lenged sentence has therefore been deleted.

18. *Comment:* Commenters questioned whether the example used in proposed paragraph III-B (now in III-C) is intended to require equal per-pupil allocations of funds.

Response: Section 106(a)(5)(B)(ii) of the Vocational Education Act prohibits the adoption of a formula seeking equal per-pupil allocations of funds. Rather it requires priority funding for subrecipients serving the greatest concentrations of low income families, for subrecipients least able to pay, and for subrecipients serving the greatest concentrations of students whose education imposes higher than average costs (e.g., handicapped students, students from low-income families, and students from families in which English is not the dominant language). These statutory priorities should result in greater expenditures for communities with concentrations of minority group persons. For this reason the gauge of unlawful discrimination contained in the Guidelines—as finding of lower allocations for communities containing concentrations of minority persons—will generally indicate a high probability of noncompliance.

In addition to an analysis of allocations State-wide, OCR may examine individual districts with substantial numbers of minority students to determine if such districts receive lower per-pupil allocations than the State-wide average.

19. *Comment:* A funding formula will be presumed unlawfully discriminatory if the circumstances recorded in paragraph III-B (now paragraph III-C) are present. Commenters asked for examples of evidence that will rebut the presumption.

Response: Two examples of persuasive rebuttal evidence derive from the Vocational Education Act. First, under Section 106(a)(5)(A)(ii) a State must give priority to funding applications that propose programs new to a service area and that are designed to meet emerging or projected manpower needs and job opportunities. These priorities are not directly related to economic need. Therefore the application of these priorities may in some circumstances be used by a State agency to rebut the presumption of discrimination arising from an inadequate allocation of funds to recipients enrolling a disproportionately high percentage of minorities. Secondly, Section 106(a)(4) requires the distribution of Federal vocational education funds on the basis of annual applications. An eligible recipient that fails to submit an application is prohibited from receiving Federal funds. A similar requirement may control the allocation of State funds under the provisions of a State law. For this

reason, the failure of urban or other recipients to apply for funds must be considered before a finding of compliance or noncompliance can be made.

These are only examples of rebuttal evidence that will be considered. Each case must be decided on the basis of a careful analysis of all evidence believed relevant by the recipient and by the Office for Civil Rights.

20. *Comment:* Commenters asked whether the presumption of paragraph III-C will be applied to each type of vocational education program or to combined State allocations; whether Federal and State funds will be examined separately or in combination; whether both operating costs and capital expenditures will be examined; whether the distribution formula will be judged on an annual basis or over a period of years.

Response: Section 106(a)(5) of the Vocational Education Act requires the States to base the distribution of Federal funds on economic, social, and demographic factors relating to the need for vocational education. The Commissioner of Education has ruled in 42 F.R. 53865 (Question #1) that the State's funding formula under section 106(a)(5) must be applied to each of the following Vocational Education Act programs: basic grant (section 120), guidance and counseling (section 134), special programs for the disadvantaged (section 140), and consumer and homemaking programs (section 150). To insure consistency with Office of Education directives under the Vocational Education Act, the Guidelines' requirements may be applied to each of the programs set out above.

The statutory factors listed in section 106(a)(5) of the Vocational Education Act apply to the distribution of Federal vocational education funds. A State may elect to distribute State funds under the same or a different formula. In any event, OCR may separately consider State and Federal allocations to determine whether each is consistent with civil rights authorities.

The distribution formula governs the allocation of all grants to subrecipients under Sections 120, 134, 140, and 150, including those for operating costs and capital expenditures. OCR may therefore examine both operating costs and capital expenditures.

States are required to describe the formula for the distribution of Federal funds in their five year plans (45 CFR 104.182(d)). In applying the gauge of unlawful discrimination to State formulas, OCR may consider expenditures for a single year, or for such other period it finds relevant to whether unlawful discrimination has occurred.

21. *Comment:* A commenter asked whether paragraph III-B (now III-B and III-C) applies to local as well as

State agencies. Others asked whether the gauge of compliance, now recorded in paragraph III-C, applies to local agencies.

Response: Paragraph III-B has been revised to clarify that it applies to all recipients that allocate Federal, State, or local funds among other recipients or schools. Thus, the paragraph applies to local agencies that employ a formula or "other method of allocation" to distribute funds among administrative subdistricts.

The gauge of compliance, recorded in paragraph III-C, refers to a potential misallocation of State and Federal funds. Although this gauge must prove in practice to be a convenient and informative measure, it will tentatively also be used to evaluate allocations of local funds.

22. *Comment:* State agencies argued they could not control the allocation of local funds.

Response: A State agency is not expected to provide protection against an improper allocation of local funds unless it has authority to review or approve local allocations.

23. *Comment:* Commenters argued that OCR lacks authority to monitor State vocational education funds. They argued that paragraph III-B should only control the allocation of Federal funds.

Response: The Department has an obligation to provide protection against unlawful discrimination in any and all facets of a program funded in whole or in part with Federal funds. A recipient of Federal funds may not unlawfully discriminate in the allocation or use of such funds or in the allocation or use of any other funds under its control. Of course, as one commenter notes, if the Department finds it necessary to proceed against any recipient, it may only attempt to defer or terminate HEW Federal funds.

24. *Comment:* Commenters suggested that the phrase "available through Federal funds" (paragraph III-C now III-D), improperly suggests that civil rights authorities apply only to competitive grants or contracts paid for with Federal funds under the Vocational Education Act. They urged that the phrase be deleted.

Response: The suggestion is accepted. A State agency receiving Federal funds may not discriminate in the allocation or distribution of any funds under its control.

25. *Comment:* Commenters thought the example, now recorded in paragraph III-C, should not be referred to in the paragraph relating to competitive grants and contracts.

Response: The example cannot be meaningfully applied to competitive grants and contracts. The reference has therefore been deleted.

26. *Comment:* Commenters suggested that paragraph III-E (now III-F) state that in appropriate circumstances a State may be required to remedy the effects of a prior unlawfully discriminatory distribution of funds.

Response: The Comment is accepted. It is well established that a recipient must remedy past unlawful discrimination and provide protection against like discrimination in the future.

27. *Comment:* Commenters questioned whether paragraph III-E (now III-F) affects the Commissioner of Education's authority to approve or direct a change in the State's method of fund distribution.

Response: If a State system for distributing Federal vocational education funds violates civil rights authorities, the Office of Education and the Office for Civil Rights will jointly seek corrective action.

SECTION IV—ACCESS AND ADMISSION OF STUDENTS

28. *Comment:* Commenters stated that the proposed Guidelines prohibited only future unlawful discrimination. They suggested a prohibition against recipients "maintaining" unlawfully discriminatory practices.

Response: This suggestion is accepted. Recipients must eliminate the effects of past discrimination and ensure nondiscrimination in the future.

29. *Comment:* Commenters suggested that paragraph IV-B be amended to require that sites be accessible to handicapped persons.

Response: The requirement of program accessibility for mobility impaired persons is contained in paragraph IV-N.

30. *Comment:* Commenters argued that new sites should be "equally" accessible rather than "readily" accessible to minority students.

Response: It is generally impossible to find or judge sites "equally" accessible to minority and nonminority communities. Recipients should attempt to locate facilities in perfectly neutral sites; but no change in the Guidelines is required or appropriate.

31. *Comment:* Recipient commenters stated that they often do not have authority to select sites for new facilities.

Response: Recipients that do not have authority to select, review, or approve sites have no obligations under this provision.

32. *Comment:* Commenters objected to paragraph IV-C on the ground that it conflicts with State statutes that limit certain programs offered by a district to students residing within that district.

Response: State laws that limit the admission of students to programs on the basis of residence within a district may be cited by recipients as proof of

nondiscrimination. The adequacy or accuracy of that claim will depend upon all of the facts and will vary from State to State and from case to case.

33. *Comment:* Commenters suggested that student reassignment is an additional remedy for site selection and geographic service area violations (proposed paragraph IV-D, now paragraph IV-E).

Response: This suggestion is accepted. For example, if high school vocational education programs are unlawfully segregated because of a geographic zone boundary, the segregation may be remedied through student reassignments.

34. *Comment:* Commenters thought the geographic zoning requirements for secondary vocational schools (paragraph IV-C) should be the same for postsecondary institutions (proposed paragraph IV-E).

Response: Geographic service area or attendance zone boundaries for vocational education centers are generally used at the secondary level. However, paragraph IV-C and IV-E apply to postsecondary institutions that limit admission on the basis of student residence. The separate paragraph for postsecondary institutions has therefore been deleted.

35. *Comment:* Generally, students may not attend an Area Vocational Education School (AVES) unless they reside within one of the school districts participating in the consortium. Commenters objected that paragraph IV-C will result in an unfair requirement that students from nonparticipating districts be admitted to the area school.

Response: In the event the "circumstances" listed in paragraph IV-C arise in a comparison between a consortium and a school district adjacent to a consortium, a recipient(s) may rebut the resulting presumption of unlawful discrimination through proof that compelling reasons justified the inclusion and exclusion of contiguous districts. For example, recipients may demonstrate that an excluded district failed to approve a bond issue needed for the construction of a facility and that all districts included in the consortium approved such a bond issue.

It will not be sufficient for the consortium to prove that all participating districts have approximately the same tax base and that they joined together for that reason. Rather a consortium must prove that an excluded district received a genuine invitation to participate on terms comparable to those offered any other district, and that the offer was declined by the governing authority of the district. If a recipient fails to prove that the planning and formation stages were nondiscriminatory, it will be required to give

the excluded district an opportunity to participate in the consortium. Of course, the newly included district may be required to contribute financially and otherwise on the basis of an equitable formula and arrangement.

36. *Comment:* Consortia ask whether paragraph IV-F bars an equal allocation of a facility's student capacity among participating school districts if that allocation results in the disproportionate exclusion of minority group students. Comment No. 35 addresses an issue illustrated by the exclusion of a city school system from an essentially suburban consortium. The issue in this comment, is illustrated by a consortium of a majority black city school system and four majority white suburban districts that equally share a vocational education facility with a capacity of 500 students. Inequality results from this agreement if the city system's student enrollment is substantially greater than its suburban partners. Thus if each participant in this five district consortium is allocated 100 student spaces in the vocational education center, each suburban district may have only 1,000 students competing for 100 spaces while the city system may have 2,000 students competing for 100 spaces. Students in the city system do not have equal opportunity for admission to the vocational education center.

Response: This provision (IV-F) applies to both separate school districts and consortia. However, a consortium may allocate available spaces in the manner described in this comment if it proves that compelling reasons similar to those discussed in comment 35 above, justify the allocation.

37. *Comment:* Commenters asked whether paragraph IV-C may result in a requirement that a school district admit to its vocational education facilities students who reside in an entirely separate school district.

Response: Paragraph IV-C and IV-F apply primarily to discrimination within a school district and to consortia as discussed in comments 35 and 36. A legally constituted separate school district providing vocational education only to students residing within its borders is not required by paragraph IV-C to admit nonresident students. However, in the event a State establishes a "vocational education district" composed of several school districts, the boundaries of the vocational education district are subject to review under paragraph IV-C.

38. *Comment:* Commenters objected that paragraph IV-H was unreasonable and unrealistic in presuming that segregated facilities, courses and programs resulted from recipient practices rather than student choice. Others urged that the paragraph contain an additional specific presump-

tion of unlawful discrimination if a school were established for members of one race, sex or national origin and continues to be so attended. Such commenters asked for a rule holding that the only permissible remedy for segregation in such a school is relocation of courses and programs to other schools.

Response: Both comments have some merit and have led to a rewriting of the paragraph. Vocational education administrators are quite correct in arguing that specific vocational courses and programs are generally elected by, not required of, students. Consequently, segregation may result from parental, community and peer group influences that are beyond their control. This fact is generally recognized by Section IV of the Guidelines: each paragraph identifies a method or factor controlling student eligibility other than student choice and attempts to provide protection against the unlawful exclusion of students based upon that factor. Thus, a student's ineligibility based upon residence (paragraph IV-C) or because the facility was located too far from his or her home (paragraph IV-B) or because he or she scored too low on an admissions test (paragraph IV-K) is addressed by the Guidelines. Proposed paragraph IV-H departed from this theme. Rather than identify a specific device that resulted in the exclusion of students despite their desire to enroll, the paragraph proposed a presumption of unlawful discrimination whenever a facility or course was segregated. This was unreasonable, and the general presumption has been deleted.

However, the other commenters are also correct in stating that the Guidelines fail to identify another factor or device that can interfere with a student's choice. A recipient may have constructed a facility for members of one race or sex and may not have taken meaningful action to remedy the segregation. In such cases, it is unreasonable to state that the school continues to be segregated as a result of student choice. The analogy to racial segregation in elementary and secondary public schools is perfect: by the late 1960's Federal courts were consistently holding that school officials were not adequately desegregating their dual racial systems when, after 100 years of enforced segregation, they merely opened the doors of their white schools and announced that black students could apply for admission. Paragraph IV-H has accordingly been rewritten to hold that if a facility was established for minorities, or for one race, national origin or sex and it continues to be essentially segregated despite open enrollment, additional steps to desegregate the facility are necessary. However, the suggestion that a specific remedy should be re-

quired of a school established as a segregated facility, is not accepted. The efficacy of any proposed remedy will vary from case to case.

39. *Comment:* Commenters stated that there should not be a violation of paragraph IV-H if a protected group is represented in a facility in proportion to its representation in the service area.

Response: This comment is accepted. Evidence that members of a protected group attend a facility in proportion to their representation in the service area will be accepted as evidence of that group's nondiscriminatory enrollment in the facility. However, the boundaries of the service area must satisfy the requirements of paragraph IV-C.

40. *Comment:* Commenters suggested that in paragraph IV-H underrepresentation, not nonparticipation, should be the standard; that discrimination based on national origin was improperly omitted from paragraphs IV-F and IV-H.

Response: These suggestions merely urge consistency among several provisions and identify inadvertent errors. The suggested changes have been made.

41. *Comment:* Commenters urged that handicapped persons be protected by paragraph IV-H.

Response: A vocational education center, branch or annex enrolling only handicapped students is often permissible under the Department's Section 504 regulation (e.g. a school for autistic children). Each secondary level student must be individually evaluated and then assigned to a program responsive to his or her individual needs. For this reason the presumption recognized in paragraph IV-H cannot routinely protect handicapped persons. Nevertheless, under the requirements of paragraphs IV-N and VI-A, secondary level handicapped students may be placed in segregated annexes, branches or centers only if their individualized education plans state that they cannot be trained in a regular program with "supplementary aids and services."

42. *Comment:* Commenters suggested that the proposed validation standard of paragraph IV-K would permit recipients to use criteria that disproportionately exclude minorities or handicapped persons merely by demonstrating that the students admitted were more likely to succeed in the program. This would allow recipients, for example, to exclude protected persons from the attractive trade and technical programs through evidence that a "C" average student is less likely to excel in a program than an "A" average student. The commenters suggested that screening criteria to be permis-

sible, must be "essential to participation" in a program.

Response: This suggestion is accepted. One of the principal objectives of the Vocational Education Act is to provide protected group persons the training they need to obtain employment. Screening criteria or standards that have the effect of disproportionately excluding such persons from vocational education programs must therefore be validated as essential to satisfactory completion of course requirements. The use of criteria like grade point average, to justify priority admission of students with exceptional attainments or scores may disproportionately exclude protected group persons. If such disproportionate exclusion occurs the criteria or standards must be validated as essential to participation in a program before they may be used by a recipient.

43. *Comment:* Commenters sought to expand paragraphs IV-L and IV-M. They argued that recipients should be required to provide native language programs, English language instruction and other diverse methods of instruction where there are high concentrations of persons with limited English language skills.

Response: The changes proposed are beyond the scope of the Guidelines project. The requirements of the Guidelines are consistent with established Office for Civil Rights secondary school policy.

44. *Comment:* Commenters objected to the failure of paragraph IV-D, (I) and (M) (now E, I, and M) to include deadlines for the submission of acceptable remedial plans.

Response: The Office for Civil Rights will establish time periods for the submission of remedial plans on a case by case basis.

45. *Comment:* Commenters thought the public notification paragraph, IV-O, fails to ensure adequate notice of vocational education opportunities. Others thought the proposed provision was too burdensome; they found the requirement of notice to limited English proficiency persons particularly objectionable.

Response: The requirement that recipients announce a policy of nondiscrimination has several components: 1) the notice must be continuing; 2) it must be designed to reach a recipient's beneficiaries and employees, and potential beneficiaries and employees, particularly members of protected groups; 3) it must state the policy of nondiscrimination; 4) it must include the name, telephone number, and address of a person who can provide additional information on the policy of nondiscrimination. The proposed provision for notification was deficient with respect to requirement number 4;

the final Guidelines have been revised accordingly.

The Department agrees with the commenters who found too onerous the requirement of notice of "all program offerings and admissions criteria." It has been substantially revised. Also, notice to national origin minorities with limited English speaking ability is now required only if a service area contains a "community" of such persons.

46. *Comment:* Commenters asked whether affirmative action programs were permissible or required.

Response: Appropriate remedial action (sometimes referred to as "affirmative action") must be undertaken to overcome the effects of past discrimination. Also, certain voluntary affirmative action measures are permissible under the Department's Title VI, Title IX, and Section 504 regulations, when a recipient finds such measures useful or necessary to correct societal discrimination or patterns of segregation and nonparticipation. The Secretary and the President have issued statements urging recipients to adopt and continue voluntary affirmative action programs in admissions, recruitment, counselling, and employment.

47. *Comment:* A commenter asked whether children attending private racially discriminatory academies may also attend Federally assisted vocational schools.

Response: On April 26, 1976, the Office for Civil Rights announced that "children enrolled in a non-public school cannot participate in the public school program if the non-public school engaged in discriminatory practices prohibited by Title VI. Even though the non-public school is not a recipient, any discriminatory practices by it would . . . directly affect the Federally assisted program." 41 F.R. 35553 (August 23, 1976).

SECTION V—COUNSELING AND PREVOCAATIONAL PROGRAMS

48. *Comment:* Commenters recommended that recipients be required to provide inservice training for counselors on the needs of minorities, the handicapped, and students stereotyped on the basis of sex.

Response: Inservice training is an approved method for instructing professional staff on the forms of discrimination experienced by students. However, recipients may obtain compliance through other methods.

49. *Comment:* Proposed paragraph V-B provided that disproportionate enrollments based on sex must be examined to verify that they do not result from discrimination in counselling. Commenters asked that disproportionate enrollments based on race or national origin lead to a similar examination of counselling practices.

Response: The suggestion is accepted and paragraph V-B has been revised.

50. *Comment:* Commenters urged that paragraph V-E endorse affirmative promotional and outreach activities.

Response: The recommendation is accepted. Voluntary affirmative action in promotional and counselling activities is endorsed through comment number 47.

51. *Comment:* Commenters found "unrealistic" the prohibition against counselling handicapped students toward limited career objectives (paragraph V-B).

Response: This provision allows a recipient to advise handicapped students of the difficulties they may encounter in fields not traditionally opened to them. However, the provision requires that recipients do more than merely state that such obstacles exist. The recipient must provide students with information on available vocational opportunities, on the responsibilities of an employer under Section 504, and on available remedies in the event of discrimination. Information or materials that may assist recipients in meeting this responsibility are available from the Office for Civil Rights, Office of Program and Review and Assistance.

SECTION VI—EQUAL OPPORTUNITY IN THE VOCATIONAL EDUCATION INSTRUCTIONAL SETTING.

52. *Comment:* Commenters recommended several changes to this section: A) "Mainstreaming" handicapped students should not be a priority; B) Sex restricted financial assistance, even subject to the conditions specified in paragraph VI-B, should be impermissible; C) Additional detail should be provided in paragraph VI-C to provide protection against unlawful discrimination; D) A new section should be added to announce recipient obligations to national origin minority persons with limited English speaking ability.

Response: The primary purpose of Section VI of the Guidelines is to record several provisions of the Department's Title IX and Section 504 regulations that deserve emphasis in light of findings in OCR compliance reviews and complaint investigations. Proposed changes "A" and "B" are inconsistent with the Department's regulations and therefore beyond the scope of the Guidelines project; suggestion "C" is meddlesome in that it seeks to regulate recipients aimlessly; proposed change "D" seeks a provision already included in another section of the Guidelines.

SECTION VII—WORK STUDY, COOPERATIVE VOCATIONAL EDUCATION, JOB PLACEMENT, AND APPRENTICE TRAINING

53. *Comment:* Commenters argued that the requirements of Section VII are too burdensome. They believe that Congress never intended recipients to monitor employers and unions for discrimination.

Response: Vocational education administrators misperceive the nature of Section VII requirements. Under the Department's civil rights regulations recipients are prohibited from engaging in any service, activity, or program in a discriminatory manner. Work study, cooperative education, and job placement are recipient programs or activities and for this reason may not be marred by unlawful discrimination. There is evidence, for example, that school officials are honoring requests from employers for persons of a particular race or sex or for persons free of handicaps. This is unlawful discrimination by both the recipient and the employer. Moreover, the Congress is not mindless; it does not enact idle legislation. It would not appropriate more than a half billion dollars annually under the Vocational Education Act for both nondiscriminatory job training programs and discriminatory job placement programs.

54. *Comment:* Commenters suggested that the Guidelines require recipients to obtain an assurance of nondiscrimination from employers that participate in cooperative education, work study, and job placement programs. Others suggested that paragraph VII-A should require school officials to collect, review, and maintain data reflecting the race, sex, national origin, and handicap of students participating in these programs.

Response: The addition of a written assurance to existing written agreements (e.g., cooperative vocational education agreements) is a reasonable and useful measure. This requirement has been added to the Guidelines. To date, OCR investigators have not been frustrated by inadequate recipient records, and the data collection suggestion is therefore not accepted.

55. *Comment:* Commenters urged that paragraph VII be rewritten to allow potential employers to discriminate on the basis of handicap if the handicap prevents a person from performing the job. One commenter stated, for example, that a roofing company need not hire an individual with no legs as a roofer since the job requires an ability to climb a ladder carrying 90 pounds of materials.

Response: Employers may not discriminate on the basis of handicap against otherwise qualified handicapped persons. Prospective employers are permitted to make preemployment

inquiries into an applicant's ability to perform job-related functions. Note, however, that employers are required to "reasonably accommodate" the special needs of a handicapped employee or applicant for employment if it does not result in an "undue hardship" for the employer. In the example provided by the commenter, a small roofing concern would probably be unduly burdened by the accommodation necessary for this handicapped person. However, in contrast, a major university will not experience "undue hardship" if it provides a reader for a blind applicant for employment. See paragraph VIII-E of the Guidelines. Additional information on the principles of "undue hardship" and "reasonable accommodation" can be obtained from the Office for Civil Rights, Office of Program Review and Assistance.

56. *Comment:* Commenters objected to the phrasing in paragraph VII-A suggesting that a recipient must control an employer's policies and practices.

Response: A recipient cannot control the policies or practices of an employer. However, a recipient must determine whether an employer discriminates and if necessary divorce itself—its programs and activities—from the discriminating employer.

57. *Comment:* Commenters asked whether recipients are prohibited from entering work study and cooperative education agreements with employers that have remedied their discriminatory policies and practices.

Response: Recipients are free to enter into agreements with such employers.

58. *Comment:* A commenter argued that prospective employers in cooperative placement activities should not be covered by these Guidelines because they are "ultimate beneficiaries" under 45 CFR § 84.3(f).

Response: The requirements of the Guidelines apply to recipients of Federal funds, not to prospective employers. Recipients must take measures to free their programs and activities of employers who unlawfully discriminate. It is unnecessary, therefore, to determine whether prospective employers are "ultimate beneficiaries."

59. *Comment:* Commenters asked whether the requirement of nondiscrimination in apprentice training applies only to programs sponsored by unions.

Response: Paragraph VII-B applies to registered and non-registered apprentice training programs whether sponsored by a union, an individual employer, a group of employees, an employer-employee committee, or a governmental agency. The text of paragraph VII-B has therefore been revised to cover a "labor union or other sponsor." Also, all sponsors of

apprentice programs are subject to the Department of Labor Guidelines for Nondiscrimination in All Apprenticeship Programs (29 CFR Part 30).

SECTION VIII—EMPLOYMENT OF FACULTY AND STAFF

60. *Comment:* Commenters argued that the Department's Title VI employment jurisdiction extends only to employees who work directly with students. They state that the Department has no authority to act on complaints of employment discrimination against "administrators or applicants for employment."

Response: The Guidelines have been revised to reflect the Department's current interpretation of its authority. If and when it is revised or modified, the new policy will be announced and will supersede the Guidelines.

61. *Comment:* Commenters stated that the Department has no authority to accept or resolve employment discrimination complaints under Title IX.

Response: The Guidelines reflect the Department's current interpretation of its authority. Several cases raising this issue are now pending in the courts of appeal. If and when this litigation results in controlling holdings that the Department has no employment jurisdiction under Title IX, the Department's regulations and these Guidelines will be revised.

62. *Comment:* Commenters suggested that under a recent decision of the United States Court of Appeals for the Fourth Circuit, *Trageser v. Libbie Rehabilitation Center*, — F.2d — (4th Cir. 1978), the Department has no authority to accept or resolve employment discrimination complaints under Section 504.

Response: The Guidelines reflect the Department's current interpretation of its authority. If and when it must be revised to conform to controlling judicial decisions, the new policy will be announced and will supersede the Guidelines.

63. *Comment:* Commenters stated that the definition of a "qualified handicapped" person under Section 504 of the Rehabilitation Act and the Guidelines is at odds with the Department of Labor's definition under Section 503 of the Rehabilitation Act.

Response: The Department of HEW is presently reviewing with the Department of Labor the inconsistencies between their definitions. The Guidelines reflect the Department's current view. If and when it is revised or modified, the Department's regulation and these Guidelines will be revised.

64. *Comment:* Commenters objected to paragraph VIII-F on the ground that it establishes requirements inconsistent with *Bakke*.

Response: The Guidelines require remedial action to overcome the effects of past discrimination. *Bakke* permits, among other activities, such "affirmative action."

65. *Comment:* Commenters objected to paragraph VIII-C as "presuming guilt" before an investigation is conducted.

Response: Although alternative language was considered, no change has been made in the Guidelines. It is not the intention nor the effect of the Guidelines to make baseless presumptions or findings. Rather, statistical patterns result in inferences that additional evidence may rebut. The Office for Civil Rights will not find unlawful discrimination solely on the basis of statistical data or without affording a recipient an opportunity for rebuttal.

66. *Comment:* Commenters urged that the Guidelines require recipients to maintain and submit data on its employment practices.

Response: This suggestion was rejected. Records maintained and submitted by recipients under other authorities have satisfied the needs of OCR investigators.

67. *Comment:* Commenters asked whether this section applies to State agencies.

Response: All recipients of Federal financial assistance from the Department, as specified in Section I, are covered by Section VIII. This also explains the requirement of paragraph II-A(4).

68. *Comment:* Commenters stated that paragraph VIII-C should recognize that a recipient may rebut a presumption of unlawful employment discrimination through evidence that qualified persons of a protected group were not available to the individual school district nor to the vocational education center.

Response: Rebuttal evidence may include proof that: (1) Members of a protected group were recruited without success; or (2) Identified persons of a protected group were offered employment opportunities that were declined.

SECTION IX—PROPRIETY VOCATIONAL EDUCATION SCHOOLS

69. *Comment:* A commenter argued that a tuition grant or loan to a student in attendance at a proprietary school is not Federal financial assistance to the proprietary school. Rather it is compensation paid for a direct service—a "procurement contract." It is argued that proprietary schools are therefore not subject to the Department's regulations or these Guidelines.

Response: The Department has long defined the term "recipient" under Title VI, Title IX and Section 504 to include proprietary (i.e., other than

public or nonprofit) educational institutions that receive tuition from students participating in Federal tuition grant programs. It is beyond the scope of the Guidelines project to reconsider established Department policy.

DAVID S. TATEL,
Director,
Office for Civil Rights.

March 15, 1979.

[FR Doc. 79-8561 Filed 3-20-79; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20790; FCC 79-134]

SETTING UP A SINGLE SYSTEM OF IDENTIFICATION FOR ALL DEVICES COVERED UNDER THE EQUIPMENT AUTHORIZATION PROGRAM

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: This is a Revision of Parts 2, 15, 18, and 83 of FCC Rules to replace former non-uniform and inconsistent identification requirements for radiofrequency devices with a single simpler system of identification for all such devices subject to the FCC Equipment Authorization program.

EFFECTIVE DATE: April 25, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Milton C. Mobley or John T. Robinson, Federal Communications Commission, Laboratory Division, P.O. Box 40, Laurel, MD 20810, Tel: 301-725-1585.

REPORT AND ORDER—PROCEEDING TERMINATED

Adopted: February 28, 1979.

Released: March 15, 1979.

By the Commission: Chairman Ferris issuing an additional statement; Commissioner Fogarty concurring in the result.

In the matter of Revisions of Parts 2, 15, 18, and 83 of the rules and regulations to set up a single system of identification for all devices covered under the equipment authorization program, Docket No. 20790

1. On May 6, 1976, the Commission released a *Notice of Proposed Rule-making* in Docket No. 20790,¹ propos-

¹FEDERAL REGISTER, MAY 12, 1976, 41 FR 19349. FCC Reports: Vol. 59, FCC, 2nd p. 56.

ing to amend various sections in Parts 2, 15, 18, and 83 of the rules, relating to identification requirements for equipment required to be covered by grants of equipment authorization issued by the Commission prior to lawful marketing. The sections to be amended all contain requirements for equipment identification, with wide variation in the present requirements as to the type of information to be listed on the equipment identification plates. It is not uncommon for a given device to be subject to two or more equipment authorization procedures, with different requirements for each. This causes problems for the grantee in trying to comply with the various identification requirements and for the Commission with regard to indexing and listing authorized equipment. It also leads to inexact identification of equipment on documents submitted to the U.S. Customs Service and has caused a number of importation problems.

2. A major part of the identification problem has been caused by the fact that equipment marketers have for many years used a variety of terms, such as Model, Type, Catalog Number, and the like as prefixes for the actual product identification number. The terms Model and Type have also been used more or less interchangeably in the Commission's Rules relating to grants of equipment authorization. In the consumer equipment area, there are many cases of equipment electrically identical being marketed under two or more model or type numbers because of the need of the marketer to distinguish differences in cabinet styling, color and the like. Under the present rules, this requires a grant of equipment authorization for each version of the equipment, and entails additional costs for both the grantee and the Commission. Included among the objectives of this rulemaking is abandonment of the use of the term Model or Type as an equipment identification prefix for equipment authorization, and instead to use an identifier assigned by the Commission for each authorized equipment. An equipment so authorized may include a family of several models or types that are electrically identical but differ from one another in cabinet style, color, or other ways not affecting the ability of the equipment to comply with the applicable technical standards, providing the prospective grantee in his application elects this option and lists these models or types and the way(s) in which they differ from the basic equipment. Additional models or types may be proposed for inclusion in an existing authorization by filing a supplementary application at a later date.

3. The rules adopted herein establish a single system of identification for all

equipment subject to the Commission's equipment authorization requirements, except for telephone equipment required to be registered under Part 68. These rules will go into effect 18 months after the effective date of this Order, except that a grantee of an equipment authorization may elect to comply with the new identification procedure at an earlier date. These rules require that an FCC-assigned identification (FCC Identifier) be displayed on the nameplate of each authorized device. This identifier shall consist of three elements.

A coded identifier for the grantee (or grantee/trade name), consisting of three alpha-numeric characters.

A coded identifier for the manufacturer, consisting of three alpha-numeric characters.

The identifier for the particular equipment, or family of equipments, assigned by the grantee.

Example: ACF2B9324B6

ACF..... Grantee (or grantee/trade name) code.
2B9..... Manufacturer code.
324B6..... Number assigned by the grantee to the product or family of technically identical products.

Encoding of the identifiers for the grantee (or grantee/trade name) and manufacturer is needed because it is common practice for certain equipment to be marketed only under trade names, without the name of either the grantee or manufacturer on the equipment. Moreover, it is known that there are many instances in which more than one grantee is marketing equipment under the same trade name. This is a major problem in after-market identification of equipment, and in identification during importation. While it is not desired nor intended to affect such arrangements in the marketplace, there is a need for assurance of identification. Consumer items sold under trade names make up the larger part of the number of regulated devices sold in an average year. Inability to assure proper identification has caused many problems, particularly for imported items.

4. A nearly identical system is already employed for identification of telephone equipment registered under Part 68 of the rules. Because that part requires the complete identifier to be assigned by the Commission, and the nameplate also must display certain information peculiar to telephone equipment (and not relevant to other devices covered under the equipment authorization program), we have not proposed full unification of Part 68 devices under this proposal. However, the system adopted herein for assignment of coded identifiers to grantees (or grantee/trade names) and manufacturers is already in use for devices registered under Part 68.