

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
CIVIL ACTION NO. **SS 2012-0025**

MICHAEL FLYNN, JAE GOODWIN,
FLORIS WILMA ORTIZ-MARRERO,
JON SAPHIER, RICHARD HEBERT,
MARY ANN STEWART, and GEJU
BROWN,

Plaintiffs,

v.

MARTHA COAKLEY, in her
capacity as ATTORNEY GENERAL
OF THE COMMONWEALTH OF
MASSACHUSETTS,

and

WILLIAM F. GALVIN, in his
capacity as SECRETARY OF THE
COMONWEALTH OF MASSACHUSETTS,

Defendants.

RECEIVED

JAN 23 2012

MAURA S. DOYLE CLERK
OF THE SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

COMPLAINT

INTRODUCTORY STATEMENT

This is a civil action seeking relief in the nature of certiorari, mandamus and a declaratory judgment concerning initiative petition # 11-20, styled "An Act to Promote Excellence in the Public Schools," which has been certified

by the Attorney General as being appropriate for submission to the people ("Petition").

The purported purpose of the Petition is to impose a teacher evaluation system that will support "merit-based" personnel actions in the public schools. In operation, however, the Petition is a confusing hodgepodge of eleven separate sections that amend and/or repeal numerous provisions of two comprehensive statutes¹ governing public schools in conceptually unrelated areas. The diverse subjects that would be presented to the voters range from the introduction of new timelines in teacher dismissal arbitrations to employee rights in school regionalization to the method of computing years of service required for professional teacher status. Further, the amendment would significantly alter the scope of judicial review of arbitration awards in teacher terminations. This proposed change significantly expands the current, streamlined scope of judicial review of teacher termination arbitration awards and introduces yet another subject for the voters to consider.

Additionally, the summary prepared by the Attorney General is neither "fair" nor "concise." While four pages

¹G.L. c. 69 and G.L. c. 71.

long, the summary is nevertheless incomplete and fails to inform the voters of the magnitude of the substantive and procedural changes to existing law that would result from the Petition's enactment, including that the measure would end the right of school districts and teachers to collectively bargain over the material aspects of numerous personnel actions and other subjects.

Specifically, the Plaintiffs contend that: (1) the Petition is inconsistent with Amend. Art. 48, Init., Pt. 2, § 2 of the Massachusetts Constitution, which excludes from the initiative process "measures [that] relate . . . to the powers . . . of courts," as it gives the courts a new power to rule whether awards in educator dismissal arbitrations are based upon "substantial evidence"; (2) the various sections of the Petition are not "related or . . . mutually dependent," Amend. Art. 48, Init., Pt. 2, §3; and (3) the summary prepared by the Attorney General is not a "fair, concise summary," as required by Amend. Art. 48, Init., Pt. 2, § 3, as amended by Amend. Art. 74, § 1. The plaintiffs request that this Court quash the certification issued by the Attorney General, declare that the Petition is not in conformity with the requirements of Amend. Art. 48, and

enjoin the Secretary of the Commonwealth from placing petition # 11-20 on the 2012 state election ballot.

PARTIES

1. Plaintiff Michael Flynn is a citizen of Massachusetts and a registered voter in the City of Northampton who resides at 9 King Avenue, Florence section of the City of Northampton, Hampshire County, Massachusetts. Mr. Flynn teaches second grade at the William E. Norris Elementary School in Southampton and received the 2008 Teacher of the Year Award from the Massachusetts Department of Elementary and Secondary Education ("DESE"). He has three children in Massachusetts public schools.
2. Plaintiff Jae Goodwin is a citizen of Massachusetts and a registered voter in the Town of Framingham who resides at 270 Grove Street, Framingham, Middlesex County, Massachusetts. Ms. Goodwin teaches fifth grade at the Charlotte A. Dunning Elementary School in Framingham and received the 2010 Teacher of the Year Award from DESE.

3. Plaintiff Floris Wilma Ortiz-Marrero is a citizen of Massachusetts and a registered voter in the Town of Amherst, who resides at 6 Cranberry Lane, Amherst, Hampshire County, Massachusetts. Ms. Ortiz-Marrero teaches English language learners at Amherst-Pelham Middle School and received the 2011 Teacher of the Year Award from DESE.
4. Plaintiff Jon Saphier is a citizen of Massachusetts and a registered voter in the Town of Carlisle who resides at 56 Bellows Hill Road, Carlisle, Middlesex County, Massachusetts. Dr. Saphier is the founder and President of Research for Better Teaching, Inc., an educational organization in Acton, Massachusetts that is dedicated to the professionalization of teaching and educational leadership. Dr. Saphier is the author and coauthor of eight books, including The Skillful Teacher, now in its sixth edition.
5. Plaintiff Richard Hebert is a citizen of Massachusetts and a registered voter in the Town of Scituate who resides at 21 Walnut Avenue, Scituate, Plymouth County, Massachusetts. Mr.

Hebert is a member of the Scituate School Committee filing in his individual capacity.

6. Plaintiff Mary Ann Stewart is a citizen of Massachusetts and a registered voter in the Town of Lexington who resides at 24 Rawson Avenue, Lexington, Middlesex County, Massachusetts. Ms. Stewart is the President of the Massachusetts Parent Teacher Association.
7. Plaintiff Geju Brown is a citizen of Massachusetts and a registered voter in the City of Boston who resides at 1820 Washington Street, Apt. 215, Roxbury section of the City of Boston, Suffolk County, Massachusetts. Ms. Brown is the parent of a child who attends the Boston Public Schools.
8. Defendant Martha Coakley is the duly elected Attorney General of the Commonwealth of Massachusetts having her usual place of business at One Ashburton Place, Boston, Suffolk County, Massachusetts. This action is brought against the Attorney General in her official capacity.
9. Defendant William F. Galvin is the duly elected Secretary of the Commonwealth of Massachusetts having his usual place of business at the State

House, Room 337, Boston, Suffolk County,
Massachusetts. This action is brought against the
Secretary of the Commonwealth in his official
capacity.

JURISDICTION

10. This Court has jurisdiction over the claims presented in this complaint pursuant to G.L. c. 213, § 1A, G.L. c. 214, § 1, G.L. c. 231A, § 1 et seq., and G.L. c. 249, §§ 4 & 5.

STATEMENT OF FACTS

11. On or about August 3, 2011, the Petition, entitled "An Act to Promote Excellence in the Public Schools," was submitted to the Attorney General and docketed as Petition # 11-20. A true copy of the Petition is attached as Exhibit A and incorporated herein by reference.
12. The Petition was signed by twenty-two individuals, each of whom certified that he or she personally reviewed the final text of the Petition, fully subscribed to its contents, agreed to be one of the original signers of this petition, and is a registered voter in Massachusetts.

13. The claimed purpose of the Petition is "to institute a comprehensive, fair and rigorous education evaluation system that provides the basis for merit-based decision-making in the hiring, retention, transfer, remediation and dismissal of teachers and school administrators." Petition, Section 11.
14. The Petition would limit the current discretion of school committees, superintendents, principals and others vested with discretionary authority (collectively referred to as "school districts") in evaluating and in making personnel decisions regarding educators employed in such districts and would require such districts to comply with new state standards and procedures. Petition, Section 1, amending G.L. c. 69, § 1B.
15. The Petition transfers from school districts to the Board of Elementary and Secondary Education ("Board") the authority to set educator performance standards. School districts may only use an evaluation system developed or approved by the Board. The Petition also sets out in detail the evaluation procedure that each school

district must adopt and implement. Petition, Section 2, amending G.L. c. 71, § 38.

16. The Petition restricts the statutory discretion now exercised by school districts by requiring them to use the results from state-mandated evaluation criteria and procedures in personnel actions, including the award of professional teacher status, hiring, firing, lay off, transfer and placement of school personnel pursuant to regionalization and deregionalization of school districts. Petition, Sections 3, 5, 6, 7, and 9, amending G.L. c. 71, §§ 41, 42, 42B and 59B.
17. In all of the personnel actions covered by the Petition, the school district must base its judgment on a teacher's "merit", "ability" and "certifications," terms which are not defined in the Petition, along with the results of the state-mandated evaluation system. The school district would be restricted to giving the relevant experience, seniority and length of service of the teacher secondary consideration. Petition, id.

18. Section 3 of the Petition (1) describes the method of computing years of service for acquiring professional teacher status and (2) limits the acquisition of professional teacher status to full-time teachers.
19. Section 4 of the Petition, amending G.L. c. 71, § 42, restructures the procedures in teacher dismissal arbitrations by, for example, adding new time limits for completion of the arbitration process and a restriction on the time a teacher is allowed to present his or her case.
20. Section 4 introduces a new standard of proof in teacher dismissal arbitrations and prescribes the evidence to be measured by the standard. Specifically, the Petition provides that teacher evaluations shall constitute "substantial evidence . . . of the grounds for dismissal," expanding the superior court's review of an arbitrator's award from that which currently applies under G.L. c. 150C, which precludes the court from examining the factual record of the arbitration.

21. Section 9 of the Petition provides, in relevant part, that "the principal and the educator mutually agree to the hiring or assignment" of a teacher within a particular school, statutorily restricting the authority of a principal to make assignments within his or her school.
22. On or about September 7, 2011, the Attorney General certified the Petition under Amend. Art. 48 Init., Pt. 2, § 3 of the Massachusetts Constitution.
23. The Attorney General also prepared a summary of the Petition as such summary will appear on the ballot. The summary was printed on the forms used for gathering the number of signatures required to place the measure on the ballot. A true copy of that summary is attached as Exhibit B and is incorporated herein by reference.
24. Section 11 of the Petition provides, in relevant part, that "[t]he application of this act to persons subject to the educator evaluation standards shall be subject to collective bargaining or a collective bargaining agreement only where expressly permitted in this act and in

the furtherance of the full implementation of the purpose of this act, which is to institute a comprehensive, fair and rigorous educator evaluation system that provides the basis for merit-based decision-making in the hiring, retention, transfer, remediation and dismissal of teachers and school administrators." (Emphasis added).

25. The Attorney General summarized Section 11 of the Petition as follows: "[t]he proposed law . . . would not affect existing collective bargaining agreements, but would have to be followed in future agreements."
26. The portion of the summary cited in paragraph 25 above misleads voters in that the Petition affects current collective bargaining agreements because, under the Petition, the terms of agreements may not be renewed or extended in any manner that is not expressly permitted by the Petition.
27. The summary completely omits that the Petition would end the right of school districts and unions to collectively bargain over any of the

subjects, including personnel actions, that are addressed in the Petition and any of the procedures relating to such personnel actions.

28. The summary fails to explain that the Petition eliminates the application of contractual grievance and arbitration enforcement provisions to subjects included in the Petition.
29. On or about December 7, 2011, the proponents of the Petition provided the Secretary of the Commonwealth with the requisite number of signatures for transmittal to the General Court.
30. On or about January 4, 2012, the Secretary of the Commonwealth transmitted the Petition to the Clerk of the House of Representatives.
31. The Legislature has not, as of this date, enacted the law proposed by the Petition.
32. If the proponents of the Petition submit sufficient additional signatures to the Secretary of the Commonwealth by the first Wednesday in July 2012, the Secretary intends to provide information to Commonwealth voters about the Petition including the full text of the proposed law and the summary. The summary would also

appear on the state election ballot for presentation to the people in November 2012.

FIRST COUNT

33. Paragraphs 1-32, above, are incorporated by reference as if fully set out here.
34. The Petition should not have been certified by the Attorney General for submission to the people at the November 2012 state election because it "relate[s] . . . to the powers . . . of courts," contrary to Amend. Art. 48, Init., Pt. 2, § 2.

SECOND COUNT

35. Paragraphs 1-34, above, are incorporated by reference as if fully set out here.
36. The Petition should not have been certified by the Attorney General for submission to the people at the November 2012 state election because it contains subjects which are not "related or which are mutually dependent," contrary to Amend. Art. 48, Init., Pt. 2, § 3 as amended by Amend. Art. 74, § 1.

THIRD COUNT

37. Paragraphs 1-36, above, are incorporated by reference as if fully set out here.

38. The Attorney General's summary of the Petition is not "fair [and] concise," within the meaning of Amend. Art. 48, Init., Pt. 2, § 3, as amended by Amend. Art. 74, § 1 and as required by Amend. Art. 48, General Provisions, subheadings "*III Form of Ballot*" and "*IV Information for Voters*". as amended by Amend. Art. 74, § 4, as further amended by Amend. Art. 108, for reasons including, but not limited to, the fact that the summary:

a) misleads voters by stating that the proposed law would only affect future collective bargaining agreements and not current agreements, without explaining that, under Section 11, such current agreements may not be renewed in any manner that is not expressly permitted by the Petition;

b) entirely omits that Section 11 of the Petition would end the rights of school districts and unions to collectively bargain over any of the personnel actions included in the Petition by providing, in

material part, that "[t]he application of this act to persons subject to the educator evaluation standards shall be subject to collective bargaining . . . only where expressly permitted in this act", and

c) fails to fairly inform the voters of the essential components of the Petition and the consequences thereof.

REQUEST FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

- a) Declare that the Petition is invalid and not in compliance with the requirements of Amendment Article 48 of the Massachusetts Constitution as amended;
- b) Quash the certificate of the Attorney General dated September 7, 2011, certifying the Petition;
- c) Enjoin the Secretary of the Commonwealth from placing the Petition on the state election ballot in 2012;

d) Grant such further relief as is proper and just.

Respectfully submitted,

MICHAEL FLYNN, JAE GOODWIN
FLORIS WILMA ORTIZ-MARRERO
JON SAPHIER, RICHARD HEBERT
MARY ANN STEWART, and GEJU
BROWN,

Date: January 23, 2012

By their attorneys,



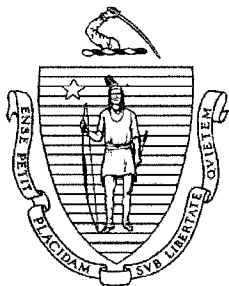
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Initiative Petition Information Sheet

Title of Petition An Act Promoting Excellence in Public Schools

Petition Number 11-20

(to be filled in by Attorney General's Office staff)

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Optional:

Will the proponents propose a summary by the Monday, 5 days after the petition-filing deadline?

Yes No

Will the proponents submit a memo of law by the Friday 9 days after the petition-filing deadline?

Yes No

Please note that the above information will be made available to the public and particularly to possible opponents of certification. The Proponent and Proponents' Attorney (if any) will receive copies of any materials submitted by the public regarding certification.

AGO Staff Person Receiving Petition

PS

(to be filled in by Attorney General's Office staff)

Date

8/3/2011

(to be filled in by Attorney General's Office staff)

An Initiative Petition for a Law

An Act Promoting Excellence in Public Schools

Be it enacted by the People, and by their authority:

SECTION 1. Section 1B of chapter 69 of the General Laws as appearing in the 2008 Official Edition is hereby amended by striking out the thirteenth paragraph and inserting in place thereof the following paragraph:-

For the purposes of this chapter and chapter 71, educator evaluation standards shall mean the standards and related provisions of 603 CMR 35.00, et seq. as amended from time to time. Educator evaluation standards and the comprehensive education evaluation system adopted by the board based on such standards shall serve as an exemplar for adoption or adaptation by districts pursuant to section 38 of chapter 71 for employees covered by the educator evaluation standards. Subject to appropriation for such purposes, the department, with approval from the board, shall develop a training program for evaluators that include methods to promote inter-rater reliability. The training program may be delivered by the department, school districts, or through a department approved provider.

SECTION 2. Section 38 of chapter 71 of the General Laws as appearing in the 2008 Official Edition is hereby amended by striking out the third, fourth, fifth and sixth paragraphs and inserting in place thereof the following five paragraphs:-

Performance standards for teachers and other school district employees shall be established by the school committee upon the recommendation of the superintendent, provided that where teachers are represented for collective bargaining purposes, all teacher performance standards shall be determined as follows. Each school district shall implement a comprehensive educator evaluation system no later than the school year which begins in calendar year 2013. A school district and the exclusive bargaining representative of its educators if any shall decide whether to implement the model evaluation system designed by the department pursuant to the board's educator evaluation standards or whether to develop an alternative evaluation system consistent with the scope and purpose of the board's educator evaluation standards. If the parties are unable to agree on an alternative evaluation system following a period of good faith collective bargaining, then the school committee shall implement the model system designed by the department. All alternative evaluation systems shall be submitted to the department for its review and approval prior to their implementation. If the department does not approve a school district's alternative evaluation system, the school district shall implement the model system designed by the department. Until a school district and the exclusive bargaining representative of its educators reach agreement on an alternative evaluation system and it receives approval from the department, the model system designed by the department shall serve as the evaluation plan. The results of such evaluations shall be used in decisions to hire, grant professional teacher status, transfer,

promote, lay off, dismiss, demote or remove an employee covered by the educator evaluation standards pursuant to sections 41, 42, 42B and 63. Any person subject to the educator evaluation standards who receives a summative rating of unsatisfactory on one or more standards may request a re-evaluation from a second evaluator. The school district shall create a list of at least 2 evaluators to serve as second evaluators. The school district shall provide the union with an opportunity to submit additional names of teacher evaluators who shall be available to serve as second evaluators and who shall be added to the list created and established by the school district. The school district and union shall collectively bargain the criteria used to add a teacher evaluator to the list. The school district will assign a second evaluator from the list. A teacher shall not challenge the selection of the second evaluator or his or her rating. Nothing in this section shall prohibit a school district and the exclusive bargaining unit of its educators from agreeing to a peer evaluation process as permitted under state regulations that could be used to meet requirements for the selection of second evaluators under this section.

If the second evaluator disagrees with the original evaluation, the superintendent shall make the final decision to require a directed improvement plan or not for the person. If no re-evaluation is requested or if the re-evaluation confirms a summative rating of unsatisfactory in one or more standards, the person shall be placed on a directed improvement plan that shall last no longer than one school year. After the improvement plan is completed, an evaluator shall determine if such person has achieved proficiency in all areas that were deemed unsatisfactory. If the evaluator determines that such proficiency was not achieved, such person may request a second evaluator. The school district shall select the second evaluator from the list established pursuant to this section. In no event shall the second evaluator be the same person who conducted any previous evaluations of the person. If the second evaluator disagrees with the original evaluation after the improvement plan is completed, the superintendent shall make the final decision as to whether the person has achieved proficiency in all areas that were deemed unsatisfactory.

Beginning with the 2013 school year, the superintendent shall require each evaluator in the school district to take the training program developed by the department pursuant to section 1B of chapter 69 before undertaking evaluations in the 2013 school year and future years. Evaluators shall only be required to complete the training program once. The department may, with the board's approval, require supplemental trainings for evaluators if substantive changes to the training program for evaluators are made.

Subject to appropriation, each school district shall be reimbursed in accordance with section 60 of chapter 15 for reasonable costs incurred for evaluator training and for conducting evaluations of employees covered by the educator evaluation standards.

SECTION 3. Section 41 of chapter 71 of the General Laws as appearing is hereby amended by striking out the first paragraph and inserting in place thereof the paragraph:-

For the purposes of this section and section 42, a teacher, school librarian, school adjustment counselor, school nurse, school social worker or school psychologist who has served in the public schools of a school district for 3 previous consecutive school years on a full-time basis shall be considered a teacher and shall be eligible for professional teacher status as provided in section 42, provided that the teacher has achieved ratings of proficient or exemplary on each performance standard and for overall educator

performance during his or her third consecutive school year of service. Teachers who have not achieved full-time status for 3 previous consecutive years owing to time away from work permissible under a collective bargaining agreement shall still be eligible for professional status provided that the teacher has completed at least 3 cumulative years of service and achieved ratings of proficient or exemplary on each performance standard and for overall educator performance during his or her third year of service. If a teacher does not receive the ratings required to be eligible for professional teacher status, the superintendent may, upon the recommendation of the principal, grant such teacher a 1 year extension of provisional status to achieve such ratings, provided that the extension is consistent with the best interests of the students and district. The superintendent may, upon the recommendation of the principal, award professional teacher status to a teacher who had previously attained professional teacher status in another school district, provided that the teacher voluntarily resigned or was honorably dismissed from the other district within a reasonable period before being hired by the current district and that the teacher achieves a rating of at least proficient on every standard and overall on his or her summative evaluation in his or her first year in the current school district. A teacher without professional teacher status shall be notified in writing on or before June fifteenth whenever such person is not to be employed for the following school year.

SECTION 4. Section 42 of said chapter 71 as so appearing is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:-

At the arbitral hearing, the teacher and the school district may be represented by an attorney or other representative, present evidence and call witnesses. The school district shall bear the burden of proving the grounds for dismissal consistent with this section. If the basis for the dismissal is incompetency or failure on the part of the teacher to satisfy teacher performance standards or if a teacher has received 2 summative ratings of unsatisfactory within a 5 year period, the district shall not be required to offer a second improvement plan following the second rating. A teacher with professional teacher status may seek review of a dismissal decision within thirty days after receiving notice of dismissal by filing a petition for arbitration with the commissioner. The arbitral hearing shall commence within 75 days of the notice of dismissal and conclude within 120 days of the notice of dismissal. These deadlines may be extended by the arbitrator for good cause shown but in no event longer than 45 days. The arbitrator shall issue her or his decision within 30 days of the close of the hearing. Evaluation documents developed pursuant to the educator evaluation standards shall be admissible, deemed to be substantial evidence and shall constitute prima facie evidence of the grounds for dismissal. Each party shall be allotted equal time to present its case in chief and rebuttal. In determining whether either party has proven grounds for dismissal consistent with this section, the arbitrator shall consider the best interests of the students in the district and the need for the elevation of performance standards and shall not consider a teacher's seniority or length of service. The school district and union shall have the right to collectively bargain an alternative decision-making body for the dismissal proceedings in the form of a review panel composed of teachers and principals with a history of exemplary performance ratings, provided all other factors associated with the dismissal hearing are consistent with those of the arbitral hearing described in this section. Unless the district and union agree on an alternative decision making body, the procedure described above shall govern all arbitral proceedings under this section.

SECTION 5. Said section 42 of said chapter 71 as so appearing is hereby further amended by striking out the seventh paragraph and inserting in place thereof the following paragraph:-

Neither this section nor section 41 shall affect the right of a superintendent to lay off teachers pursuant to reductions in force or reorganization resulting from declining enrollment or other budgetary reasons. The school committee, in consultation with the superintendent, shall establish the selection criteria for layoffs of principals, teachers, and other school district employees. Such selection criteria as applied to a person subject to the educator evaluation standards shall be primarily based on certifications, merit and ability, including results from performance evaluations, and other factors related to job performance and the best interests of the students in the school or district and secondarily on relevant experience and seniority or length of service. If 2 or more educators are of equal certifications, merit and ability, including results of performance standards, seniority shall be the deciding factor.

SECTION 6. Section 42B of said chapter 71 as so appearing is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph: -

The provisions of this chapter relating to school personnel granted certificates in accordance with section 38G shall apply to all such school personnel employed by regional school districts. Any such school personnel who have provisional or professional teacher status or other rights under section 41 in a particular school district, whose positions are superseded by reason of the establishment and operation of a regional school district, shall be elected to fill available positions primarily based on certifications, merit and ability, including results from performance evaluations, and other factors related to job performance and the best interests of the students in the school or district, and secondarily on relevant experience and seniority or length of service, providing both the principal and teacher agree on such election or assignment, but if 2 or more of such teachers are of equal certifications, merit and ability, including results of performance standards, seniority shall be the deciding factor. If elected the person shall be employed with the same provisional or professional teacher status by the regional school district.

SECTION 7. Section 42B of said chapter 71 as so appearing is hereby amended by striking out the fourth paragraph.

SECTION 8. Said section 42B of said chapter 71 as so appearing is hereby amended by striking the seventh paragraph and inserting in place thereof the following paragraph:-

Any such school personnel, employed by a regional school district, whose position is abolished or eliminated by reason of the disestablishment and discontinuance of the regional school district or the withdrawal of a member community from such district shall be employed by one of the withdrawing city or town school committees, and if any such personnel have such status, such personnel shall be employed by such city or town, school committee with the same status. In the event that there are not sufficient teaching positions available in the withdrawing city or town school systems, such personnel shall be offered the available positions primarily based on certifications, merit and ability, including results from performance evaluations, and other factors related to job performance and the best interests of the students in the school or district, and secondarily on relevant experience and seniority or length of service, providing both the

principal and teacher agree on such selection or assignment, but if 2 or more educators are of equal certifications, merit and ability, including results of performance standards, seniority shall be the deciding factor. All such personnel so employed by a city or town school district shall initially be placed on the salary schedule of such city or town school district so that the compensation paid to such school personnel shall not be less than the compensation received by such school personnel while previously employed by the regional school district. Such school personnel also shall be given credit by the city or town school committee for all accumulated sick time, accumulated time towards service with such status, and accumulated sabbatical leave years of service, and for terminal compensation due such school personnel on the termination of such service.

SECTION 9. The first paragraph of section 59B of said chapter 71 as so appearing is hereby amended by striking out the third sentence and inserting in place thereof the following five sentences :-

Principals employed under this section shall be responsible, consistent with district personnel policies and budgetary restrictions and subject to the approval of the superintendent, for hiring all teachers, athletic coaches, instructional or administrative aides, and other personnel assigned or transferred to the school and, where applicable, shall be primarily based on certifications, merit and ability, including results from performance evaluations, and other factors related to job performance and the best interests of the students in the school or district, and secondarily on relevant experience and seniority or length of service, and provided that both the principal and the educator mutually agree to the hiring and assignment. If 2 or more are of equal certifications, merit and ability, including results of performance standards, seniority shall be the deciding factor. Principals employed under this section shall be responsible for terminating such personnel subject to review and prior approval by the superintendent and subject to the provisions of this chapter. If a teacher refuses the only available position to him or her in the district, provided that the principal has consented to his or her placement, the teacher will not be entitled to paid leave. The school district and the union shall collectively bargain the amount of paid leave provided to the teacher if he does not find a mutually agreed upon position, provided that no teacher shall be entitled to paid leave for more than 12 months after the teacher is unable to secure a mutually agreed upon position at a school in the school district.

SECTION 10. As used in this act, the term school district shall also mean regional school district and the term regional school district shall also mean school district.

SECTION 11. This act shall take effect on January 1, 2013. No collective bargaining agreements entered into prior to that date shall be altered, impaired or otherwise affected by any conflicting provision of this act. The application of this act to persons subject to the educator evaluation standards shall be subject to collective bargaining or a collective bargaining agreement only where expressly permitted in this act and in the furtherance of the full implementation of the purpose of this act, which is to institute a comprehensive, fair and rigorous educator evaluation system that provides the basis for merit-based decision-making in the hiring, retention, transfer, remediation and dismissal of teachers and school administrators.

Signers of this Initiative Petition for a Law entitled an Act Promoting Excellence in Public Schools

I have personally reviewed the final text of this Initiative Petition for a Law, I fully subscribe to its contents, I agree to be one of the original signers of this petition, and I am a registered voter in Massachusetts.

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Exhibit B

SUMMARY OF NO. 11-20

This proposed law would require that school districts use model "educator evaluation standards" issued by the state Board of Elementary and Secondary Education, or adapt such standards for use, in evaluating teachers, principals, and administrators. Such evaluations would be used in decisions to hire, grant professional teacher status, transfer, promote, demote, lay off, or dismiss educators.

A school district and its teachers' union, if any, would decide whether to (1) implement a model evaluation system to be designed by the state Department of Elementary and Secondary Education using the Board's standards, or (2) develop another system consistent with those standards. If the district and union, after good faith collective bargaining, could not agree on another system, and until any agreed-upon alternative was approved by the Department, the district would implement the model system. The proposed law would replace the current law under which evaluation standards may be set by collective bargaining at the local level, or by binding arbitration if the district and union cannot agree.

Any educator who received an unsatisfactory rating would either (1) be placed on an improvement plan for up to 1 year; or (2) at the educator's request, could request a second evaluator, who the school district would choose from a list set up by the

school district and the teachers' union, if any. All evaluators would have to take a training program set up by the Department.

If the second evaluator disagreed with the original evaluation, the superintendent would decide whether to require an improvement plan. After completion of an improvement plan, an evaluator would decide if the educator had achieved proficiency in all previously unsatisfactory areas, and an educator could request a second evaluator on that issue. If the second evaluator disagreed with the first, the superintendent would make the final decision. Under the proposed law, if a teacher with professional teacher status was dismissed for incompetence or failure to meet performance standards, or had received 2 overall unsatisfactory ratings in 5 years, the district would not have to offer a second improvement plan.

The proposed law provides that to be eligible for professional teacher status in a district, a teacher would have to serve full-time in that district for 3 years and be rated proficient or exemplary, on each standard and overall, in the third year. If a teacher did not obtain such ratings, the superintendent could, at the principal's recommendation, give the teacher a 1-year extension. A teacher could also obtain professional teacher status if the teacher recently held that status in another district, had voluntarily resigned from or was honorably dismissed by the other district, and had been rated at

least proficient, on each standard and overall, in the first year in the new district. A superintendent could no longer award professional teacher status based only on the recommendation of a principal in whose school a teacher had served for a year. The proposed law would eliminate the requirement that a teacher without professional teacher status be automatically appointed for the next school year unless notified otherwise by June 15th.

If a teacher with professional teacher status was dismissed for any reason and requested that an arbitrator review the dismissal, the arbitration hearing would have to begin within 75 days of the notice of dismissal and end within 120 days of the notice. At the arbitration hearing, evaluation documents would be treated as substantial evidence of the grounds for dismissal. In deciding whether the grounds for dismissal had been proven, the arbitrator would not consider a teacher's seniority or length of service. A school district and teachers' union could agree to have teacher dismissals reviewed by a panel of teachers and principals with a history of exemplary performance ratings, instead of an arbitrator, but the proposed law's other requirements for arbitration hearings would still apply.

The proposed law would require that decisions about hiring, transfers (including transfers when a regional school district is formed or dissolved), and layoffs, be based mainly on

certifications, merit and ability, including evaluations, and other factors related to job performance and the best interests of the students. Experience and seniority would be secondary. If 2 educators had equal certifications, merit and ability, and evaluations, seniority would be the deciding factor.

The proposed law would require that in hiring and transfers, the principal and educator must agree on the placement. The school district and the union would collectively bargain about how much paid leave, up to 1 year, to give a teacher who could not find an agreed-upon position in the district.

The proposed law would eliminate the current requirements that no professional teacher may be either (1) laid off due to a reduction in force or reorganization, if there is a teacher without such status for whose position the professional teacher is certified, or (2) displaced by a more senior professional teacher, unless that teacher is qualified for the junior teacher's position. The proposed law would eliminate certain educator transfer rights that apply when a regional school district is formed or dissolved.

The proposed law would take effect on January 1, 2013. It would not affect existing collective bargaining agreements, but would have to be followed in future agreements.