

**Analysis and Synopsis of Public Comment Concerning
Commonwealth of Massachusetts Virtual Schools (CMVS) Regulations CMR 52.00
Amendments to Special Education Regulations 603 CMR 28.00
Amendments to Innovation School Regulations 603 CMR 48.00**

March 25, 2014

Unless otherwise indicated, “regulations” refer to these proposed regulations, 603 CMR 52.00, as released for public comment on December 27, 2013. References to “the statute” are to G.L. c. 71, § 94. Positive comments are not included in this summary.

(highlight) identifies areas where the proposed regulations were updated.

| Section | Summary of Comments | ESE Response and Recommendation |
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| 52.02: Definitions | | |
| 52.02 Accountability Plan | Recommend adding “Goals should be measurable, achievable, and relevant to the purpose of the school and population served.” | The Department will provide guidance to help develop the Accountability Plan including specific guidelines for goals. |
| 52.02 Administrator | Recommend adding “, including statutory regulation for duties of certified administrative personnel” to help ensure the school has the right personnel managing public funding. | “Federal and state laws and regulations” includes this area. |
| 52.02 Applicant | Recommend adding language recognizing an existing Innovation Virtual School as an applicant and that the school would convert to a CMVS. Recommend requiring ten or more parents to apply for a certificate and include “guardians” with parents in (f) to mirror charter requirements. Recommend adding language from statute that private, parochial and for-profits cannot apply for a certificate. | All Commonwealth of Massachusetts virtual schools holding a certificate will be responsible for adhering to the regulations once they are effective. The statute specifies eligible applicants and expansion of these categories would require legislation. The statute specifies that private and parochial schools and for-profit entities cannot apply. The regulations reiterate this in 52.03(3). |

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| 52.02 Board of Trustees | <p>Recommend CMVS boards of trustees have the same requirements and limitations as public school committees and their members.</p> <p>Recommend adding boards of trustees shall be considered public employers for collective bargaining (applies to public school district or districts, an education collaborative, or public institution of higher education).</p> | <p>G.L. c. 71, § 94, authorizes the creation of Commonwealth virtual schools. The requirements and limitations for boards of trustees are different from those of school committees.</p> <p>Absent explicit legislative language in G.L. c. 71, § 94, matters of collective bargaining are covered by other statutes.</p> |
| 52.02 Certificate | <p>Recommend adding language recognizing the statute allows the board of trustees to oversee the governance and operations of the school consistent with regulations and terms in the certificate.</p> | <p>The statute, G.L. c. 71, § 94(a), defines certificate, and this regulation incorporates the statute by reference.</p> |
| 52.02 Commonwealth of Massachusetts Virtual School | <p>Recommend removing the term “virtual school” since it does not apply when the school is operated by a single school district enrolling only students residing in that district. Also, clarify the school operates under a certificate of organization issued by the Board.</p> <p>Recommend adding that the school is a tax exempt government instrumentality.</p> <p>Recommend providing clarity on the different types of virtual schools identified in statute.</p> | <p>The term “virtual school” in the proposed regulations refers only to Commonwealth of Massachusetts virtual schools; it does not refer to schools operated by a single school district as provided in G.L. c. 71, § 94(s). The statute deems the board of trustees of a Commonwealth virtual school to be a public agent authorized by the Commonwealth to supervise and control the school.</p> <p>The appointing authority for statewide Commonwealth of Massachusetts virtual schools, and for those operated only for the benefit of a specified group of school districts, is addressed in 52.06(1).</p> |
| 52.02 Online Course | <p>Recommend rewording since not all online courses will be “delivered” by a teacher.</p> <p>Recommend highlighting the course can be synchronous or asynchronous.</p> | <p><u>We have revised the definition to say “overseen” instead of “delivered”; all credit bearing courses will need some type of supervision. We have revised language to allow synchronous and asynchronous courses.</u></p> |
| 52.02 Terms of Certificate | <p>Recommend adding “in addition to those required by GL c. 71, §94(a) and its regulations 603 CMR 52.00.”</p> | <p>Terms of Certificate are unique to each virtual school and are in addition to other statutory and regulatory obligations.</p> |

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| 52.03: General Provisions | | |
| 52.03(2) Waivers | Two commenters recommend clarifying what “for good cause” means; term is too vague and open to opinion Recommend clarifying “...upon written request” - to whom? Recommend defining the threshold for “exceptional.” Recommend adding provision that regulations pursuant to terms of 30A should not be waived. | The Department will provide guidance to clarify terms. The statute designates the Board as the authorizer and decision maker in administering the statute. |
| 52.03(2)(b) Waivers | Recommend adding language to include the reason for the waiver request. | <u>We have revised the regulation to clarify that a waiver request should include the specific reason a waiver is sought.</u> |
| 52.03(2)(c) Waivers | Recommend adding “if applicable;” requiring a good faith effort has been made to comply with the guideline may not be relevant to the waiver request. | Efforts to comply, if any, are relevant to waiver requests. |
| 52.03(3) Prohibitions | Recommend adding clarity in the regulations or through guidance what “shall not charge students any fee related to the provision of required education programs” means. | The Department will provide guidance regarding student fees. |
| 52.03(4) Immediate Closure | Recommend the conditions for immediate closure should include provisions for relocating students which cannot be done “immediately.” Comment concerning ESE’s authority in relation to other agencies that may have the authority). Recommend adding language “Upon request by the local regulatory authority for health and safety code compliance.” | The Department will provide guidance regarding these issues on a case-by-case basis. The Department has experience with these issues in the charter school context. Federal and state law require all public school facilities to pass certain inspections to be programmatically accessible. The Department works with other agencies to assess conditions for immediate closure. |

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| 52.04: Applications for and Granting of Certificates | | |
| 52.04(2) Review Process | Recommend adding that the board “ <u>approves CMVS applications</u> and grants certificates.” | The granting of certificates is addressed in 52.04(4). |
| 52.04(3) Evaluation and Approval of Applications | Concern that some of the areas are redundant to the statute. | Some provisions deliberately reference the statute to clarify the evaluation of applications. |
| 52.04(3)(a) Application requirements | Recommend adding language specifically highlighting the need for virtual schools to meet the diverse needs of students, including those who are educationally disadvantaged, those with disabilities, including with an IEP under IDEA and MGL c. 71B, those protected under Section 504 and the ADA, those who are English language learners under MGL c. 71A, etc. as well as defining the criteria the Department will use to assess applicants’ capacity in this area. Recommend defining “educational programs.” | The statute already addresses these issues. Assurances signed by applicant groups ensure applicants are aware of their obligations to meet the diverse needs of students. Further guidance and oversight occurs prior to opening and through the accountability process. |
| 52.04(3)(b) Application requirements | Recommend adding language to ensure the virtual schools can provide FAPE to every child with an Individualized Education Program (IEP). Also include some guidance for both students with IEPs and English Language Learners. Recommend adding language to support requirements of ADA and Section 504 for students with disabilities under these federal laws and consistent with UDL principles. | The Department includes this information in the assurances signed by applicant groups. Updates to 603 CMR 28.00, Special Education, further address this. The Department will add Universal Design for Learning (UDL) principles to the application. |

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| 52.04(3)(c) Application requirements - enrollment projections | Concern with how this will be completed without guidance and startup funding from state or federal grants. | Applicants wishing to apply for a certificate should take funding into consideration. No federal or state grants currently exist to assist with startup funding for virtual schools in Massachusetts. Applicants may seek private grants and other funds. |
| 52.04(3)(d) Application requirements - management structure | Concern that virtual schools receive significantly less funding when compared to other public schools. Recommend including a management plan and a provision for goals being a product of funding. Concern that board of trustees is seen as an administrative body and not similar to the responsibilities of a school committee. | The statute restricts per pupil funding to no more than the state average per pupil foundation budget for students of the same classification and grade level. G.L. c. 71, § 94(k). G.L. c. 71, § 94(g), states virtual school students “shall be required to meet the same academic standards, testing and portfolio requirements set by the Board for students in other public schools.” The requirements and limitations for boards of trustees are different from those of school committees. |
| 52.04(3)(e) Application requirements - bylaws | Concern that Department may be over-reaching; can the school appeal if the Department’s guidelines and requirements are unreasonable? | The statute gives the Board the authority to promulgate regulations to implement and enforce the statute. G.L. c. 71, § 94(r). |
| 52.04(3)(f) Application requirements - performance standards | Recommend adding “virtual” to public schools to better accommodate for the student population. Recommend providing clarity on what student performance means (partner provider, etc.?). Concern this requirement conflicts with other elements of the law and of these proposed regulations where it is understood that the virtual school might serve a specific target group. Recommend Department provides additional guidance for specific preferences in the statute as well as encourages Mass Core completion. | G.L. c. 71, § 94(g), states virtual school students “shall be required to meet the same academic standards, testing and portfolio requirements set by the Board for students in other public schools.” The Department will provide guidance to clarify what is allowable for enrollment preferences. The Board specifies enrollment preferences in the Terms of Certificate. |

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| 52.04(3)(h) Application requirements - student learning time | Recommend removing “research-based;” instead require applicants to demonstrate that they will employ a “rigorous” competency-based model. Concern that provision is inconsistent because 52.03(2) cites “exceptional” circumstances. This language makes it sound routine to seek a waiver. | We have revised the regulation to replace “research-based” with “rigorous”. The statute includes a specific provision allowing the Board to waive student learning time requirements. G.L. c. 71, § 94(g). |
| 52.04(3)(l) Application requirements - public information | Concern that the regulations suggest unlimited, unspecified documentation and reporting requests. Virtual schools have reduced funding and limited administrative staffing. | The statute gives the Board authority to promulgate regulations to implement and enforce the statute. G.L. c. 71, § 94(r). The statute also authorizes the Board, in consultation with the Operational Services Division, to set tuition amounts; the Board may increase tuition if additional reporting requirements justify the need. This provision helps ensure the Department receives sufficient information and that virtual schools provide high quality programs. |
| 52.04(3) Recommended additions | Recommend adding “(m): to develop and implement a recruitment and retention plan that is designed to help sustain the engagement of its targeted students and maintain their enrollment until the successful completion of their courses.” Recommend adding “(n): to develop a professional development plan for all online teachers and teachers employed or under contract by a CMVS. Such professional development shall be consistent with the MA Standards for Professional Development.” | A recruitment and retention plan is not a statutory requirement; rather, an applicant must identify enrollment preferences. G.L. c. 71, § 94(c). The Department provides further guidance and oversight prior to opening and through the accountability process. We have revised the regulation to include a provision addressing professional development plans required by statute that are tied to the Massachusetts Standards for Professional Development. |
| 52.04(4)(d) Private and parochial schools | Recommend removing (d) to ensure public money is not spent on governing boards run by private or parochial schools. Applicant should not be able to establish facts to secure public funding. | The statute makes clear that private and parochial schools may not apply for a certificate. |

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| 52.04(5) Opening Procedures | Concern that conditions listed in 603 CMR 52.04 are already extensive. Why should the Board or Department add to the statutory conditions for opening and may schools appeal over-reaching conditions? | The statute gives the Board authority to promulgate regulations to implement and enforce the statute. G.L. c. 71, § 94(r). Standard opening procedures help to ensure all new virtual schools provide a rigorous and effective virtual public K-12 education. |
| 52.04(5)(a) Approval of proposed contract | Two commenters expressed concerns the Commissioner is over-reaching his authority by being allowed to approve contracts with third party vendors; the Commissioner should be limited to reviewing the contract. The statute does not give the Commissioner this authority and it is not done for traditional public schools. Schools should be allowed to hire their own business and legal consultation. Recommend that vendors go through a proven provider process based on record of success, including success with subgroups. Better define “substantially” to a percentage, for example 50%. | The statute gives the Board authority to promulgate regulations to implement and enforce the statute. G.L. c. 71, § 94(r). Because virtual schools are public schools and members of the board of trustees are not elected officials, this provision provides a check and balance. Charter school regulations have a similar provision that has worked well. |
| 52.04(5)(c) Expulsion of students | Recommend revising to a broader policy around student discipline and limiting denial of access to learning as a last resort and in circumstances in which the student is engaged in behavior that is violent and likely to cause serious injury to self or others. | We have revised the regulation to include the suspension policy. |
| 52.04(5)(d) Criminal background checks | Recommend adding documentation ensuring all teachers are “highly qualified” consistent with ESEA, IDEA and state laws. | The statute requires teachers to be licensed. As public schools, virtual schools must comply with IDEA, ESEA, and state law. |

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| <p>52.04(5)(e) Compliance documentation</p> | <p>Concern that other agencies already have statutory responsibility to oversee this; over-regulation will confuse statutory authority. Recommend requiring documentation that the online web-based delivery system is accessible to students with disabilities consistent with ADA and UDL.</p> | <p>The statute gives the Board authority to promulgate regulations to implement and enforce the statute. G.L. c. 71, § 94(r). Regulations balance accountability and autonomy to ensure virtual schools provide rigorous and effective education. Demonstrating compliance with accessibility requirements is addressed during the application review process and during ongoing oversight.</p> |
| <p>52.04(5) Add enrollment policy and recruitment plan</p> | <p>Recommend adding an enrollment policy and a recruitment and retention plan.</p> | <p>The statute includes provisions requiring proposed Commonwealth virtual schools to submit information regarding the school's admission process, outreach to prospective students, and services for students who are English language learners or who have a disability. G.L. c. 71, § 94(b)(4), (16), (19), (20). A recruitment and retention plan is not required by statute; rather, an applicant must identify enrollment preferences. G.L. c. 71, § 94(c).</p> |

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| 52.05: Student Recruitment, Enrollment, and Retention | | |
| 52.05(2) Student Recruitment and Retention | <p>Recommend change to retain “if applicable” since some students may attend for a temporary reason (for example recovering from surgery). It is not required that every virtual school replicate a typical public school, open to all students.</p> <p>Recommend changing to state that only schools designed and approved to address specific target populations may restrict initial lottery eligibility to target populations.</p> <p>Recommend changing strategy to plan, making requirement similar to charter schools.</p> <p>Recommend recruitment plan must include how instruction is to be made available so as to ensure equal educational opportunity to all students.</p> | <p>Preferences for admission are defined in the Terms of the Certificate. The statute includes provisions requiring proposed Commonwealth virtual schools to submit information regarding the school’s admission process, outreach to prospective students, and services for students who are English language learners or who have a disability. G.L. c. 71, § 94(b)(4), (16), (19), (20). A recruitment and retention plan is not required by statute; rather, an applicant must identify enrollment preferences. G.L. c. 71, § 94(c). As public schools, Commonwealth virtual schools are held to the requirements in G.L. c. 71, §37H3/4, and the related regulations.</p> |
| 52.05(3) Non-discrimination | <p>Recommend clarifying how this provision intersects with the ability to have target groups.</p> | <p>The Department will provide guidance.</p> |

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| 52.05(5) Enrollment Conditions | <p>Recommend allowing out of state students to enroll if there are unfilled seats, similar to traditional public schools. Why prevent any school from filling its available seats, particularly if Massachusetts law allows this?</p> <p>Recommend that the Board revisit the out of state prohibition in one year, once sufficient data exists to assess the quality and effectiveness of state virtual schools.</p> <p>Recommend allowing a virtual school to use a test to identify target students. The statement conflicts with section (15) wherein it states “Subsequent to enrolling a student, a CVS shall assess students with respect to their potential success in online learning.”</p> <p>Recommend adding language that requirements for enrollment cannot be used to discriminate against students (for example requiring attendance at informational meetings).</p> | <p>Currently state statutes only permit school committees to accept out of state students.</p> <p>A virtual school may not use tests to identify target students prior to enrollment. Section (15) allows the assessment of enrolled students.</p> <p><u>We have revised the regulation to add language to prohibit the use of attendance at informal meetings or interviews as a requirement in the enrollment process.</u></p> |
| 52.05(6)(b) Enrollment preferences | <p>Concern that this section conflicts with non-discrimination and being able to assess to verify students fall into specific target groups.</p> <p>Recommend enrollment should not be restricted to students who fall within categories included in the certificate.</p> | <p>For a student to be eligible for an enrollment preference, they must provide information indicating their eligibility during the enrollment process. A virtual school may not require information beyond what is necessary to establish an enrollment preference. The Department will provide guidance.</p> |
| 52.05(6)(b) Enrollment preferences | <p>Recommend adding a safeguard prior to a student being unenrolled; “stops attending for any reason” does not protect the student.</p> | <p>When a student stops attending, the school will be allowed to unenroll the student and fill the vacancy. Virtual schools will notify the sending district within 10 days.</p> |
| 52.05(7) Repeat Enrollment Process | <p>Concern that repeat enrollment process conflicts with waitlist. Parents should not have to reapply causing process delays filling available seats.</p> | <p><u>We have revised the regulation to include language addressing wait list and enrollment processes.</u></p> |

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| 52.05(10) Maximum Age Threshold | Recommend that the regulation reference existing state laws. | Broad statement mentioning “consistent with state and federal law” covers applicable laws. |
| 52.05(11) Enrollment Restrictions | Recommend clarifying if preschool enrollment and choice-in students are included in total enrollment (assume should not be). Also clarify if it is 1% attending a specific virtual school or all virtual schools in the Commonwealth. | The Department will provide guidance. |
| 52.05(12) Individual Online Course Enrollment | <p>Concern that students should not require resident school district permission to take a virtual course; approval should only be required if a student wants to replace a required district course, if they want their resident district to fund the course, or if they want the course integrated in their transcript. Otherwise, students are free to take courses at their own expense without any district approval.</p> <p>Counter-concern that allowing students to pay for an individual online course may create a divide between families that can/cannot afford to purchase an individual course.</p> | The Department will provide guidance. |
| 52.05(13) Establishing School District Enrollment | Four commenters recommend allowing the establishing district(s) or education collaborative districts to offer full-time and individual course enrollments for free or at least at a discount to students from the sponsoring district(s) or education collaborative. | <u>We have revised the regulation to remove the provision requiring the establishing district to pay the same fee. Allowable discounts will be outlined in guidance and defined in the Terms of the Certificate.</u> |

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| 52.05(14) Online Learning Experience | <p>Concern that this conflicts with 52.05(5) and may impact ability to identify students from target group(s). This provision requiring the virtual school to assess students with respect to potential success in online learning is quite important. It is not in a student’s interest to enroll if the student has a high risk for failure in this virtual education medium. But other rules conflict with this important requirement—a proposed rule that no assessment can be used to make enrollment decisions and a rule saying there can be no discrimination in acceptance, even with target groups.</p> <p>Recommend adding a provision to ensure the student cannot be counseled out.</p> | <p>The proposed regulation does not allow the school to refuse to enroll or to unenroll students based upon “potential success in online learning experiences”; rather, the virtual school must provide supports to alleviate the learning gaps before giving the student significant coursework. This assessment occurs after the student is enrolled.</p> |
| 52.05(15) Educational Tools | <p>Concern if the school is required to provide internet access and the student lives in an area without adequate internet or requires a significant upfront fee to get internet service. Can the regulations include a provision to require a student to have transportation to a facility with computer access? A virtual school will need a higher funding rate to accommodate this. Recommend that the virtual school shall provide such technology and materials free of charge to students who are eligible for free and reduced-price lunch and do not have computer equipment.</p> | <p>Public schools, including Commonwealth of Mass. Virtual Schools, must provide, at public expense, textbooks and other instructional materials and supplies intended for use and re-use over a period of years. G.L. c. 71, § 48. This requirement exists irrespective of family income. The Department will provide further guidance.</p> |

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| 52.06: Board of Trustees and Staff | | |
| 52.06(1) Responsibilities of Board of Trustees | <p>Recommend adding language to identify similarity to public school committees and explicitly mentioning they are considered a state government body or instrumentality.</p> <p>Recommend adding language about boards of trustees fulfilling their fiduciary responsibilities.</p> | <p>Boards of trustees are different from school committees and are governed by G.L. c. 71, § 94.</p> <p><u>We have revised the regulation by adding language to differentiate how members are appointed for statewide virtual schools versus one serving a specific group of school districts.</u></p> <p><u>We have also revised the regulation to address the fiduciary responsibilities of boards of trustees.</u></p> |
| 52.06(1)(b) Appoint new trustees | <p>Concern about requiring Commissioner’s approval of appointment of new trustee, but the school is supposed to be an autonomous, independent school and traditional school districts are not required to do this.</p> <p>Recommend changing regulation to just notifying Commissioner.</p> | <p>The statute gives the Board authority to promulgate regulations to implement and enforce the statute. G.L. c. 71, § 94(r). The regulations balance accountability and autonomy to ensure virtual schools provide rigorous and effective education. Because members of boards of trustees are not elected officials, this provides a check and balance.</p> |
| 52.06(3) Board of Trustees Training | <p>Two commenters expressed concern that the scope and timing of this training is unclear and potentially an over-reach unless it is the same training school committee members are required to take.</p> <p>Recommend allowing board of trustee members to receive compensation, similar to school committee members.</p> | <p>Boards of trustees are different from school committees and are governed by G.L. c. 71, § 94. Similar to charter schools’ boards of trustees, members of the board of trustees of a virtual school cannot be paid for their service. They may, however, receive reimbursement of reasonable expenses. Training is meant to ensure all board members have the mandatory ethics training and a solid foundation to oversee the virtual school.</p> |
| 52.06(4) Teacher License | <p>Recommend adding provision requiring teacher to be “highly qualified.”</p> | <p>The statute requires teachers to be licensed. As public schools, virtual schools must comply with ESEA and state law.</p> |

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| 52.06(5) Educator Evaluation | Recommend clarifying “all educators” (i.e., does it mean all certified teachers and administrators?) | “All educators” means all staff holding positions as educational professionals at the virtual school. The Department will provide guidance. |
| 52.07: Funding | | |
| 52.07(1) Funding | <p>Concern that 52.07(1) appears to be an Average Daily Membership (ADM) approach and 52.07(4) appears to be a Count Day approach. Which approach will be used to calculate student funding paid to the CMVS?</p> <p>Concern that a student transferring to a virtual school may have an IEP, but that IEP should be revisited to ensure it is appropriate for a virtual environment. The virtual school should have responsibility to initiate the meeting to clarify IEP services.</p> | <p>The Department will provide guidance regarding the payment process described in the regulations. The SIMS data collected includes days in membership to reflect how many days a student attended the virtual school. Adjustments to payments are made accordingly, http://www.doe.mass.edu/infoservices/data/sims/. Proposed regulations do not limit a virtual school’s ability to revisit a student’s IEP upon enrollment.</p> |
| 52.07(4) Monthly payments | <p>Two commenters expressed concern that requirement for a pre-enrollment report no later than May 1 (52.05(6)) will cause each virtual school to be underfunded for its first 5 months of school since many families make decisions later in the summer. Pre-enrollment report in the first year should at least be mid to late May.</p> <p>Recommend the Department conducts an additional enrollment check via SIMS data in January, not to impact the funding cycle, but as data for enrollment and retention rates.</p> <p>Concern that this provision incentivizes virtual schools to inflate target enrollment numbers so their cap is not reached.</p> | <p>A pre-enrollment report enables the Department and school districts to accurately assess enrollment numbers and requires schools to recruit students before the start of the next fiscal year. The Department subsequently adjusts tuition payments based upon the October 1 SIMS. The Department will set a deadline for submission of pre-enrollment data.</p> |

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| 52.07(5) Transportation | Two commenters expressed concern about what “arrange” means. It seems unreasonable to ask the virtual school to pay for transportation to tests for all of the virtual school’s students and the statute does not require that. Recommend change to “coordinate.” Recommend transportation to include accessing the virtual school’s courses in a location provided and overseen by the virtual school for students that are not taking course from home. | The Department will provide guidance regarding transportation. Virtual schools must ensure that students can access their courses. |
| 52.08: Reporting Requirements and Ongoing Review | | |
| 52.08(1) Annual Report | Recommend adding that each school shall make the annual report available on its website. | We have revised the regulation to require annual reports to be available on the school website. |
| 52.08(2) Accountability Reviews | Concern about the cost and time of an annual review. Traditional schools have much less frequent reviews. Recommend changing “may send evaluation teams...” to “shall send evaluation teams...” | No changes recommended due to the lack of evidence and contradictory comments. |
| 52.08(4) EoY Financial Report | Recommend adding language that once the Department defines requirements for the end-of-year report for the virtual school, the virtual school will be required to submit the report to avoid delays. | Virtual schools should close their books as of June 30 th . The Department will provide guidance regarding reporting. |
| 52.08(5) Pre-enrollment Report | Concern similar to those stated in 52.07 (4) about monthly payments | See response to 52.07(4) above. |
| 52.08(6) Enrollment Claim Forms | Recommend adding language that these are the same reports all public schools are required to submit. | Enrollment claim forms may evolve and include additional information for virtual schools. |

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| 52.08(7) Compliance | Concern about redundant messaging around building codes and concerns with conflicts of authority. See 52.03 (4) Immediate Closure comments. | The Department has experience with these issues in the charter school context. Federal and state law requires all public school facilities to pass certain inspections to be programmatically accessible. The Department works with other agencies to assess conditions for compliance. |
| 52.08(8) Investigations | Concern that two business days is unattainable and “significant” is too vague. Also concern that information sent to the Department becomes public record and some investigations may not be public. | <u>We have revised the regulation defining “significant matters.”</u> |
| 52.08(9) Notification of New Circumstances | Recommend keeping this provision and deleting 52.08(8). (9) subsumes (8), it seems. Recommend adding two additional circumstances: (g) decrease in enrollment more than 10%; (h) decrease in percentage of students successfully completing online courses (including subgroups) | This provision specifically addresses the material terms of a school’s certificate; investigations are not a material term. <u>We have revised the regulation to include a decrease in enrollment of more than 10% as a circumstance.</u> |

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| 52.08(10) Additional Information and Reports | Concern about costs of additional reports and information, and virtual schools are funded below traditional schools that have fewer reporting requirements. | The statute gives the Board authority to promulgate regulations to implement and enforce the statute. G.L. c. 71, § 94(r). The statute also authorizes the Board, in consultation with the Operational Services Division, to set tuition amounts; the Board may increase tuition if additional reporting requirements justify the need. This provision helps ensure the Department receives sufficient information and that virtual schools provide high quality programs. |
| 52.10: Amendments of Certificates | | |
| 52.10(2) Amendments Requiring Commissioner Approval | Recommend grammatical change to include the preposition “to”. | We have revised the regulation. |
| 52.11: Renewal of Certificates | | |
| 52.11(2) Renewal Guidelines | Concern that “evidence of academic success for all students is essential for renewal” is too broad. Should include more focus on annual goals and serving targeted groups. | The statute states virtual school students “shall be required to meet the same academic standards, testing and portfolio requirements set by the Board for students in other public schools.” G.L. c. 71, § 94(g). While annual goals and serving targeted groups will be taken into consideration, a virtual school must meet the same academic standards as all public schools in the Commonwealth. |

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| 52.12: Conditions, Probation, Suspension, Revocation, and Non-Renewal | | |
| 52.12(1) Conditions | Concern that implementation of conditions could cost money. Who will be providing additional funding to meeting conditions? | The statute gives the Board authority to promulgate regulations to implement and enforce the statute. G.L. c. 71, § 94(r). Because virtual schools are a new initiative in Massachusetts, this provision enables the Department to provide adequate oversight and balance accountability with autonomy. |
| 52.12(3)(a) Academic success | Concern similar to 52.11(2), lack of evidence of academic success should reflect the student population and the achievement of annual goals. | The statute states virtual school students “shall be required to meet the same academic standards, testing and portfolio requirements set by the Board for students in other public schools.” G.L. c. 71, § 94(g). While annual goals and serving targeted groups will be taken into consideration, a virtual school must meet the same academic standards as all public schools in the Commonwealth. |
| Other Areas for 603 CMR 52.00: Commonwealth of Massachusetts Virtual Schools | | |
| Various | Concern there is no provision for higher per pupil funding for high school students. | Proposed regulations do not prohibit higher per pupil funding for high school students. Per pupil funding is set by the Board and defined in the Terms of Certificate. |
| Various | Concern that it’s unclear when the new regulations will go into effect for existing schools. Will the 2% cap for GCVS remain through the end of the certificate? | New regulations apply to all virtual schools, including existing schools, upon taking effect. GCVS must enroll at least 2% of its students from Greenfield through the end of the school’s current certificate, June 30, 2016. If the school chooses to submit a renewal application, subsequent certificates will require GCVS to enroll at least 5% of its students from Greenfield, as required by statute. |
| Various | Recommend additional guidance on partnering with sending districts on IEPs. | The Department will provide guidance. |

| Section | Summary of Comments | ESE Response and Recommendation |
|----------------|--|---|
| Various | Recommend clear expectations for a sending district's "cumulative folder" being transferred. | Virtual schools will follow the same requirements as all public schools, see 603 CMR 23.00. If a sending district is not providing information in a timely manner, the virtual school may file a complaint with Program Quality Assurance Services in the Department. |
| Various | Recommend provision to allow students to participate in the student's sending district's extracurricular programs at the sending district's discretion without penalty or forfeiture. | Virtual schools may work with sending districts to allow students to participate in extracurricular activities. Some activities may be subject to MIAA restrictions. |
| Various | Concern that cumulative burden of new regulations will discourage future virtual schools. | The statute gives the Board authority to promulgate regulations to implement and enforce the statute. G.L. c. 71, § 94(r). The regulations balance accountability with autonomy. |
| Various | Concern there is no clear mention of providing instruction consistent with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act accessibility for students with disabilities. | All virtual schools must comply with state and federal law. |

| Section | Summary of Comments | ESE Response and Recommendation |
|---------------------------------------|--|---|
| Various | Concern there is no clear mention of ensuring virtual schools have a framework for delivering effective teaching and instruction consistent with UDL principles. | The Department will add Universal Design for Learning principles to the application. |
| SPED Regulations 603 CMR 28.00 | | |
| | 602 CMR 28.10(6) | |
| 28.10(6) Program School | Recommend moving “Commonwealth of Massachusetts virtual schools” from the program schools out-of-district placement section to the school choice section of the Special Education Regulations. From 28.10(a) to 28.10(b), since the virtual school acts similarly to a “school choice” district. | The virtual schools statute better aligns to the out-of-district placement model. <u>See</u> G.L. c. 71, § 94(h). |

| Section | Summary of Comments | ESE Response and Recommendation |
|---|--|---|
| | 602 CMR 28.10(6)(a)(1) | |
| 28.10(6)(a)(1) schedule meeting with sending districts | <p>Recommend that representative(s) from the sending district be <u>required</u> to, (rather than “invited” to) participate as a member of the placement team for the <u>first</u> transition meeting held by the virtual school. Participation of the school district should be optional thereafter.</p> <p>Conflicting recommendation to remove requirement for inviting representatives of the school district where the student resides, since this could lead to impediment to enrolling and serving the student in a timely manner. The Board of Trustees and virtual school staff should be accountable for the proper placement process of special education students.</p> | <p>The Department expects sending districts and virtual schools to act in the best interests of students. The regulation, consistent with the statute, requires the virtual school to invite representatives from the sending district.</p> |

Appendix: Public Comment Sources

1. Digital Learning Advisory Council
 - a. Kevin Bauman, Senior Director of Product Management, Penn Foster
 - b. Wiley Cordone, Online Content Developer and Parent of Virtual School Student, Remilon LLC
 - c. Dr. Edward W. Costa II, Superintendent, Lenox Public Schools
 - d. Melissa Dodd, Chief of Staff, Boston Public Schools
 - e. Jeffrey A. Elliott, President/CEO, The VHS Collaborative
 - f. Amy A. Gracia, English and Special Education Teacher, Greater New Bedford Regional Vocational Technical High School
 - g. Fred Haas, Teacher of English, Hopkinton High School
 - h. Michael Horn, Co-Founder and Executive Director, Education Clayton Christensen Institute for Disruptive Innovation
 - i. Julia Freeland, Research Fellow in Education, Clayton Christensen Institute for Disruptive Innovation
 - j. Sam Catherine Johnston, Research Scientist, Center for Applied Special Technology (CAST)
 - k. Justin Reich L., Menschel HarvardX Research Fellow, Berkman Center for Internet & Society Fellow, Harvard University
 - l. Peter Sanchioni, Superintendent, Natick Public Schools
 - m. Annamaria Schrimpf, Director of Education Technology, Minuteman Regional High School
 - n. Kyle W. Shachmut, Technology Consultant, Lynch School of Education, Boston College
 - o. Evelyn S. Thoren, Vice-Chair, Chelmsford School Committee
 - p. Paul Toner, President, Massachusetts Teachers Association
 - q. Barbara Treacy, Director, EdTech Leaders Online Education Development Center
2. MA Virtual Academy at Greenfield Commonwealth Virtual School (GCVS)
 - a. Carl Tillona, Executive Director
 - b. Paul Basset, board member
 - c. Ryan Clepper, Head Program Administrator
3. The Education Cooperative (TEC)
 - a. Elizabeth McGonagle, Executive Director
4. Previous MAVA Virtual Innovation School Administrator
 - a. Susan Hollins, Superintendent
5. Connections Academy
 - a. David Schmidt, Vice President

6. Center for Law and Education www.cleweb.org
 - a. Kathleen B. Boundy, Co-Director

7. Massachusetts Teachers Association
 - a. Paul F. Toner, President
 - b. Timothy Sullivan, Vice President
 - c. Ann Clarke, Executive Director-Treasurer