

	Proposed Revisions to 603 CMR 28.00	Public Comment
PROPOSED REVISIONS TO COMPLY WITH FEDERAL LAW		
1	<p><u>28.07(1): Parent Consent</u> Through 28.07(1)(a)(3) – unchanged</p> <p style="padding-left: 40px;"><u>4. A parent may discontinue special education and related services provided to his or her child by notifying the school district in writing that the parent revokes consent to the continued provision of all special education and related services to the child. The school district shall respond promptly by sending notice to the parent of the district’s intention to discontinue all special education and related services to the student 10 school days from the date of the school district’s notice based on the parent’s revocation of consent. The school district may not challenge the parent’s decision through the dispute resolution processes provided under 603 CMR 28.08. Nothing in this regulation shall prevent a school district and a parent from meeting to discuss discontinuation of all special education and related services provided the parent’s participation is voluntary.</u></p> <p>(b) If, subsequent to initial evaluation and initial placement, ... after consideration, the school district determines that the parent’s failure or refusal to consent will result in a denial of a free appropriate public education to the student, it shall seek resolution of the dispute through the procedures provided in 603 CMR 28.08. . . . <u>This provision shall not apply if the parent has revoked consent to all special education and related services as provided in 603 CMR 28.07(1)(a)(4).</u></p> <p>(c) When the participation or consent of the parent is required and the parent fails or refuses to participate, the school district shall make and document multiple efforts to contact the parent. . . . If the above efforts are attempted and</p>	<p><u>No comments on 603 CMR 28.07(1)(a)(4); (b) or (c).</u></p>

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	<p>documented and the district is unable to secure parental consent to a reevaluation or placement subsequent to the initial placement in a special education program, the school district shall proceed in accordance with 603 CMR 28.07(1)(b). <u>This provision shall not apply if the parent has revoked consent to all special education and related services as provided in 603 CMR 28.07(1)(a)(4).</u></p> <p>(d) Nothing in 603 CMR 28.07(1) shall prevent a school district from making a court referral for appropriate action.</p>	<p><u>One comment on deletion of 603 CMR 28.07(1)(d):</u> Recommends that language in (1)(d) be retained. States that deletion of (d) might be interpreted to limit court access by schools for truancy or delinquency matters, or child abuse.</p> <p><u>Response:</u> The Department (ESE) does not recommend retaining (1)(d). Authority exists under other state statutes to pursue court actions. Moreover, retaining the language in this regulation may cause confusion in light of the statements immediately preceding regarding parental consent rights, including the right to reject continued special education services in their entirety.</p>
<p>2</p>	<p><u>28.08(3) Bureau of Special Education Appeals: Jurisdiction</u> In order to provide for the resolution of differences of opinion among school districts, private schools, parents, and state agencies, the Bureau of Special Education Appeals, pursuant to G.L. c.71B, §2A located with the Department, shall conduct mediations and hearings to resolve such disputes. The jurisdiction of the Bureau of Special Education Appeals over state agencies, however, shall be exercised consistent with 34 CFR §300.154(a). The hearing officer may determine, in accordance with the rules, regulations and policies of the respective agencies, that services shall be provided by the Department of <u>Children and Families Social Services</u>, the Department of <u>Developmental Disabilities Mental Retardation</u>, the Department of Mental Health, the Department of Public Health, or any other state agency or program, in addition to the IEP services provided by the school district.</p>	<p><u>One comment from the BSEA.</u> The Director suggests that the Department be added to the string of agencies listed in this provision.</p> <p><u>Response:</u> ESE does not recommend the suggested change. This regulation lists the non-educational (health and human services) agencies over which the BSEA may exercise jurisdiction.</p>

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	<p>...</p> <p>(c) A school district may not request a hearing on a parent's failure or refusal to consent to initial evaluation or initial placement of a student in a special education program, <u>or on a parent's decision to revoke consent to the continued provision of all special education and related services to his or her child under 603 CMR 28.07(1)(a)(4).</u></p>	
PROPOSED REVISION CONSISTENT WITH ESTABLISHED POLICY		
3	<p>(18) <i>Related services</i> shall have the meaning set forth in federal special education law at 34 CFR §300.34. <u>Individuals providing interpreting services for students who are deaf or hard of hearing shall be registered with the Massachusetts Commission for the Deaf and Hard of Hearing.</u></p>	<p><u>Four comments:</u> Four individuals strongly supported the proposed language, indicating that it was a critical first step to setting performance requirements for interpreters.</p> <p><u>Response:</u> None required.</p>
PROPOSED REVISION FOR CLARITY		
4	<p><u>28.04(5)(d) Independent Education Evaluations</u></p> <p>(d) If the parent is requesting an independent education evaluation in an area not assessed by the school district . . . the school district shall respond in accordance with the requirements of federal law. <u>Within five school days, the district shall either agree to pay for the independent education evaluation or within five school days, proceed to the Bureau of Special Education Appeals to show that its evaluation was comprehensive and appropriate. . .</u></p>	<p><u>One comment from the Bureau of Special Education Appeals.</u></p> <p>The BSEA director suggests amending the regulation to make clear that the district must respond in five days if the parent disputes the evaluations conducted by the district.</p> <p><u>Response:</u> ESE does not recommend the suggested change because it is outside the scope of the proposed amendment.</p>
PROPOSED REVISIONS FOR CONTINUITY OF PROGRAMMATIC RESPONSIBILITY FOR CERTAIN STUDENTS		
5	<p><u>28.06(9): Educational Services in Institutional Settings. . .</u></p> <p>(a) <u>Decisions about admission to and discharge from institutional facilities are within the</u></p>	<p><u>No comments on 603 CMR 28.06(9)</u></p>

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	<p><u>authority of institution administrators, not the school district. However, Public-school districts are not relieved of their obligations to students in such settings. Although admission and discharge decisions in such facilities are not within the jurisdiction of the public school district, students in institutional settings remain the responsibility of the school district where the father, mother or legal guardian resides and School districts are responsible for students in institutional settings in accordance with 603 CMR 28.10. Such students have the same rights for referral, evaluation, and the provision of special education in accordance with state and federal law as students in public schools.</u></p> <p>(b) No changes proposed.</p> <p>(c) Where a student's IEP requires a type or amount of service that the facility does not provide, it shall remain the responsibility of the school district where the father, mother or legal guardian resides, <u>except as provided in 603 CMR 28.10(3)(c)(1 & 2),</u> to implement the student's IEP by arranging and paying for the provision of such services.</p> <p>(d) <u>The responsible school district where the father, mother or legal guardian resides shall be responsible to coordinate with the Department and to ensure that the student receives an evaluation, an annual review, and special education services as identified by the Team at a Team meeting convened by the responsible parent's school district. The Department shall participate in Team meetings for any student receiving special education services in an institutional setting. To the extent that special education services are provided by the Department in such facilities, the Department will make every effort to provide services consistent with the student's IEP and available resources.</u></p>	
6	<p><u>28.10(3): School district responsibility based on residence of parent(s) or legal guardian</u></p> <p>(c) When a student lives and receives</p>	<p><u>No comments on 603 CMR 28.10(3)(c) or (d).</u> However, the Department recommends</p>

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	<p>educational services in an <u>institutional residential</u> facility operated by or, through contract, authorized by the Department of Mental Health, the Department of Public Health, the Department of Youth Services, or the Department of Correction or County House of Correction, <u>the school district where the parent(s) or legal guardian resides shall have both programmatic and financial responsibility except as provided below.</u> In certain of these facilities, the Department of Education may provide special education services, subject to appropriation and resource availability. The responsible school district shall coordinate with the Department to ensure that the student receives an evaluation, an annual review, and special education services as identified by the Team at a Team meeting convened by the school district. The responsible school district is not relieved of its obligations under state and federal special education law because the student is being served by the Department of Education or any other state agency.</p> <ol style="list-style-type: none"> 1. <u>If an eligible student requiring in-district services had been placed or resided in a Department of Children and Families foster home for at least three months before entering the institutional facility, the school district where the foster home is located shall remain programmatically responsible and the school district where the parents reside shall be financially responsible.</u> 2. <u>If a student is 18 years of age or older and has established his or her own residence as an adult, the school district where the student resided prior to entering the institutional facility shall remain programmatically and financially responsible.</u> <p>(d) When a student whose IEP requires in-district services is placed by the Department of Social Services <u>Children and Families</u> in an</p>	<p>changing "...school district where the foster home is located," previously proposed in (c)(1), to "the school district in which the student was enrolled before entering the facility." This will more effectively achieve the policy goal that the district serving the student at the time the student enters the facility continues to be programmatically responsible while the student is in the institutional setting.</p>

April 2011 Public Comment on Proposed Revisions to Regulations (Special Education)

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	approved residential school. . . .	

	Proposed Revisions to 603 CMR 7.00	Comments
PROPOSED REVISIONS TO LICENSURE DUE TO STATUTORY CHANGE		
1	<p><u>7.02 Definitions:</u></p> <p>As used in 603 CMR 7.00, the following terms shall have the following meanings:</p> <p style="padding-left: 40px;"><u>Alternative and augmentative communication:</u> <u>Methods of communication other than oral speech that enhance or replace conventional forms of expressive and receptive communication to facilitate interaction by and with persons with disabilities who are nonverbal or have limited speech, including, but not limited to: specialized gestures and signs; communication aids such as charts, symbol systems, visual supports, and language boards; mouth sticks; facilitated communication; and electronic communication devices such as switches, head pointers, eye tracking, dynamic displays, auditory scanning, and voice output devices.</u></p> <p style="padding-left: 40px;"><u>Assistive Technology:</u> <u>Assistive technology devices and services as defined under the Individual with Disabilities Education Act, 20 USC §§1401(1),1401(2); 34 CFR §§300.5, 300.6.</u></p>	<p><u>Two comments:</u> Two individuals indicated that the definitions were necessary and helpful. One commenter, a doctoral student and instructor at a local university, strongly objected to the inclusion of “facilitated communication” in the definition of “alternative and augmentative communication,” indicating that messages sent through this form of communication have not been scientifically validated and that major professional organizations, such as the American Psychiatric Association, the American Academy of Pediatrics, and the American Speech-Language-Hearing Association, have issued position or policy statements against the use of facilitated communication.</p> <p><u>Response:</u> In light of the unsettled opinion in this area, we recommend deleting the specific reference in this list.</p>
2	<p><u>7.03: Educator Preparation Program Approval</u></p> <p style="padding-left: 40px;">(7) Implementation</p> <p style="padding-left: 40px;">...</p> <p style="padding-left: 80px;"><u>(d) Approved Programs leading to the following licenses must address the requirements set forth in</u></p>	<p><u>No comments on 603 CMR 7.03(7)(d).</u></p>

	<p><u>7.06(25)(d)(4) and 7.06(26)(b)12 by August 31, 2011: Teachers of Students with Moderate and Teachers of Students with Severe Disabilities.</u></p>	
<p>3</p>	<p><u>7.06(25) Teacher of Students with Moderate Disabilities (Levels: PreK-8; 5-12) . . .</u></p> <p>(d) The following topics shall be included in an approved program but will not be addressed on a test of subject matter knowledge:</p> <ol style="list-style-type: none"> 1. Educational terminology for students with mild to moderate disabilities. 2. Preparation, implementation, and evaluation of Individualized Education Programs (IEPs). 3. Design or modification of curriculum, instructional materials, and general education classroom environments for students with moderate disabilities. 4. <u>Instruction on the appropriate use of augmentative and alternative communication and other assistive technologies.</u> 5. . . . 	<p><u>Four comments:</u> All support inclusion of the proposed language in 7.06(25) and 7.06(26). State Senator Cynthia Stone Creem, State Representative Garrett J. Bradley and the Disability Law Center proposed additional detailed language, recommended by Massachusetts Advocates for Children during the informal comment period, to be added to 7.06(25)(d)4 and 7.06(26)(b)12.</p> <p><u>Response:</u> ESE does not recommend the suggested change. Adding the proposed level of detail to regulation is unnecessary, inconsistent with the more broadly stated topic areas throughout this regulation, and may be duplicative of areas covered under current (d)1, (d) 2 and (d) 3. The Department will provide information to teacher preparation programs that will be developing the coursework to respond to these new requirements, and is prepared to include the areas of instruction suggested by the commenters.</p>
<p>4</p>	<p><u>7.06(26) Teacher of Students with Severe Disabilities (Levels; All) . . .</u></p> <p>(b) The following topics shall be included in an approved program but will not be addressed on a test of subject matter knowledge:</p> <p>...</p> <ol style="list-style-type: none"> 12. <u>Instruction on the appropriate use of augmentative and alternative communication and other assistive technologies.</u> 	
<p>5</p>	<p>7.14 General Provisions</p> <p>(14) Implementation</p>	<p><u>No comments on 603 CMR 7.14(14)(h).</u></p>

	<p>...</p> <p><u>(h) Individuals who apply and complete all requirements for initial or preliminary licensure as a Teacher of Students with Moderate Disabilities prior to August 31, 2012, may qualify for an initial or preliminary license by meeting the requirements under 603 CMR 7.06 (25) in effect prior to July 1, 2011.</u></p> <p><u>(i) Individuals who apply and complete all requirements for initial or preliminary licensure as a Teacher of Students with Severe Disabilities prior to August 31, 2012, may qualify for an initial or preliminary license by meeting the requirements under 603 CMR 7.06 (26) in effect prior to July 1, 2011.</u></p>	
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