

**PROPOSED FINAL REGULATIONS FOR  
COMMONWEALTH OF MASSACHUSETTS VIRTUAL SCHOOLS**

**603 CMR 52.00**

- Presented to the Board of Elementary and Secondary Education for initial review and vote to solicit public comment: **December 17, 2013**
- Period of public comment: **through January 24, 2014**
- Final action by the Board of Elementary and Secondary Education anticipated: **March 25, 2014**

**603 CMR 52.00**

**Commonwealth of Massachusetts Virtual Schools**

**Section:**

<b>52.01:</b>	<b>Authority and Purpose</b> .....	<b>1</b>
<b>52.02:</b>	<b>Definitions</b> .....	<b>2</b>
<b>52.03:</b>	<b>General Provisions</b> .....	<b>3</b>
<b>52.04:</b>	<b>Applications for and Granting of Certificates</b> .....	<b>4</b>
<b>52.05:</b>	<b>Student Recruitment, Enrollment, and Retention</b> .....	<b>7</b>
<b>52.06:</b>	<b>Board of Trustees and Staff</b> .....	<b>10</b>
<b>52.07:</b>	<b>Funding</b> .....	<b>12</b>
<b>52.08:</b>	<b>Reporting Requirements and Ongoing Review</b> .....	<b>13</b>
<b>52.09:</b>	<b>Complaint Procedure</b> .....	<b>15</b>
<b>52.10:</b>	<b>Amendments of Certificates</b> .....	<b>16</b>
<b>52.11:</b>	<b>Renewal of Certificates</b> .....	<b>17</b>
<b>52.12:</b>	<b>Conditions, Probation, Suspension, Revocation, and Non-Renewal</b> .....	<b>17</b>
<b>52.13:</b>	<b>Severability Clause</b> .....	<b>19</b>

---

**52.01: Authority and Purpose**

- (1) Authority. 603 CMR 52.00 is promulgated under the authority of M.G.L. c. 69, § 1B; and M.G.L. c. 71, § 94.
- (2) Purpose. The purpose of 603 CMR 52.00 is to provide uniform rules and procedures governing the establishment and operation of Commonwealth of Massachusetts virtual schools.

## 52.02: Definitions

As used in 603 CMR 52.00, unless the context clearly requires otherwise, terms shall have the following meanings:

**Accountability Plan.** A Commonwealth of Massachusetts virtual school creates an Accountability plan by the end of its first year of operation in accordance with guidelines issued by the Department. An Accountability Plan articulates the goals the virtual school has set to measure its success.

**Administrator.** Any individual duly authorized by a Commonwealth of Massachusetts virtual school's board of trustees to manage the programs and operations of the Commonwealth of Massachusetts virtual school in accordance with its certificate and in compliance with federal and state laws and regulations.

**Applicant.** A Commonwealth of Massachusetts virtual school applicant shall include but is not limited to:

- (a) a public school district or districts;
- (b) an education collaborative;
- (c) an institution of higher education;
- (d) a non-profit entity;
- (e) two or more certified teachers; or
- (f) parents.

**Application Cycle.** The period beginning with the availability of application information and extending through the receipt of Commonwealth of Massachusetts virtual school applications for review, ending when the Board of Elementary and Secondary Education makes final decisions on awarding certificates. The various stages of the application cycle occur in accordance with the schedule established by the Department of Elementary and Secondary Education.

**Applicant District.** A district, group of districts, or an education collaborative that submit a Commonwealth of Massachusetts virtual school application. Not less than five percent of the students enrolled in a statewide Commonwealth of Massachusetts virtual school shall be from the applicant district or districts.

**Board.** The Board of Elementary and Secondary Education or a personal duly authorized by the Board of Elementary and Secondary Education.

**Board of Trustees.** Public agents authorized by the state to supervise and oversee a Commonwealth of Massachusetts virtual school. Boards of trustees shall be considered public employers for purposes of tort liability under M.G.L. c. 258.

**Certificate.** As defined in G.L. c. 71, § 94(a).

Commissioner. The Commissioner of Elementary and Secondary Education or the Commissioner's designee.

Commonwealth of Massachusetts Virtual School ("virtual school" or "school"). A Commonwealth virtual school as defined in G.L. c. 71, § 94(a). A virtual school is a public school operated by a board of trustees whose teachers primarily teach from a remote location using the internet or other computer-based methods and whose students are not required to be located at the physical premises of the school.

Department. As defined in G.L. c. 71, § 94(a).

Education Collaborative. As defined in G.L. c. 71, § 94(a).

Online Course. A course overseen by a teacher who primarily teaches from a remote location using the internet or other computer-based methods and whose students are not required to be located at the same physical premises as the teacher. An online course may include synchronous and asynchronous instruction.

Sending District or District of Residence. A Massachusetts city, town, or regional school district in which a Commonwealth of Massachusetts virtual school student resides and where the student has a right to attend a public school.

Sibling. Persons who have a common parent, either biologically or legally through adoption.

Terms of Certificate. Those material terms specified by the Board with the granting of a certificate.

Modification of the terms by a Commonwealth of Massachusetts virtual school requires requesting an amendment pursuant to 603 CMR 52.00.

### **52.03: General Provisions**

- (1) Administrative Bulletins. The Board and the Department may, from time to time, issue advisories to interpret, implement, and provide guidance to Commonwealth of Massachusetts virtual schools.
- (2) Waivers. The Board may waive provisions of 603 CMR 52.00 for good cause. If an applicant or Commonwealth of Massachusetts virtual school board of trustees makes a written request for a waiver, the Board may waive the applicability of one or more provisions of 603 CMR 52.00. These waivers shall be granted only under circumstances the Board deems exceptional and such waivers shall be granted only to the extent allowed by law. All such requests from the applicant or a board of trustees must:

- (a) be in writing, signed by the waiver applicant;
  - (b) specify the provisions of 603 CMR 52.00 to be waived, the duration of the waiver, the circumstances to which the waiver applies, and the specific reason why a waiver is sought;
  - (c) include a certification that the waiver applicant has made a good faith effort to comply with said provisions; and
  - (d) be accompanied by supporting documentation considered sufficient by the Board to support the special circumstances or the need for relief.
- (3) Prohibitions. Commonwealth of Massachusetts virtual schools shall not charge students an application fee or tuition. Commonwealth of Massachusetts virtual schools shall not charge students any fee related to the provision of required educational programs. Commonwealth of Massachusetts virtual schools may not charge any public school for the use of their curriculum, subject to the restrictions contained in any contract between Commonwealth of Massachusetts virtual schools and any vendors. Private and parochial schools and for-profit entities may not apply for a certificate.
- (4) Immediate Closure. The Commissioner may order immediate closure of a Commonwealth of Massachusetts virtual school where the health, safety, or education of the virtual school's students is at risk. Additionally, the Commissioner may order immediate closure of a facility owned or leased by or for a Commonwealth of Massachusetts virtual school where fire, health, or safety codes, regulations, laws, or accessibility requirements are not met.

**52.04: Applications for and Granting of Certificates**

- (1) Commonwealth of Massachusetts virtual school Application Process. Applicants shall submit to the Department application materials in accordance with the schedule, application form, and guidelines established by the Department. Applications for Commonwealth of Massachusetts virtual schools must be submitted by the deadline established by the Department to be considered. The application must address the requirements in M.G.L. c. 71 § 94(b), as well as other criteria required by the application.
- (2) Review Process. The Department shall review application materials submitted in accordance with established deadlines. The role of any reviewer is solely advisory. Application materials will be reviewed and evaluated in accordance with criteria outlined in 603 CMR 52.05 and in the application itself. The Department will hold a public hearing, solicit public comments, and conduct interviews with all applicants in order to better assess their qualifications and capacity to start and operate a Commonwealth of Massachusetts virtual school.

- (3) Evaluation and Approval of Applications. The Department reviews applications to ensure that the applicant has, at a minimum, demonstrated the ability:
- (a) to address all of the requirements included in M.G.L. c. 71, § 94, including the identification of educational programs identified in the statute;
  - (b) to conform with M.G.L. c. 71, § 94, and all other applicable laws and regulations including, but not limited to, those related to English learners and students with disabilities and any guidelines issued by the Department;
  - (c) to meet its enrollment projections through demonstration of support for the proposed Commonwealth of Massachusetts virtual school;
  - (d) to develop a management structure and plan which enables the virtual school to achieve its goals and mission, including information about proposed board members and the selection, roles, and responsibilities of the board of trustees;
  - (e) to develop bylaws that govern the board of trustees consistent with M.G.L. c. 71, § 94, 603 CMR 52.00, and guidelines issued by the Department;
  - (f) to assure that students will meet the same performance standards and assessment requirements set by the Board for students in other public schools;
  - (g) to involve parents and guardians as partners in the education of their children;
  - (h) to establish a method for tracking student learning time that is acceptable to the Department or, if a waiver of those requirements is requested, a rigorous competency based model;
  - (i) to develop an accountability plan that meets criteria established by the Department, setting specific performance objectives to measure the virtual school's progress and success in raising student achievement, establishing a viable organization, and fulfilling the terms of its certificate;
  - (j) to administer its educational programs, school operations, and finances effectively;
  - (k) to develop a professional development plan for all online teachers, such professional development shall be consistent with the Massachusetts Standards for Professional Development;
  - (l) to develop an online learning experience for enrolled students to better prepare them to be a successful online learner; and
  - (m) to establish a process to provide to students, parents and guardians, the Board, other interested parties, and the public all information required by law and regulation, as well as to provide other information the Board may request.

If a certificate is granted, the drafts of documents submitted during the application process are subject to Department review and approval during the opening procedures process and must meet the additional requirements in 603 CMR 52.04.

- (4) Granting of Certificates. The Board shall grant certificates to boards of trustees under M.G.L. c. 71 § 94, with such conditions as the Board specifies.
- (a) A certificate granted by the Board shall be effective for three to five years, beginning July 1 of the first fiscal year in which the virtual school enrolls students, unless revoked pursuant to M.G.L. c. 71 § 94 and 603 CMR 52.12. If no students are attending a Commonwealth of Massachusetts virtual school within 19 months from the date the certificate was granted, the certificate will be null and void, unless an extension is granted by the Commissioner.
  - (b) Should the Board elect to award fewer than the number of certificates specified under M.G.L. c. 71 § 94, in any given cycle, the Board may grant those certificates not awarded in subsequent application cycles in addition to the number of certificates scheduled to be awarded and notwithstanding any limitations on the number of new certificates authorized in such year.
  - (c) The Board may award any certificate revoked or returned to the Board in subsequent application cycles in addition to the number of certificates scheduled to be awarded and notwithstanding any limitations on the number of new certificates authorized in such year.
  - (d) Private and parochial schools shall not be eligible for status as a Commonwealth of Massachusetts virtual school. If members of an applicant group are on the governing board or management of a private or parochial school that plans to close or closes around the time of seeking a certificate, it creates a rebuttable presumption that the private or parochial school seeks a certificate for the purpose of securing public funding. To rebut this presumption, the applicant group must establish facts sufficient for the Department to determine that funding is not the primary reason they are seeking a certificate while the private or parochial school is closing. In making a determination, the Department will compare the governance, management, and other characteristics of the private or parochial school and the governance, management, and other characteristics of the Commonwealth of Massachusetts virtual school, including but not limited to curriculum, student body, staff, leadership, location, and the financial plan for the virtual school.
- (5) Conditions for Opening New Commonwealth of Massachusetts virtual schools. Certificates shall be awarded subject to the conditions listed in 603 CMR 52.04, and any additional conditions that the Board or Department may specify. The Board may temporarily waive such conditions and award a certificate, provided that the applicant submits adequate written assurance that all such conditions will be met prior to the opening of the virtual school. If a new virtual school fails to comply with any specified condition prior to the opening of the virtual school, the Commissioner may prohibit the virtual school from opening.

Upon receiving a certificate, the virtual school must successfully complete the opening procedures process specified by the Department. This process begins with the awarding of a new certificate by the Board and ends in the following June when the virtual school submits a draft Accountability Plan to the Department. Opening procedures requirements include, but are not limited to, the following:

- (a) the terms of the proposed contract, in such cases where the virtual school's board of trustees intends to procure substantially all educational services from another person or organization, the board of trustees shall submit for the Commissioner's approval the terms of the contract;
  - (b) approved bylaws;
  - (c) criteria and procedures for suspension and expulsion of students;
  - (d) written documentation that a criminal background checks have been performed as required by state law on all employees and volunteers; and
  - (e) written documentation of the virtual school's compliance with state and federal laws, including, but not limited to, all fire, health, and safety laws and accessibility requirements for facilities owned or leased by or for the virtual school.
- (6) Information for Distribution of Public Funds. Upon receiving a certificate, a Commonwealth of Massachusetts virtual school shall provide the Department with a federal tax identification number issued solely to the virtual school, and banking information regarding a bank account solely in the name of the virtual school, as required by the State Treasurer for the transfer of public funds.

**52.05: Student Recruitment, Enrollment, and Retention**

- (1) Statewide Cap. The Board will use the October SIMS data to determine if the number of full-time students allowed to attend a Commonwealth of Massachusetts virtual school is above the two percent cap. Once the two percent cap is reached, no additional full-time enrollments will be allowed.
- (2) Student Recruitment and Retention. A Commonwealth of Massachusetts virtual school must develop deliberate, specific steps to attract, to enroll, and to retain any target populations specified in the certificate and to ensure the provision of equal educational opportunity for all students in similar grades in public schools across the Commonwealth. The virtual school shall not, however, restrict enrollment to target populations.

- (3) Non-Discrimination. Commonwealth of Massachusetts virtual schools shall not discriminate on the basis of race, color, national origin, creed, sex, gender identity, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language or a foreign language, or prior academic achievement. For purposes of 603 CMR 52.05, gender identity shall mean a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth. Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity, or any other evidence that the gender-related identity is sincerely held as part of a person's core identity; provided, however, that gender-related identity shall not be asserted for any improper purpose.
- (4) Application Deadlines. Virtual schools may have a rolling admissions process but shall give reasonable public notice, of at least one month, of all application deadlines.
- (5) Enrollment Conditions. Students that do not reside in Massachusetts shall not enroll in a Commonwealth of Massachusetts virtual school. Students shall not enroll as a full-time student while attending another school. Eligibility for enrollment shall be consistent with the virtual school's grade levels. A virtual school shall not administer tests to potential applicants or predicate enrollment on results from any test of ability or achievement. A virtual school shall not use attendance at informational meetings and interviews to discriminate against applicants. A virtual school shall not use financial or technology incentives to recruit students.
- (6) Enrollment Process. A Commonwealth of Massachusetts virtual school will conclude its principal enrollment process for the upcoming school year no later than May 1. In conformance with M.G.L. c. 71, § 94, enrollment in Commonwealth of Massachusetts virtual schools shall be conducted as follows:
  - (a) In such cases where there are fewer spaces than eligible applicants, students shall be accepted for admission from among applicants by a lottery process.
  - (b) Notwithstanding the provisions of this section, a virtual school shall provide enrollment preferences for those categories of students specified in the Terms of Certificate for the virtual school.
  - (c) Commonwealth of Massachusetts virtual schools shall place names of students not selected in an enrollment lottery on a waitlist or in a wait pool. When a student stops attending for any reason, the virtual school shall attempt to fill that vacancy.



- (7) Repeat Enrollment Process. If the enrollment process fails to fill the available admission spaces, a virtual school may repeat the process more than once, providing such process is fair and open and the virtual school gives reasonable public notice at least one month prior to the application deadline. As spaces become available during the school year, a virtual school may repeat the enrollment process to fill these openings. No student entering an enrollment process may be admitted ahead of other eligible students who were previously placed on a wait list during a prior enrollment process, except in cases where enrollment preferences change. The total number of students attending a Commonwealth of Massachusetts virtual school in a given school year cannot exceed the total number of students approved in the certificate.
- (8) Public Lotteries. All lotteries shall be conducted in public, with a neutral party drawing names, and with reasonable public notice given at least one week prior to the lottery. Such lotteries may be conducted electronically, and the neutral party will certify the process is fair and selection is random. Lottery results must be published online in accordance with Department guidelines.
- (9) Waitlist or Wait Pool. Commonwealth of Massachusetts virtual schools will maintain a waitlist or wait pool of students not selected in the enrollment lottery only for the school year for which the students applied.
- (10) Maximum Age and Thresholds: A Commonwealth of Massachusetts virtual school shall specify age thresholds for kindergarten and maximum ages for high school programs, consistent with state and federal law.
- (11) Enrollment Restrictions. In accordance with the guidance issued by the Department, a school committee may vote to restrict full-time enrollment of future students in a Commonwealth of Massachusetts virtual school if the district's total full-time student enrollment exceeds one per cent of the total enrollment in the district. The Department will publish an annual list of districts eligible to restrict future full-time enrollment. October SIMS data will be used to assess which school committees are eligible to vote to restrict future full-time enrollment.
- (12) Individual Online Course Enrollment. A student may take some classes online when such classes are approved by the district in which the student attends school. The student will be counted in the foundation enrollment of the district of residence and such courses shall be reported as online courses in accordance with Department guidelines. A virtual school may charge a district or a school for individual courses provided the virtual school reaches an agreement with the district or school.

- (13) Enrollment from School Districts Establishing a Commonwealth of Massachusetts virtual school. Enrollment of students on a fulltime basis who reside in the district(s) and collaborative(s) establishing a Commonwealth of Massachusetts virtual school under G.L. c. 71, § 94(c), shall count towards the percentage required in G.L. c. 71, § 94(c). Enrollment of students in six individual courses that last a full school year shall count as one student enrolled on a fulltime basis for purposes of the percentage required in G.L. c. 71, § 94(c). Additionally, for these courses to be included, students taking the courses must reside in the district(s) and collaborative(s) establishing the virtual school.
- (14) Online Learning Experience. Subsequent to enrolling a student, a Commonwealth of Massachusetts virtual school shall assess students with respect to their potential success in online learning experiences. The virtual school shall share the results of this assessment with the student and parent. A Commonwealth of Massachusetts virtual school shall provide support for students to enhance their success in online learning before the students start significant coursework.
- (15) Educational Tools. A Commonwealth of Massachusetts virtual school shall ensure that all enrolled students have access to necessary technology and materials to participate in the virtual school's educational program and shall provide such technology and materials free of charge to students as required by state law.

**52.06: Board of Trustees and Staff**

- (1) Appointing Authority. For Commonwealth of Massachusetts virtual schools that serve students statewide, the Commissioner appoints the members of the boards of trustees, except to the extent such members may be appointed directly by the Board in the Terms of Certificate. For Commonwealth of Massachusetts virtual schools that are operated only for the benefit of a specific group of school districts, the collaborative board or the school committees of the specific schools shall appoint the members of the board of trustees.
- (2) Responsibilities of Board of Trustees. The board of trustees of a Commonwealth of Massachusetts virtual school holds the certificate of the virtual school and governs the virtual school. Every board of trustees shall have a least five members. Boards of trustees are state governmental bodies. Boards of trustees must fulfill their fiduciary responsibilities including, but not limited to, the duty of loyalty and duty of care, as well as the obligation to oversee the school's budget. Boards of trustees shall not exercise managerial powers over the day-to-day operations of the virtual school. Boards of trustees must ensure that virtual schools operate in accordance with their certificate, including any approved amendments. Boards of trustees must ensure that virtual schools operate in compliance with all applicable state and federal laws. The responsibilities of the board of trustees shall include, but are not limited to, the following:

- (a) Successfully completing the opening procedures process as specified by the Department;
  - (b) Requesting the Commissioner's approval for appointment of any new trustees;
  - (c) Submitting timely annual reports;
  - (d) Submitting timely annual independent audits;
  - (e) Hiring, evaluating, and removing, if necessary, qualified personnel to manage the school's day-to-day operations and holding these administrators accountable for meeting specified goals;
  - (f) Approving and monitoring progress towards meeting the goals of the school's Accountability Plan;
  - (g) Adopting and revising school policies;
  - (h) Responding to complaints in writing as required by 603 CMR 52.09; and
  - (i) Ensuring that members of the board receive an orientation and training regarding their duties and obligations as members of a board of trustees.
- (3) Bylaws. The bylaws of every board of trustees must comply with state and federal laws and contain provisions including, but not limited to:
- (a) Specific, reasonable limits on successive or total terms for members of the board of trustees;
  - (b) the exercise of due diligence in assessing the suitability of candidates for board membership with respect to potential conflicts of interest and areas of skills and expertise that will be of value to the board of trustees, such due diligence to occur prior to a vote by the board of trustees to request the Commissioner to appoint the proposed members;
  - (c) frequency of board meetings, which must occur at least quarterly;
  - (d) compliance with the Commonwealth's open meeting law in M.G.L. c. 30A, including meeting all training requirements; and
  - (e) compliance by members of the board of trustees with the Commonwealth's state ethics requirements, including meeting all training requirements, filing all required disclosures under M.G.L. c. 268A, and the filing of statements of financial interest under M.G.L. c. 268B.
- (4) Board of Trustees Training. Every member of the board of trustees shall, within 1 year of appointment, complete orientation concerning the responsibilities of their office, as determined by the Department and any other training required by other state agencies in accordance with timelines established by those agencies.
- (5) Teacher License. All teachers hired by Commonwealth of Massachusetts virtual schools must be licensed in Massachusetts in the areas in which they teach or teach under a waiver pursuant to G.L. c. 71, § 38G.

- (6) Educator Evaluation. All educators must be evaluated consistent with regulations promulgated by the Board and related guidance issued by the Department.

**52.07: Funding**

- (1) Funding. A Commonwealth of Massachusetts virtual schools shall be funded through payments from sending districts at a per pupil tuition rate set by the Board. For students who attend the virtual school for less than the full year, the tuition payment shall be based upon the number of days of enrollment. The cost of special education services shall be calculated in accordance with 603 CMR 10.07(3). The Commonwealth of Massachusetts virtual school is responsible for providing special education services to students in accordance with their Individualized Education Program. Sending school districts remain fiscally responsible for such students as if the Commonwealth of Massachusetts virtual school were a receiving district pursuant to school choice under M.G.L. c. 76, § 12B.
- (2) Total Tuition Payments. For each sending district, the sum of its tuition payment to each Commonwealth of Massachusetts virtual school shall be used as the district's "total Commonwealth of Massachusetts virtual school tuition payment." The Department shall notify both the Commonwealth of Massachusetts virtual school and sending districts of the amount of these payments and corresponding reductions in local aid under M.G.L. c. 70.
- (3) Tuition Payment. The State Treasurer shall make monthly payments to Commonwealth of Massachusetts virtual schools. In making such payments, the Commonwealth shall reduce each sending district's M.G.L. c. 70 allocation by an amount sufficient to meet its tuition obligations for the month for Commonwealth of Massachusetts virtual schools. If there are insufficient M.G.L. c. 70 funds to meet a district's obligation, the Commonwealth shall reduce other state aid allocated to the applicable cities and towns. If there are insufficient state aid funds of any kind to meet a district's obligation, the Board shall recommend to the Governor and legislature that a supplemental appropriation be made to pay any remaining obligation to the Commonwealth of Massachusetts virtual school(s).
- (4) Monthly Payments. The first five monthly payments in each fiscal year will be based on the Commonwealth of Massachusetts virtual school's pre-enrollment report. Remaining monthly payments for the fiscal year will be based on the October SIMS collection from the Commonwealth of Massachusetts virtual school. Although each monthly payment is intended to equal approximately one twelve of the projected annual amount, payments in the later months of each fiscal year (from December through June) shall include adjustments to correct any over- or under-payments in earlier months, including adjustments for special education increments.

- (5) Transportation. Commonwealth of Massachusetts virtual schools must arrange for student transportation to state assessment tests and required school activities.

**52.08: Reporting Requirements and Ongoing Review**

- (1) Annual Report. A Commonwealth of Massachusetts virtual school shall submit to the Board and make available to every district, parent or guardian of its enrolled students, and to every parent or guardian who expresses interest in enrolling in that Commonwealth of Massachusetts virtual school, an annual report. All schools shall make annual reports available on their websites. The annual report shall be posted on the virtual school's website. The annual report shall be completed on or before January 1 for the preceding school year. The annual report shall include the following information:
  - (a) information required by M.G.L. c. 71 § 94(m);
  - (b) the virtual school's recruitment and retention of students in the categories outlined in M.G.L. c. 71, § 94(b)(36), and the categories specified as enrollment preferences in the Terms of Certificate for the virtual school; and
  - (c) such other information as the Department requires.
- (2) Accountability Reviews. The Department may send evaluation teams to visit each Commonwealth of Massachusetts virtual school on an annual or as-needed basis to corroborate and augment the information provided in the annual report. The Department may conduct other accountability reviews as necessary. Accountability review teams will gather any other evidence relevant to the virtual school's performance. The written reports from these reviews shall become part of the Commonwealth of Massachusetts virtual school's record, along with any written comments that the school wishes to submit.
- (3) Financial Audits. In accordance with M.G.L. c. 71, § 94, every Commonwealth of Massachusetts virtual school shall have an independent audit conducted of its accounts, consistent with generally accepted government auditing standards and any guidelines issued by the Department. Audits shall be filed annually on or before January 1 with the Department and the Office of the State Auditor.
- (4) End of Year Financial Report. Every Commonwealth of Massachusetts virtual school shall submit an end of year financial report based on audited financial figures in accordance with guidelines issued by the Department.

- (5) Pre-enrollment Report. A Commonwealth of Massachusetts virtual school shall file a pre-enrollment report annually with the Department in accordance with established deadlines. Pre-enrollment reports must include the virtual school's projected total enrollment for the subsequent academic year and the projected number of students, by grade, selected for admission from each sending district for the subsequent academic year.
- (6) Enrollment Claim Forms. Each Commonwealth of Massachusetts virtual school shall submit reports of actual enrollment as of October 1 and March 1. The reports shall be filed in accordance with guidelines and deadlines established by the Department.
- (7) Compliance. Every Commonwealth of Massachusetts virtual school shall submit written documentation related to compliance with building, health, safety, and insurance requirements and related to all such inspections and approvals are current. This does not apply to a residence or location where a student may be completing schoolwork outside of a facility owned or leased by or for the virtual school.
- (8) Investigations. Every Commonwealth of Massachusetts virtual school shall notify the Department in writing of all significant matters within two business days. Significant matters include, but are not limited to, all communications made or received by or on behalf of the school with any government audit, investigative, or law enforcement agency.
- (9) Notification of New Circumstances. The virtual school shall notify the Department in writing immediately of any change in circumstances that may have a significant impact on a virtual school's ability to fulfill its goals or mission as stated in its certificate. These include, but are not limited to:
  - (a) changes in individuals holding school leadership positions, such as an executive director or principal;
  - (b) a delay in implementing an amendment;
  - (c) changes in location of the facilities owned or leased by or for the Commonwealth of Massachusetts virtual school and documentation of the virtual school's compliance with state and federal laws, including, but not limited to, all fire, health, and safety laws and accessibility requirements for new facilities or renovations to existing facilities owned or leased by or for the virtual school;
  - (d) changes in officers of the virtual school's board of trustees;
  - (e) individuals resigning from the board of trustees;
  - (f) changes in general contact information (phone number, mailing address, and email) for the virtual school and the virtual school's board of trustees; and

- (g) significant decreases in enrollment (more than 10 percent lower than any previously reported figure).
- (10) Additional Information and Reports. Every Commonwealth of Massachusetts virtual school shall submit all additional information, data, and reports required by the Department.
- (11) Signatory Authorization. All information supplied to the Board, the Commissioner, or the Department by the Commonwealth of Massachusetts virtual school shall be signed by an individual given signatory authority. All such information is submitted under penalty of perjury.

**52.09: Complaint Procedure**

- (1) For a complaint that is not resolved at the school level, a parent, guardian, or other individuals or groups who believe that a virtual school has violated or is violating any provision of M.G.L. c. 71, § 94, or 603 CMR 52.00 may file a complaint with the board of trustees of the Commonwealth of Massachusetts virtual school.
- (2) The board of trustees shall respond in writing to the complaining party no later than 45 days from receipt of the complaint.
- (3) The board of trustees shall, pursuant to a complaint received under 603 CMR 52.09, or on its own initiative, conduct reviews to ensure compliance with M.G.L. c. 71, § 94, and 603 CMR 52.00. The Commonwealth of Massachusetts virtual school and the specific individuals involved shall cooperate to the fullest extent with such review.
- (4) A complaining party who believes the complaint falling within 603 CMR 52.09 has not been adequately addressed by the board of trustees may submit the complaint in writing to the Department, who shall investigate such complaint and make a written response.
- (5) In the event the virtual school is found in non-compliance with M.G.L. c. 71, § 94, or 603 CMR 52.00, the Commissioner or Board may take such action as it deems appropriate including, but not limited to, suspension or revocation of the certificate, or referral of the matter to the District Attorney, the Office of the Attorney General, or any other agency for appropriate legal action.
- (6) A parent, guardian, or other individuals who believe that a virtual school has violated or is violating any state or federal law or regulation regarding special education, may file a complaint directly with the Department.

## 52.10: Amendments of Certificates

- (1) Amendment Requests. Requests to amend the material terms of a virtual school's certificate must be voted on by the board of trustees and approved by the Commissioner before the change is implemented.
  
- (2) Amendments Requiring Commissioner Approval. If a Commonwealth of Massachusetts virtual school desires to change the terms of its certificate, the virtual school's board of trustees shall vote on and submit to the Commissioner a request in writing to amend its certificate. Changes requiring approval by the Commissioner before they can be implemented include all information specified as the Terms of Certificate. Changes requiring advance approval include, but are not limited to:
  - (a) School name;
  - (b) Membership of the board of trustees;
  - (c) Maximum enrollment;
  - (d) Grades served;
  - (e) Enrollment region;
  - (f) Mission, purpose, and special focus;
  - (g) Educational programs, instructional methodology, and services for students that are inconsistent with those specified in the virtual school's certificate;
  - (h) Governance or leadership structure;
  - (i) Bylaws;
  - (j) Schedule (length of school year, school week, or school day);
  - (k) Identity of software or curriculum providers;
  - (l) Contractual relationships with an individual or entity providing or planning to provide substantially all the virtual school's educational services;
  - (m) Support and storage of critical data;
  - (n) Accountability Plan;
  - (o) Enrollment policy and application for admission;
  - (p) Expulsion policy; and
  - (q) Location of facilities, if such change involves relocating to or adding a facility in another municipality or school district.
  
- (3) Consideration of Amendment Requests. The Commissioner may consider a Commonwealth of Massachusetts virtual school's compliance with applicable state, federal, and local law and the evidence the virtual school has provided regarding the areas set forth in 603 CMR 52.11(2) in reaching a determination regarding a virtual school's request to amend its certificate.



## **52.11: Renewal of Certificates**

- (1) **Renewal Application.** The virtual school shall submit its application for renewal of a certificate under 603 CMR 52.00 no later than 12 months before the certificate is set to expire. The Board will review renewal applications pursuant to the criteria set forth in 603 CMR 52.05 and M.G.L. c. 71, § 94.
- (2) **Renewal Guidelines.** The Department shall issue guidelines describing the evaluation process to be followed in reviewing applications for renewal, including protocols for renewal inspections and performance criteria. The decision by the Board to renew a certificate shall be based upon the presentation of affirmative evidence regarding the faithfulness of the virtual school to the terms of its certificate, the virtual school's academic program, and the viability of the virtual school as an organization. The Department will gather evidence regarding these issues from the renewal application and from other information, including but not limited to, a virtual school's annual reports, financial audits, test results, accountability review reports, and the renewal inspection report. All Commonwealth of Massachusetts virtual schools will be evaluated on the same performance criteria as provided in the guidelines, provided, however, that the criteria will take into account each virtual school's certificate and accountability plan. Evidence of academic success for all students is essential for renewal.
- (3) **Time Period of Certificate.** Certificates that are renewed shall be for three to five years from the expiration of the previous certificate under such conditions as the Board may establish under 603 CMR 52.04 and any additional conditions that the Board or the Commissioner may specify. If a virtual school fails to comply with any specified conditions, the Commissioner may recommend to the Board that the virtual school be placed on probation or that the certificate be revoked as described in 603 CMR 52.12. Certificates of schools that do not file renewal applications by the deadline identified in CMR 52.11(1) shall expire on the date indicated in the certificate.

## **52.12: Conditions, Probation, Suspension, Revocation, and Non-Renewal**

- (1) **Conditions.** The Board or Commissioner may impose conditions on a virtual school's certificate for violations of law, failure to improve student achievement, failure to comply with the terms of the virtual school's certificate, or failure to remain viable.

- (2) Probation. The Board may place a Commonwealth of Massachusetts virtual school on probation if in its judgment the imposition of a condition alone would be insufficient to remediate the problem. The Board may impose conditions on the virtual school's certificate that require the virtual school to address specific areas of concern. Placing a virtual school on probation signals concern about the virtual school's viability and permits the Board to suspend a virtual school's certificate immediately if the virtual school fails to remedy the causes of its probation. The Department may require a virtual school on probation to establish an escrow account in an amount determined by the Department in consultation with the virtual school to pay for closing, legal, and audit expenses associated with closure should that occur.
- (3) Suspension or Revocation. The Board may suspend or revoke a certificate for cause including, but not limited to:
- (a) lack of evidence of academic success;
  - (b) failure to comply substantially with the terms of the certificate; with any of the applicable provisions of M.G.L. c. 71, § 94; or with any other applicable law or regulation;
  - (c) a material misrepresentation in the application for approval or renewal of the certificate;
  - (d) financial insolvency;
  - (e) misappropriation, conversion, mismanagement, or illegal withholding of funds or refusal to pay any funds that belong to any person otherwise entitled thereto and that have been entrusted to the virtual school or its administrators in their fiduciary capacities;
  - (f) fraud or gross mismanagement on the part of school administrators or board of trustees, including but not limited to, mismanagement of the educational program and failure to provide a healthy and safe environment for students;
  - (g) criminal convictions on the part of the school's administration or members of its board of trustees; or
  - (h) failure to fulfill any conditions imposed by the Board in connection with the grant or renewal of a certificate.
- (4) Notification. Upon a Board vote to suspend a certificate, a vote of intent to revoke a certificate with that revocation effective as of a specified date, or a vote to not renew a certificate, the Commissioner shall notify the virtual school in writing of the Board's vote. A vote to suspend, a vote of intent to revoke, or a vote to not renew a certificate shall operate as a notice of the action and does not operate as an order to show cause. Except in the case of a suspension, the Commissioner shall send the notice 60 days before the revocation takes effect.

- (5) **Hearing.** Upon receiving a notice of intent to revoke a certificate, notice of non-renewal, or notice of suspension where the health, safety, or education of the virtual school's students is at immediate risk, the virtual school shall have the rights provided in M.G.L. c. 30A, § 13, and 801 CMR 1.00. Where hearings are provided by statute, all requests for hearings shall be in writing, addressed to the Board, and must be received within 15 days of receipt by the virtual school of notice. At such hearing, the virtual school shall bear the burden of proof and present its case first.
- (6) **Withhold Payments.** The Board may withhold payments to any Commonwealth of Massachusetts virtual school that fails to comply with conditions imposed on its certificate; that has been placed on probation; or whose certificate has been suspended, revoked, or not renewed.
- (7) **Closing Procedures.** A Commonwealth of Massachusetts virtual school must comply with the closing procedures established by the Department. Virtual schools must begin planning for closure and compliance with closing procedures immediately upon issuance of a notice of intent to revoke the virtual school's certificate, a notice of non-renewal, or a notice of suspension.
- (8) **Property.** Upon the revocation, non-renewal, or voluntary return of the certificate of a Commonwealth of Massachusetts virtual school, title to all of the property of the virtual school shall immediately vest in the Commonwealth, subject to the rights of any secured party holding a perfected security interest in the property of such school. Any funds remaining after the satisfaction of the virtual school's obligations shall be deposited in the General Fund.

**52.13: Severability Clause**

If any section or portion of a section of 603 CMR 52.00, or the applicability of 603 CMR 52.00 to any person, entity or circumstance is held invalid by a court, the remainder of 603 CMR 52.00 or the applicability of such provisions to other persons, entities or circumstances shall not be affected thereby.