*****Massachusetts Department of***

***Elementary and Secondary Education***

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| Jeffrey C. Riley  *Commissioner* |  |

# MEMORANDUM

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| **To:** | Members of the Board of Elementary and Secondary Education |
| **From:** | Jeffrey C. Riley, Commissioner |
| **Date:** | March 30, 2020 |
| **Subject:** | Proposed Regulation Addressing Regulatory Timelines Due to COVID-19 State of Emergency: 603 CMR 56.00, for Emergency Adoption |

At the meeting of the Board of Elementary and Secondary Education (Board) on March 31, 2020, I will recommend that the Board adopt an emergency regulation related to Governor Baker’s March 10, 2020 declaration of a state of emergency and subsequent executive orders affecting public and private elementary and secondary schools (attached). Following the adoption of the regulations, the Department of Elementary and Secondary Education (Department) will solicit public comment. I expect to bring the regulation back to the Board, with any changes resulting from the public comment, for final adoption at your meeting on June 30, 2020.

**Background**

On March 10, 2020, Governor Baker declared a state of emergency in recognition that “the worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and the Commonwealth significantly affect the life and health of our people, as well as the economy, and is a disaster that impacts the health, security and safety of the public.” March 10, 2020 State of Emergency Declaration at ¶ 10. Governor Baker issued two subsequent orders relating to public and private elementary and secondary schools in the Commonwealth. On March 15, 2020, Governor Baker ordered public and private elementary and secondary schools to suspend in-person instruction until April 6, 2020, and on March 25, 2020, Governor Baker extended the closure and ordered schools not to reopen for normal operations before May 4, 2020. (The orders do not relate to residential schools for students with disabilities.)

**Need for Flexibility**

Among our many actions to support students and schools during this state of emergency, the Department has been reviewing our administrative guidelines and Board regulations to identify areas where relief may be needed. For example, I extended by a week the deadline for school districts to submit their March 2020 Student Information Management System (SIMS) data.

Unlike the SIMS deadline, some dates and timelines are set by Board regulation. For example:

* Students who seek admission to a vocational-technical school as non-residents must submit their application to the receiving school no later than March 15 and must submit their tuition application to their district of residence no later than April 1. 603 CMR 4.03(6)(b)(2).
* School districts that enroll non-resident students are required to provide certain information to the Department on or before April 15 of each year. 603 CMR 10.03(4)(b).
* Educators who seek a bilingual education endorsement to their educator license may qualify for an exemption if they meet certain requirements by June 30, 2020. 603 CMR 7.14(3)(c).

While some of our regulations include a waiver provision, others do not. In light of the unprecedented circumstances and the disruption caused by COVID-19, I am requesting that the Board allow me, for good cause arising from the state of emergency and the closure of schools, to suspend, extend, or waive any timeline or due date in the Board’s regulations to the extent permitted by state and federal law. Having such authority will permit me to act in a timely and efficient manner to adjust timelines and due dates that in the current state of emergency are not possible to meet.

**Safeguards**

As set forth in the proposed regulation:

* Any timeline or due date that arises from state or federal law would remain unchanged. For example, timelines for special education evaluations that are set by the federal Individuals with Disabilities Education Act or by Massachusetts statute would not be subject to this regulation. Any change to statutory timelines would require legislative action.
* I will send prior written notice to the Board of any suspensions, extensions, or waivers of regulatory timelines or due dates.
* We will notify the public of any such actions by notice posted on the Department’s website.
* Any such changes will remain in effect only as long as needed. Each decision will be based on the needs of students, educators, and schools in the circumstances presented. In most cases, the changes may remain in effect no longer than 45 days after the termination of the state of emergency. In all cases the changes may remain in effect for no longer than 90 days beyond the termination of the state of emergency.

**Recommendation**

I am recommending that the Board adopt the proposed regulation on emergency basis, as provided by the Massachusetts Administrative Procedure Act. Immediate adoption of the regulation is necessary while we are in the current public health emergency and schools are under order to remain closed for normal operations. The regulation will provide a way to meet the needs of students, educators, and schools by authorizing the Commissioner to make reasonable adjustments to regulatory timelines and due dates, as needed in the current situation and consistent with state and federal law.

Under the Administrative Procedure Act, emergency regulations remain in effect for no more than three months. During that period, the Department will give notice and invite interested persons to present data, views, or arguments. At the Board meeting on June 30, 2020, I will present a summary of the public comment and any changes we are recommending and ask the Board to adopt the final regulation.

At the March 31 meeting, General Counsel Rhoda Schneider will be available to answer your questions on the proposed regulation.

Enclosures: Proposed Regulation Addressing Regulatory Timelines Due to COVID-19 State of Emergency, 603 CMR 56.00

Governor Baker’s Declaration of State of Emergency dated March 10, 2020

Governor Baker’s Order Temporarily Closing all Public and Private Elementary and Secondary Schools dated March 15, 2020

Governor Baker’s Order Extending Temporary Closure of all Public and Private Elementary and Secondary School dated March 25, 2020

Motion