*****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:** | September 18, 2020 |
| **Subject:** | Regulatory Amendments Addressing Safety and Education Plans During a State of Emergency or Other Exigent Circumstances: 603 CMR 27.00, for Final Adoption |

On June 30, 2020, the Board of Elementary and Secondary Education (Board) voted to adopt amendments to 603 CMR 27.00 that establish health and safety standards for providing structured learning time to students during a declared state of emergency or other exigent circumstances that adversely affect the safe environment of schools. The Board adopted the regulation on an emergency basis, as provided by the Massachusetts Administrative Procedure Act (G.L. c. 30A).

The Department of Elementary and Secondary Education (Department) solicited public comment on the regulation, as required by G.L. c. 30A, § 3. I am recommending several modifications to the amendments based on the public comment the Department received. Copies of all the public comment, along with a summary, are included with this memo. I recommend that the Board vote on final adoption of the regulation as further amended, at the September 29 meeting.

**Background**

The proposed amendments establish health and safety standards for providing structured learning time to students during a declared state of emergency or other exigent circumstances that adversely affect the safe environment of schools. The amendments include the following:

* There are two circumstances under which the new requirements come into effect: (1) a declaration by the Governor that an emergency exists which is detrimental to the public health; or (2) a determination by the Board that exigent circumstances exist that adversely affect the ability of students to attend classes in a safe environment unless additional health and safety measures are put in place.
* When the Governor or Board makes such a declaration or determination, the Commissioner will:
  + Issue health and safety requirements and related guidance to districts, in consultation with medical experts and state health officials;
  + Require each district to develop and submit a plan that prioritizes providing in-person instruction to all students in a safe environment.
  + Direct districts providing in-person summer school programs to implement health and safety procedures consistent with requirements issued by the Commissioner.
* District plans must include: (1) health and safety procedures that are consistent with the requirements issued by the Commissioner; and (2) a description of the in-person learning model the district will use to provide instruction to all students.
* The Commissioner may require districts to also include alternative education models, including hybrid learning and remote learning, to address circumstances in which students cannot safely attend classes in an in-person setting.
* Remote learning is defined, and remote learning plans must include:
  + Procedures for all students to participate in remote learning, including a system for tracking attendance and participation;
  + Remote academic work must be aligned to state standards;
  + A policy for grading students’ remote academic work; and
  + A requirement that teachers and administrators regularly communicate with students’ parents and guardians, including providing interpretation and translation services.
* Districts are required to post their plans on their websites.
* The Commissioner may modify the minimum school year and structured learning time requirements under certain limited circumstances.

**Public Comment and Recommendation**

Based on public comment, I recommend the following additional amendments to the regulation:

* Add a definition of “synchronous” and “asynchronous” learning to provide clarity on the scope of these new concepts;
* Modify the definition of remote learning to include that students have opportunities to regularly interact with teachers to address the concern that remote learning could consist of asynchronous learning only;
* Include “students” to the requirement in section 27.08(3)(b)(4) that teachers and administrators regularly communicate with parents and guardians.

The accompanying version of the regulation shows these additional changes in red type. The proposed amendments also include some copy-edits and other non-substantive changes.

Several important themes run through the public comment. First, several organizations proposed that information that the Department included in guidance be added to the regulation. See, for example, Pioneer Institute public comment at p. 6 (Additional elements relating to attendance should be included in the regulation, not solely contained in guidance.); and Massachusetts Advocates for Children’s public comment at p. 1 (“The proposed changes reflect critically important elements of DESE’s *Remote Learning Guidance*, issued by Commissioner Riley on July 24, 2020.” ) While we appreciate the support for the Department’s guidance, we believe we have struck the right balance between what is in regulation and what is in guidance. In the regulation, we provided requirements of general application and future effect, while in guidance, we filled in the details.

Second, several of the comments identified a need to strengthen the regulation to provide additional protections for students, especially for students with disabilities and English learners. For example, the Children’s Law Center of Massachusetts and other advocacy organizations proposed amending the requirement that remote learning models include a procedure for all students to participate in remote learning, by expanding it to include specific requirements for providing accommodations and services to students with disabilities and services to English learners. We did not include the proposed change to the regulation because state and federal law already require districts to have procedures and systems to meet the educational needs of students with disabilities and English learners. I do share the underlying concern expressed by the advocacy organizations that schools and districts must meet their legal obligations to serve students with disabilities and English learners, even when students are learning remotely. The regulation requires districts providing remote learning to have a procedure “for all students to participate” – and *all students* means each and every student, including students with disabilities and English learners. One way the Department will be addressing these concerns is by monitoring districts that have a remote learning model to determine if districts are meeting their statutory and regulatory obligations.

Finally, several organizations proposed adding language to clarify that a student could not be considered habitually truant if the student is absent as a result of remote learning barriers. We did not include this change because the Department does not have authority to regulate in this area. The term “habitually truant” is defined by statute (G.L. c. 119, §21), which is overseen by the Department of Children and Families (DCF). But, I agree that additional guidance on this issue is needed. The Department is working with DCF to address this need.

I recommend that the Board vote to adopt the regulation as presented. A motion is attached. At the September 29, 2020 meeting, Deputy General Counsel Deb Steenland will be available to answer your questions on the regulation.

Enclosure: Regulation Addressing Safety and Education Plans During a State of Emergency or Other Exigent Circumstances: 603 CMR 27.00, for final adoption

Summary of Public Comment

Public comment

Motion