*****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 16, 2022 |
| **Subject:** | Proposed Amendment to Special Education Regulations on School District Administration and Personnel, 603 CMR 28.03(1), Concerning Early Literacy Screening and Intervention |

On June 28, 2022, the Board of Elementary and Secondary Education voted to solicit public comment on a proposed amendment to 603 CMR 28.03(1) concerning early literacy screening and intervention. I am recommending adopting the core aspects of the draft amendment with modifications based on the public comments that the Department of Elementary and Secondary Education received. I have enclosed a summary of the comments and the Department’s responses. The comments themselves are available upon request. I recommend that the Board vote on September 20, 2022 to adopt the proposed amendment, including these additional changes.[[1]](#footnote-2)

**Background**

Early literacy skills are vital to student success. To that end, in 2018, the Massachusetts Legislature passed *An Act Relative to Students with Dyslexia*,[[2]](#footnote-3) which required the Department, in consultation with the Department of Early Education and Care, to “issue guidelines to assist school districts in developing screening procedures or protocols for students that demonstrate 1 or more potential indicators of a neurological learning disability including, but not limited to, dyslexia.” The Department issued the Guidelines in 2021[[3]](#footnote-4) after an extensive process that engaged experts and stakeholders and built on recommendations from an expert literacy panel created by the Legislature in 2012.[[4]](#footnote-5)

The Guidelines emphasize the need for early identification of reading difficulties as a critical step to promote effective instruction and targeted intervention.[[5]](#footnote-6) According to the Guidelines, “screening for risk is critical for efficient intervention” and when “coupled with meaningful data interpretation, targeted Tier 2 intervention, and progress monitoring, students receive support during the critical window of opportunity that occurs prior to fourth grade.”[[6]](#footnote-7)

At the June 2022 meeting, the Board considered a draft regulation that would require public schools to screen for early literacy issues, including dyslexia, at least twice per year using a screener approved by the Department. If a screening determines that a student is significantly below relevant benchmarks, the draft regulation would require a further assessment to determine whether the student needs additional reading supports or an evaluation for a specific learning disability. It also would require the school to promptly notify the student’s parents or guardians of the assessment results.

The Board voted unanimously to send the proposed regulation out for public comment.

**Overview of Comments Received**

The public comment period closed on August 26, 2022. In total, the Department received public comments from 70 commenters. Of these, 59 were from individuals, including parents, educators, experts, advocates, and reading specialists. The remaining 11 were from these organizations:

* Decoding Dyslexia Massachusetts
* Dyslexia Parents Group of Lexington
* Federation for Children with Special Needs
* Keys to Literacy
* Landmark School Outreach Program
* Massachusetts Administrators for Special Education
* Massachusetts Association of School Superintendents
* Massachusetts Municipal Association
* Massachusetts Urban Project
* Moor, Perlman & Gregg, LLC
* The Reading Circuit

62 of the commenters were in favor of the proposed changes (in some cases with suggestions for improvement), 4 commenters were opposed, and the remainder were “neutral” or “mixed” because their comments did not clearly articulate a position.

A summary of these comments and the Department’s analysis can be found in the attached Summary document.

**Proposed Changes**

I recommend adopting the main aspects of the draft regulation with the changes discussed below in response to public comment, to provide clarification and help achieve the regulation’s goals. My proposal maintains these key aspects of the draft regulation, including:

* The requirement for twice-annual screening of students in kindergarten through third grade, using a screening instrument approved by the Department;
* For students found to be significantly below relevant benchmarks in specific literacy skills, a requirement that the school determine which actions will meet the student’s needs, consistent with existing state law (M.G.L. c. 71B, § 2) and the Department’s dyslexia and literacy guidelines; and
* Timely parental notification.

The main proposed change from the draft regulation involves the sequencing of events once a screener identifies a student as being significantly below relevant benchmarks. For such students, the draft regulation called for a further assessment within 30 days to determine whether the student needs additional reading supports or a referral for evaluation for a specific learning disability. Based on public comment, I recommend removing the further assessment requirement. Instead, the revised draft states that consistent with existing state law and the Department’s dyslexia and literacy guidelines, if the screening determines that a student is significantly below relevant benchmarks for age-typical development in specific literacy skills, the school shall determine which actions within the general education program will meet the student’s needs, including differentiated or supplementary evidence-based reading instruction and ongoing monitoring of progress. In such cases, the school shall notify the student’s parent or guardian within 30 school days of the screening results and the school’s response and offer the opportunity for a follow-up discussion. This timing of 30 school days is consistent with Department guidance, which recommends providing students with supports or evidence-based interventions over a limited time period and monitoring their progress to determine the appropriateness of interventions, additional assessments, or possible referral for special education.[[7]](#footnote-8)

Other changes I am recommending are intended to clarify the regulation, including:

* Changing the regulation title from “dyslexia screening” to “early literacy screening” because it is not limited to students with dyslexia; the regulation is intended to cover a range of reading difficulties that schools may address within the general education program.
* Adding an effective date of July 1, 2023 to specify when school districts are responsible for implementing this regulation and provide time for them to plan and prepare for any changes to their current procedures for early literacy screening.
* Changing the term “foundational skills” in the first two sentences to “literacy skills” to clarify that the screening assesses various aspects of early literacy, e.g., vocabulary and listening comprehension, as well as foundational literacy skills such as phonics, phonological awareness, and fluency.
* Removing the term “modified” in the second sentence because the term is more commonly used in relation to services for students with disabilities. This regulation focuses on screening that will help schools determine actions that will meet the student’s needs within the general education program, including differentiated or supplementary evidence-based reading instruction and ongoing monitoring of progress.
* Making other minor changes for consistency with other regulatory language (e.g., changing “must” to “shall” and “elementary school” to “school district”).

**Implementation**

Early literacy screening is already commonplace in Massachusetts elementary schools. While data on early literacy screener use is not collected from school districts, information provided to the Department by screener publishers in 2022 suggests that Department-approved screeners are already in use in about 300 Massachusetts public school districts. Some districts, however, may use no screener or screeners that are out-of-date or not evidence-based. This regulation will benefit these districts and students because it will conserve school districts’ resources, both in terms of money spent on screeners and effort spent administering screenings.

The Department is supporting schools with a variety of funding opportunities. The Department has offered a competitive grant twice in the last 18 months to support the purchase of early literacy screening assessments and the associated professional development, awarding over $471,955 total to 27 school districts. A similar grant will be offered again in the current school year to support schools that do not yet have an appropriate screening measure in place or are in need of training. The Early Grades Literacy Grant and Growing Literacy Equity Across Massachusetts Grants also provide funding to school districts to purchase an approved screening assessment and the associated professional development if needed. Student Opportunity Act (SOA) guidance identified early literacy screening as a key evidence-based practice, and the Department encourages school districts to use SOA funding to support this cost.

The Department has been developing and providing guidance, resources, and supports for school districts to implement best practices for early literacy screening over several years. The Mass Literacy Guide features information about screening and provides useful resources for educators to learn about this practice.[[8]](#footnote-9) In the 2021-22 school year, the Department convened 120 educators for a Mass Literacy Support Network focused on screening assessment and data-based decision making. These local literacy leaders received extensive support and access to resources to bring into their schools and school districts. The MTSS Tiered Literacy Academy and professional development courses focusing on dyslexia, both offered annually, also support schools to understand and use approved early literacy screeners. The Department also regularly offers events, such as the recent two-day Dyslexia Institute and last summer’s Start Strong with Screening webinars, to support educators in this work.

Finally, the Department is providing support to educators as they select the early literacy screener that best fits their local context and needs. Seven early literacy screeners are currently approved, each with unique features and advantages. Relatedly, the Department has provided resources such as the Screeners At-a-Glance Guide to support school districts in making this selection decision. Department experts also remain available by phone and email for individualized technical assistance to districts. Further, the proposed regulation will go into effect for the next school year (2023-24), so that districts have adequate time to research their options and make a thoughtful selection based on local stakeholder input, context, and priorities. Districts may also seek a waiver under the existing provisions of 603 CMR 28.03(5) by submitting a proposal for the Department’s approval that “shows substantial promise of contributing to improvements in the methods for meeting the goals” of this regulation.

**Conclusion**

I recommend that the Board vote to adopt the amended regulation as presented and have attached a motion. At the September 20, 2022 Board meeting, Department staff, including Deputy Commissioner Russell Johnston and Katherine Tarca, Director, Literacy and Humanities will be present to address the Board and answer questions.

Enclosures:Summary of Public Comments Received and Department Response

603 CMR 28.03(1) – Clean version of regulation incorporating proposed amendments and changes based on public comments

Comparison of Draft and Proposed Final Regulation

Motion

1. Please note that the regulation has not yet been approved by the Executive Office of Administration and Finance. [↑](#footnote-ref-2)
2. Chapter 272 of the Acts of 2018 (codified at M.G.L. c. 71, § 57A). [↑](#footnote-ref-3)
3. Department of Elementary and Secondary Education, *Massachusetts Dyslexia Guidelines*. <https://www.doe.mass.edu/sped/dyslexia-guidelines.pdf> (“Guidelines”). [↑](#footnote-ref-4)
4. Chapter 287 of the Acts of 2012. [↑](#footnote-ref-5)
5. Guidelines at 22. [↑](#footnote-ref-6)
6. *Id.* at 19. [↑](#footnote-ref-7)
7. [MTSS Quick Reference Guide: Student Support Teams](https://www.mass.gov/doc/student-support-teams-ssts/download) [↑](#footnote-ref-8)
8. <https://www.doe.mass.edu/massliteracy/>. [↑](#footnote-ref-9)