*****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:** | June 24, 2020 |
| **Subject:** | Addressing Regulatory Timelines Due to COVID-19 State of Emergency: 603 CMR 56.00, for Final Adoption |

On March 31, 2020, the Board of Elementary and Secondary Education (Board) voted to adopt a regulation authorizing the Commissioner, for good cause arising from the current 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. The Board adopted the regulation on an emergency basis, as provided by the Massachusetts Administrative Procedure Act (G.L. c. 30A). I have used the authority to modify several regulatory deadlines that were problematic for students, educators, and school districts due to the public health emergency.

The Department solicited public comment on the regulation, as required by G.L. c. 30A, § 3, and received no adverse comments. Because the state of emergency is still in effect and the regulation will lapse without further action by the Board, I recommend that the Board vote on final adoption of the regulation at the June 30 meeting.

**Background**

On March 10, 2020, Governor Baker declared a state of emergency due to the COVID-19 pandemic. The Governor subsequently issued several orders requiring public and private elementary and secondary schools in the Commonwealth (other than residential schools for students with disabilities) to close for in-person instruction.

Among our actions to support students and schools during these unprecedented circumstances, we reviewed our regulations to identify areas where relief might be needed with respect to timelines. The Board’s adoption of the emergency regulation, 603 CMR 56.00, on March 31 provided a mechanism to adjust certain regulatory timelines and due dates that were not possible to meet in the current situation.

**Summary of Regulation**

The regulation permits the Commissioner to suspend, extend, or waive any timeline or due date in the Board’s regulations to the extent permitted by state and federal law for good cause arising from the state of emergency and the closure of schools. Since March 31, I have used this authority to extend the following dates and deadlines:

* I extended the deadlines for parents and superintendents relating to the process for non-resident vocational tuition applications – i.e., the admission of students to vocational-technical school programs outside their district of residence. 603 CMR 4.03(6)(b)(2).
* I extended the June 30, 2020 deadline for educators who seek a bilingual education endorsement to their educator license through the “grandfather clause.” 603 CMR 7.14(3)(c) and 603 CMR 4.15(3)(c).

The state of emergency is still in effect, and we may need to make additional adjustments to timelines and due dates in our regulations for the new school year. For that reason, I recommend that the Board make the regulation permanent. By its own terms, the regulation becomes obsolete after the Governor ends the state of emergency that he declared on March 10, 2020.

**Public Comment and Recommendation**

We did not receive any public comments that address the substance of the emergency regulation. The only comments (two) advocated extending the period of eligibility for certain students with disabilities to continue receiving special education services beyond their 22nd birthday if their transition programs were disrupted by the pandemic. While the concern is understandable, it cannot be addressed through this regulation because the age limit is set by statute and a change would require legislative action. Parents and students may also seek a remedy through the Bureau of Special Education Appeals in individual cases.

We made two non-substantive copy edits from the regulation as it was presented on March 31. First, to follow the formatting standards from the Secretary of State’s Regulations Office, we moved the statement of regulatory authority to the end instead of including it in section 56.01. Second, we corrected a typo in numbering: the reference in section 56.02(1) to “603 CMR 56.2(b)” should have been “603 CMR 56.02(2).” Both corrections have been made in the attached regulation.

I recommend that the Board vote to adopt the regulation as presented. A motion is attached. At the June 30 meeting, General Counsel Rhoda Schneider will be available to answer your questions on the regulation.

Enclosure: Regulation Addressing Regulatory Timelines, 603 CMR 56.00

Motion