*****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:**  | November 13, 2020 |
| **Subject:** | Amendments to Regulations on Educator Licensure, 603 CMR 7.00, on Staffing Flexibility for 2020-2021 – Final Action on Adoption  |

On September 3, 2020, I took action on behalf of the Board of Elementary and Secondary Education (Board) to adopt two amendments (see below) to the Educator Licensure and Preparation Program Approval regulations ([603 CMR 7.00](https://www.doe.mass.edu/lawsregs/603cmr7.html)) on an emergency basis.[[1]](#footnote-2) We needed to adopt the regulations on an emergency basis to allow them to take effect immediately, in advance of school reopening for the 2020-2021 school year. In a [memo](https://www.doe.mass.edu/bese/docs/fy2021/2020-09/) dated September 18, 2020,I informed the Board that I had exercised my delegated authority to approve these amendments and would bring them back to the Board at its November 2020 meeting following the public comment period.

The Department of Elementary and Secondary Education (Department) solicited public comment on the regulations, as required by the Administrative Procedure Act, G.L. c. 30A, §3. I am recommending a few modifications to the amendments based on the public comment that the Department received. Copies of all the public comments are included with this memo. I recommend that the Board vote on final adoption of the regulations, with the further modifications described below, at the November 24, 2020 meeting.

**Background and Summary of Amendments**

The Department is supporting educators and districts as they work to best match student needs with the knowledge, skills, and abilities of educators to staff a variety of learning environments for the 2020-2021 academic year. In addition to granting newly authorized emergency licenses and allowing greater flexibility in granting hardship licensure waivers, these amendments to the Educator Licensure and Preparation Program Approval regulations allow greater staffing flexibility for the 2020-2021 school year in light of the COVID-19 pandemic.

The amendments to the regulations make two changes for the current school year:

1. Increase in the time a teacher is allowed to teach “out of field.” The existing regulations (603 CMR 7.15(9)(a)) allowed individuals to teach up to 20% of their time outside of their license area. The amended regulation increases this allowable time to 50%. This means licensed educators could spend half of their time out of field without needing to secure a waiver. We have included an exception, based on federal law and guidance and Massachusetts Department of Public Health requirements: This additional flexibility does not apply to positions requiring a Special Education, English as a Second Language, or school nurse license.
2. Increase in the length of time an individual can be considered a long-term substitute. The existing regulation (603 CMR 7.02) required that the district secure a waiver for individuals in teaching assignments as a long-term substitute for more than 90 school days. The amendment increases the permissible time to the full 2020-2021 school year for an individual who holds a bachelor’s degree.

**Summary of Public Comment Received**

The Department received a total of four public comments on these regulations. The Massachusetts Teachers Association (MTA) and three parents submitted comments. Below is a summary of the comments received.

1. The MTA suggested that individuals employed as substitutes during the 2020-2021 school year should be eligible to count the year toward the three consecutive school years required to earn professional teacher status (PTS), if they earn the appropriate license by June 30, 2021 and continue to work for the same employer for at least the next two consecutive school years in a role eligible for PTS. The Department agrees with this proposal and recommends clarifying that only individuals who currently hold an educator license and are teaching outside their area(s) of license as substitutes for the 2020-2021 school year may have the year count toward PTS. Individuals who do not already hold an educator license are eligible for an emergency license, and through that route are also eligible to have the year count toward PTS.

This change to the regulation means that a teacher employed by a district as a long-term substitute outside his or her area of license for the 2020-2021 school year could count the year toward PTS, if the teacher obtains the appropriate license by the end of this school year and continues to work for the same employer next year. While the MTA suggested allowing substitutes who obtain emergency, temporary, initial, provisional, or professional licenses by June 30, 2021 to count this year toward PTS, the Department recommends excluding emergency licenses, as emergency licenses are valid only until June 30, 2021. This is similar to how a teacher working under an emergency license this year may count the year toward PTS. *This change is reflected in the definition of temporary substitute teacher, 603 CMR 7.02.*

1. The MTA suggested that a similar provision be included in 603 CMR 7.15 (9)(a) to make clear that an educator working up to 50% of the time outside their area of license during the 2020-2021 school year is eligible to count this year toward PTS. The Department agrees with this proposal as it will clarify the issue for districts and arbitrators and is consistent with current practice of counting full school years when an educator works 20% out of field. *This change is reflected in 603 CMR 7.15, the general provisions for legal employment*.
2. The MTA suggested spelling out which licenses are considered “special education licenses” to make clear those that are excluded from the flexibilities concerning substitute teaching or working outside the license area for up to 50% of a teacher’s time. The Department agrees with this change except for the MTA’s suggestion to include teacher of reading among those licenses, as the Reading Specialist license is not a special education license. *This change is reflected in the definition of temporary substitute teacher, 603 CMR 7.02, and 603 CMR 7.15, the general provisions for legal employment*.
3. The MTA noted that long-term substitutes are not required to be evaluated using our evaluation system and suggested requiring these individuals to apply for an emergency license. No further change is needed in the regulation. The Department will address this concern by notifying districts that they should be evaluating licensed teachers who are working as long-term substitutes outside their field this year, because this year of substitute service may count toward PTS for the teachers. (See # 1, above.)
4. The MTA raised a question about use of the term “out of field.” No change is needed as the “out of field” description is accurate, and teachers are allowed to teach out of field for up to 50% of their time. DESE will continue to track, monitor, and report on out of field course assignments as required by federal regulations.
5. The MTA also raised concerns about the need for careful reporting and tracking of staff assignments to consider whether vulnerable populations of students are disproportionally being assigned to teachers outside their field of license and whether certain groups of teachers are disproportionally being given assignments out of field. No change to the regulations is needed. The Department’s Education Personnel Information Management System (EPIMS) is collecting this information through data reporting and the Student Learning Experience (SLE) report will track the impact on vulnerable populations of students.  In addition, special education and teacher of English learner roles have been excluded from the flexibilities in these regulatory amendments, maintaining consistent training and knowledge requirements for teachers of the students who need these specialized services.
6. The three individual comments were generally in opposition to the amendments; however, one person was under the impression that the changes were permanent and not limited to the 2020-2021 school year. After receiving the Department’s response to their comment, this individual responded that she appreciated the clarification and was grateful the amendments would apply only to the current school year.

At the November 24, 2020 Board meeting, Senior Associate Commissioner Heather Peske, Assistant General Counsel Lucy Wall, and Brian Devine, Director of Educator Licensure, will be available to answer your questions.

Enclosure: 603 CMR 7.00 Strikethrough version of relevant portion of regulations showing amendments

 Public comments

 Motion

**Educator Licensure and Preparation Program Approval** **Regulations**

 **603 CMR 7.00**

With amendments adopted on an emergency basis shown by underscore or ~~strikethrough~~

Proposed changes made following public comment are in red\*

The full regulations can be found at: <https://www.doe.mass.edu/lawsregs/603cmr7.html>

**Approved by the Commissioner of Elementary and Secondary Education on behalf of the Board of Elementary and Secondary Education as emergency regulations: 9/3/2020**

**Period of public comment: through 10/23/2020**

**Final action by the Board of Elementary and Secondary Education anticipated: 11/24/2020**

**7.02: Definitions**

As used in 603 CMR 7.00, the following terms shall have the following meanings:

…

**Temporary Substitute Teacher:** An educator who is employed, on a temporary basis, for less than 90 consecutive school days in the same role, to take the place of a regularly employed educator who is absent. Any educator who is employed on a temporary basis for more than 90 consecutive school days in the same role must either be licensed for the role or working under a hardship waiver. In addition, as a result of the outbreak of the 2019 novel coronavirus, also known as COVID-19, and the Governor’s March 10, 2020 declaration of a state of emergency, during the 2020-2021 school year, an educator who holds a bachelor’s degree may be employed as a temporary substitute teacher for up to the full school year in the same role, except in a role requiring any of the following ~~a special education license~~ licenses: Teacher of Moderate Disabilities, Teacher of Severe Disabilities, Teacher of Deaf and Hard of Hearing (ASL/TC), Teacher of Deaf and Hard of Hearing (Oral/Aural), Teacher of Visually Impaired, Teacher of Speech, Language and Hearing Disorders, or English as a Second Language ~~license~~, to take the place of a regularly employed educator who is absent. Service of an employee as a temporary substitute teacher shall not be counted as service in acquiring professional teacher status or other rights under section 41 of chapter 71 of the General Laws; provided, however, that if the employee holds a license in another field or level during the time employed as a temporary substitute and obtains an emergency, temporary, initial, provisional or professional license in the appropriate field and level by June 30, 2021 and continues to serve as a teacher with the same employer under a license for two additional consecutive years, the full year of service as a temporary substitute shall be counted as service toward professional teacher status.

**603 CMR 7.15: General Provisions**

**…**

**603 CMR 7.15(9) General Provisions for Employment**.

1. **Legal Employment**. To be eligible for employment by a school district in any position covered by a license issued under 603 CMR 7.00, a person must have been granted a license by the Commissioner that is appropriate for the role. A person holding a license may be employed for a maximum of 20% of his or her time in a role or at a level for which he or she does not hold a license. In addition, as a result of the outbreak of the 2019 novel coronavirus, also known as COVID-19, and the Governor’s March 10, 2020 declaration of a state of emergency, during the 2020-2021 school year, a person holding a license may be employed for a maximum of 50% of his or her time in a role or at a level for which the individual does not hold a license, except in a role requiring any of the following ~~a special education license~~ licenses: Teacher of Moderate Disabilities, Teacher of Severe Disabilities, Teacher of Deaf and Hard of Hearing (ASL/TC), Teacher of Deaf and Hard of Hearing (Oral/Aural), Teacher of Visually Impaired, Teacher of Speech, Language and Hearing Disorders, ~~a special education license,~~ school nurse ~~license~~, or ~~an~~ English as a Second Language ~~license~~. Assignment outside the educator’s license up to 50% of the time during the 2020-2021 school year shall not prevent the 2020-2021 school year from being counted as service toward Professional Teacher Status.
1. On June 30, 2020, the Board voted to authorize me to act on its behalf in approving any matters not otherwise covered by the Board’s previous delegations of authority and that require Board action between June 30, 2020, and the next regular meeting of the Board in September 2020. The Board vote required the Commissioner to notify Board members in advance of any such action and to report to the Board on any matters that have been so approved, both of which I did. I notified the field of the change to the regulations, in my [Commissioner’s Weekly Update](https://mailchi.mp/doe.mass.edu/commissioners-weekly-update-9-8-20-info-for-school-health-offices-back-to-school-resources-enrolling-new-students?e=583fc2bc03#additionalflexibility) on September 8, 2020. [↑](#footnote-ref-2)