*****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:** | April 9, 2021 |
| **Subject:** | Proposed Amendment to Charter School Regulations – Initial Discussion and Vote to Solicit Public Comment |

At the meeting of the Board of Elementary and Secondary Education (Board) on April 20, 2021, I will ask your approval to solicit public comment on a very limited proposed amendment to the Regulations on Charter Schools (603 CMR 1.00). The proposed amendment addresses the calculation of the list of districts in the lowest 10 percent, which is required by statute. The amendment is needed because we lack MCAS results from last spring due to the COVID-19 pandemic. To deal with this unprecedented situation, the proposed approach would add one sentence to the current regulation, effectively freezing for this year the list that was released in spring 2020.

**Lowest 10 Percent**

The calculation of an annual ranking of all operating public school districts based upon student performance on MCAS is mandated by statute for two limited purposes related to charter schools. First, the lowest 10 percent calculation is required to determine where charter schools may be approved during each annual charter application cycle.[[1]](#footnote-1) Second, the lowest 10 percent calculation is required to determine in which districts the total charter school tuition payment may exceed nine (9) percent of the district's net school spending.[[2]](#footnote-2)

The list of districts in the lowest 10 percent is provided to school districts, charter schools, and potential charter applicants in advance of the charter application cycle each year. The current list of districts in the lowest 10 percent informed the charter application cycle this year, FY21, and establishes tuition caps for FY22, with admission decisions for students made prior to April 1, 2021.

**Proposed Regulatory Amendment**

Due to the public health emergency resulting from the COVID-19 pandemic and the enactment of special legislation (St. 2020, c. 56, § 7), no statewide student testing occurred in FY20. Because the MCAS tests were not administered in the spring of 2020, no statewide student performance scores were released by the Department in fall 2020. Neither the statute nor the regulations contemplate a situation in which MCAS tests would not be administered. This unanticipated situation necessitates a limited amendment to the regulations. The amendment will permit calculation of the list to continue based on the two most recent years in which test scores were released and avoid the highly variable results that would occur if only one year of data were used.

The charter school regulations currently provide as follows.

The Commissioner shall annually publish a ranking of all districts that are subject to charter school tuition charges, for the purpose of determining the lowest 10% as specified in M.G.L. c. 71, § 89(i)(2), and (i)(3). Such ranking shall be calculated by determining the average ranks for each district's English language arts, mathematics, and science composite performance index; the percentage of students scoring warning or failing in English language arts, mathematics, and science; the percentage of students scoring advanced in English language arts, mathematics, and science; and student growth percentiles for English language arts and mathematics, using statewide student performance scores released in the two consecutive school years immediately preceding the school year in which applications are submitted. These calculations shall use weighting consistent with the Department's approved methodology for the state accountability system. Districts without data for each component of the calculation will not be included. Additional charter school seats resulting from a district's designation in the lowest 10% may be awarded by the Board to a new charter applicant, to existing charter schools, or to any combination thereof. The Board may provisionally award seats to new charter applicants and to existing charter schools that will become available in future years pursuant to the schedule set forth in St. 2010, c. 12, § 9, provided, that if a district is no longer in the lowest 10%, any remaining provisional seats may not be used.

603 CMR 1.04(9).

The proposed amendment is narrowly tailored and limited to only situations in which statewide student testing does not occur. It would add one sentence to the current regulation, to deal with the unprecedented situation resulting from the COVID-19 pandemic. The amendment effectively freezes the calculation of the districts in the lowest 10 percent for this year and allows calculation of the list using results that are not from consecutive school years. The proposed amendment does not address any other provisions relating to the calculation of districts in the lowest 10 percent. The proposed language to be added to 603 CMR 1.04(9) is as follows.

In the event that all statewide student performance scores were not released in the two consecutive school years immediately preceding the school year in which applications are submitted, such ranking shall be calculated for districts, including those that may lack data for some components, using the two most recent years in which statewide student performance scores were released.

Using this approach, [the current 2020 list of districts in the lowest 10 percent](https://www.doe.mass.edu/charter/enrollment/CapIncrease/sy2021analysis.xlsx) effectively would be frozen for FY21. Additionally, the proposed language addresses situations in which certain components are not available, such as the results for Science, Technology, and Engineering (STE) tests for students in grades 10, 11, or 12.

With the Board’s approval, the Department will solicit public comment on the proposed amendment. After reviewing any comments that are received and determining whether further changes are needed, I plan to bring the amended regulation back to the Board in June 2021 for final adoption.

A redlined version of the regulations and a motion to solicit public comment are attached. Associate Commissioner Rob Curtin will join us for the discussion on April 20, 2021.

Attachments:

Redlined version of proposed amendment to 603 CMR 1.00

Motion to solicit public comment

1. Section 89(i)(2) of G.L. c. 71 states as follows.

   Not less than 2 of the new commonwealth charters approved by the board in any year shall be granted for charter schools located in districts where overall student performance on the statewide assessment system approved by the board under section 1I of chapter 69 is in the lowest 10 per cent statewide in the 2 years preceding the charter application. [↑](#footnote-ref-1)
2. Section 89(i)(3) of G.L. c. 71 provides as follows.

   In any fiscal year, if the board determines based on student performance data collected pursuant to section 1I, said district is in the lowest 10 per cent of all statewide student performance scores released in the   
   2 consecutive school years before the date the charter school application is submitted, the school district's total charter school tuition payment to commonwealth charter schools may exceed 9 per cent of the district's net school spending but shall not exceed 18 per cent. [↑](#footnote-ref-2)