*****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:** | May 14, 2021 |
| **Subject:** | Regulatory Amendments Supporting a Return to In-person Instruction: 603 CMR 27.00, for Final Adoption |

On March 5, 2021, the Board of Elementary and Secondary Education (Board) voted to adopt amendments to 603 CMR 27.00, the Student Learning Time regulations, that support a return to in-person instruction. The Board adopted the regulatory amendments 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 regulations, as required by G.L. c. 30A, § 3. Based on the public comment received, I am not recommending any modifications to the amendments. 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 regulations at the May 25 meeting.

**Background**

In June 2020, the Board adopted amendments to the Student Learning Time Regulations in light of the COVID-19 pandemic. These amendments identified certain measures that would go into effect if the Governor declared a state of emergency related to public health concerns or the Board made a determination that exigent circumstances existed that adversely affected the ability of students to attend classes in a safe environment unless additional health and safety measures were put in place. They prioritize in-person instruction, including, for example, a requirement that provides: “Upon such a declaration by the Governor or determination by the Board, the Commissioner shall require each district to develop and submit a plan that prioritizes providing in-person instruction to all students in a safe environment.” 603 CMR 27.08(2). The amendments also provide that I may require districts to include hybrid and remote education models in their plans to address circumstances in which students cannot safely attend classes in an in-person setting. Id. at 27.08(2)(c).

The amended regulations that the Board adopted on an emergency basis in March 2021 permit me to determine when hybrid and remote models no longer constitute structured learning time and districts must return students to in-person instruction. The amendments include a waiver provision and also state that for the remainder of this school year, parents and guardians may continue to select a remote learning model for their children.

Following the March Board meeting, after consultation with medical experts and state health officials and notification to the Board, I informed schools and districts as follows:

* **Elementary school phase (grades K-5):** For **elementary schools**, hybrid and remote learning models will no longer count towards meeting the required student learning time hours as of **Monday, April 5, 2021**. As a result, districts and schools are required to shift their learning model for **elementary school** grade levels to full-time, in-person instruction five days per week effective **Monday, April 5, 2021**.
* **Middle school phase (grades 6-8):** For **middle schools**, hybrid and remote learning models will no longer count towards meeting the required student learning time hours as of **Wednesday, April 28, 2021.** As a result, districts and schools will be required to shift their learning model for **middle school** grade levels to full-time, in-person instruction five days per week, effective **Wednesday, April 28, 2021**.
* **High school phase (grades 9-12):** For **high schools**, hybrid and remote learning models will no longer count towards meeting the required student learning time hours as of **Monday, May 17, 2021.** As a result, districts and schools will be required to shift their learning model for **high school** grade levels to full-time, in-person instruction five days per week, effective **Monday, May 17, 2021.**

With deep appreciation for all the hard work and dedication of school administrators, teachers, and staff, I am pleased to report that as of May 14, 2021, 100% of elementary and middle schools and 65% of districts with high schools are offering full-time, in-person instruction. By the May 17th deadline for high schools, we expect 99% of high schools to be open for full-time, in-person instruction.

**Summary of Public Comment**

The Department received public comment from parents, educators, and other individuals. A complete list of the individuals who submitted comments is included at the end of the summary of public comment.

While some comments support the amendments, including comments from parents, many comments express dissatisfaction with the amendments. For example, some describe the stress that students and teachers are experiencing, and express frustration with having to make changes this late in the school year. Some comments raise concerns that in-person learning is not safe, and suggest the return of students should be delayed until teachers can be vaccinated. Other comments reflect the view that local school committees, not the Department, should decide when students will return for in-person learning.

While I appreciate the concerns that these individuals have expressed, I remain convinced that returning to in-person learning is in students’ best interests. Indeed, schools throughout Massachusetts have been providing in-person instruction safely to students using the Department’s guidance for over six months. The Department’s guidance balances the urgent need to bring students back to in-person learning with careful attention to minimizing the risk to students, staff, and their families. With the mitigation strategies in place and as state health metrics continued to improve, it was appropriate to move from remote and hybrid learning models and return to the in-person educational format this spring.

One comment proposed a change to the regulations that would require live teacher-student interaction so remote students would be able to engage with their teachers daily. No further changes to the regulations are necessary because we already require a daily “live check-in” to support students whose families have selected a remote model for the remainder of the school year. As provided in the definition of remote learning in the Department’s regulations, remote learning requires that students have opportunities to interact with a teacher each school day. The daily live check-in provides the district with information about student engagement and well-being. The Department has recently updated its guidance to require using video conferencing or other methods of seeing students as part of the daily live check-in. To the extent the comment relates to the manner in which teachers manage live-streamed classes, that is a matter best left to the discretion of teachers and administrators.

**Conclusion**

As we have stated repeatedly throughout this pandemic, there is no substitute for in-person learning, especially for younger students, students with disabilities, and English learners. In addition to academic instruction and support, we know that when students are in school, they have the opportunity to learn important social and emotional skills, and they have access to mental health and other support services as well as healthy meals. The amended regulations permitted me to support the return of all students to in-person learning. For all these reasons, I recommend that the Board vote on final adoption of these regulatory amendments.

At the May 25 meeting, Associate Commissioner Rob Curtin and Deputy General Counsel Deb Steenland will be available to answer your questions on the final adoption of the amendments.

Enclosures: 603 CMR 27.00 Strikethrough version of regulation showing amendments

Summary of public comment

Public comment

Motion