



Jeffrey C. Riley
Commissioner

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MEMORANDUM

To: Members of the Board of Elementary and Secondary Education
From: Jeffrey C. Riley, Commissioner
Date: March 3, 2021
Subject: Proposed Regulatory Amendments Supporting a Return to In-person Instruction:
603 CMR 27.00, for Emergency Adoption

At the meeting of the Board of Elementary and Secondary Education (Board) on March 5, 2021, I will recommend that the Board adopt amendments to the Student Learning Time regulations on an emergency basis to provide me with the authority to determine when hybrid and remote models will no longer count towards meeting the required student learning time hours. Consistent with the regulations, the amendments prioritize in-person instruction. If adopted, they will result in more students returning to full-time, in-person learning with appropriate school-based mitigation measures in place, as COVID-19 health indicators continue to improve. Following the adoption of the regulatory amendments, the Department of Elementary and Secondary Education (Department) will solicit public comment. I will bring the amendments back to the Board, with any changes resulting from the public comment, for final adoption at the Board's meeting in May 2021.

After a challenging winter, we are beginning to see hopeful signs ahead as we look towards spring. We have seen significant improvement in our COVID-19 health metrics, nearly half of our schools now have pooled testing available for students and staff, and the vaccine rollout is in process. Many districts are already starting to bring more students back, especially at the elementary level.

Indeed, schools throughout Massachusetts have been providing in-person instruction safely to students using the Department's guidance for over six months and have experienced first-hand the efficacy of these measures in significantly limiting in-school transmission. 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 extensive mitigation strategies in place and as state health metrics continue to improve, we now need to begin shifting away from remote and hybrid learning models and return to the in-person educational format. As explained below, a logical extension to our Student Learning Time regulations provides a way to achieve this goal.

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).

In light of the Governor’s declaration of a state of emergency to respond to COVID-19, and consistent with these amendments to the regulations, the Department took the following steps:

- In consultation with medical experts and state health officials, the Department issued COVID-related health and safety requirements and guidance to districts, including its Initial Fall School Reopening Guidance. In this guidance, the Department identified the mitigation strategies that districts were required to put in place, including wearing masks, physical distancing, hand hygiene, cleaning, and contact tracing.
- Over the summer, we required districts to prepare a reopening plan that included the three learning models identified in the regulations: (1) an in-person learning model consistent with health and safety requirements; (2) a hybrid learning model; and (3) a remote learning model. Requiring districts and schools to include all three learning models in their plan allowed them to provide continuity of learning as circumstances changed. If districts’ hybrid or remote models were consistent with the requirements included in the Student Learning Time regulations, then the districts’ hybrid or remote instruction counted toward structured learning time.
- Following collaborative discussions with the teachers’ unions, we provided school districts 10 additional days at the start of the 2020-2021 school year to prepare for a safe, successful reopening of schools. These planning days provided time for district and school staff to become familiar with all three learning models, allowing districts to pivot between them as needed.

During the course of this school year, most schools have operated either in-person or in a hybrid model. For example, as of February 12th, nearly 80% of districts were providing at least some in-person instruction to students through an in-person or hybrid model. But many students, including students in some of the larger urban school districts, have been receiving fully remote instruction for most or all of the school year. For example, approximately 300,000 students are

enrolled in districts that are currently fully remote.

Further Amendments to the Student Learning Time Regulations

At the March Board meeting, I will recommend that the Board further amend the Student Learning Time regulations. While the regulations currently provide me with the authority to determine when to require districts to provide hybrid and remote learning models in the first instance, I am requesting that the Board extend that authority to permit me to determine when the hybrid and remote models would no longer constitute structured learning time and districts must return students to in-person instruction.¹ The proposed amendments include the following:

- If I conclude, after consulting with state health officials and medical experts, that students may safely attend classes in an in-person setting consistent with the health and safety requirements that I have issued, then, after providing written notice to the Board, I may notify districts that they may no longer use hybrid or remote learning models to meet the minimum school year and structured learning time requirements set forth in the regulations.
- I may make this determination “in whole or in part.” In other words, I may use a phased-in approach, where I determine that hybrid and remote models will no longer be used to meet learning time requirements at the elementary school level, and make subsequent determinations for middle schools and high schools.
- The amendments include a waiver provision. The Department will develop a waiver process to address a limited set of circumstances in which districts make a compelling case that they must take an incremental approach.
- For the remainder of this school year, parents and guardians may continue to select a remote learning model for their children. The learning hours for students who opt into remote learning will continue to count for structured learning time.
- The authorities granted in this section of the regulations would remain in effect until the Board determines, on my recommendation, that students can attend classes in a safe environment without additional health and safety measures.

If the Board adopts the proposed regulation granting this authority, I will pursue a graduated approach to returning students to the classroom, working closely with state health officials and medical experts. My initial focus is to bring all elementary school students back to in-person learning five days a week this April. The proposed regulation provides accommodation for families who wish to have their students learn remotely for the rest of this school year, as well as

¹ As noted in the fourth bullet, districts providing in-person instruction as determined by the Commissioner may continue to provide remote learning to those students whose parents/guardians have selected it for their children, for the remainder of the current school year.

a waiver process for districts. At the March meeting, I will provide additional details to the Board on my plan to return more students to full in-person instruction, including supports for districts to accomplish this goal.

Conclusion

Working with the medical community, districts and schools have worked hard to keep students and staff safe during what we hope is a once-in-a-lifetime pandemic. At this point, with the robust mitigation strategies we have in place and all the data and evidence we have in hand, it is time to begin the process of returning even more students to classrooms.

As we have stated repeatedly throughout this pandemic, we know 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 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. Further, as noted in the attached letter from numerous Massachusetts infectious diseases physicians, pediatricians, and public health experts, the risks to students of not being in school are dramatic.

For all these reasons, I recommend that the Board adopt these amendments to the regulations to provide me with the authority to determine, in consultation with public health officials and medical experts, when hybrid and remote models will no longer count for student learning time hours. Because of the urgent need, I am proposing that these amendments be adopted on an emergency basis to allow them to take effect immediately. Under the Administrative Procedure Act, emergency regulations are effective for three months, during which time the agency solicits and reviews public comment. Following the public comment period, the Board would vote on final adoption of these regulations in May 2021.

Enclosures: 603 CMR 27.00 Strikethrough version of regulation showing proposed amendments
February 28, 2021 physician letter
Motion