



Jeff Wulfson
Acting Commissioner

Massachusetts Department of Elementary and Secondary Education

75 Pleasant Street, Malden, Massachusetts 02148-4906

Telephone: (781) 338-3000
TTY: N.E.T. Relay 1-800-439-2370

MEMORANDUM

To: Members of the Board of Elementary and Secondary Education
From: Jeff Wulfson, Acting Commissioner

A handwritten signature in cursive script that reads "Jeff Wulfson".

Date: March 16, 2018
Subject: Proposed Amendments to Special Education Regulations, 603 CMR 28.10, to Align with Every Student Succeeds Act (ESSA) Foster Care Provisions

At the meeting of the Board of Elementary and Secondary Education (Board) on March 27, 2018, I will ask the Board to vote to adopt the amendments to the Massachusetts Special Education Regulations at 603 CMR 28.10, pertaining to the assignment of school district responsibility for the special education services of students in foster care who have Individualized Education Programs (IEPs). These regulations would take effect on July 1, 2018.

In November 2017, the Board voted to send the proposed amendments out for public comment. The Department of Elementary and Secondary Education (Department) has reviewed the comments that were received and has revised the proposed amendments as needed.

Assignment of School District Responsibility

Under the state special education law, Mass. General Laws Chapter 71B, § 3, the school committee of every city, town, or school district is responsible for identifying school age children *residing therein* who have a disability, and providing or arranging for the provision of special education for them. M.G.L. Chapter 71B, § 5 states that “any school committee which provides or arranges for the provision of special education” pursuant to section 3 shall pay the costs. The statute authorizes the Board to adopt regulations to carry out the statutory mandate.

Our state regulations set forth rules for allocating programmatic and financial responsibility for students eligible for special education based upon residency and enrollment. The Board first adopted these regulations in the 1970s and has amended them several times since, to address changing needs. Under section 28.10, depending on where a student lives, responsibility for the student’s special education services may fall to the district in which the student currently resides, the district in which the student’s parent or legal guardian resides, and in some cases responsibility may be shared between them.

For the majority of students who live with their parent(s) or legal guardian in a city, town, or regional school district and who are enrolled in and attend school there, the responsibility for special education rests with the school committee of that city, town, or school district. For students in less traditional living arrangements, including those who reside in hospitals or other institutional settings, residential schools, those who are homeless, and students in foster care, the regulations define which school committee(s) is/are responsible programmatically and financially for the students' special education.

For students in these non-traditional living situations, the programmatic and financial responsibility for a special education program may be split between two school districts. The district with programmatic responsibility must ensure that evaluations, IEPs, and services are provided for the eligible student as required under special education law. The district with financial responsibility must pay for the student's special education program but may not require use of a specific program.

Section 28.10 also authorizes the Department to assign, and school districts or agencies to request the Department's assistance in assigning, a city, town, or school district to be responsible for students in more complex living situations. The Department carries out this assignment function after the student is enrolled and receiving services, so that ambiguity about school district responsibility does not impede the student's receipt of services described in an IEP. The Department makes approximately 400 school district assignments annually.

Overview of Proposed Amendments

The federal Every Student Succeeds Act (ESSA) has introduced additional considerations about where a student in foster care has the right to attend school. A student in foster care – whether a foster home, group home, state-ordered residential setting, temporary care unit, or similar setting – has the right to stay in the school s/he was attending upon placement in foster care or a change in foster care setting, regardless of where the foster care setting is located, if it is in the student's best interest to do so.

Given this change under federal law, it is necessary to amend the state regulations that currently do not provide for situations, now permitted under ESSA, in which a student in foster care resides in one district but is enrolled in and attends school in another. The proposed amendments are intended to:

- clarify programmatic and financial responsibility for the special education services of students in foster care;
- resolve a conflict between the current state regulation and new provisions in federal law (ESSA, the Every Student Succeeds Act) relating to students in foster care; and
- simplify, and provide consistency and predictability for, the process of assigning responsibility to school districts for the special education of students in foster care.

The Department provided the Board with [additional information](#) about the new ESSA requirements and the scope of the proposed regulations at the November 2017 meeting, at which the Board authorized the Department to seek public comment.

Comments and Response

Two individuals, both of whom are attorneys representing school districts, submitted comments during the public comment period. While they mainly concern issues outside of the scope of these amendments, the comments prompted the Department to clarify two areas of potential ambiguity. The Department also corrected a typo. Except for these minor changes, the proposed regulations are identical to the version released for public comment in November 2017. The comments are attached, along with a summary of the comments and the Department's response to them.

Next Steps

This spring the Department will issue guidance to assist districts in implementing the amended regulations, which will take effect on July 1, 2018 and will apply prospectively, not retroactively. This means that the Department will not change existing determinations of district responsibility, nor apply the new regulations if a student's foster care setting changes before July 1, 2018. Also, the current regulations will apply to assignments made during the summer of 2018 that affect extended school year services, as part of a student's 2017-2018 IEP. All other decisions made under the amended regulations will be effective for the 2018-2019 school year. These implementation dates will provide a clear transition from the current regulations to the amended regulations on and after July 1, 2018.

Combined with the [guidance](#) on rights extended under ESSA to students in foster care issued jointly with the Department of Elementary and Secondary Education and the Department of Children and Families, the amendments to 603 CMR 28.10 will ensure that students in foster care will receive a more continuous and stable education experience, focused on the students' best interests, and featuring fewer changes in enrollment. For districts, the amended assignment rules should be more predictable and easier to apply for purposes of planning and budgeting.

Attached to this memo are clean and redlined versions of 603 CMR 28.10, copies of the public comment, a report analyzing and summarizing the public comment, and a motion to adopt the proposed amendments, effective July 1, 2018. Senior Associate Commissioner Russell Johnston; Director of Special Education Planning and Policy Teri Williams Valentine; and Department Legal Counsel Josh Varon will be at the Board meeting to answer your questions.

Enclosures: Proposed Amendments to Special Education Regulations, 603 CMR 28.10 – clean version
Proposed Amendments to Special Education Regulations, 603 CMR 28.10 – redlined version
Copies of Public Comment
Report Analyzing and Summarizing Public Comment
Motion to Adopt the Proposed Regulations

**PROPOSED AMENDMENTS TO SPECIAL EDUCATION REGULATIONS, 603 CMR 28.10, TO ALIGN
WITH ESSA FOSTER CARE PROVISIONS**

- Presented to the Board of Elementary and Secondary Education for initial review and vote to solicit public comment: **November 28, 2017**
- Period of public comment: **through January 19, 2018**
- Final action by the Board of Elementary and Secondary Education anticipated: **March 27, 2018**

The proposed amendments would clarify programmatic and financial responsibility for the special education services of students in foster care; resolve a conflict between the current state regulation and new provisions in federal law relating to students in foster care; and simplify, and provide consistency and predictability for, the process of assigning responsibility to school districts for the special education of students in foster care.

For the complete text of the current Special Education Regulations, 603 CMR 28.00, see <http://www.doe.mass.edu/lawsregs/603cmr28.html>.

28.10: School District Responsibility

(1) **General Provisions.** School districts shall be programmatic and financially responsible for eligible students based on residency and enrollment.

(a) With the exception of students who are in the care or custody of a state agency, nothing in 603 CMR 28.10 shall require a school district to provide special education to a student whose parent(s), and legal guardian if any, live outside Massachusetts and have placed the student in an education program in Massachusetts or who maintain contact with the student who remains in Massachusetts.

(b) Nothing in 603 CMR 28.10 shall limit the right of the student to timely evaluation, services and placement in accordance with 603 CMR 28.00.

(c) Nothing in 603 CMR 28.10 shall be interpreted to assign responsibility to school districts for any educational service or program other than services or programs provided under state or federal special education law.

(d) Any school district deemed responsible for a student under 603 CMR 28.10 shall continue responsibility for such student until another school district is deemed responsible under 603 CMR 28.10.

(2) **School district responsibility based on student residence.** The school district where the student resides shall have both programmatic and financial responsibility under the following circumstances:

(a) When students live with their parent(s) or legal guardian.

1. When a student who requires an in-district placement to implement his or her IEP lives with both of his or her parents during the school year, irrespective of school vacation

periods, and the parents live in two different Massachusetts school districts, the school district where the student is enrolled shall be responsible for fulfilling the requirements of 603 CMR 28.00.

2. When a student who requires an out-of-district placement to implement his or her IEP lives with both of his or her parents during the school year, irrespective of school vacation periods, and the parents live in two different Massachusetts school districts, the school districts where the parents reside shall be equally responsible for fulfilling the requirements of 603 CMR 28.00.

(b) When students are eighteen years of age or over and they have established their own residences as adults.

(3) School district responsibility based on residence of parent(s) or legal guardian. The school district where the parent(s) or legal guardian resides shall have both programmatic and financial responsibility under the following circumstances:

(a) When a student is in a pediatric nursing home.

(b) When a student whose IEP requires an out-of-district placement lives and receives special education services at a special education residential school pursuant to a placement by the IEP Team.

(c) When a student lives and receives educational services in an institutional facility operated by or, through contract, authorized by the Department of Mental Health, the Department of Public Health, the Department of Youth Services, or the Department of Correction or County House of Correction, except as provided below.

1. If an eligible student was placed or resided in foster care at the time the student entered the institutional facility, then responsibility shall remain with the district(s) assigned most recently pursuant to 603 CMR 28.10(5)(b).
2. If a student is 18 years of age or older and has established his or her own residence as an adult, the school district where the student resided prior to entering the institutional facility shall remain programmatically and fiscally responsible.

(4) Shared school district responsibility. The school district where the parent(s) or legal guardian resides shall have financial responsibility and the school district where the student resides shall have programmatic responsibility when a student who is not in foster care, as defined below in 603 CMR 28.05(b), is living in a relative's home or living in a residence, crisis, or respite facility funded or supervised by a state agency other than the Department of Children and Families.

(a) When such a student is served in an in-district program, the school district where the student lives shall provide such services and may bill and shall receive payment for the special education costs (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable) from the school district where the parent(s) or legal guardian resides, unless such student is over 18 years of age and has established his or her own residence as an adult as described in 603 CMR 28.10(2)(b).

(b) When such a student is served in an out-of-district program, the school district where the parent(s) or legal guardian resides shall pay the tuition costs for the student's IEP program directly to the out-of-district school, and such other payments as may be required to other individuals or entities that provide services required by the student's IEP.

(c) In all cases where financial and programmatic responsibility are shared, the school district where the student resides shall invite the school district where the parent(s) or legal guardian resides to participate as a member of the student's Team, provided that such participation shall not limit the student's right to timely evaluation and placement in accordance with 603 CMR 28.00.

(5) Responsibility for Homeless Students and Students in Foster Care.

(a) Nothing in 603 CMR 28.00 shall limit the educational rights of homeless students and parents afforded under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq. (McKinney-Vento). The following provisions apply to these students.

1. Homeless students shall be entitled to either continue to attend their school of origin, as defined by McKinney-Vento, or attend school in the city or town where they temporarily reside. To the extent feasible, homeless students should remain in their school of origin unless doing so is contrary to the wishes of such student's parent(s) or legal guardian or state agency with care or custody of the student.
2. The school district(s) that was programmatically and financially responsible prior to the student becoming homeless shall remain programmatically and financially responsible for a homeless student until the parent(s) or legal guardian or state agency with care or custody of the student chooses to enroll the student in the school district where the shelter or temporary residence is located. When a student whose IEP requires in-district services is enrolled in the school district where the student is temporarily residing, then that school district shall become programmatically and financially responsible upon enrollment. When a student whose IEP requires out-of-district services is enrolled in the school district where the student is temporarily residing, then that school district shall become programmatically responsible upon enrollment and the school district(s) that was financially responsible prior to the student becoming homeless shall remain financially responsible until the student is no longer homeless.

(b) Nothing in 603 CMR 28.00 shall limit the educational rights afforded under the Every Student Succeeds Act (ESSA) to students who are in foster care, which means 24-hour substitute care for children placed away from their parents or guardians and for whom the Department of Children and Families has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. The following provisions apply to these students:

1. The school district(s) that was programmatically and financially responsible prior to the student's entry into foster care or prior to a subsequent change in the student's foster care setting shall remain responsible for the student's special education program for as long as the student continues to attend the same school.

2. For students in foster care who do not continue to attend the same school, and who enroll in the district in which their foster care setting is located, programmatic responsibility shall be with the district in which the student is enrolled and financial responsibility shall be with the district where the parent(s) or legal guardian resides.
3. When the Department of Children and Families relocates a student to reside in and attend an approved residential school, the school district that was programmatically responsible prior to this relocation shall remain programmatically responsible and the district where the parent(s) or legal guardian resides shall be financially responsible.
4. For all situations in which school districts share responsibility for students in foster care, the following provisions shall apply:
 - i. When such a student is served in an in-district program, the school district with programmatic responsibility may bill and shall receive payment for the special education costs (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable) from the school district where the parent(s) or legal guardian resides.
 - ii. When such a student is served in an out-of-district placement, the school district where the parent(s) or legal guardian resides shall pay the tuition costs for the student's IEP placement directly to the out-of-district school, and such other payments as may be required to other individuals or entities that provide services in the student's IEP.
 - iii. The school district with programmatic responsibility shall invite the school district where the parent(s) or legal guardian resides to participate as a member of the student's Team, providing that such participation shall not limit the student's right to timely evaluation and placement in accordance with 603 CMR 28.00.

(6) Program schools. A program school shall have programmatic and financial responsibility for enrolled students, subject only to specific finance provisions of any pertinent state law related to the program school. Specific provisions for program schools are as follows:

(a) For charter schools, Commonwealth of Massachusetts virtual schools, vocational schools, or schools attended under M.G.L. c. 76, § 12A (Metco), when the Team determines that the student may need an out-of-district placement, the Team shall conclude the meeting pursuant to 603 CMR 28.06(2)(e) without identifying a specific placement type, and shall notify the school district where the student resides within two school days.

1. Upon a determination as in 603 CMR 28.10(6)(a) above, the program school shall schedule another meeting to determine placement, and shall invite representatives of the school district where the student resides to participate as a member of the placement team pursuant to 603 CMR 28.06(2)(e)(1).

2. The Team meeting convened by the program school shall first consider if the school district where the student resides has an in-district program that could provide the services recommended by the Team, and if so, the program school shall arrange with the school district where the student resides to deliver such services or develop an appropriate in-district program at the program school for the student.
3. If the placement Team, in accordance with the procedures of 603 CMR 28.06(2)(e), determines that the student requires an out-of-district program to provide the services identified on the student's IEP, then the placement proposed to the parent shall be an out-of-district day or residential school, depending on the needs of the student. Upon parental acceptance of the proposed IEP and proposed placement, programmatic and financial responsibility shall return to the school district where the student resides. The school district where the student resides shall implement the placement determination of the Team consistent with the requirements of 603 CMR 28.06(3).

(b) For schools attended pursuant to M.G.L. c. 76, § 12B (school choice), such schools may bill and receive payment from the school district where the student resides for the costs of out-of-district placements made by the program school. The program school shall invite the school district where the student resides to participate as a member of the student's Team and shall provide notice of the Team meeting at least five school days prior to the meeting, provided that such participation shall not limit the student's right to a timely evaluation and placement in accordance with 603 CMR 28.00.

(c) A Vocational school shall not discriminate in the enrollment of students with disabilities.

1. A vocational school may not accept students with disabilities on a conditional basis unless the vocational school has procedures that ensure that the reasons for conditional acceptance are equally applied to students without disabilities.
2. A vocational school may serve as an "evaluation site" for a student requiring an extended evaluation under the provisions of 603 CMR 28.05(2)(b) of 603 CMR 28.00 if the evaluative information that is required is primarily vocational in nature. In such circumstances, the student is not considered enrolled in the vocational school, nor shall an extended evaluation be considered a temporary placement. For the duration of the extended evaluation the student shall be considered enrolled in the public school district in which he or she was enrolled prior to the extended evaluation.

(7) Temporary Assignments. The Department reserves the right to assign temporary responsibility in cases where the student is not receiving services or when lack of assignment threatens the student's placement or program. Such temporary assignment shall be made based on the information available to the Department. The temporary district shall have all of the rights and responsibilities assigned to districts under 603 CMR 28.00. The temporary district may bill and shall be eligible to receive payment for the special education costs (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable) from the district assigned responsibility for that period of time for which a temporary district was identified.

(8) Department Assignment of School District Responsibility.

(a) The Department may assign or a school district or agency may request the Department's assistance in assigning a city, town, or school district to be responsible for students in living situations described in 603 CMR 28.10(3), (4), or (5) in the following circumstances.

1. Students who are in the care or custody of a state agency and have no parent or legal guardian residing in Massachusetts; or
2. When the residence or residential history of the student's parent(s) or legal guardian is in dispute; or
3. When the student has a legal guardian who has been appointed on a limited basis; or
4. When a student has not yet been determined to be eligible and/or is not receiving services; or
5. When a student is in the care or custody of a state agency and is hospitalized and the agency gives notice to the responsible school district that the student will not return to the residence held prior to hospitalization.

(b) A request for an assignment shall not limit the right of the student to timely evaluation, services, or placement in accordance with 603 CMR 28.00. The school district or state agency requesting assignment shall be responsible for providing to the Department all required documentation to ascertain the legal status or residence(s) of the student or the student's parent(s) or legal guardian.

(c) The Department shall use the following criteria to assign a city, town or school district responsibility for a student in a living situation described in 603 CMR 28.10(3), ~~or (4)~~, or (5).

1. If the child has been voluntarily surrendered for adoption or freed for adoption by the Probate Court or the Juvenile Court, the school district(s) where the parent(s) lived at the time that the child was surrendered or freed for adoption or when parental rights were terminated shall be responsible.
2. If the student is in the care or custody of a state agency and such state agency has obtained a legal guardianship for the student when the student has turned 18, the school district(s) where the parent(s) lived at the time the court granted the request for guardianship shall be responsible.
3. If the parents' rights have been terminated and the Probate Court or the Juvenile Court has appointed a legal guardian for a minor student, the school district where the legal guardian resides shall be responsible.
4. If the legal guardian is an agency or organization or the legal guardian has been appointed on a limited basis such as a guardian ad litem, or a guardian appointed solely to monitor medications or finances, the school district where the parent(s) lives or last lived shall be responsible.
5. If the student's parents live in two different school districts, such school districts shall be jointly responsible for fulfilling the requirements of 603 CMR 28.00 except if the student actually resided with either parent immediately prior to going into a living situation

described in 603 CMR 28.10(3) or (4) or the parents are divorced or separated and one parent has sole physical custody, then the school district where the student resided with the parent or the school district of the parent who has sole physical custody shall be responsible and shall remain responsible in the event the student goes into the care or custody of a state agency.

6. If the student's parent(s) or legal guardian resides in an institutional setting in Massachusetts, including, but not limited to, a correctional facility, a hospital, a nursing home or hospice, or a mental health facility, a halfway house, a pre-release center or a treatment facility, the school district where the parent(s) or legal guardian lived prior to entering the institutional setting shall be responsible.
7. If the student's parent(s) or legal guardian does not reside in Massachusetts, and the parent's or legal guardian's whereabouts are unknown, the school district of the last known Massachusetts residence of the student's parent(s) or legal guardian who lived in Massachusetts shall be responsible.

(d) Using the above criteria, the Department shall notify in writing the assigned school district(s) of its decision. Upon notification of responsibility for provision of special education to a student under 603 CMR 28.10(8)(d), the school district(s) shall immediately assume responsibility for the student in accordance with the requirements of 603 CMR 28.00. Until such notification, the school district(s) that had been responsible for providing special education to such student under 603 CMR 28.00 shall continue to be responsible.

(e) The school district(s) that had been responsible for providing special education to the student prior to assignment by the Department under 603 CMR 28.10(8)(d) may bill and shall be eligible to receive payment (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable), from the newly assigned district for the special education costs that were incurred during the period of time in which the newly assigned district should have been responsible.

(f) A school district may seek a review of the Department's assignment under the procedures of 603 CMR 28.10(8) at any time that the district has information that was not available to the Department at the time that the assignment was made. The Department will review the information presented and will confirm or change the assignment of school district responsibility, and notify the districts of this decision under 603 CMR 28.10(8)(d).

(9) Appeal of Assignment of School District Responsibility. The assigned district may appeal the Department's assignment of responsibility to the Bureau of Special Education Appeals, subject to the following procedures:

(a) A district may appeal the assignment of school district responsibility within 60 days of the most recent notification of assignment.

(b) The request for appeal shall meet the following standards:

1. A request for appeal shall be based only on the information provided to the Department under 603 CMR 28.10(8)(b) and 603 CMR 28.10(8)(f) if applicable;

2. The request shall state the basis of the appeal;
3. The request for appeal shall identify the district(s) that the appealing district claims should have been assigned responsibility; and
4. The appealing district shall include such district(s) as a party to the appeal.

(c) A party may request a decision without a hearing with the agreement of all parties.

(d) The Bureau of Special Education Appeals shall render a decision within 45 days of receipt of the hearing request. The granting of a postponement shall not extend the 45-day deadline for issuance of a decision unless the postponement is requested by a party and allowed by the hearing officer for good cause.

(e) The Bureau of Special Education Appeals may return the case to the Department of Elementary and Secondary Education based on new information presented at the hearing.

(f) The decision of the Bureau of Special Education Appeals shall be limited to a determination of the assigned school district and the effective date of such assignment.

***Technical Changes:**

State agency names shall be revised throughout 603 CMR 28.00 where necessary to conform to recent statutory name changes.

Regulatory Authority:

M.G.L. c. 69, § 1B; c. 69, §§ 1J and 1K, as amended by St. 2010, c. 12, § 3; c. 71, § 38G.

Last Updated: April 1, 2014

Proposed amendments to 603 CMR 28.10 November 2017

**PROPOSED AMENDMENTS TO SPECIAL EDUCATION REGULATIONS, 603 CMR 28.10, TO ALIGN
WITH ESSA FOSTER CARE PROVISIONS**

- Presented to the Board of Elementary and Secondary Education for initial review and vote to solicit public comment: **November 28, 2017**
- Period of public comment: **through January 19, 2018**
- Final action by the Board of Elementary and Secondary Education anticipated: **March 27, 2018**

Summary: The proposed amendments would clarify programmatic and financial responsibility for the special education services of students in foster care; resolve a conflict between the current state regulation and new provisions in federal law relating to students in foster care; and simplify, and provide consistency and predictability for, the process of assigning responsibility to school districts for the special education of students in foster care.

Proposed amendments are indicated by underline (new language) or ~~striketrough~~ (deleted language). For the complete text of the current Special Education Regulations, 603 CMR 28.00, see <http://www.doe.mass.edu/lawsregs/603cmr28.html>.

28.10: School District Responsibility

(1) **General Provisions.** School districts shall be programmatically and financially responsible for eligible students based on residency and enrollment.

(a) With the exception of students who are in the care or custody of a state agency, nothing in 603 CMR 28.10 shall require a school district to provide special education to a student whose parent(s), and legal guardian if any, live outside Massachusetts and have placed the student in an education program in Massachusetts or who maintain contact with the student who remains in Massachusetts.

(b) Nothing in 603 CMR 28.10 shall limit the right of the student to timely evaluation, services and placement in accordance with 603 CMR 28.00.

(c) Nothing in 603 CMR 28.10 shall be interpreted to assign responsibility to school districts for any educational service or program other than services or programs provided under state or federal special education law.

(d) Any school district deemed responsible for a student under 603 CMR 28.10 shall continue responsibility for such student until another school district is deemed responsible under 603 CMR 28.10.

(2) **School district responsibility based on student residence.** The school district where the student resides shall have both programmatic and financial responsibility under the following circumstances:

(a) When students live with their parent(s) or legal guardian.

1. When a student who requires an in-district placement to implement his or her IEP lives with both of his or her parents during the school year, irrespective of school vacation periods, and the parents live in two different Massachusetts school districts, the school district where the student is enrolled shall be responsible for fulfilling the requirements of 603 CMR 28.00.
2. When a student who requires an out-of-district placement to implement his or her IEP lives with both of his or her parents during the school year, irrespective of school vacation periods, and the parents live in two different Massachusetts school districts, the school districts where the parents reside shall be equally responsible for fulfilling the requirements of 603 CMR 28.00.

(b) When students are eighteen years of age or over and they have established their own residences as adults.

~~(c) When students have been placed or are funded by the Department of Children and Families in a foster home located within Massachusetts.~~

(3) School district responsibility based on residence of parent(s) or legal guardian. The school district where the parent(s) or legal guardian resides shall have both programmatic and financial responsibility under the following circumstances:

(a) When a student is in a pediatric nursing home.

(b) When a student whose IEP requires an out-of-district placement lives and receives special education services at a special education residential school pursuant to a placement by the IEP Team.

(c) When a student lives and receives educational services in an institutional facility operated by or, through contract, authorized by the Department of Mental Health, the Department of Public Health, the Department of Youth Services, or the Department of Correction or County House of Correction, except as provided below.

1. If an eligible student ~~requiring in-district services had been~~ was placed or resided in a ~~Department of Children and Families foster~~ care home for at least three months before entering the at the time the student entered the institutional facility, ~~the school district in which the student was enrolled before entering the facility shall remain programmatically responsible and the school district where the parents reside shall be financially responsible~~ then responsibility shall remain with the district(s) assigned most recently pursuant to 603 CMR 28.10(5)(b).
2. If a student is 18 years of age or older and has established his or her own residence as an adult, the school district where the student resided prior to entering the institutional facility shall remain programmatically and fiscally responsible.

~~(d) When a student whose IEP requires in-district services is placed by the Department of Children and Families in an approved residential school, programmatic and financial responsibility will be with the district where the parent(s) or legal guardian resides. The school~~

~~district of the city, town or regional school district where such approved residential special education school is located shall provide educational and special educational services to the student in accordance with his or her IEP, shall participate in any Team meetings convened by the school district where the parent(s) or legal guardian resides and shall receive reimbursement from the school district where the parent(s) or legal guardian resides for such services using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable.~~

(4) Shared school district responsibility. The school district where the parent(s) or legal guardian resides shall have financial responsibility and the school district where the student resides shall have programmatic responsibility when a student who is not in foster care, as defined below in 603 CMR 28.05(b), is in a living situation other than that described in 603 CMR §28.10(2) or (3) including but not limited to in a relative's home; that is not funded by the Department of Children and Families, a foster home funded by the Department of Children and Families that is located outside of Massachusetts, a group home, or living in a residence, or crisis, or respite facility funded or supervised by a state agency other than the Department of Children and Families. ~~and an approved residential special education school as a result of action by the Department of Children and Families.~~

(a) When such a student is served in an in-district program, the school district where the student lives shall provide such services and may bill and shall receive payment for the special education costs (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable) from the school district where the parent(s) or legal guardian resides, unless such student is over 18 years of age and has established his or her own residence as an adult as described in 603 CMR 28.10(2)(b).

(b) When such a student is served in an out-of-district program, the school district where the parent(s) or legal guardian resides shall pay the tuition costs for the student's IEP program directly to the out-of-district school, and such other payments as may be required to other individuals or entities that provide services required by the student's IEP.

(c) In all cases where financial and programmatic responsibility are shared, the school district where the student resides shall invite the school district where the parent(s) or legal guardian resides to participate as a member of the student's Team, provided that such participation shall not limit the student's right to timely evaluation and placement in accordance with 603 CMR 28.00.

(5) Responsibility for Homeless Students and Students in Foster Care.

(a) Nothing in 603 CMR 28.00 shall limit the educational rights of homeless students and parents afforded under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq. (McKinney-Vento). The following provisions apply to these students.

~~(a)~~ 1. Homeless students shall be entitled to either continue to attend their school of origin, as defined by McKinney-Vento, or attend school in the city or town where they temporarily reside. To the extent feasible, homeless students should remain in their school of origin unless doing so is contrary to the wishes of such student's parent(s) or legal guardian or state agency with care or custody of the student.

- ~~(b)~~ 2. The school district(s) that was programmatically and financially responsible prior to the student becoming homeless shall remain programmatically and financially responsible for a homeless student until the parent(s) or legal guardian or state agency with care or custody of the student chooses to enroll the student in the school district where the shelter or temporary residence is located. When a student whose IEP requires in-district services is enrolled in the school district where the student is temporarily residing, then that school district shall become programmatically and financially responsible upon enrollment. When a student whose IEP requires out-of-district services is enrolled in the school district where the student is temporarily residing, then that school district shall become programmatically responsible upon enrollment and the school district(s) that was financially responsible prior to the student becoming homeless shall remain financially responsible until the student is no longer homeless.

(b) Nothing in 603 CMR 28.00 shall limit the educational rights afforded under the Every Student Succeeds Act (ESSA) to students who are in foster care, which means 24-hour substitute care for children placed away from their parents or guardians and for whom the Department of Children and Families has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. The following provisions apply to these students:

1. The school district(s) that was programmatically and financially responsible prior to the student's entry into foster care or prior to a subsequent change in the student's foster care setting shall remain responsible for the student's special education program for as long as the student continues to attend the same school.
2. For students in foster care who do not continue to attend the same school, and who enroll in the district in which their foster care setting is located, programmatic responsibility shall be with the district in which the student is enrolled and financial responsibility shall be with the district where the parent(s) or legal guardian resides.
3. When the Department of Children and Families relocates a student to reside in and attend an approved residential school, the school district that was programmatically responsible prior to this relocation shall remain programmatically responsible and the district where the parent(s) or legal guardian resides shall be financially responsible.
4. For all situations in which school districts share responsibility for students in foster care, the following provisions shall apply:
 - i. When such a student is served in an in-district program, the school district with programmatic responsibility may bill and shall receive payment for the special education costs (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable) from the school district where the parent(s) or legal guardian resides.
 - ii. When such a student is served in an out-of-district placement, the school district where the parent(s) or legal guardian resides shall pay the tuition

costs for the student's IEP placement directly to the out-of-district school, and such other payments as may be required to other individuals or entities that provide services in the student's IEP.

- iii. The school district with programmatic responsibility shall invite the school district where the parent(s) or legal guardian resides to participate as a member of the student's Team, providing that such participation shall not limit the student's right to timely evaluation and placement in accordance with 603 CMR 28.00.

(6) Program schools. A program school shall have programmatic and financial responsibility for enrolled students, subject only to specific finance provisions of any pertinent state law related to the program school. Specific provisions for program schools are as follows:

(a) For charter schools, Commonwealth of Massachusetts virtual schools, vocational schools, or schools attended under M.G.L. c. 76, § 12A (Metco), when the Team determines that the student may need an out-of-district placement, the Team shall conclude the meeting pursuant to 603 CMR 28.06(2)(e) without identifying a specific placement type, and shall notify the school district where the student resides within two school days.

1. Upon a determination as in 603 CMR 28.10(6)(a) above, the program school shall schedule another meeting to determine placement, and shall invite representatives of the school district where the student resides to participate as a member of the placement team pursuant to 603 CMR 28.06(2)(e)(1).
2. The Team meeting convened by the program school shall first consider if the school district where the student resides has an in-district program that could provide the services recommended by the Team, and if so, the program school shall arrange with the school district where the student resides to deliver such services or develop an appropriate in-district program at the program school for the student.
3. If the placement Team, in accordance with the procedures of 603 CMR 28.06(2)(e), determines that the student requires an out-of-district program to provide the services identified on the student's IEP, then the placement proposed to the parent shall be an out-of-district day or residential school, depending on the needs of the student. Upon parental acceptance of the proposed IEP and proposed placement, programmatic and financial responsibility shall return to the school district where the student resides. The school district where the student resides shall implement the placement determination of the Team consistent with the requirements of 603 CMR 28.06(3).

(b) For schools attended pursuant to M.G.L. c. 76, § 12B (school choice), such schools may bill and receive payment from the school district where the student resides for the costs of out-of-district placements made by the program school. The program school shall invite the school district where the student resides to participate as a member of the student's Team and shall provide notice of the Team meeting at least five school days prior to the meeting, provided that such participation shall not limit the student's right to a timely evaluation and placement in accordance with 603 CMR 28.00.

(c) A Vocational school shall not discriminate in the enrollment of students with disabilities.

1. A vocational school may not accept students with disabilities on a conditional basis unless the vocational school has procedures that ensure that the reasons for conditional acceptance are equally applied to students without disabilities.
2. A vocational school may serve as an "evaluation site" for a student requiring an extended evaluation under the provisions of 603 CMR 28.05(2)(b) of 603 CMR 28.00 if the evaluative information that is required is primarily vocational in nature. In such circumstances, the student is not considered enrolled in the vocational school, nor shall an extended evaluation be considered a temporary placement. For the duration of the extended evaluation the student shall be considered enrolled in the public school district in which he or she was enrolled prior to the extended evaluation.

(7) Temporary Assignments. The Department reserves the right to assign temporary responsibility in cases where the student is not receiving services or when lack of assignment threatens the student's placement or program. Such temporary assignment shall be made based on the information available to the Department. The temporary district shall have all of the rights and responsibilities assigned to districts under 603 CMR 28.00. The temporary district may bill and shall be eligible to receive payment for the special education costs (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable) from the district assigned responsibility for that period of time for which a temporary district was identified.

(8) Department Assignment of School District Responsibility.

(a) The Department may assign or a school district or agency may request the Department's assistance in assigning a city, town, or school district to be responsible for students in living situations described in 603 CMR 28.10(3), ~~or (4)~~, or (5) in the following circumstances.

1. Students who are in the care or custody of a state agency and have no parent or legal guardian residing in Massachusetts; or
2. ~~w~~When the residence or residential history of the student's parent(s) or legal guardian is in dispute; or
3. ~~w~~When the student has a legal guardian who has been appointed on a limited basis; or
4. ~~w~~When a student has not yet been determined to be eligible and/or is not receiving services; or
5. ~~w~~When a student is in the care or custody of a state agency and is hospitalized and the agency gives notice to the responsible school district that the student will not return to the residence held prior to hospitalization.

(b) A request for an assignment shall not limit the right of the student to timely evaluation, services, or placement in accordance with 603 CMR 28.00. The school district or state agency requesting assignment shall be responsible for providing to the Department all required documentation to ascertain the legal status or residence(s) of the student or the student's parent(s) or legal guardian.

(c) The Department shall use the following criteria to assign a city, town or school district responsibility for a student in a living situation described in 603 CMR 28.10(3), ~~or (4)~~, or (5).

1. If the child has been voluntarily surrendered for adoption or freed for adoption by the Probate Court or the Juvenile Court, the school district(s) where the parent(s) lived at the time that the child was surrendered or freed for adoption or when parental rights were terminated shall be responsible.
2. If the student is in the care or custody of a state agency and such state agency has obtained a legal guardianship for the student when the student has turned 18, the school district(s) where the parent(s) lived at the time the court granted the request for guardianship shall be responsible.
3. If the parents' rights have been terminated and the Probate Court or the Juvenile Court has appointed a legal guardian for a minor student, the school district where the legal guardian resides shall be responsible.
4. If the legal guardian is an agency or organization or the legal guardian has been appointed on a limited basis such as a guardian ad litem, or a guardian appointed solely to monitor medications or finances, the school district where the parent(s) lives or last lived shall be responsible.
5. If the student's parents live in two different school districts, such school districts shall be jointly responsible for fulfilling the requirements of 603 CMR 28.00 except if the student actually resided with either parent immediately prior to going into a living situation described in 603 CMR 28.10(3) or (4) or the parents are divorced or separated and one parent has sole physical custody, then the school district where the student resided with the parent or the school district of the parent who has sole physical custody shall be responsible and shall remain responsible in the event the student goes into the care or custody of a state agency.
6. If the student's parent(s) or legal guardian resides in an institutional setting in Massachusetts, including, but not limited to, a correctional facility, a hospital, a nursing home or hospice, or a mental health facility, a halfway house, a pre-release center or a treatment facility, the school district where the parent(s) or legal guardian lived prior to entering the institutional setting shall be responsible.
7. If the student's parent(s) or legal guardian does not reside in Massachusetts, and the parent's or legal guardian's whereabouts are unknown, the school district of the last known Massachusetts residence of the student's parent(s) or legal guardian who lived in Massachusetts shall be responsible.

(d) Using the above criteria, the Department shall notify in writing the assigned school district(s) of its decision. Upon notification of responsibility for provision of special education to a student under 603 CMR 28.10(8)(d), the school district(s) shall immediately assume responsibility for the student in accordance with the requirements of 603 CMR 28.00. Until such notification, the school district(s) that had been responsible for providing special education to such student under 603 CMR 28.00 shall continue to be responsible.

(e) The school district(s) that had been responsible for providing special education to the student prior to assignment by the Department under 603 CMR 28.10(8)(d) may bill and shall be eligible to receive payment (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable), from the newly assigned district for the special education costs that were incurred during the period of time in which the newly assigned district should have been responsible.

(f) A school district may seek a review of the Department's assignment under the procedures of 603 CMR 28.10(8) at any time that the district has information that was not available to the Department at the time that the assignment was made. The Department will review the information presented and will confirm or change the assignment of school district responsibility, and notify the districts of this decision under 603 CMR 28.10(8)(d).

(9) Appeal of Assignment of School District Responsibility. The assigned district may appeal the Department's assignment of responsibility to the Bureau of Special Education Appeals, subject to the following procedures:

(a) A district may appeal the assignment of school district responsibility within 60 days of the most recent notification of assignment.

(b) The request for appeal shall meet the following standards:

1. A request for appeal shall be based only on the information provided to the Department under 603 CMR 28.10(8)(b) and 603 CMR 28.10(8)(f) if applicable;
2. The request shall state the basis of the appeal;
3. The request for appeal shall identify the district(s) that the appealing district claims should have been assigned responsibility; and
4. The appealing district shall include such district(s) as a party to the appeal.

(c) A party may request a decision without a hearing with the agreement of all parties.

(d) The Bureau of Special Education Appeals shall render a decision within 45 days of receipt of the hearing request. The granting of a postponement shall not extend the 45-day deadline for issuance of a decision unless the postponement is requested by a party and allowed by the hearing officer for good cause.

(e) The Bureau of Special Education Appeals may return the case to the Department of Elementary and Secondary Education based on new information presented at the hearing.

(f) The decision of the Bureau of Special Education Appeals shall be limited to a determination of the assigned school district and the effective date of such assignment.

***Technical Changes:**

State agency names shall be revised throughout 603 CMR 28.00 where necessary to conform to recent statutory name changes.

Regulatory Authority:

M.G.L. c. 69, § 1B; c. 69, §§ 1J and 1K, as amended by St. 2010, c. 12, § 3; c. 71, § 38G.

Last Updated: April 1, 2014

Proposed amendments to 603 CMR 28.10 November 2017

Proposed amendments to 603 CMR 28.10 March 2018

From: Marguerite Mitchell [<mailto:MMitchell@tauntonschools.org>]

Sent: Friday, January 19, 2018 12:54 PM

To: Special Education

Subject: Public Comment to proposed Amendments to 603 CMR 28.00

Dear Sir or Madam:

Please consider the following public comments:

1. Regarding the proposed changes to 603 CMR 28.10(3)(b) – although the District supports the additional proposed language, it believes it may not be specific enough. It is the District’s understanding the additional language is intended to cover situations where an IEP Team determines that a residential school is required for a student to receive FAPE, and not situations where a student is attending a residential school through a cost-share arrangement with DCF (or another agency), but whose IEP requires a day school placement for FAPE. The District agrees that in those situations both programmatic and financial responsibility should be with the district with the parent(s) or legal guardian resides. The District proposes that the proposed language clarify this further possibly by adding the following (new proposed language is underlined) “... pursuant to an educational placement in a residential school by the IEP Team”.
2. Regarding the proposed changes to 603 CMR 28.10(4) – the District recognizes that the proposed amendments are seeking to ensure that “foster care” covers every type of placement by DCF other than placement with a parent or legal guardian. However, as that term is generally understood in the community it means only placements that involve living in the home of a foster parent (and would not also include the types of settings that are within the definition of “foster care” set out in the proposed regulation 603 CMR 28.10(5)(b), thus the District suggests that the proposed language clarify this wording further possibly by adding the following (new proposed language is underlined) “... who is not in foster care as that term is defined in 603 CMR 28.10(5)(b), below is ...”.
3. Regarding proposed new provisions 603 CMR 28.10(5)(b)(1-4) – overall the District suggests that whichever school district is financially responsible for students in foster care (placements where DCF has placement and care responsibility), should always also be programmatically responsible too. Allowing another school district to be programmatically responsible would, in essence, give that district the ability to appropriate the funds of another school district (the district that is financially responsible) for which they have no knowledge of the budgetary obligations, solely based on a decision made by DCF, a third party agency. Additionally, without maintaining programmatic responsibility, the school district that is financially responsible is now unable to have a conversation with DCF as to whether or not the foster care placement choice is in the best interest of the student. At no time does the school district who is financially responsible only, have any input into the placement decisions of DCF and by virtue of losing programmatic responsibility and now only being a member of the Team, the financially responsible District also has no ability to ensure the appropriate special education services are being provided to students of the parent(s) or legal guardians living in its boundaries.

4. Regarding proposed new provision 603 CMR 28.10(5)(b)(2) – assuming the comment made above in #3 does not elicit any changes to this proposed provision, the District was not sure if this provision is intended to address changes in students due to moving to another grade level (i.e. elementary to middle school, or middle school to high school), that may be in a different school building, but may be part of the same school district or outside program. For example, if a Taunton student who is already attending an elementary school in a collaborative program in Middleboro, is placed by DCF in a group home in Fall River and stays in this foster care arrangement long enough to now need to attend the middle school program that is in a different school building of the collaborative program, does Middleboro now become programmatically responsible when the change from elementary to middle school happens. Taunton suggests this should not occur and would want to have it clarified this is not what the proposed provision requires.

5. General comment – are there any transition rules being proposed given the financial responsibility changes that will be occurring immediately upon these regulations taking effect and given that the proposed regulations do not appear to be scheduled to take effect with the start of a new fiscal year for school districts, that would otherwise allow school districts to plan for the financial impact of the amendments.

Marguerite M. Mitchell, Esquire
Legal Counsel for Pupil and Personnel

Taunton Public Schools

215 Harris Street

Taunton, MA 02780

This email and the documents included with it contain information from Legal Counsel which is confidential and/or privileged. This information is intended to be for the use of the addressee named on this email transmittal. If you are not the addressee, note that any disclosure, photocopying, distribution or use of the contents of this emailed information is prohibited. If you have received this email in error, please reply to this email, immediately so that we can arrange for the retrieval of the original transmittal documents at no cost to you.

28.10: School District Responsibility

(1) **General Provisions.** School districts shall be programmatically and financially responsible for eligible students based on residency and enrollment.

(a) With the exception of students who are in the care or custody of a state agency, nothing in 603 CMR 28.10 shall require a school district to provide special education to a student whose parent(s), and legal guardian if any, live outside Massachusetts and have placed the student in an education program in Massachusetts or who maintain contact with the student who remains in Massachusetts.

(b) Nothing in 603 CMR 28.10 shall limit the right of the student to timely evaluation, services and placement in accordance with 603 CMR 28.00.

(c) Nothing in 603 CMR 28.10 shall be interpreted to assign responsibility to school districts for any educational service or program other than services or programs provided under state or federal special education law.

(d) Any school district deemed responsible for a student under 603 CMR 28.10 shall continue responsibility for such student until another school district is deemed responsible under 603 CMR 28.10.

(2) **School district responsibility based on student residence.** The school district where the student resides shall have both programmatic and financial responsibility under the following circumstances:

(a) When students live with their parent(s) or legal guardian.

1. When a student who requires an in-district placement to implement his or her IEP lives with both of his or her parents during the school year, irrespective of school vacation periods, and the parents live in two different Massachusetts school districts, the school district where the student is enrolled shall be responsible for fulfilling the requirements of 603 CMR 28.00.
2. When a student who requires an out-of-district placement to implement his or her IEP lives with both of his or her parents during the school year, irrespective of school vacation periods, and the parents live in two different Massachusetts school districts, the school districts where the parents reside shall be equally responsible for fulfilling the requirements of 603 CMR 28.00.

(b) When students are eighteen years of age or over and they have established their own residences as adults.

~~(c) When students have been placed or are funded by the Department of Children and Families in a foster home located within Massachusetts.~~

(3) **School district responsibility based on residence of parent(s) or legal guardian.** The school district where the parent(s) or legal guardian resides shall have both programmatic and financial responsibility under the following circumstances:

(a) When a student is in a pediatric nursing home.

(b) When a student whose IEP requires an out-of-district placement lives and receives special education services at a special education residential school pursuant to a placement by the IEP Team.

(c) When a student lives and receives educational services in an institutional facility operated by or, through contract, authorized by the Department of Mental Health, the Department of Public Health, the Department of Youth Services, or the Department of Correction or County House of Correction, except as provided below.

1. If an eligible student ~~requiring in-district services had been~~ placed or resided in a ~~Department of Children and Families foster care home for at least three months before entering the~~ at the time the student entered the institutional facility, ~~the school district in which the student was enrolled before entering the facility shall remain programmatically responsible and the school district where the parents reside shall be financially responsible then responsibility shall remain with district(s) assigned most recently pursuant to 603 CMR 28.10(5)(b).~~
2. If a student is 18 years of age or older and has established his or her own residence as an adult, the school district where the student resided prior to entering the institutional facility shall remain programmatically and fiscally responsible.

~~(d) When a student whose IEP requires in-district services is placed by the Department of Children and Families in an approved residential school, programmatic and financial responsibility will be with the district where the parent(s) or legal guardian resides. The school district of the city, town or regional school district where such approved residential special education school is located shall provide educational and special educational services to the student in accordance with his or her IEP, shall participate in any Team meetings convened by the school district where the parent(s) or legal guardian resides and shall receive reimbursement from the school district where the parent(s) or legal guardian resides for such services using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable.~~

(4) **Shared school district responsibility.** The school district where the parent(s) or legal guardian resides shall have financial responsibility and the school district where the student resides shall have programmatic responsibility when a student who is not in foster care is in a living situation other than that described in 603 CMR §28.10(2) or (3) including but not limited to in a relative's home, that is not funded by the Department of Children and Families, a foster home funded by the Department of Children and Families that is located outside of Massachusetts, a group home, or living in a residence, or crisis, or respite facility funded or supervised by a state agency other than the Department of Children and Families, and an approved residential special education school as a result of action by the Department of Children and Families.

(a) When such a student is served in an in-district program, the school district where the student lives shall provide such services and may bill and shall receive payment for the special education costs (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable) from the school district where the parent(s) or legal guardian

Comment [A1]: Suggested rewording: Option 1: "When a student lives and receives special education services at a special education residential school pursuant to a placement by the IEP Team" or Option 2: "When a student whose IEP requires a residential placement lives and receives special education services at a special education residential school pursuant to a placement by the IEP Team."
Rationale: "Out-of-district" placement/program includes collaboratives, public day schools, and private day schools. If a student is receiving services at a residential school pursuant to a placement by the IEP Team, then the IEP necessarily must be for a residential school not a less restrictive out-of-district program.

resides, unless such student is over 18 years of age and has established his or her own residence as an adult as described in 603 CMR 28.10(2)(b).

(b) When such a student is served in an out-of-district program, the school district where the parent(s) or legal guardian resides shall pay the tuition costs for the student's IEP program directly to the out-of-district school, and such other payments as may be required to other individuals or entities that provide services required by the student's IEP.

(c) In all cases where financial and programmatic responsibility are shared, the school district where the student resides shall invite the school district where the parent(s) or legal guardian resides to participate as a member of the student's Team, provided that such participation shall not limit the student's right to timely evaluation and placement in accordance with 603 CMR 28.00.

(5) **Responsibility for Homeless Students and Students in Foster Care.**

(a) Nothing in 603 CMR 28.00 shall limit the educational rights of homeless students and parents afforded under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq. (McKinney-Vento). The following provisions apply to these students.

~~(a)~~ 1. Homeless students shall be entitled to either continue to attend their school of origin, as defined by McKinney-Vento, or attend school in the city or town where they temporarily reside. To the extent feasible, homeless students should remain in their school of origin unless doing so is contrary to the wishes of such student's parent(s) or legal guardian or state agency with care or custody of the student.

~~(b)~~ 2. The school district(s) that was programmatic and financially responsible prior to the student becoming homeless shall remain programmatic and financially responsible for a homeless student until the parent(s) or legal guardian or state agency with care or custody of the student chooses to enroll the student in the school district where the shelter or temporary residence is located. When a student whose IEP requires in-district services is enrolled in the school district where the student is temporarily residing, then that school district shall become programmatic and financially responsible upon enrollment. When a student whose IEP requires out-of-district services is enrolled in the school district where the student is temporarily residing, then that school district shall become programmatic and financially responsible upon enrollment and the school district(s) that was financially responsible prior to the student becoming homeless shall remain financially responsible until the student is no longer homeless.

(b) Nothing in 603 CMR 28.00 shall limit the educational rights afforded under the Every Student Succeeds Act (ESSA) to students who are in foster care, as defined in 45 CFR § 1355.20(a). The following provisions apply to these students:

1. The school district(s) that was programmatic and financially responsible prior to the student's entry into foster care or prior to a subsequent change in the student's foster care setting shall remain responsible for the student's special education program for as long as the student continues to attend the same school.

Comment [A2]: Suggest that a regulation be added to address what happens when students exit foster care either by adoption or by returning to the care of their parent(s)/legal guardian. ESSA recommends that students remain in whatever school they were attending prior to exiting foster care for the remainder of the school year. If a regulation gave students the right to remain in the same school for the remainder of the school year, then the regulation could maintain the status quo for the remainder of the school year in terms of the programmatic and financially responsible school districts.

Comment [A3]: These provisions depend on whether a student is going to remain in their school of origin or change schools to their new district of residence. The decision is reached through the best interest determination. Our suggestion is that the proposed regulations lay out the best interest determination, explaining how there may be determinations reached under ESSA that allow a child in foster care to reside in one district but go to school in another.

Comment [A4]: 1. [Suggest clarifying that "shall remain responsible" means "shall remain programmatic and financially responsible..."] Please also clarify what happens when a parent moves during the pendency of foster care. If programmatic and financial responsibility is in the district where the parent resides, responsibility may move with the parent even if the student remains in the school of origin. It is unclear if this is a snap-shot in time determination and responsibility stays with these districts or if they move with the parent (as financial responsibility moves in #2 below). Suggest also that you use the term "school of origin" as that covers changes from elementary to middle school etc. "Same school" reference may cause confusion.

2. For students in foster care who do not continue to attend the same school, programmatic responsibility shall be with the district in which the student is enrolled and financial responsibility shall be with the parent(s) district
3. When the Department of Children and Families relocates a student to an approved residential school, the school district that was programmatically responsible prior to this relocation shall remain programmatically responsible and the district where the parent(s) or legal guardian resides shall be financially responsible
4. For all situations in which school districts share responsibility for students in foster care, the following provisions shall apply:
 - i. When such a student is served in an in-district program, the school district with programmatic responsibility may bill and shall receive payment for the special education costs (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable) from the school district where the parent(s) or legal guardian resides.
 - ii. When such a student is served in an out-of-district placement, the school district where the parent(s) or legal guardian resides shall pay the tuition costs for the student's IEP program directly to the out-of-district school, and such other payments as may be required to other individuals or entities that provide services in the student's IEP shall apply:
 - iii. The school district with programmatic responsibility shall invite the school district where the parent(s) or legal guardian resides to participate as a member of the student's Team, providing that such participation shall not limit the student's right to timely evaluation and placement in accordance with 603 CMR 28.00.

Comment [A5]: 2.[Comment: Suggest that this regulation include the language from current regulation 28.10(3)(d) about the school providing in-district services being reimbursed for the provision of in-district services. The school district that is programmatically responsible might not be the same as where the residential school is located, therefore, proposed regulation 28.10(5)(b)(4)(i) doesn't make sense for this fact pattern. Also concerned that if IEP is for in-district services, the district that is responsible for implementing the IEP, although at the Team meeting table, does not have programmatic responsibility for the student.]

Comment [A6]: i.Please clarify guidance regarding transportation. Transportation may not be a "special education cost" as it could be regular transportation but to a school that is not in the district where the student resides. ESSA guidance says that DCF and DESE should collaborate to provide uniform statewide guidelines for transportation provisions. In the meantime, **suggest:** "If a student in foster care remains in their school of origin after moving to a new school district as a result of entering foster care or as a result of subsequent changes in foster care placement, then the school district where the student resides is responsible for coordinating transportation and that district may bill and shall receive payment from the school district where the parent(s) or legal guardian resides."

(6) **Program schools.** A program school shall have programmatic and financial responsibility for enrolled students, subject only to specific finance provisions of any pertinent state law related to the program school. Specific provisions for program schools are as follows:

(a) For charter schools, Commonwealth of Massachusetts virtual schools, vocational schools, or schools attended under M.G.L. c. 76, § 12A (Metco), when the Team determines that the student may need an out-of-district placement, the Team shall conclude the meeting pursuant to 603 CMR 28.06(2)(e) without identifying a specific placement type, and shall notify the school district where the student resides within two school days.

1. Upon a determination as in 603 CMR 28.10(6)(a) above, the program school shall schedule another meeting to determine placement, and shall invite representatives of the school district where the student resides to participate as a member of the placement team pursuant to 603 CMR 28.06(2)(e)(1).

2. The Team meeting convened by the program school shall first consider if the school district where the student resides has an in-district program that could provide the services recommended by the Team, and if so, the program school shall arrange with the school district where the student resides to deliver such services or develop an appropriate in-district program at the program school for the student.
3. If the placement Team, in accordance with the procedures of 603 CMR 28.06(2)(e), determines that the student requires an out-of-district program to provide the services identified on the student's IEP, then the placement proposed to the parent shall be an out-of-district day or residential school, depending on the needs of the student. Upon parental acceptance of the proposed IEP and proposed placement, programmatic and financial responsibility shall return to the school district where the student resides. The school district where the student resides shall implement the placement determination of the Team consistent with the requirements of 603 CMR 28.06(3).

(b) For schools attended pursuant to M.G.L. c. 76, § 12B (school choice), such schools may bill and receive payment from the school district where the student resides for the costs of out-of-district placements made by the program school. The program school shall invite the school district where the student resides to participate as a member of the student's Team and shall provide notice of the Team meeting at least five school days prior to the meeting, provided that such participation shall not limit the student's right to a timely evaluation and placement in accordance with 603 CMR 28.00.

(c) A Vocational school shall not discriminate in the enrollment of students with disabilities.

1. A vocational school may not accept students with disabilities on a conditional basis unless the vocational school has procedures that ensure that the reasons for conditional acceptance are equally applied to students without disabilities.
2. A vocational school may serve as an "evaluation site" for a student requiring an extended evaluation under the provisions of 603 CMR 28.05(2)(b) of 603 CMR 28.00 if the evaluative information that is required is primarily vocational in nature. In such circumstances, the student is not considered enrolled in the vocational school, nor shall an extended evaluation be considered a temporary placement. For the duration of the extended evaluation the student shall be considered enrolled in the public school district in which he or she was enrolled prior to the extended evaluation.

(7) Temporary Assignments. The Department reserves the right to assign temporary responsibility in cases where the student is not receiving services or when lack of assignment threatens the student's placement or program. Such temporary assignment shall be made based on the information available to the Department. The temporary district shall have all of the rights and responsibilities assigned to districts under 603 CMR 28.00. The temporary district may bill and shall be eligible to receive payment for the special education costs (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable) from the district assigned responsibility for that period of time for which a temporary district was identified.

(8) Department Assignment of School District Responsibility.

(a) The Department may assign or a school district or agency may request the Department's assistance in assigning a city, town, or school district to be responsible for students in living

situations described in 603 CMR 28.10(3), ~~or (4)~~, or (5) in the following circumstances. For students described in 603 CMR 28.10(5), the following criteria will apply only for determinations of financial responsibility.

1. Students who are in the care or custody of a state agency and have no parent or legal guardian residing in Massachusetts; or
2. ~~When~~ When the residence or residential history of the student's parent(s) or legal guardian is in dispute; or
3. ~~When~~ When the student has a legal guardian who has been appointed on a limited basis; or
4. ~~When~~ When a student has not yet been determined to be eligible and/or is not receiving services, or
5. ~~When~~ When a student is in the care or custody of a state agency and is hospitalized and the agency gives notice to the responsible school district that the student will not return to the residence held prior to hospitalization.

(b) A request for an assignment shall not limit the right of the student to timely evaluation, services, or placement in accordance with 603 CMR 28.00. The school district or state agency requesting assignment shall be responsible for providing to the Department all required documentation to ascertain the legal status or residence(s) of the student or the student's parent(s) or legal guardian.

(c) The Department shall use the following criteria to assign a city, town or school district responsibility for a student in a living situation described in 603 CMR 28.10(3), ~~or (4)~~, or (5):

1. If the child has been voluntarily surrendered for adoption or freed for adoption by the Probate Court or the Juvenile Court, the school district(s) where the parent(s) lived at the time that the child was surrendered or freed for adoption or when parental rights were terminated shall be responsible.
2. If the student is in the care or custody of a state agency and such state agency has obtained a legal guardianship for the student when the student has turned 18, the school district(s) where the parent(s) lived at the time the court granted the request for guardianship shall be responsible.
3. If the parents' rights have been terminated and the Probate Court or the Juvenile Court has appointed a legal guardian for a minor student, the school district where the legal guardian resides shall be responsible.
4. If the legal guardian is an agency or organization or the legal guardian has been appointed on a limited basis such as a guardian ad litem, or a guardian appointed solely to monitor medications or finances, the school district where the parent(s) lives or last lived shall be responsible.
5. If the student's parents live in two different school districts, such school districts shall be jointly responsible for fulfilling the requirements of 603 CMR 28.00 except if the student actually resided with either parent immediately prior to going into a living situation described in 603 CMR 28.10(3) or (4) or the parents are divorced or separated and one parent has sole physical custody, then the school district where the student resided with the parent or the school district of the parent who has sole physical custody shall be responsible and shall remain responsible in the event the student goes into the care or custody of a state agency.

6. If the student's parent(s) or legal guardian resides in an institutional setting in Massachusetts, including, but not limited to, a correctional facility, a hospital, a nursing home or hospice, or a mental health facility, a halfway house, a pre-release center or a treatment facility, the school district where the parent(s) or legal guardian lived prior to entering the institutional setting shall be responsible.
7. If the student's parent(s) or legal guardian does not reside in Massachusetts, ~~and~~ or the parent's or legal guardian's whereabouts are unknown, the school district of the last known Massachusetts residence of the student's parent(s) or legal guardian who lived in Massachusetts shall be responsible.

(d) Using the above criteria, the Department shall notify in writing the assigned school district(s) of its decision. Upon notification of responsibility for provision of special education to a student under 603 CMR 28.10(8)(d), the school district(s) shall immediately assume responsibility for the student in accordance with the requirements of 603 CMR 28.00. Until such notification, the school district(s) that had been responsible for providing special education to such student under 603 CMR 28.00 shall continue to be responsible.

(e) The school district(s) that had been responsible for providing special education to the student prior to assignment by the Department under 603 CMR 28.10(8)(d) may bill and shall be eligible to receive payment (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable), from the newly assigned district for the special education costs that were incurred during the period of time in which the newly assigned district should have been responsible.

(f) A school district may seek a review of the Department's assignment under the procedures of 603 CMR 28.10(8) at any time that the district has information that was not available to the Department at the time that the assignment was made. The Department will review the information presented and will confirm or change the assignment of school district responsibility, and notify the districts of this decision under 603 CMR 28.10(8)(d).

(9) Appeal of Assignment of School District Responsibility. The assigned district may appeal the Department's assignment of responsibility to the Bureau of Special Education Appeals, subject to the following procedures:

(a) A district may appeal the assignment of school district responsibility within 60 days of the most recent notification of assignment.

(b) The request for appeal shall meet the following standards:

1. A request for appeal shall be based only on the information provided to the Department under 603 CMR 28.10(8)(b) and 603 CMR 28.10(8)(f) if applicable;
2. The request shall state the basis of the appeal;
3. The request for appeal shall identify the district(s) that the appealing district claims should have been assigned responsibility; and
4. The appealing district shall include such district(s) as a party to the appeal.

(c) A party may request a decision without a hearing with the agreement of all parties.

(d) The Bureau of Special Education Appeals shall render a decision within 45 days of receipt of the hearing request. The granting of a postponement shall not extend the 45-day deadline for issuance of a decision unless the postponement is requested by a party and allowed by the hearing officer for good cause.

(e) The Bureau of Special Education Appeals may return the case to the Department of Elementary and Secondary Education based on new information presented at the hearing.

(f) The decision of the Bureau of Special Education Appeals shall be limited to a determination of the assigned school district and the effective date of such assignment.

***Technical Changes:**

State agency names shall be revised throughout 603 CMR 28.00 where necessary to conform to recent statutory name changes.

Regulatory Authority:

M.G.L. c. 69, § 1B; c. 69, §§ 1J and 1K, as amended by St. 2010, c. 12, § 3; c. 71, § 38G.

Last Updated: April 1, 2014

Revisions Proposed: November 2017

PUBLIC COMMENT REPORT

PROPOSED AMENDMENT TO SPECIAL EDUCATION REGULATIONS ASSIGNING SCHOOL DISTRICT RESPONSIBILITY:

Amendment to 603 CMR 28.10

Executive Summary

The Department received public comment submissions from two attorneys who represent school districts. One submission contained five comments; the other contained six.

All comments are reflected in this report. Although one attorney submitted comments shortly after the public comment period closed, the comments were accepted.

Based on the public comments, the Department proposes three changes, which are indicated below.

General Comments

Comment: One comment requested the Department to issue “transition rules” to address the changes in financial responsibility that will occur when the proposed regulations take effect. The basis for the request was the commenter’s belief that the regulations would be implemented immediately, rather than at the beginning of the next fiscal year.

Response: The proposed regulations will not go into effect until July 1, 2018, and will **not** be retroactive, thus allowing districts sufficient time to review and plan for implementation. Also, the Department will issue guidance regarding the proposed regulations, once approved, that will address any changes in financial responsibility as a result of the amendment. The Department does not anticipate the proposed regulations will have serious fiscal impacts on districts upon implementation.

Comment: One comment requested the Department to issue a regulation on best interest determinations under ESSA.

Response: The regulations assigning school district responsibility are not intended to address best interest determinations under ESSA. The Department has jointly issued guidance with the Department of Children and Families (DCF) that addresses ESSA best interest determinations. The document can be accessed at this link: <http://www.doe.mass.edu/sfs/foster/>

Comment: One comment suggests adding a regulation to address whether a student must stay in the school they are attending at the time that they exit foster care, due to either adoption or to return to the care of biological parents.

Response: This is not an issue that is properly addressed in the regulations assigning school district responsibility. The ESSA guidance document referenced above addresses this issue on page 5.

Comment: One comment suggests that the regulations address transportation for students in foster care.

Response: The ESSA guidance referenced above addresses transportation for students in foster care. The regulations assigning school district responsibility are not intended to address transportation.

	603 CMR 28.10(2)	Comments
	<p>(2) School district responsibility based on student residence. The school district where the student resides shall have both programmatic and financial responsibility under the following circumstances:</p> <p>(a) When students live with their parent(s) or legal guardian.</p> <ol style="list-style-type: none"> 1. When a student who requires an in-district placement to implement his or her IEP lives with both of his or her parents during the school year, irrespective of school vacation periods, and the parents live in two different Massachusetts school districts, the school district where the student is enrolled shall be responsible for fulfilling the requirements of 603 CMR 28.00. 2. When a student who requires an out-of-district placement to implement his or her IEP lives with both of his or her parents during the school year, irrespective of school vacation periods, and the parents live in two different Massachusetts school districts, the school districts where the parents reside shall be equally responsible for fulfilling the requirements of 603 CMR 28.00. <p>(b) When students are eighteen years of age or over and they have established their own residences as adults.</p> <p>(c) When students have been placed or are funded by the Department of Children and Families in a foster home located within Massachusetts.</p>	<p>Comment: No comments were received on 603 CMR 28.10(2).</p>

	603 CMR 28.10(3)	Comments
	<p>(3) School district responsibility based on residence of parent(s) or legal guardian. The school district where the parent(s) or legal guardian resides shall have both programmatic and financial responsibility under the following circumstances:</p> <p>(a) When a student is in a pediatric nursing home.</p> <p>(b) When a student whose IEP requires an out-of-district placement lives and receives special education services at a special education residential school pursuant to a placement by the IEP Team.</p>	<p>Comments: No comments were received on 603 CMR 28.10(3)(a).</p> <p>Comment: The commenter agrees with the additional language proposed for 603 CMR 28.10(3)(b) and suggests another addition to emphasize that the residential placement is pursuant to a DCF determination and not the Team’s decision. The commenter proposes to revise the language to state: “pursuant to an <u>educational placement in a residential school</u> by the IEP Team.”</p> <p>Response: The Department does not find the additional language necessary, as the proposed language already indicates the residential school is an educational placement by the IEP Team.</p> <p>Comment: Request to omit the phrase “whose IEP requires an out-of district placement,” as out-of-district placements are inclusive of day schools and other types of placements that are not residential schools.</p> <p>Response: The suggested omission is in regard to language that is contained in the current regulations and</p>

	<p>(c) When a student lives and receives educational services in an institutional facility operated by or, through contract, authorized by the Department of Mental Health, the Department of Public Health, the Department of Youth Services, or the Department of Correction or County House of Correction, except as provided below.</p> <ol style="list-style-type: none"> 1. If an eligible student requiring in-district services had been was placed or resided in a Department of Children and Families foster care home for at least three months before entering the at the time the student entered the institutional facility, the school district in which the student was enrolled before entering the facility shall remain programmatically responsible and the school district where the parents reside shall be financially responsible then responsibility shall remain with district(s) assigned most recently pursuant to 603 CMR 28.10(5)(b). 2. If a student is 18 years of age or older and has established his or her own residence as an adult, the school district where the student resided prior to entering the institutional facility shall remain programmatically and fiscally responsible. <p>(d) When a student whose IEP requires in-</p>	<p>has not been problematic. The Department does not find the suggested omission to be necessary as a clarification given that the regulation specifies the type of out-of-district placement addressed is that of a residential school.</p> <p>Comments: No comments were received on 603 CMR 28.10(3)(c).</p>
--	---	--

	<p style="color: red;">district services is placed by the Department of Children and Families in an approved residential school, programmatic and financial responsibility will be with the district where the parent(s) or legal guardian resides. The school district of the city, town or regional school district where such approved residential special education school is located shall provide educational and special educational services to the student in accordance with his or her IEP, shall participate in any Team meetings convened by the school district where the parent(s) or legal guardian resides and shall receive reimbursement from the school district where the parent(s) or legal guardian resides for such services using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable.</p>	
	<p>603 CMR 28.10(4)</p>	<p>Comments</p>
	<p>(4) Shared school district responsibility. The school district where the parent(s) or legal guardian resides shall have financial responsibility and the school district where the student resides shall have programmatic responsibility when a student <u>who is not in foster care, as defined below in 603 CMR 28.05(b), is</u> in a living situation other than that described in 603 CMR §28.10(2) or (3) including but not limited to <u>in</u> a relative's home; that is not funded by the Department of Children and Families, a foster home funded by the Department of Children and Families that is located outside of Massachusetts, a group home, or living in a residence, or crisis, or respite facility funded or supervised by a state agency <u>other than the Department of Children and Families.</u> and an approved residential special education school as a result of action by the Department of Children and Families.</p>	<p>Comment: The commenter suggests that the use of the term “foster care” in 603 CMR 28.10(4) be further clarified by referencing the definition of foster care in 603 CMR 28.10(5)(b). Thus, the commenter suggests adding the following language: “. . . who is not in foster care <u>as that term is defined in 603 CMR 28.10(5)(b) . . .</u>”</p> <p>Response: The Department Accepts the proposed language and will make the suggested revision.</p>

	<p>(a) When such a student is served in an in-district program, the school district where the student lives shall provide such services and may bill and shall receive payment for the special education costs (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable) from the school district where the parent(s) or legal guardian resides, unless such student is over 18 years of age and has established his or her own residence as an adult as described in 603 CMR 28.10(2)(b).</p> <p>(b) When such a student is served in an out-of-district program, the school district where the parent(s) or legal guardian resides shall pay the tuition costs for the student's IEP program directly to the out-of-district school, and such other payments as may be required to other individuals or entities that provide services required by the student's IEP.</p> <p>(c) In all cases where financial and programmatic responsibility are shared, the school district where the student resides shall invite the school district where the parent(s) or legal guardian resides to participate as a member of the student's Team, provided that such participation shall not limit the student's right to timely evaluation and placement in accordance with 603 CMR 28.00.</p>	<p><u>Comments:</u> No comments were received on 603 CMR 28.10(4)(a).</p>
	<p>603 CMR 28.10(5)</p>	<p>Comments</p>
<p>(a)</p>	<p>Responsibility for Homeless Students <u>and Students in Foster Care.</u></p> <p><u>(a)</u> Nothing in 603 CMR 28.00 shall limit the educational rights of homeless students and parents afforded under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq. (McKinney-Vento). The following</p>	<p><u>Comment:</u> No comments were received on 603 CMR 28.10(5)(a).</p>

provisions apply to these students.

(a) 1. Homeless students shall be entitled to either continue to attend their school of origin, as defined by McKinney-Vento, or attend school in the city or town where they temporarily reside. To the extent feasible, homeless students should remain in their school of origin unless doing so is contrary to the wishes of such student's parent(s) or legal guardian or state agency with care or custody of the student.

(b) 2. The school district(s) that was programmatically and financially responsible prior to the student becoming homeless shall remain programmatically and financially responsible for a homeless student until the parent(s) or legal guardian or state agency with care or custody of the student chooses to enroll the student in the school district where the shelter or temporary residence is located. When a student whose IEP requires in-district services is enrolled in the school district where the student is temporarily residing, then that school district shall become programmatically and financially responsible upon enrollment. When a student whose IEP requires out-of-district services is enrolled in the school district where the student is temporarily residing, then that school district shall become programmatically responsible upon enrollment and the school district(s) that was financially responsible prior to the student becoming homeless shall remain financially responsible until the student is no longer homeless.

(b)

(b) Nothing in 603 CMR 28.00 shall limit the educational rights afforded under the Every Student Succeeds Act (ESSA) to students who are in foster care, which means 24-hour substitute care for children placed away from their parents or guardians and for whom the Department of Children and Families has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. The following provisions apply to these students:

1. The school district(s) that was programmatically and financially responsible prior to the student's entry into foster care or prior to a subsequent change in the student's foster care setting shall remain responsible for the student's special education program for as long as the student continues to attend the same school.

Comment: The commenter proposes that “shall remain responsible” in 603 CMR 28.10(5)(b)(1) be clarified by revising it to state “shall remain programmatically and financially responsible.” The commenter also suggests using “school of origin,” a term used in the ESSA foster care provisions, instead of “same school.” The commenter also suggests that the regulations address when a parent moves during the student’s time in foster care.

Response: The Department does not believe that the regulation needs clarification as suggested. The first suggestion would create a redundancy as earlier in the same sentence “responsibility” is specified as programmatic and fiscal responsibility. The Department not accept the second suggestion because the proposed amendment intentionally does not use the language in ESSA to distinguish that the regulations address school district responsibility only. The commenter’s request for the regulations to address the move of the parent will be addressed in forthcoming guidance; however, we note that the regulation on its face would still apply.

	<p>2. <u>For students in foster care who do not continue to attend the same school, and who enroll in the district in which their foster care setting is located, programmatic responsibility shall be with the district in which the student is enrolled and financial responsibility shall be with the district where the parent(s) or legal guardian resides.</u></p>	<p><u>Comment:</u> The commenter proposes that 603 CMR 28.10(5)(b)(2) be revised to explicitly address when a student who has continued to attend the school of origin after entry into foster care moves to another grade level and thus would attend a different school if the student stayed enrolled in the same district. The commenter assumes that the student would move to another school in the same district in this situation and that programmatic responsibility would not shift.</p> <p><u>Response:</u> The timeframe in which students retain their rights under ESSA to continue to attend their schools of origin is addressed in the Department’s guidance issued jointly with the Department of Children and Families. This issue is not the proper subject of regulations that govern school district responsibility.</p> <p>In addition, the proposed regulations already address the situation with which the commenter has concern. The plain language of 603 CMR 28.10(5)(b)(1) states that school district responsibility does not shift for a student who continues to attend the school of origin after entry into foster care “as long as the student continues to</p>
--	--	--

	<p>3. <u>When the Department of Children and Families relocates a student to reside in and attend an approved residential school, the school district that was programmatically responsible prior to this relocation shall remain programmatically responsible and the district where the parent(s) or legal guardian resides shall be financially responsible.</u></p>	<p>attend the same school.” 603 CMR 28.10(5)(b)(2) addresses all situations in which students in foster care enroll in new schools in the district in which foster care is located, including the situation referenced in the comment.</p> <p>Comment: The commenter suggests that 603 CMR 28.10(5)(b)(3) include the language in the current 603 CMR 28.10(3)(d) requiring the district providing in-district services to be reimbursed by the financially responsible district. The commenter also suggests that the proposed 28.10(5)(b)(4)(i) may not apply if the district with programmatic responsibility is different from the district in which the residential school is located. The commenter finally suggests that, for in-district services, school implementing IEP may be “at the table” but would not have programmatic responsibility.</p> <p>Response: The comments appear to address situations in which DCF relocates students to approved programs for residential purposes only. For school attendance, the comment appears to assume the student will remain either at the school of origin or enroll locally. This is not the situation this regulation was</p>
--	---	--

	<p>4. <u>For all situations in which school districts share responsibility for students in foster care, the following provisions shall apply:</u></p> <ul style="list-style-type: none"> i. <u>When such a student is served in an in-district program, the school district with programmatic responsibility may bill and shall receive payment for the special education costs (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable) from the school district where the parent(s) or legal guardian resides.</u> ii. <u>When such a student is served in an out-of-district placement, the school district where the parent(s) or legal guardian resides shall pay the tuition costs for the student's IEP program directly to the out-of-district school, and such other payments as may be</u> 	<p>designed to address.</p> <p>In response to this comment, and to clarify any ambiguity in the language of the regulations, the Department has made minor changes to 603 CMR 28.10(5)(b)(2, 3). This additional language should clarify the specific situations covered by each of the three school attendance scenarios described in 603 CMR 28.10(5)(b)(1-3).</p> <p><u>Comment:</u> The commenter proposes that 603 CMR 28.10(5)(b)(4) be revised to ensure that whenever a student is in foster care the same district is both programmatically and financially responsible for the student. Otherwise, the commenter is concerned that the programmatically responsible district will make placement and service decisions without knowledge of the budgetary obligations of the fiscally responsible district. In addition, the commenter is concerned that the fiscally responsible district will not be able to discuss with DCF whether a placement for which it might be responsible is in the student's best interests.</p> <p><u>Response:</u> When programmatic and financial responsibility has been bifurcated for purposes of a special education placement of a student in foster care</p>
--	---	--

	<p><u>required to other individuals or entities that provide services in the student’s IEP shall apply.</u></p> <p>iii. <u>The school district with programmatic responsibility shall invite the school district where the parent(s) or legal guardian resides to participate as a member of the student’s Team, providing that such participation shall not limit the student’s right to timely evaluation and placement in accordance with 603 CMR 28.00.</u></p>	<p>under the proposed amendment, the right of the financially responsible district to attend the Team meeting and participate in decisions around special education placement and services provides an adequate safeguard against the programmatically responsible district making unilateral decisions that would adversely affect the financially responsible district. The current version of 603 CMR 28.10 allows for bifurcation of district programmatic and financial responsibility and, therefore, there is no conceptual change in the proposed amendment. The proposed amendment is based on the general rule that the district of the student’s enrollment is programmatically responsible because it is familiar with the student and their needs, and the parents’ district(s) is financially responsible for the duration of the student’s time in foster care, thus providing for fiscal continuity. All relevant parties may participate in discussions with DCF regarding its determinations of foster care settings and related school district enrollments for children in its custody. No revisions will be made to the proposed amendment based on this comment.</p>
--	---	--

	603 CMR 28.10(8)	Comments
	<p>Department Assignment of School District Responsibility.</p> <p>(a) The Department may assign or a school district or agency may request the Department's assistance in assigning a city, town, or school district to be responsible for students in living situations described in 603 CMR 28.10(3), or (4), <u>or (5) in the following circumstances.</u></p> <ol style="list-style-type: none"> 1. <u>Students</u> who are in the care or custody of a state agency and have no parent or legal guardian residing in Massachusetts; or 2. w<u>W</u>hen the residence or residential history of the student's parent(s) or legal guardian is in dispute; or 3. w<u>W</u>hen the student has a legal guardian who has been appointed on a limited basis; or 4. w<u>W</u>hen a student has not yet been determined to be eligible and/or is not receiving services; or 5. w<u>W</u>hen a student is in the care or custody of a state agency and is hospitalized and the agency gives notice to the responsible school district that the student will not return to the residence held prior to hospitalization. <p>(b) A request for an assignment shall not limit the right of the student to timely evaluation, services, or placement in accordance with 603 CMR 28.00. The school district or state agency requesting assignment shall be responsible for providing to the Department all required documentation to ascertain the legal status or residence(s) of the student or the</p>	<p>No comments were received on 603 CMR 28.10(8).</p>

student's parent(s) or legal guardian.

(c) The Department shall use the following criteria to assign a city, town or school district responsibility for a student in a living situation described in 603 CMR 28.10(3), ~~or~~(4), or (5).

1. If the child has been voluntarily surrendered for adoption or freed for adoption by the Probate Court or the Juvenile Court, the school district(s) where the parent(s) lived at the time that the child was surrendered or freed for adoption or when parental rights were terminated shall be responsible.
2. If the student is in the care or custody of a state agency and such state agency has obtained a legal guardianship for the student when the student has turned 18, the school district(s) where the parent(s) lived at the time the court granted the request for guardianship shall be responsible.
3. If the parents' rights have been terminated and the Probate Court or the Juvenile Court has appointed a legal guardian for a minor student, the school district where the legal guardian resides shall be responsible.
4. If the legal guardian is an agency or organization or the legal guardian has been appointed on a limited basis such as a guardian ad litem, or a guardian appointed solely to monitor medications or finances, the school district where the parent(s) lives or last lived shall be responsible.
5. If the student's parents live in two different school districts, such school districts shall be jointly responsible for fulfilling the requirements of 603 CMR 28.00 except if the student actually resided with either parent immediately

	<p>prior to going into a living situation described in 603 CMR 28.10(3) or (4) or the parents are divorced or separated and one parent has sole physical custody, then the school district where the student resided with the parent or the school district of the parent who has sole physical custody shall be responsible and shall remain responsible in the event the student goes into the care or custody of a state agency.</p> <p>6. If the student's parent(s) or legal guardian resides in an institutional setting in Massachusetts, including, but not limited to, a correctional facility, a hospital, a nursing home or hospice, or a mental health facility, a halfway house, a pre-release center or a treatment facility, the school district where the parent(s) or legal guardian lived prior to entering the institutional setting shall be responsible.</p> <p>7. If the student's parent(s) or legal guardian does not reside in Massachusetts, and the parent's or legal guardian's whereabouts are unknown, the school district of the last known Massachusetts residence of the student's parent(s) or legal guardian who lived in Massachusetts shall be responsible.</p> <p>(d) Using the above criteria, the Department shall notify in writing the assigned school district(s) of its decision. Upon notification of responsibility for provision of special education to a student under 603 CMR 28.10(8)(d), the school district(s) shall immediately assume responsibility for the student in accordance with the requirements of 603 CMR 28.00. Until such notification, the school district(s) that had been responsible for providing special education to such student</p>	
--	---	--

	<p>under 603 CMR 28.00 shall continue to be responsible.</p> <p>(e) The school district(s) that had been responsible for providing special education to the student prior to assignment by the Department under 603 CMR 28.10(8)(d) may bill and shall be eligible to receive payment (using the procedures of 603 CMR 10.07 to calculate such costs, including transportation expenses where applicable), from the newly assigned district for the special education costs that were incurred during the period of time in which the newly assigned district should have been responsible.</p> <p>(f) A school district may seek a review of the Department's assignment under the procedures of 603 CMR 28.10(8) at any time that the district has information that was not available to the Department at the time that the assignment was made. The Department will review the information presented and will confirm or change the assignment of school district responsibility, and notify the districts of this decision under 603 CMR 28.10(8)(d).</p>	
--	--	--

Board of Elementary and Secondary Education Meeting: March 27, 2018
Agenda Item: Amendments to Special Education Regulations,
603 CMR 28.10, to Align with ESSA Foster Care Provisions

MOVED: that the Board of Elementary and Secondary Education, in accordance with G.L. c. 69, § 1B, and G.L. c. 71B, and having solicited public comment in accordance with the Administrative Procedure Act, G.L. c. 30A, § 3, hereby adopts the amendments to the Special Education Regulations, 603 CMR 28.10, as presented by the Commissioner.

The amendments clarify programmatic and financial responsibility for the special education services of students in foster care; resolve a conflict between the current state regulation and new provisions in federal law relating to students in foster care; and simplify, and provide consistency and predictability for the process of assigning responsibility to school districts for the special education services of students in foster care. The amended regulations take effect on July 1, 2018.