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MEMORANDUM

To: Members of the Board of Elementary and Secondary Education
From: Education Secretary James A. Peyser
Date: June 22, 2022
Subject: Proposed Amendment to Special Education Regulations on School District Administration and Personnel, 603 CMR 28.03(1), Concerning Dyslexia Screening and Intervention

As part of the Commonwealth's efforts to improve early literacy and identify and effectively educate students with dyslexia, I am proposing an amendment to the School District Administration and Personnel special education regulations that would require all elementary schools to assess each student's reading abilities and foundational skills at least twice per year from kindergarten through at least third grade. Pursuant to the Board's Bylaws, I am presenting the proposed amendment to the Board for initial review at the June 28 meeting. With the Board's approval, the Department will solicit public comment on the proposed amendment, which will be brought back to the Board for final approval in September.

Background

The federal Individuals with Disabilities Education Act (IDEA) and Massachusetts law require school districts to proactively identify and evaluate all students aged 3-21 who are suspected of having a disability (known as "Child Find").¹ One disability covered by these laws is dyslexia, a learning disability "characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities."² It is considered the most common of all specific learning disabilities and affects 5-17% of children.³

¹ M.G.L. c. 71B, § 3; IDEA Part B, Subpart B, Section 300.111.

² Definition of dyslexia. (n.d.). International Dyslexia Association. dyslexiaida.org/definition-of-dyslexia/.

³ O'Brien, B. A., Wolf, M., & Lovett, M. W. (2012). A Taxometric Investigation of Developmental Dyslexia Subtypes. *Dyslexia* (Chichester, England), 18(1), 16–39.

In 2018, the Legislature passed *An Act Relative to Students with Dyslexia*,⁴ which required the Department, in consultation with the Department of Early Education and Care, to “issue guidelines to assist districts in developing screening procedures or protocols for students that demonstrate 1 or more potential indicators of a neurological learning disability including . . . dyslexia.” The Department issued the Guidelines in 2021⁵ after an extensive process that engaged experts and stakeholders and built on recommendations from an expert literacy panel created by the Legislature in 2012.⁶

The Guidelines emphasize the need for early identification of reading difficulties as a critical step to promote effective instruction and targeted intervention.⁷ According to the Guidelines, “screening for risk is critical for efficient intervention” and when “coupled with meaningful data interpretation, targeted Tier 2 intervention, and progress monitoring, students receive support during the critical window of opportunity that occurs prior to fourth grade.”⁸

The Guidelines are consistent with existing state special education laws that encourage early identification of learning challenges, coupled with timely instructional responses, to sustain educational progress in a regular education classroom setting and to avoid unnecessary referrals to special education:

Prior to referral of a school age child for evaluation under the provisions of this chapter, the principal of the child's school shall **ensure that all efforts have been made to meet such child's needs within the regular education program**. Such efforts may include, but not be limited to: modifying the regular education program, the curriculum, teaching strategies, **reading instruction**, environments or materials, the use of support services, the use of consultative services and building-based student and teacher support and assistance teams to meet the child's needs in the regular education classroom.⁹

Notably, early literacy screening is only an initial first assessment. If a screening reveals a concern in foundational benchmarks, further evaluation is needed to determine what instructional modifications or additional supports might be needed.

The Guidelines also noted with concern that “[i]n many school settings, dyslexia is not identified until a student has experienced prolonged reading failure.” This “wait to fail framework is problematic for several reasons, including the negative impact reading challenges can have on the emotional well-being of struggling students and the difficulty students face in meeting grade-level expectations when reading interventions are initiated in later elementary school.”¹⁰

⁴ Chapter 272 of the Acts of 2018. Codified at M.G.L. c. 71, § 57A.

⁵ Department of Elementary and Secondary Education, *Massachusetts Dyslexia Guidelines*.
<https://www.doe.mass.edu/sped/dyslexia-guidelines.pdf> (referred to in this memo as “Guidelines”)

⁶ Chapter 287 of the Acts of 2012.

⁷ Guidelines at 22.

⁸ *Id.* at 19.

⁹ M.G.L. c. 71B, § 2 (bolding added).

¹⁰ Guidelines at 18.

For these reasons, the Guidelines state that “**it is critical to universally screen students multiple times annually**” in the early grades.”¹¹

According to the National Center on Improving Literacy, as of 2019, 39 states require dyslexia screening, including nearby states New Hampshire, Connecticut, Maine, and Rhode Island.¹²

The Department currently reviews and recommends early literacy assessments, which it reevaluates annually.¹³ The assessments are designed to be brief and easy to administer.¹⁴

Proposal

Consistent with the Department’s 2021 Guidelines, the proposed regulation confirms that elementary schools must assess each student’s reading ability and progress in foundational skills from kindergarten through at least third grade at least twice per year, using a screener approved by the Department. In other words, it would confirm that the problematic “wait-to-fail” approach is not appropriate.

If a screening determines that a student is significantly behind relevant benchmarks, the proposed regulation would require a further assessment to determine whether the student needs additional reading supports or an evaluation for a specific learning disability. It also would require the school to promptly notify the student’s parents or guardians of the assessment results.

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With the Board’s approval, the Department will solicit public comment on the proposed regulatory amendment. After reviewing all the comments and determining whether further changes are needed, I plan to request that the amendment be brought back to the Board in September 2022 for a vote on final adoption.

A redlined version of the regulations is attached, along with a motion to solicit public comment on the proposed amendments. Please let me know if you have any questions.

Enclosures: 603 CMR 28.03 – strikethrough version of relevant portion of regulations showing amendment
Motion

¹¹ *Id.* at 23 (bolding in original) (citing a 2019 federal report published by the Office of Special Education Programs, which recommends that “all students in all grades should be screened multiple times a year.”).

¹² National Center on Improving Literacy (2019). State policy and dyslexia. Washington, DC: U.S. Department of Education, Office of Elementary and Secondary Education, Office of Special Education Programs, National Center on Improving Literacy. <https://improvingliteracy.org/state-of-dyslexia>

¹³ <https://www.doe.mass.edu/instruction/screening-assessments.html>.

¹⁴ International Dyslexia Association, <https://dyslexiaida.org/universal-screening-k-2-reading/>. For example, the NWEA MAP screener takes “[a]bout 20 minutes to assess an entire class simultaneously.” <https://teach.mapnwea.org/impl/maphelp/Content/ReadFluency/DyslexiaScreener.htm>.

**Special Education School District Administration and Personnel Regulations,
603 CMR 28.03(1)
Proposed Amendment Relating to Dyslexia Screening**

This document shows the proposed amendment to 603 CMR 28.03 by ~~striketrough~~ (language deleted) and underline (new language). The proposed amendment would require all elementary schools to assess each student's reading abilities and foundational skills at least twice per year from kindergarten through at least third grade.

The full regulations can be found at: [603 CMR 28.03: School District Administration and Personnel Regulations](#). The proposed amendments are to 603 CMR 28.03(1).

**Presented to the Board of Elementary and Secondary Education for initial action: 6/28/22
Final action by the Board of Elementary and Secondary Education anticipated: 9/20/22**

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28.03(1) General Responsibilities of the School District

...

(d) **Preschool Screening.** Each school district shall conduct screening for three and four year olds and for all children who are of age to enter kindergarten. Such screening shall be designed to review a child's development and to assist in identification of those children who should be referred for an evaluation to determine eligibility for special education services.

1. The school district shall submit information to the Department describing the screening program and its elements as part of the local special education plan, when so requested.

2. Participation in the screening program for three and four year olds shall be optional on the part of the parents.

...

(f) **Dyslexia Screening.** Each elementary school shall at least twice per year assess each student's reading ability and progress in specific foundational skills, from kindergarten through at least third grade, using a valid, developmentally appropriate screening instrument approved by the Department. If such screenings determine that a student is significantly behind relevant benchmarks for age-typical development in specific foundational skills, then the school must complete a further assessment within 30 days to determine whether the school should provide such student with modified, differentiated, or supplementary evidence-based reading instruction aligned with the Department's literacy guidelines or refer the student for evaluation for a specific learning disability. The school shall promptly inform each student's parent or guardian of the results of such assessments and prior to any evaluation referral.

Proposed Motion

Board of Elementary and Secondary Education Meeting: June 28, 2022
Agenda Item: Proposed Amendment to Special Education Regulations on School District
Administration and Personnel, 603 CMR 28.03(1)
(Concerning dyslexia screening and intervention)

MOVED: that the Board of Elementary and Secondary Education, in accordance with G.L. chapter 69, § 1B, and chapter 71B, §§ 2 and 3, hereby authorizes the Commissioner to proceed in accordance with the Administrative Procedure Act, G.L. chapter 30A, § 3, to solicit public comment on the proposed amendment to the Special Education Regulations on School District Administration and Personnel, 603 CMR 28.03(1), as presented by Secretary Peyser. The proposed amendment concerns dyslexia screening and intervention requirements for elementary schools.