

Proposed Amendments to Regulations on Special Education, 603 CMR 28.00

For consideration and initial action by the Board of Elementary and Secondary Education: February 24, 2026

Period of public comment: through April 24, 2026

Final action by the Board of Elementary and Secondary Education anticipated: June 23, 2026

The proposed amendments reflect the recent change to M.G.L. c. 71B, § 3, made by section 30 of Chapter 14 of the Acts of 2025.

SECTION 30. The ninth paragraph of said section 3 of said chapter 71B, as so appearing, is hereby amended by adding the following sentence:- The department shall promulgate regulations to continue in effect and enforce the provisions of 20 U.S.C. 1415(k) in effect on January 1, 2025.

The proposed amendments relate to the definition of “Individualized Education Program” and discipline procedures for students with disabilities. In accordance with the Administrative Procedure Act, M.G.L. c. 30A, § 3, the Board of Elementary and Secondary Education invites written comments on the proposed amendments to these regulations. Following the period of public comment, the Board is expected to vote on the regulations in final form at its regular meeting in June 2026.

The proposed amendments to the regulations are indicated below by underscore (new language) and ~~striketrough~~ (deleted language). The full current text of 603 CMR 28.00 is available on the Department of Elementary and Secondary Education website at <https://www.doe.mass.edu/lawsregs/603cmr28.html>.

603 CMR 28.00 Special Education

28.02: Definitions

(11) *Individualized Education Program (IEP)* shall mean a written statement, developed and approved in accordance with federal and state special education law in a form established by the Department that identifies a student's special education needs and describes the services a school district shall provide to meet those needs.

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New section:

28.11: Discipline Procedures for Eligible Students

(1) Authority of school personnel.

- (a) **Case-by-case determination.** School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of 603 CMR 28.11, is appropriate for an eligible student who violates a code of student conduct.
- (b) **General.** School personnel under this section may remove an eligible student who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, so long as those removals do not constitute a change in placement under 603 CMR 28.11(7).
- (c) **Additional authority.** For disciplinary changes in placement under 603 CMR 28.11(7), if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the eligible student's disability pursuant to 603 CMR 28.11(1)(e), school personnel may apply the relevant disciplinary procedures to the eligible student in the same manner and for the same duration as the procedures would be applied to students without disabilities, except as provided in 603 CMR 28.11(1)(d).
- (d) **Services.**
 - 1. An eligible student who is removed from their current placement pursuant to 603 CMR 28.11 must receive educational services during periods of removal consistent with M.G.L. c. 71, § 37H and M.G.L. c. 71, § 37H½.
 - 2. An eligible student who is removed from their current placement pursuant to 603 CMR 28.11(1)(c) or (g) must:

- a. Continue to receive educational services as necessary to provide a free appropriate public education, to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and
 - b. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
 3. After an eligible student has been removed from their current placement for more than 10 days in the same school year, if the current removal is for not more than 10 consecutive school days and is not considered a change in placement under 603 CMR 28.11(7), school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed for the eligible student to receive a free appropriate public education, to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.
 4. If the removal is a change of placement under 603 CMR 28.11(7), the student's Team determines appropriate services under 603 CMR 28.11(1)(d)(2).
 5. The services required by 603 CMR 28.11(1)(d) may be provided in an interim alternative educational setting.
- (e) **Manifestation Determination.**
1. Within 10 school days of any decision to change the placement of an eligible student because of a violation of a code of student conduct, the district, the parent, and relevant members of the student's Team (as determined by the parent and the district) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine—
 - a. If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
 - b. If the conduct in question was the direct result of the district's failure to implement the IEP.
 2. The conduct must be determined to be a manifestation of the student's disability if the school district, the parent, and relevant members of the student's Team determine that a condition in either 603 CMR 28.11(1)(e)(1)(a) or (b) was met.
 3. If the school district, the parent, and relevant members of the student's Team determine the condition of 603 CMR 28.11 (1)(e)(1)(b) was met, the district must take immediate steps to remedy those deficiencies.

(f) **Determination that behavior was a manifestation.** If the school district, the parent, and relevant members of the Team make the determination that the conduct was a manifestation of the student's disability, the Team must:

1. Either –

- a. Conduct a functional behavioral assessment, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or
- b. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

2. Except as provided in 603 CMR 28.11(1)(g), return the student to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) **Special Circumstances.** School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student does one of the following:

1. Carries a dangerous weapon to or possesses a dangerous weapon at school, on school premises, or to or at a school function under the jurisdiction of the Department or a school district;
2. Knowingly possesses or uses a controlled substance, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the Department or a school district;
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Department or a school district.

(h) **Notification.** On the date on which the decision is made to make a removal that constitutes a change of placement of an eligible student because of a violation of a code of student conduct, the school district must notify the parents of that decision and provide the parents the procedural safeguards notice as described in 34 C.F.R. § 300.504.

(2) **Determination of setting.** The student's Team determines the interim alternative setting for services under 603 CMR 28.11(1)(c), (d)(4), and (g).

(3) **Appeal.**

(a) **General.** The parent of an eligible student who disagrees with any decision regarding placement under 603 CMR 28.11(1) or (2) or the manifestation

determination under 603 CMR 28.11(1)(e), or a school district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing with the Bureau of Special Education Appeals. The hearing is requested by filing a complaint pursuant to 34 C.F.R. §§ 300.507 and 300.508(a) and is conducted on an expedited basis pursuant to the Bureau of Special Education Appeals Hearing Rules.

(b) Authority of hearing officer.

1. Consistent with 34 C.F.R. § 300.511, a hearing officer hears and makes a determination regarding the appeal.
2. In making such determination, the hearing officer may:
 - a. Return the eligible student to the placement from which the student was removed if the hearing officer determines that the removal was a violation of 603 CMR 28.11(1) or that the student's behavior was a manifestation of the student's disability; or
 - b. Order a change of placement of the eligible student to an appropriate interim educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the student or to others.
3. The procedures in 603 CMR 28.11(3)(a) and (b) may be repeated if the district believes that returning the student to the original placement is substantially likely to result in injury to the student or others.
4. The hearing officer's determination may be appealed consistent with 34 C.F.R. § 300.514.

(4) Placement during appeals.

- (a) When an appeal under 603 CMR 28.11(3) has been made by either the parent or the district, the student must remain in the interim alternative setting pending the decision of the hearing officer or until the expiration of the time period specified in 603 CMR 28.11(1)(c) or (g), whichever occurs first, unless the parent and the district agree otherwise.

(5) Protections for students not determined eligible for special education and related services.

- (a) **General.** A student who has not been determined eligible for special education and related services and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in 603 CMR 28.11 if the district had knowledge, as determined in accordance with this paragraph, that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

- (b) **Basis of knowledge.** A district will be deemed to have knowledge that a student is an eligible student if before the behavior that precipitated the disciplinary action occurred:
1. The parent of the student expressed concern in writing to supervisory or administrative personnel, or a teacher of the student, that the student is in need of special education and related services;
 2. The parent of the student requested an evaluation of the student pursuant to 34 C.F.R. §§ 300.300 through 300.311; or
 3. The teacher of the student, or other district personnel, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the district or to other supervisory personnel.

(c) **Exception.** A district will not be deemed to have knowledge if:

1. The parent of the student:
 - a. Has not allowed an evaluation of the student pursuant to 34 C.F.R. §§ 300.300 through 300.311; or
 - b. Has refused special education services; or
2. The student has been evaluated in accordance with 34 C.F.R. §§ 300.300 through 300.311 and determined not to be eligible.

(d) **Conditions that apply if no basis of knowledge.**

1. If a district does not have knowledge that a student is an eligible student prior to taking disciplinary measures against the student, the student may be subjected to the disciplinary measures applied to students without disabilities who engage in comparable behaviors.
2. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under 603 CMR 28.11(1), the evaluation must be conducted in an expedited manner.
 - a. Until the evaluation is completed, the student remains in the educational placement determined by the school authorities, which can include suspension or expulsion; provided however, that for disciplinary action taken pursuant to M.G.L. c. 71, §37H or M.G.L. c. 71, §37H½, the student shall have the opportunity to make academic progress during the period of removal consistent with state law.
 - b. If the student is determined to be an eligible student, taking into consideration information from the evaluation conducted by the district and information provided by the parent, the district must provide special education and related services in accordance with federal and state special education law, including 603 CMR 28.11.

(6) Referral to and action by law enforcement and judicial authorities

(a) Rule of construction. Nothing in this part prohibits a district from reporting a crime committed by an eligible student to appropriate authorities or prevents state or local law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by an eligible student.

(b) Transmittal of records.

1. A district reporting a crime committed by an eligible student must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the district reports the crime.
2. A district reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act and 603 CMR 23.00.

(7) Change of placement because of disciplinary removals.

(a) For purposes of removals of an eligible student from the student's current educational placement under 603 CMR 28.11(1) through (6), a change of placement occurs if:

1. The removal is for more than 10 consecutive school days; or
2. The student has been subjected to a series of removals that constitute a pattern:
 - a. Because the series of removals total more than 10 school days in a school year;
 - b. Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
 - c. Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

(b) The district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.