

Accountability in Massachusetts' Remote Learning Regulations

By David S. Clancy and Dr. John G. Flores



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Success for Pioneer is when the citizens of our state and nation prosper and our society thrives because we enjoy world-class options in education, healthcare, transportation and economic opportunity, and when our government is limited, accountable and transparent.

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Pioneer believes that America is at its best when our citizenry is well-educated, committed to liberty, personal responsibility, and free enterprise, and both willing and able to test their beliefs based on facts and the free exchange of ideas.



This paper is a publication of Pioneer Education, which seeks to increase the education options available to parents and students, drive system-wide reform, and ensure accountability in public education. The Center's work builds on Pioneer's legacy as a recognized leader in the charter public school movement, and as a champion of greater academic rigor in Massachusetts' elementary and secondary schools. Current initiatives promote choice and competition, school-based management, and enhanced academic performance in public schools.



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Table of Contents

Introduction	4
Background: 603 CMR 27.00 Has Been Revised To Include New Requirements About In-Person Schooling And “Alternative Education Models”	4
Generally Stated, 603 CMR 27.00 Defines and Sets Rules For Necessary “Structured Learning Time”	4
In Part, The Recent Revisions Include New Requirements For Safe In-Person Learning	5
The Recent Revisions Also Include New Requirements for “Alternative Education Models,” Including “Remote Learning”	5
The Regulation Should Be Strengthened In Certain Important Ways	5
1. The Four Baseline Requirements For Remote Learning Should Be Supplemented and Clarified	6
2. The Regulation Should Be Clarified on the Important Issue of Synchronous vs. Asynchronous Learning	8
3. The Regulation Should Clearly State that Each District’s Plans Must Be Approved By DESE	9



Introduction

The Massachusetts Board of Elementary and Secondary Education has solicited public comment on pandemic-related revisions to the state's important "Learning Time" regulation, 603 CMR 27.00.¹ This policy brief constitutes the comments of Pioneer Institute.

The revisions establish baseline procedural and substantive requirements for in-person, hybrid, and remote learning. Appreciating that the regulation is meant to set forth only the most fundamental matters, with many other matters contained in parallel guidance documents, Pioneer nonetheless strongly believes that the regulation should be supplemented and clarified in key areas.

For example, the revised regulation states that remote learning must be "aligned to state standards." The intent of that statement is laudable, but in the present environment it should be strengthened to send a crystal-clear message that remote learning does not mean dilution of substantive curriculum, grading, and testing requirements, which are the result of years of study and progress, and which are crucial to meaningful student learning, and meaningful educator accountability.

Pioneer suggests this instead:

"Remote academic work shall be aligned to the Massachusetts Curriculum Frameworks and other applicable standards; shall advance the curriculum to the same extent as in-person education; and, also to the same extent as in-person education, shall prepare students for Massachusetts Comprehensive Assessment System testing."

This and other important proposed changes are explained in detail below. The state must stand firm in favor of a return to rigorous and high-quality education, for the sake of students, parents, and the Commonwealth as a whole. Improving this regulation is one opportunity to demonstrate, and implement, that commitment.

Importantly, this policy brief, which responds to the state's solicitation of public comments on the regulation, in no way supersedes Pioneer's prior papers concerning remote learning, which make recommendations about the methodology and substance of remote learning. The Institute continues to advocate for those recommendations, and for maximum preparedness and rigor in the actual delivery of remote learning. At this moment, Pioneer emphasizes these important areas: training for teachers and parents, which addresses both technical and substantive aspects of remote learning; highly accessible lines of communication between school personnel and families—such as online or audio hotlines—so technological and other problems can be resolved quickly and during as much of the day as reasonably possible; and a constant process of critical self-evaluation, resolving problems and making improvements wherever possible.

Background: 603 CMR 27.00 Has Been Revised To Include New Requirements About In-Person Schooling And "Alternative Education Models"

Generally Stated, 603 CMR 27.00 Defines And Sets Rules For Necessary "Structured Learning Time"

603 CMR 27.00 is a pre-existing regulation which exists to "ensure that every public school in the Commonwealth provides its students with the structured learning time needed to enable the students to achieve competency in 'core subjects' and 'other subjects' as defined in 603 CMR 27.02."² "**Core subjects**" means "the core academic subjects specified in G.L. c. 69, section 1D (science, technology and mathematics, history and social science, English, foreign languages and the arts), and the subjects covered in courses which are part of an approved vocational-technical education program under M.G.L. c. 74."³

The regulation defines how much "structured learning time" is necessary, and defines what forms of instruction qualify as "structured learning time." See 603 CMR 27.02: "structured learning time" is,

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inter alia, “[t]ime during which students are engaged in regularly scheduled instruction, learning activities, or learning assessments within the curriculum for study of the ‘core subjects’ and ‘other subjects’...”

In Part, The Recent Revisions Include New Requirements For Safe In-Person Learning

The regulation was revised on an emergency basis on June 30, 2020 in light of the COVID-19 pandemic, and under the authority of Massachusetts General Laws “c. 69, section 1B, which requires the Board to establish standards to ensure that every student shall attend classes in a safe environment.”⁴

One significant change to the regulation is the addition of rules for developing special plans about safe *in-person* learning. The regulation states that in a declared emergency the state must “issue health and safety requirements and related guidance for districts,”⁵ and must require each district to “develop and submit a plan that prioritizes providing in-person instruction to all students in a safe environment.”⁶

Among other things, each district-developed plan must describe “the in-person learning model the district will use to provide instruction to students... appropriately modified to address health and safety requirements issued by the Commissioner [i.e., Jeffrey C. Riley, who heads the Department of Elementary and Secondary Education (DESE)].”⁷

The Recent Revisions Also Include New Requirements for “Alternative Education Models,” Including “Remote Learning”

This same portion of the regulation states that the DESE may require districts to include “alternative education models” in their plans “to address circumstances in which students cannot safely attend classes in an in-person setting.”⁸

In turn, the regulation states—in a key section titled 603 CMR 27.08(3)—that

- “(3) Alternative education models shall include the following:
- (a) Hybrid learning. Hybrid learning means students alternate between in-person learning with safety requirements and remote learning.
 - (b) Remote learning. Remote learning means all students participate in remote learning. Remote learning models shall include the following requirements:
 - (1) procedures for all students to participate in remote learning, including a system for tracking attendance and participation;
 - (2) remote academic work shall be aligned to state standards;
 - (3) a policy for issuing grades for students’ remote academic work; and
 - (4) teachers and administrators shall regularly communicate with students’ parents and guardians, including providing interpretation and translation services to limited English proficient parents and guardians.
 - (c) District approved model. A district approved model means an education model submitted by a district and approved by the Commissioner.”⁹

Elsewhere—specifically, in its definitions section (603 CMR 27.02)—the revised regulation states that “remote learning” is “learning that happens outside of the traditional classroom because the student and teacher are separated by distance. Remote learning may be synchronous or asynchronous. Remote learning may include but is not limited to online learning.”

The Regulation Should be Strengthened in Certain Important Ways

Pioneer appreciates that the intent of the regulation is not to set forth all important aspects of remote learning, but instead to set forth essential baseline requirements, sufficiently fundamental to apply equally to all districts. The remainder of the remote-learning protocols will, as Pioneer understands, reside in guidance documentation from DESE, such as the July 24, 2020 “Remote Learning Guidance for Fall 2020,”¹⁰ and in district-specific plans approved by DESE.

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Assuming and accepting this basic structure, Pioneer nonetheless thinks the regulation should be supplemented in certain important ways.

1. The Four Baseline Requirements for Remote Learning Should Be Supplemented And Clarified

Each of the four baseline requirements for remote learning should be revised, as follows:

- *603 CMR 27.08(3)(b)(1) states that a remote learning model must include “procedures for all students to participate in remote learning, including a system for tracking attendance and participation.”*

The July 24 DESE remote learning guidance includes important elaboration on this regulation. Within it are three elements that, in Pioneer’s view, should be contained within the regulation itself:

1. That “[s]chools and districts must take daily attendance whether a student is in person or remote”;
2. That this daily attendance should “differentiate between students attending school in-person and remotely”; and
3. that “Schools and districts must continue to investigate extended absences and make and document reasonable efforts to locate the student and determine the reason for nonattendance.”¹¹

These elements should be part of applicable law, not solely contained in DESE guidance. Adding them to the regulation itself would signal the importance of these matters, enhancing both rigor within school districts and consistency across them. Doing so would also provide helpful reassurance concerning remote learning to parents and other constituencies who are justifiably concerned about schools’ earnestness in regard to remote learning.

Potential additional text is underlined here: remote learning must include “procedures for all students to participate in remote learning, including a system for tracking attendance and participation which includes school personnel taking daily attendance and recording whether that attendance is in-person or remote, and which contains procedures for investigating and documenting extended absences.”

In addition, Pioneer adds that tracking remote attendance should involve ensuring each student’s *meaningful and substantial* participation, since merely being online is clearly not adequate.

- *603 CMR 27.08(3)(b)(2) states that “remote academic work shall be aligned to state standards.”*

Pioneer understands and applauds the intent of this provision, but submits that it should be clarified and reinforced. As stated at the outset, Pioneer suggests that it read: “Remote academic work shall be aligned to the Massachusetts Curriculum Frameworks and other applicable standards; shall advance the curriculum to the same extent as in-person education; and, also to the same extent as in-person education, shall prepare students for Massachusetts Comprehensive Assessment System testing.”

Such revision is supported by this portion of DESE’s July 24 guidance:

“Learning Standards

Consistent with 603 CMR 27.08(3)(b), **all students—whether learning in-person or remotely—must have access to grade-level instruction in all content areas included in the Massachusetts curriculum frameworks.** While the scope and sequence of the instruction teachers provide will vary depending on student needs and district requirements, all students will be required to take the MCAS tests in spring 2021. Students learning remotely should also have opportunities to engage in enrichment opportunities and receive intervention supports as needed.”¹²

Pioneer suggests that it read:
 “Remote academic work shall be aligned to the Massachusetts Curriculum Frameworks and other applicable standards; shall advance the curriculum to the same extent as in-person education; and, also to the same extent as in-person education, shall prepare students for Massachusetts Comprehensive Assessment System testing.”

Pioneer agrees with that guidance, but believes that the point is too important to find regulatory expression solely in the dry and cursory statement that “remote academic work shall be aligned to state standards.” Due in part to the exigent circumstances, much of the remote schooling in spring 2020 was devoted to enrichment, rather than to the teaching of new material. In addition, the Spring 2020 MCAS was canceled – and some are already advocating that the Spring 2021 MCAS be canceled as well. Indeed a pending bill supported by the Massachusetts Teachers Association would cancel the MCAS for four years.¹³

In the face of this turbulence, the state should send as clear a signal as possible—to schools, to parents, to students, to teachers, and to other constituencies—that things will be different this year, and in particular that while methodologies may need to change, core academic expectations should be restored, and adhered to rigorously. This point should appear more clearly in the regulation.

- *603 CMR 27.08(3)(b)(3) states that a remote learning model must include “a policy for issuing grades for students’ remote academic work.”*

Similar to the two previously addressed provisions, this is appropriate in general direction, but unnecessarily vague.

DESE’s July 24 guidance states:

“Grades

Consistent with 603 CMR 27.08(3)(b), **districts must assess all students based on the district’s and educator’s performance criteria for students during the 2020-21 academic year.** This performance criteria must be consistent across in-person, hybrid, and remote learning environments. For example, if students typically receive a letter grade (A-F) for a particular course, students who are participating remotely must also receive a letter grade. Although a district’s grading policy will be implemented across all scenarios, districts should consider exemptions for students under extreme circumstances (e.g., students in households with family members experiencing significant health issues related to COVID-19) and ensure they receive the appropriate support and wraparound services to accelerate learning.”¹⁴

The regulation should capture these important points. It could state, for example, that a remote learning model must include “a policy for issuing grades for students’ remote academic work that is based upon that district’s performance criteria for the 2020-21 academic year; that is consistent across each type of learning model; and that contains exemptions, as well as appropriate support for accelerating learning, for students in extreme circumstances.”

In addition, DESE should provide more detailed guidance on what extreme circumstances justify exceptions to ensure maximum grading rigor and consistency across districts in the approach to exemptions.

Here too, adding substance—not just requiring a policy, but also prescribing necessary elements thereof—will underscore the importance of these matters, likely enhancing the rigor of schools’ plans and implementation, fostering greater consistency from district to district, and reassuring parents and other constituencies.

- *603 CMR 27.08(3)(b)(4) states that “teachers and administrators shall regularly communicate with students’ parents and guardians, including providing interpretation and translation services to limited English proficient parents and guardians.”*

This part of the regulation oddly requires schools to engage in regular communication with parents and guardians—but not with students.

In the face of this turbulence, the state should send as clear a signal as possible—to schools, to parents, to students, to teachers, and to other constituencies—that things will be different this year.

This may be an oversight, because the July 24 DESE guidance includes the following section, which recognizes that students are entitled to regular meaningful communication with teachers and staff, and that such communication is “critical for student academic growth and meaningful student and family engagement”

“Synchronous and Asynchronous Learning

Districts may determine the amount of synchronous and asynchronous teaching and learning during remote learning programming. However, consistent with 603 CMR 27.08(3)(b), DESE requires that **remote learning programs include regular, two-way communication between students, educators, and families to ensure students and families have meaningful opportunities to connect regularly with staff.** Students must have regular, consistent opportunities to access live, synchronous instruction, student-to-student interaction, collaborative assignments/projects, teacher feedback, and other needed supports (e.g., semi-weekly office hours, individual check-ins with students bi-weekly, etc.), as they are critical for student academic growth and meaningful student and family engagement.”¹⁵

Pioneer agrees with this, but finds it conspicuous—and concerning—that it is not reflected in the proposed regulation itself.

Pioneer understands that it would be difficult to specify in text the precise amount and nature of required student-teacher communication, since this will depend heavily on such matters as educational subject matter, teaching style, and districts’ own valid preferences and choices.

Certainly, though, if it is possible for the regulation to articulate a general, aspirational standard for teacher-*parent* interaction, it can do the same for teacher-*student* interaction. For example, the regulation could be revised to add the underlined text here: “teachers and administrators shall regularly communicate with students, and with students’ parents and guardians, including providing interpretation and translation services to limited English proficient students, parents and guardians.” (emphasis added.)

2. The Regulation Should Be Clarified On The Important Issue of Synchronous vs. Asynchronous Learning

As shown above, the revised regulation states in its definitions section that remote learning is “learning that happens outside of the traditional classroom because the student and teacher are separated by distance. Remote learning may be synchronous or asynchronous. Remote learning may include but is not limited to online learning.”¹⁶

This statement is entirely open ended on a crucial issue concerning the nature of remote education, namely the extent to which it involves live instruction (e.g., group instruction in real time, through Zoom or some similar video application). The regulation elsewhere articulates the four required elements of remote learning (in key section 27.08(3)(b)), but that section does not fix the problem, because it does not address the topic of synchronous v. asynchronous learning at all.

DESE’s July 24 remote learning guidance is much clearer on this issue. The “**Synchronous and Asynchronous Learning**” section of that guidance repeats that instruction may be synchronous or asynchronous. However, presumably to avoid educators relying too heavily on the latter, the guidance states further (among much else) that “[s]tudents must have regular, consistent opportunities to access live, synchronous instruction...”

Pioneer agrees, and believes that this issue, like the others, is sufficiently important that it should find expression in the regulation itself. As it is, the regulation is at best neutral on the topic of synchronous vs. asynchronous instruction, and it may in fact be worse than neutral. Read literally, the regulation permits remote learning to be entirely asynchronous: “Remote learning may be synchronous or asynchronous.” (603 CMR 27.02 (emphasis added.)) This is clearly not DESE’s intent, but in a regulation setting essential remote-learning requirements there should be no room for confusion or misimpressions.

Pioneer agrees with this, but finds it conspicuous—and concerning—that it is not reflected in the proposed regulation itself.

As it is, the regulation is at best neutral on the topic of synchronous vs. asynchronous instruction, and it may in fact be worse than neutral.

The regulation should be revised to communicate the importance of synchronous instruction as an element of remote learning. For example, the regulation's definition of remote learning could be revised so that the problematic statement "Remote learning may be synchronous or asynchronous" reads instead: "Remote learning may combine synchronous and asynchronous methods, though a program of remote learning must provide students with regular, consistent opportunities to access live, synchronous instruction."

3. The Regulation Should Clearly State That Each District's Plans Must Be Approved By DESE

After 603 CMR 27.08(3)(b) lays out the four required elements of remote learning, the next subsection—27.08(3)(c)—states that "A district approved model means an education model submitted by a district and approved by the Commissioner."

This statement implies that a hybrid or remote learning model is ineffective until approved by DESE, particularly when read in combination with the regulation's definition of structured learning time, the last sentence of which states that "Remote learning may constitute structured learning time if a district's remote learning model is consistent with the requirements of 603 CMR 27.08(3)(c)."¹⁷

Still, the language is vague and roundabout on this straightforward point. Among other things, the term "district approved model" is confusing—why refer to a "district approved model," if approval is by the Commissioner? In addition, the term "district approved model" does not appear anywhere else in the regulation, meaning that 27.08(3)(c) defines a term that has no practical operation.

Also, 27.08(3)(c) refers to "an education model submitted by a district," which is vague on another fundamental point: does 27.08(3)(c) solely concern a district's plan for remote learning, or does it also concern a district's plan for *in-person* learning? If solely the former, what does the regulation intend with regard to the latter – the equally important issue of DESE approval of districts' plans for in-person learning?

A recent statement by a state spokesperson that "[the] DESE will not reject (reopening) plans but will work very closely with school districts to ensure what they are proposing complies with the medical requirements released in the guidance"¹⁸ is also relevant to this issue. Like the regulation itself, this statement—suggesting some reluctance to provide clear academic accountability in districts and schools—is unclear about its scope: in referring to "medical requirements," it seems to apply to districts' plans for in-person learning, but does it apply only to process-oriented medical or health-related plans, or to plans for academics and remote learning as well? At minimum, this statement weakens the practical force of clear academic oversight and associated guidance, at a time when such dilution is the last thing Massachusetts needs.

The regulation should make the DESE's and the state's roles and authority perfectly clear, so there is no confusion on that issue—and also to show leadership, and embrace academic accountability. The regulation should state, in words or in substance: "A district's proposed models for in-person, hybrid and remote learning are effective and may be used only when approved by the Commissioner, which review will be performed under relevant law and published guidance. An approved model shall be referred to as a Commissioner-Approved Model. A Commissioner-Approved Model may be followed by the relevant district, but always remains subject to additional review and revision by the Commissioner."¹⁹

* * * *

Pioneer hopes these comments are useful to the DESE and to the Commonwealth, and that they—along with Pioneer's other work on this topic in recent months—helps to facilitate a maximally productive academic school year for the schoolchildren of Massachusetts.

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Endnotes

- 1 See <http://www.doe.mass.edu/lawsregs/>, and in particular (A) the 7/01/2020 entry titled “Student Learning Time Regulations,” which contains the revised 603 CMR 27.00, and (B) the 7/01/2020 entry titled “Notice of Public Comment for Proposed Amendments to 603 CMR 27.00” (each visited 8/19/2020). Pioneer understands that the revised regulation is effective now on a provisional basis, subject to public comment for which the deadline is August 28, 2020
- 2 603 CMR 27.01(2)(a).
- 3 603 CMR 27.02 (“Definitions”).
- 4 603 CMR 27.01(1).
- 5 603 CMR 27.08(1).
- 6 603 CMR 27.08(2).
- 7 603 CMR 27.08(2)(b).
- 8 603 CMR 27.08(2)(c).
- 9 603 CMR 27.08(3).
- 10 See <http://www.doe.mass.edu/covid19/on-desktop.html>
- 11 “Remote Learning Guidance for Fall 2020,” July 24, 2020, section titled “Attendance,” at <http://www.doe.mass.edu/covid19/on-desktop.html>.
- 12 “Remote Learning Guidance for Fall 2020,” July 24, 2020, section titled “Learning Standards” (emphasis in original), at <http://www.doe.mass.edu/covid19/on-desktop.html>.
- 13 <https://malegislature.gov/Bills/191/S2814?emci=a5ad482a-0bd8-ea11-8b03-00155d0394bb&emdi=c5a1006a-11d8-ea11-8b03-00155d0394bb&ccid=4237226>
- 14 “Remote Learning Guidance for Fall 2020,” July 24, 2020, section titled “Grades” (emphasis in original), at <http://www.doe.mass.edu/covid19/on-desktop.html>.
- 15 “Remote Learning Guidance for Fall 2020,” July 24, 2020, section titled “Synchronous and Asynchronous Learning” (emphasis in original), at <http://www.doe.mass.edu/covid19/on-desktop.html>.
- 16 603 CMR 27.02 (emphasis added.)
- 17 603 CMR 27.02.
- 18 <https://www.baystateparent.com/news/20200727/deadline-for-mass-schools-to-submit-reopening-plans-looms-as-dese-maintains-no-substitute-for-in-person-learning>
- 19 A related but discrete point: as noted, the definition of “structured learning time” concludes with this sentence: “Remote learning may constitute structured learning time if a district’s remote learning model is consistent with the requirements of 603 CMR 27.08(3)(c).” Pioneer believes that this sentence should refer simply to “603 CMR 27.08(3),” not to 27.08(3)(c) in particular. 27.08(3) contains three subsections, (a), (b), and (c). Subsection (c) is certainly important; it defines the term “district approved model.” But the others are important too. Indeed it is the second—27.08(3)(b)—that states four baseline requirements for remote learning.

About the Authors

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