February 13, 2025

VIA ELECTRONIC MAIL

William Anderson

Office of the General Counsel Department of Public Health 250 Washington Street

Boston, MA 02108 [Reg.Testimony@mass.gov](mailto:Reg.Testimony@mass.gov)

RE: 105 CMR 210.000 – Administration of Medications in Schools

Testimony to the Department of Public Health on Proposed Regulatory Changes Dear Commissioner Goldstein & Members of the Board of the Department of Public Health:

Please accept this testimony of the Massachusetts Association of Approved Private Special Education School (MAAPS) regarding Department of Public Health’s (DPH) proposed regulatory changes to 105 CMR

210.000 – *Administration of Medications in Schools*. Thank you for the opportunity to provide this testimony and we look forward to working with you on these critically important comments.

MAAPS represents over 80 members, operating nearly 160 special education schools/programs. The MAAPS member schools provide state-approved, regulated and licensed, highly specialized programs to meet the special education needs of approximately 7,000 students. These specialized day and residential schools educate children ages 3-22, across a broad spectrum of disabilities, including but not limited to students with autism spectrum disorder, intellectual disabilities, language-based learning disabilities, trauma-based clinical needs, medical fragility, and hearing and visual impairments. The vast majority of the students who attend the approved special education schools are Massachusetts public school students, placed at approved special education schools through a public-private partnership that aids districts in meeting the federal and state mandate for a free and appropriate public education.

1. Request to Pause Proposed Regulations Change Process in Order for DPH to Engage with Talks to Schools About Changes, Best Practices

As a threshold matter, we urge you to pause changes to your regulations until you have done a more robust public process. The changes proposed here will have sweeping impacts to all schools, and yet, we are not aware of any outreach or discussions with schools prior to releasing the proposed changes.

1. Significant Staffing and Funding Impacts

All schools, especially MAAPS member-schools, are committed to operating safe and exceptional schools for the students they serve. A regulatory scheme that is robust and fair is in the best interest of all. However, regulations must also be achievable, and we have concerns about how some of the proposed regulations will be achieved without significant staffing changes, pipeline changes and significant funding. Creating and implementing new regulations that require additional nurses and nurse staff hours will have a fiscal impact. *See 105 CMR 210.02 proposed definition of School Day.* Without any indication of additional funding being provided to match the new regulatory changes, implementation of such changes will be impossible. Additionally, Massachusetts is still facing a staffing crisis in schools. School nurses have been particularly hard to find since the COVID-19 pandemic. It is unclear how schools will be able to implement these proposed regulations if the workforce and funding does not currently exist.

1. Overly-broad Inspection Provision

Schools are highly regulated environments. The Massachusetts Department of Elementary and Secondary Education (DESE) has primary regulatory authority over K-12 schools, including MAAPS-members, and the Department of Early Education and Care (EEC) has licensing authority over certain residential portions of schools. *105 CMR 210.017: Inspection* creates an entirely new regulatory framework, inserting DPH as a regulator over K-12 schools, which is not the current state of the law. This sweeping section gives no due process or parameters to DPH’s review of K-12 schools (for example, if “any violation of law or regulation is observed,

the Department shall prepare a deficiency statement”). There are entire investigatory and oversight departments within the state devoted specifically to reviewing K-12 schools. Without statutory authority, DPH cannot write overreaching regulations granting itself broad power to regulate K-12 schools.

1. Unintended Consequences

We are particularly concerned with the unintended consequences of the proposed regulations. In particular, the proposed regulations will have a chilling effect on students with special needs. It is vitally important that all students have access to activities like community outings, internships, and field trips. Students with special education needs are no exception. However, the proposed regulations could have an unintended consequence of restricting the ability of these students from attending or participating in certain activities because of their medical needs. We urge DPH to have further dialogue with schools that work with students with special education needs to best address the goals DPH is striving for, while also ensuring the educational rights of all students.

1. Prescription Medication

We are concerned that provisions introduced here require over the counter medications (Advil, Motrin, Tums, Benadryl) to only be provided by a nurse, and that this may not be feasible in a school setting. *See 105 CMR 210.02 proposed definition of Medication and School Day.* Please see attached our redline document.

1. Medication Provided by Non-Healthcare Personnel

We are encouraged by some of the new safety measures introduced, specifically those related to emergency medications being administered by non-healthcare personnel in schools, and the introduction of a waiver provision.

1. Conclusion

Consistent with this letter and incorporated by reference herein to this testimony, attached please find MAAPS’ redline edits and comments on the proposed regulations. We respectfully urge you to include the edited language as attached regarding the administration of medication in schools.

On behalf of the entire MAAPS member special education community, thank you for your time and attention to these important matters. Please do not hesitate to contact me with any questions or comments you might have.

Sincerely,



CC:

Shaun Cusson, President of the MAAPS Board of Directors Janine Brown-Smith, Esquire

Elizabeth Dello Russo Becker, Esq. Executive Director