



Massachusetts Department of Elementary and Secondary Education

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Mitchell D. Chester, Ed.D.
Commissioner

MEMORANDUM

To: Superintendents of Schools, Principals, and Charter School Leaders
From: Mitchell D. Chester, Ed.D., Commissioner
Date: November 28, 2012
Subject: Chapter 222 of the Acts of 2012, *An Act Relative to Students Access to Educational Services and Exclusion from School*

This is the first of a series of communications from the Department of Elementary and Secondary Education (Department) regarding *An Act Relative to Student Access to Educational Services and Exclusion from School*, passed by the Legislature and signed into law by Governor Deval Patrick on August 6, 2012 as Chapter 222 of the Acts of 2012. For the full text of the new law, please see: <http://www.malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter222>. The purpose of this memorandum is to provide highlights of the law, the most significant of which are the provisions ensuring that students who are suspended or expelled from school continue to have an opportunity to make academic progress through educational services provided by their district or charter school.

The sections of the law affecting districts and charter schools do not take effect until **July 1, 2014**. We are providing this information to assist you in your initial planning.

I. Changes Affecting Schools and Students

The new law adds procedural and reporting requirements for student suspensions and expulsions. It also makes substantive changes, most notably, to require school districts and charter schools to ensure that students who have been excluded from school for disciplinary reasons have the opportunity to make academic progress during the period of their exclusion. For many years, the federal special education law, the Individuals with Disabilities Education Act, has required that schools continue to provide educational services to special education students who are lawfully removed from their current educational placement for disciplinary reasons. *See*, 20 USC § 1415(k).

Here is an overview of the key provisions affecting schools and students.

A. Discipline procedures: suspensions and expulsions

The new law:

- Amends G.L. c. 71 by adding a new section 37H ³/₄ that addresses all suspensions and expulsions for reasons other than those covered in section 37H (dangerous weapons, controlled substances, and assaults on education staff) and section 37H ¹/₂ (felony complaint);
- Under section 37H³/₄, directs school decision makers at student disciplinary meetings or hearings to: 1) exercise discretion in deciding consequences for the student; 2) consider ways to reengage the student in the learning process; and 3) avoid using expulsion as a consequence until other remedies and consequences have been tried;
- Under section 37H ³/₄, requires that districts provide 1) *written* notice to the student and parent or guardian of the reasons for suspension or expulsion in English and the primary language spoken in the home of the student, and 2) the opportunity for the student to meet with the principal or headmaster to discuss the reasons for suspension or expulsion, *before* the suspension or expulsion takes effect. The principal or headmaster must make reasonable efforts to include the parent or guardian in the meeting with the student.
- Defines the process that school officials must follow under section 37H ³/₄ if the decision is made after the meeting to suspend or expel the student, including notice of the student’s appeal rights, if applicable, and the appeal process;
- Limits the length of suspensions or expulsions under section 37H ³/₄ to 90 school days;
- Requires the principal or headmaster to notify the superintendent in writing of the out-of-school suspension of a student enrolled in kindergarten through grade 3, the alleged misconduct, and the reasons for out-of-school suspension, *before* the suspension takes effect;

B. Opportunity for students to make academic progress while suspended or expelled

The new law:

- Amends sections 37H and 37H¹/₂ to require districts and charter schools to continue to provide educational services to any student suspended or expelled under these sections;
- Requires principals and headmasters to create a “school-wide education service plan” for all students who are suspended or expelled for *more than 10 consecutive school days*, whether in or out of school, so that students have an opportunity to make academic progress. Education service plans may include, but are not limited to, tutoring, alternative placement, Saturday school, and online or distance learning;

- States that students who are suspended from school for *10 or fewer consecutive school days*, whether in or out of school, must be provided an opportunity to make academic progress during the period of suspension, to make up assignments, and earn credits missed;
- Establishes that if a student moves to another district during a period of suspension or expulsion, the new district must either admit the student or provide educational services to the student during the period of suspension or exclusion;
- Provides for partial reimbursement under G.L. c 71B, § 5A, the circuit breaker provision, for the instructional costs of providing alternative educational services to suspended and expelled students. First payments will be made in fiscal year 2016, partially reimbursing eligible costs incurred in the 2014-15 school year.

C. Data reporting

Chapter 222 of the Acts of 2012 amends section 37H of chapter 71 to require districts and charter schools to report to the Department “the specific reasons for *all* suspensions and expulsions, regardless of duration or type,” in the manner directed by the Commissioner. Each year the Department is required to publish the district level data (without identifying students) and an analysis disaggregated by student status and categories to be established.

D. Pupil absence notification program

G.L. c. 76 has been amended to include section 1B, which requires each school committee to establish a pupil absence notification program in each of its schools. Under this provision, the program must ensure that the school notifies a parent or guardian if the student was absent and the parent has not notified the school of the absence within 3 days of the absence.

In addition, the school committee must have a policy of notifying the parent or guardian of a student who has:

- missed 2 or more periods unexcused over at least 5 days in a school year, or
- missed 5 or more school days unexcused in a school year.

Under the policy, the principal, headmaster, or designee must make reasonable efforts to meet with the parent or guardian of a student who has 5 or more unexcused absences to develop an action plan for student attendance as prescribed in the statute.

The statutory language directing the “school committee of each city, town or regional school district” to establish a pupil absence notification program limits the requirement to school committees and the public schools within their jurisdiction. The language does not place the same obligation on charter schools, which are governed by a board of trustees. It is the only new requirement discussed in Section I of this memorandum that applies only to districts and not charter schools. Even though the provision does not specifically apply to charter schools, we encourage charter schools to adopt some kind of pupil absence notification program as a matter

of good educational practice.

E. Students who permanently leave school

The new law amends G.L. c. 76, § 1, which sets forth the process for establishing that a student has permanently left school. As amended, the statute requires that the administrator of the school last attended by the student:

- Send notice within a prescribed timeline from the student's tenth consecutive absence to the student and parent or guardian in both the primary language of the home, to the extent practicable, and English, which contains information prescribed in the statute. Among other things, the notice must initially offer at least 2 dates and times for an exit interview.
- Convene an exit interview which may proceed without the parent or guardian if the superintendent or designee has made a good faith effort to include the parent or guardian.
- Include a team of school personnel in the exit interview such as the principal, guidance counselor, teachers and other relevant school staff, and give the student information about the benefits of earning a high school diploma, the detrimental effects of leaving school, and alternative education programs and services available to the student.

II. Changes Affecting the Department

Consistent with the new law, the Department will be undertaking a number of activities leading up to the July 1, 2014 implementation of the provisions described above. The Department will:

- File a report with the Legislature by November 30, 2013 on the costs associated with implementation of Chapter 222 of the Acts of 2012, and annually thereafter, on the cost of providing reimbursement for alternative educational services not otherwise reimbursed under G.L. c. 71B, §5;
- Prepare a model protocol for conducting exit interviews with students who intend to drop out of school; and create and maintain a list of research and other information about the consequences of dropping out, the benefits of obtaining a high school diploma, and a list of alternative education services, that schools can provide to the student at the exit interview;
- Identify models that incorporate intermediary steps before suspension and exclusion that districts with significant numbers of suspensions and exclusion can adopt;
- Adopt regulations that address:

- a principal's duties under new Section 37H ³/₄ and procedures for including parents in student exclusion meetings, hearings or interviews; and
 - investigation of districts that report a significant number of suspensions and expulsions.
- Define data reporting requirements regarding suspensions and expulsions for districts and charter schools and issue district level data reports and analyses. Starting with data collected from the 2014-2015 school year, and annually thereafter, the Department also will submit an annual report to the chairs of the Joint Committee on Education on the costs of reimbursement for instructional costs associated with alternative education services.

We hope this information is useful. If you have any questions, please email John L.G. Bynoe III, Associate Commissioner, at: jbynoe@doe.ma.edu