

PUBLIC SECTOR CLIENT ALERT: Upcoming Changes to Massachusetts School Law on Student Suspension and Expulsion

On August 6, 2012, Governor Patrick signed “An Act Relative to Student Access to Educational Services and Exclusion from School” (Chapter 222 of the Acts of 2012), which makes the most significant changes to the process and consequences of suspension and expulsion of elementary and secondary students since the Education Reform Act of 1993. The law also establishes new requirements for school districts on student attendance.

The law is not effective until July 2014 so Massachusetts school districts have two school years to revise their policies to reflect and comply with these important changes. The legislation was sponsored by Rep. Alice Wolf of Cambridge and it is intended to “curtail the overuse of disciplinary exclusions” as a means of reducing the student dropout rate.

Under the new law, any school district that suspends or expels a student for any reason must continue to provide educational services during the period of suspension or expulsion. If the student moves to another district during the period of suspension or expulsion, the new district must either admit the student to its schools or provide other educational services to the student.

Principals must develop a school-wide education service plan for all students who are expelled or suspended for more than 10 days that allows the students to continue to make academic progress and make up assignments and earn credit. In addition, a list of alternative educational service providers must be offered to the student’s parent or guardian and the school must facilitate the student’s enrollment with the chosen service. Instructional costs associated with alternative educational services are eligible for reimbursement under G.L. c. 71B, §5A. A student suspended for 10 or fewer consecutive days, whether in or out of school, shall also have the opportunity to make academic progress during the period of suspension, to make up assignments and earn credits missed, including homework, quizzes, exams, papers, and other projects.

The law also adds a new section, 37H³/₄, to Chapter 71, which applies to any student suspended or expelled for any reason other than being in possession of a dangerous weapon or drugs [§37H(a)], assaulting a staff member [§37H(b)], or charged with a felony [§37H¹/₂]. For any suspension or expulsion under §37H³/₄, the student must be given written notice of the charges and the reason for the suspension or expulsion in English and in the primary language spoken in the home of the student. Such notice must also be provided to the student’s parent or guardian. The student and parent/guardian have the right to meet with the principal or a designee to discuss the matter prior to the suspension or expulsion taking effect. Following the meeting, if the decision is made to suspend or expel, the notification to the student must be updated to reflect the meeting. Section 37H³/₄ specifies that the decisionmaker (principal or superintendent) shall exercise discretion, consider ways to re-engage the student in the learning process, and avoid using expulsion until other remedies and consequences have been considered. No suspension or expulsion under §37H³/₄ may exceed 90

school days.

If a student is suspended for more than 10 school days, either for one occurrence or cumulatively for multiple infractions in a school year, the student and parent or guardian shall also receive, at the time of the suspension or expulsion decision, written notification of a right to appeal to the superintendent and the process for appealing. This notification must be in English and in the primary language spoken in the home of the student. The suspension or expulsion will remain in effect prior to any appeal hearing. The student has the right to present oral and written testimony at the hearing, cross-examine witnesses, and the right to counsel.

A principal or headmaster must notify the superintendent in writing of any out-of-school suspension imposed on a student enrolled in kindergarten through grade 3 prior to the suspension taking effect.

Under the new law, school districts will also have an obligation to report to the Department of Elementary and Secondary Education (DESE) the specific reasons for all suspensions and expulsions, regardless of their duration or type. Under regulations that will be issued by DESE, each school district that suspends or expels a “significant” number of students for more than 10 cumulative days in a school year shall be reviewed by DESE and DESE may suggest disciplinary models that focus upon disciplinary steps prior to the use of suspension or expulsion.

School districts will also have to establish a pupil absence notification program in each of its schools that ensure that a parent or guardian is notified of a student’s absence if the school has not received notification of the absence from the parent or guardian within three (3) days of the absence. Each school committee must have a policy of notifying the parent or guardian of a student who has at least five (5) days in which the student has two (2) or more unexcused missed periods in a school year or five (5) or more unexcused missed school days in a school year. The principal or designee must attempt to meet with the parent or guardian to develop a plan to improve the student’s attendance.

Under the new law, any high school student, regardless of his/her age, will not be considered to have permanently withdrawn (“dropped out”) from high school until notification is sent to the student and the parent or guardian after the student’s 10th consecutive absence and an exit interview with the superintendent or designee and a team of school personnel is offered. During the exit interview, the adverse consequences of dropping out, the benefits of earning a high school diploma, and alternative education resources and programs must be addressed. DESE will publish a model protocol for the conduct of exit interviews along with information that can be provided to the student about the importance of staying in school.

DESE will be issuing regulations and advisories on these suspension, expulsion, and attendance requirements before the new law takes effect in July 2014. We will provide further information in connection with these new disciplinary and attendance obligations when the regulations and guidance are issued by DESE.

James M. Pender is an attorney with Morgan, Brown & Joy, LLP. Jim may be reached at 617-523-6666 or at jpender@morganbrown.com. Morgan, Brown & Joy, LLP represents employers in employment and labor matters including school committees, charter schools, and college and universities in



www.morganbrown.com

collective bargaining, labor relations, staff and student issues, school governance, special education, and training and information services.

This alert was prepared on August 29 and revised on September 5, 2012.

This publication, which may be considered advertising under the ethical rules of certain jurisdictions, should not be construed as legal advice or a legal opinion on any specific facts or circumstances by Morgan, Brown & Joy, LLP and its attorneys. This newsletter is intended for general information purposes only and you should consult an attorney concerning any specific legal questions you may have.