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**Education Alert  
August 2012**

**New Massachusetts Legislation Dramatically Affects  
Student Suspensions and Expulsions**

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On August 6, 2012, Governor Patrick signed into law “An Act Relative to Student Access to Educational Services and Exclusion From School” as Chapter 222 of the Acts of 2012. This law will dramatically affect the responsibilities of school departments in regard to students whom they suspend or expel. The Governor expects the bill to curb what the proponents allege has been an overuse of school suspensions and expulsions. The law becomes effective as of July 1, 2014.

The Act addresses the following areas:

**Students Suspended or Expelled for Offenses Covered By Chapter 71, Sections 37H and 37H½**

**The Act:**

- Requires districts to provide educational services (as outlined in Chapter 76, Section 21, which is created via the Act) to students expelled or suspended under 37H or 37H½. Previously, a district was not required to provide educational services to a student expelled under these provisions.
- Requires a new district of residence to provide educational services or admit the suspended or expelled student. Previously, no school district within the state was required to admit or provide educational services to a student expelled under 37H or 37H½ by another school district.
- Increases information collection and reporting requirements. Districts must now track the specific reasons for all suspensions and expulsions, regardless of their duration or type. The Commissioner has to determine in the future the method for tracking this information. It will be made available to the public by DESE.

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- Establishes an investigative role for the Commissioner. For each school that suspends or expels a “significant” number of students for more than 10 cumulative days, the Commissioner will investigate the school, make recommendations as appropriate, and report the results of the investigation publicly. The term “significant” is undefined in the Act, so further clarification on its meaning is needed.

### Students Suspended or Expelled for Offenses not covered by 37H or 37H½

#### The Act creates a Section 37H¾ which:

- Eliminates permanent expulsion as a consequence for offenses not covered by 37H or 37H½. A principal or other person acting as a decision-maker for student discipline must exercise discretion, must consider ways to reengage the student in the learning process, and must avoid expulsion until he or she uses other remedies or consequences. A student may not be expelled or suspended under Section 37H¾ for more than 90 days.
- Provides procedural safeguards. A school must provide the student and the parent or guardian written notice of the charges and reasons for suspension or expulsion in English and in the home language of the student. The student must have an opportunity to meet with the principal or designee to discuss the charges prior to the suspension or expulsion. The guardian or parent must be present at the meeting unless after “reasonable efforts” the school cannot reach the parent. All of this needs to occur prior to the suspension or expulsion taking effect. After the meeting, the principal or designee must update the notification letter to reflect the meeting.
- Provides educational services to suspended or expelled students. Under a new statute, Chapter 76, Section 21, created by the Act, students suspended for any number of days, whether in or out of school, have a right to make up assignments, pursue academic progress, and earn credits missed. For students suspended or expelled for more than 10 consecutive school days, principals must develop a school-wide educational service plan to allow the student to make academic progress and make up assignments, and must provide parents with a list of alternative educational services.
  - The costs of these alternative educational services may be eligible for reimbursement under Chapter 71B, Section 5A, although such reimbursements are subject to appropriation.



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- Establishes additional procedural safeguards for suspension or expulsion of more than 10 school days. If a student has been suspended or expelled for more than 10 school days for a single infraction or more than 10 days cumulatively for multiple infractions in a school year, then the student and parent or guardian must receive written notice of their right to appeal to the superintendent. The student must notify the superintendent in writing of an appeal, and a hearing must be held within three days of the student's request, unless the parent or student requests an extension. The superintendent may appoint a designee to conduct the appeal hearing.
- Increases notification requirements for K-3. A principal must notify the superintendent in writing of any out-of-school suspensions of a student enrolled in grades K-3, before they can take effect.

### Student Attendance

#### The Act:

- Eliminates exceptions to the compulsory attendance rule for working students that previously appeared in Chapter 76, Section 1. Previously, students aged 14 or older who either had work permits or written permission from the superintendent were not required to attend public school.
- Establishes a pupil absence notification system. Each school must have a pupil absence notification system that reports to parents or guardians within three days of an absence if the school has not received notification of the absence from the parent or if the student has had at least five unexcused absences in a school year.
- Requires the establishment of action steps for student attendance. For students who have 5 or more unexcused absences, a principal or designee must meet with parents to develop action steps for the student.
- Increases the requirements for establishing that a student has "permanently left school". Previously, a student, sixteen years of age or older, was not regarded as having permanently left school unless an administrator sent a notice to parents. Now, a student who has not graduated from high school must still be enrolled in school unless an administrator sends a notice to the student and parent within five days of the tenth consecutive absence, and unless the administrator offers two dates for an exit interview to discuss the reasons for the student permanently leaving school. A team of personnel at



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the exit interview must give the student information about the detrimental effects of early withdrawal from school, the benefits of a diploma and alternative education options.

**As noted earlier, this Act takes effect on July 1, 2014.**

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*If you have any questions or concerns with regard to the implementation of the Act, please contact the attorney assigned to your account.*

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