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LEGAL NOTE
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BOARD OF EDUCATION ADOPTS STUDENT DISCIPLINE REGULATIONS
603 CMR 53.00

BACKGROUND

The new regulations, which are 13 single spaced pages, were promulgated on April 29, 2014 by the Massachusetts Board of Education. Many educators have been following DESE efforts to draft regulations implementing the provisions of Chapter 222 of the Acts of 2012 relative to student discipline.

As you recall from previous advisories, the legislature adopted Chapter 222 of the Acts of 2012 and made it **effective July 1, 2014**. The statute was a legislative response to the perception that school districts were overreacting to relatively minor disciplinary infractions by imposing lengthy suspensions and/or exclusions without sufficient cause, without due process, and without the application of professional judgment. As always, due process includes (a) notice, (b) opportunity to be heard before the consequences are imposed and (c) fairness of the punishment. The M.A.S.S. has always supported due process for students consistent with state and federal law, and has long taken the view that zero-tolerance policies, so called, were not appropriate disciplinary devices. Zero-tolerance policies negate an administrator's professional judgment and require the

imposition of discipline without consideration of unique circumstances presented by each case.

The new regulations go far beyond the elimination of zero tolerance policies. The regulations prescribe extremely detailed procedures that must accompany various forms of suspension and/or expulsion, from in-school to short and long term suspension. Unfortunately, the complexity of the process due under the regulations varies significantly depending on the potential consequences of a specific infraction. We have previously issued advisories on the content of the statute, and we anticipate addressing this matter at a meeting sponsored by M.A.S.S. either this spring or at the July Executive Institute.

This advisory is intended to bring superintendents and educators up to date on the regulatory changes, highlighting the major points. Due to the length and complexity of the regulations, please consider this document a summary of relevant provisions. You should review the regulations with your administrators and local counsel to cross-reference new requirements with existing practices. We expect further advice from DESE on the development of mandatory school committee policies on student discipline. M.A.S.S. will provide templates for written communication with parents and students relative to potential discipline.

The provisions of Chapter 222 and the regulations **do not** change the provisions of M.G.L. c. 71, §37H and §37H½ regarding the grounds for discipline under those sections. Further, the new law/regulation **do not** amend rules specific to discipline of special needs students. Chapter 222 and regulations, however, do require the provision of ongoing educational services to students suspended under those laws during the course of the suspension whether or not they are special needs students. A section by section summary of the newly adopted regulations follows.

SUMMARY OF REGULATORY PROVISIONS

1. 603 CMR 53.01: Purpose: The regulations are intended to limit long-term suspensions and find alternative consequences for student misconduct, to promote engagement of students' parents in the disciplinary process, to assure that students who are suspended or excluded have the opportunity to obtain educational services, and to keep schools safe for all students.

The regulation applies to all public pre-school, elementary, and secondary schools and includes charter and virtual schools.

2. 603 CMR 53.02: Definitions: The definitional portion of the regulations make it clear that the law and the regulations apply to every alleged disciplinary infraction, **EXCEPT** those offenses covered by Section 37H (possession of drugs or weapons, or assault on a staff member in school) or Section 37H½ (issuance of felony complaints/felony delinquency complaints and conviction on same.) As noted above the only aspect of 37H and 37H½ changed by §222 is the requirement to provide educational services to all excluded students, not just those on IEP's.

You should consider whether your existing student handbook can be sufficiently adapted to the new rules.

The word "**expulsion**" is defined as "removal of the student from the school premises, regular classroom activities, and school activities for more than ninety (90) school days, indefinitely or permanently."

The term "**in school suspension**" means "removal of the student from regular classroom activities, but not from the school premises, for no more than ten (10) consecutive school days, or no more than ten (10) school days cumulatively for multiple infractions during the school year." An in-school suspension of ten (10) or fewer days, consecutively or cumulatively is not considered a "short-term suspension" provided,

however, that an in school suspension of more than ten (10) days, consecutively or cumulatively, will be considered a long term suspension for due process purposes.

A **long term suspension** is defined as the “removal of a student from the school premises and regular classroom activities for more than ten (10) consecutive school days, or for more than ten (10) school days cumulatively for multiple disciplinary offenses in any school year.” A long term suspension may be served in school. Except for Section 37H and Section 37H½ offenses, a long term suspension may not be imposed for more than ninety (90) days in a school year and does not extend from school year to school year.

A **short term suspension** is “the removal of a student from a school premises and regular classroom activities for ten (10) consecutive school days or less.”

In the case of in-school suspensions and short term suspensions, removal from participation and extra-curricular activities does not count as a removal from school in calculating the duration of a suspension.

A **school wide education service plan**, required by provisions of newly added c. 76, §21, is a document created by the principal that “includes a list of education services available to students who are expelled or suspended from school for more than ten (10) consecutive days.” While the precise application of the service place remains to be clearly defined, educators should assume that from this list will come the events and activities which represent the student’s opportunity to continue to receive educational services and make progress while out on discipline.

3. 603 CMR 53.03: Policies: Each school committee or board of trustees must insure policies and procedures are in place that meet the minimum due process and educational requirements of Section 37H¾, Section 21 of Chapter 76, and these regulations. Review your policies with district counsel for compliance.

4. 603 CMR 53.04: Administrative Investigation: School administrators continue to be authorized to conduct investigations into school related disciplinary matters, including student interviews.

5. 603 CMR 53.05: Alternatives to Suspension: This provision of the regulations requires administrators to “exercise discretion in deciding the consequence” for disciplinary offenses, thereby abolishing the application of “zero-tolerance policies”, so called. This section also requires that administrators seek alternative means to impose consequences as a means of avoiding long term suspension and further requires that administrators consider ways to “re-engage the student in learning.” Some of those alternatives may include evidence based strategies, mediation, conflict resolution, restorative justice, positive behavioral interventions and supports.

6. 603 CMR 53.06: Notice to Parents and Students: Section 53.06 establishes notice provisions for suspensions and hearings under Section 37H¾. Except for emergencies provided by Section 53.07, and in-house suspension authorized by Section 53.10, a suspension may not be imposed without providing the student or the parent oral and written notice, along with an opportunity for a hearing on the charge and an opportunity for the parent to participate in the hearing.

Contents of Notice: The notices must be oral and in writing to the student and the parent in English and the primary language of the home if not English. (All notices sent home must be in English or the primary language of the home. Determine who in your district can translate these notices into the appropriate language.)

The notice must advise of:

1. The alleged disciplinary offense.
2. The basis for the charge.
3. The potential consequences, including the potential length of the student’s suspension.

4. The opportunity for the student to have a hearing with the principal, including an opportunity to dispute the charges and present the student's explanation, and for the parent to attend.
5. The date, time and location of the hearing.
6. The right to an interpreter, if needed.
7. If long term suspension is an option the student must be provided with appeal rights and a statement of the due process applicable in long term suspensions contained in Section 53.08(3) (b).

The principal must document efforts to notify the parents orally and, if the parents do not participate, the documentation must include evidence of reasonable efforts to contact the parents by writing and at least **two** attempts at contact "in the manner specified by the parent for emergency notification."

Notice to the parent may be by hand delivery, first class mail, certified mail or email to an address provided by the parent. (Administrators should obtain emails for parents to ensure speedy communication.)

7. Section 53.07: Emergency Removal: Brief emergency removals are available under Section 37H³/₄.

A student may be removed for **not more than two (2) school days** following the date of the emergency removal if the student is charged with a disciplinary offense "and the continued presence of the student poses a danger to persons or property, or material and substantially disrupts the order of the school, and, in the principal's judgment, there is no alternative to alleviate the danger or disruption." In such cases, the principal must **immediately** notify the superintendent in writing and describe the danger presented by the student.

During the two (2) day emergency removal period the principal must make reasonable efforts to orally notify the student and the parent of the emergency removal,

the reason for the removal, and must also notify them of the process as outlined in Section 53.06 above. That process includes an opportunity for a hearing consistent with the provisions for short term suspensions or long term suspensions under Section 53.08.

The opportunity for a hearing must be provided within the two (2) days of the emergency removal and the principal must render a decision orally **on the date of the hearing** and **in writing no later than the following day**. Finally, in an emergency removal situation the principal must make sure there are adequate provisions for the student's safety and transportation.

8. Section 53.08: Hearing at Principal's Level: Because the rights of the student are different under short and long term suspensions, the principal must at the outset determine what rights are applicable to the student based on the potential consequences. This regulatory provision will require that administrators consider, before they hear from the student, whether the consequence is likely to include a long or short term suspension and adjust the hearing procedures accordingly. While this might suggest to some that the principal has pre-judged the matter, this is a requirement of the regulations and principals should be expected to address this issue at the outset.

Short Term Suspensions: In these proceedings the principal is to hear and consider information regarding the alleged incident and provide the student with an opportunity to explain the circumstances and dispute the charges. The principal will determine whether the student committed the disciplinary offense and the consequences. The discussion must involve at least the nature of the disciplinary offense, the basis for the charge and any other pertinent information. The student can present mitigating facts which the principal should consider in determining remedies and consequences. Parents are permitted to participate in the hearing at this stage.

Based on available information, including mitigating circumstances, the principal will make a decision as to whether the student committed the offense and notify the student and parent of the determination and his or her reasons. If the student is

suspended the principal's correspondence must identify the type and duration of the suspension and the opportunity to make up work assignments or other school work "as needed to make academic progress during the period of removal."

In all cases of public **pre-school students**, and in grades K-3 in other programs, the principal must send a copy of the written determination to the superintendent explaining the reasons for an out of school suspension BEFORE the short term suspension takes effect.

Long Term Suspensions: A long term suspension hearing is convened for the same reasons as a short term suspension, namely to advise of and consider information about the charge, provide the student an opportunity to dispute the charges and explain the circumstances, and present mitigating information. Parents are permitted to participate.

AT A MINIMUM, "in addition to the rights afforded a student in a short term suspension hearing" additional rights are required in a long term suspension as follows:

1. **PRIOR TO THE HEARING**, an opportunity to review the student record and documents on which the principal may rely.
2. To be represented by counsel or a lay person at his or her own expense.
3. To produce witnesses and to present the student's explanation of the incident, "but the student may not be compelled to do so."
4. The right to cross-examine witnesses presented by the school district.
5. The right to request that the hearing be recorded and to receive a copy of the audio recording if an audio recording is requested the principal will advise all parties of that fact.

At a hearing on the long term suspension the parents will be given the opportunity to discuss the student's conduct and provide other information.

After hearing the evidence the principal shall determine whether the disciplinary offense was committed and, after considering mitigating circumstance and alternatives to

suspension, what the remedy or consequence shall be. This determination shall be in writing and sent to the student and the parent by hand-delivery, certified mail, first-class mail, or email to an address provided by the parent to the school. The written determination shall:

1. State the specific disciplinary offense, the date on which the hearing took place and the participants.
2. Record the key facts and conclusions reached by the principal.
3. Identify the length of suspension and the date of return to school.
4. Notify the student of his or her opportunity to receive educational services and make educational progress during the course of the suspension.
5. Advise the student of his or her appeal rights to the Superintendent or the Superintendent's designee in cases of long term suspension (there is no right of appeal to the superintendent for short term suspension)
6. Be in English or the primary language of the home and
7. Explain that the appeals process requires the student or the parents to file a written notice with the superintendent within five (5) calendar days of the effective date of the long term suspension subject to an extension of the filing, upon agreement with the Superintendent, for up to a total of seven (7) calendar days.
8. Advise the student if a long term suspension will remain in effect unless and until the superintendent decides to reverse the principal.
9. 603 CMR 53.09: Appeals to the Superintendent under Section 37H³/₄: Long term suspensions may be appealed to the superintendent upon the filing of a written appeal by the parent or student as discussed above. If the appeal is not filed on time "the superintendent may deny the appeal" or allow it to go forward. Hearings by the superintendent or his or her designee must occur within three (3) school days of the request unless there is also a parental request of an extension of up to seven (7) additional calendar days.

The superintendent must send written notice to the parent of the date, time and location of the hearing and must make a good faith effort to include the parent in the

hearing process. Those efforts may require the superintendent to adjust the originally scheduled hearing date, time, and location.

The Superintendent or designee “shall conduct a hearing to determine whether the student committed the disciplinary offense” and the appropriate consequence. An audio recording of the appeal at the superintendent’s level must be made and must be provided to the student and parent upon request. The parties must be advised that an audio record will be made and that a copy will be available. The student shall have the same due process rights at the superintendent’s appeal as are available on long term suspensions at the principal’s level. These processes are outlined above in section 53.08. The superintendent’s written decision must be made within five (5) days. If it is determined the offense was committed the decision must state the consequence, which may be the same or lesser than the principal but shall not be “greater than that imposed by the principal”. The Superintendent’s decision is final.

10. 603 CMR 53.10: In-school suspension proceedings: In-school suspension is an alternative to short term suspension and may be imposed for disciplinary offenses under Section 37H³/₄, provided the principal follows the procedures in Section 53.10 and gives the student an opportunity to make an academic progress during the course of in-school suspension.

At a hearing at which an in-school suspension is to be imposed, the principal must advise the student of the disciplinary offense(s) charged, the basis for the charge, and provide the student with an opportunity to dispute the charge or explain the circumstances. If the principal determines that the student committed the offense he must advise the student of the length of the in-school suspension, which must not exceed ten (10) days cumulatively or consecutively in the school year. There is no right of parental participation at the initial hearing or in-school suspension but there are requirements of immediate contact with the parents.

On the same day the principal makes a decision to impose an in-school suspension her or she must make reasonable efforts notify the parent orally of the circumstances. The parent must be invited to a meeting to discuss the student's academic performance and behavior as well as strategies for student engagement and responses to the behavior. The meeting "shall be scheduled" on the date of the suspension "if possible" or "soon thereafter". The principal must document two (2) attempts to contact the parent under such circumstances. Following the decision to impose an in-school suspension the principal must send a written notice to the parent and invite the parent to meet if the parent was unavailable for a meeting after oral notice. The notice must be forwarded by hand-delivery, certified mail, first-class mail, or email to an address provided by the parent.

11. 603 CMR 53.11: Exclusion from extra-curricular activities: Any student may be prohibited from participating in extra-curricular activities or attendance of school sponsored events based on misconduct. These removals are "not subject to the procedures of Chapter 71 Section 37H³/₄ or 603 CMR 53.00."

12. 603 CMR 53.12: Relationship to offenses under Sections 37H and 37H¹/₂: School Districts are required to adopt policies regarding offenses under the section 37H and 37H¹/₂ which are consistent with the applicable statutes and the hearing procedures required therein. Students subject to discipline under Section 37H or 37H¹/₂ "may be removed from school" for more than ninety (90) days in a school year" but schools must provide an opportunity for the students to continue to receive educational services and make academic progress during the period of removal under §§37H and 37H¹/₂.

13. 603 CMR 53.13: Provision of educational services under Sections 37H, 37H¹/₂, and 37H³/₄: All students subject to in-school, short term, or long term suspension or expulsion pursuant to 37H, 37H¹/₂, and 37H³/₄, must be provided with an opportunity to earn credits, make up assignments, tests, papers, and other school work "as needed to make academic progress" during the period of suspension. When a suspension is imposed the principal must advise the student and parent in writing of this opportunity.

Any student expelled or suspended for more than ten (10) consecutive days must be given an opportunity to receive educational services and make academic progress “through the school-wide education service plan.”

The principal is responsible for developing the school-wide educational service plan. The plan must include a process for notifying students and parents of the existence of such services and information on arranging for services. The educational services “shall be based on and be provided in a manner consistent with, the academic standards and curriculum framework established for all students” under Massachusetts law. The notice of educational services must be provided to the parent in English and in the student’s primary language at home if not English. The plan must list “specific educational services” available, with contact information for the school district staff member responsible for providing more detailed information.

Every student expelled or suspended for greater than ten (10) days whether in or out of school shall have their enrollment in education services documented and the school will track and report enrollment education services as directed by the department.

14. 603 CMR 53.14: Retention and reporting of student discipline data: All in-school, short and long term suspensions, expulsion and emergency removals imposed pursuant to the regulations must be retained in data collection and reported annually to DESE. The form of reporting will be determined by DESE.

Every school principal is required to periodically review discipline data by selected student populations such as, for example, race and ethnicity, gender, socio-economic status, English language learner status, or as students with disabilities to determine the impact of suspensions on the selected student population. The principal shall determine whether modification of disciplinary procedures is necessary due to over reliance on suspensions or emergency removals on the selected student populations.

The department will annually publish an analysis and report school district data disaggregated by district and school and by selected student population. This information will be produced by DESE and made available to the public online. Further, DESE will identify schools with the highest percentage of students expelled or placed on long term suspension and other relevant school and district determined information such as drop-out rates, student demographic, student performance, etc. to determine whether the schools need additional assistance.

CONCLUSION

Because of this significantly increased level of detail, this law and regulations will radically revise student disciplinary procedures. Work closely with your administrators and local counsel to determine the most effect way to implement the new rules. Buy-in at all levels is essential to consider if time consuming and costly litigation is to be avoided. It is important to remember that the traditional principles of due process are carried over, although the procedures are regulated to a far greater extent and an excluded students are now always entitled to some educational services.