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**LEGAL ADVISORY:**

**Goodwin v. Lee, 475 Mass. 280 (2016)**

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**I. CASE SUMMARY**

In Goodwin v. Lee, 475 Mass. 280 (2016), the SJC held that the plaintiff student was not required to exhaust administrative remedies under M.G.L. c. 71, § 37H prior to commencing a Superior Court action for damages against the district because her suspension was not valid under the statute. The Court held that the student's failure to obtain a statement from the School Committee stating the defendant district's reasons for her suspension was not a bar to her seeking tort damages, which were nonetheless available to her under M.G.L. c. 76 § 16. The SJC reversed and remanded the matter to Superior Court for consideration of the plaintiff's claims against the district. The Superior Court had previously granted the district's motion to dismiss, holding that the student could not recover damages stemming from her allegedly improper suspension because she had failed to exhaust administrative remedies.

**II. FACTS**

The Plaintiff, a former high school student at Lee Middle and High School, was suspended by the school principal pursuant to a school policy stating that any student charged with a felony would be suspended even if the conduct occurred off of school grounds, in accordance with M.G.L. c. 71, § 37H1/2.<sup>1</sup> She was suspended for the entirety of her last semester of senior year, excluding her from participation in graduation, because the principal erroneously believed that she had been charged with a felony relating to the theft of a firearm. The student was subsequently charged with a misdemeanor for receipt of stolen property, but was never charged with a felony. Her suspension was lifted and she ultimately obtained her high school diploma, but she was not permitted to attend graduation with her classmates. After refusing the school's offer of a solo graduation for her upon her completion of online classes (she did not return to school after being told she could not attend graduation), the Plaintiff brought an action

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<sup>1</sup> Under § 37H1/2 (1), a student may be suspended "[u]pon the issuance of a criminal complaint charging a student with a felony ... if [the] principal or headmaster determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school."

against the district in Superior Court to recover tort damages. She sought “compensation” for the “grief and stigmatization” resulting from the district’s refusal to allow her to “participate in her last year of school on school grounds and in the rite of passage that is graduation.” The district moved to dismiss, arguing that the student had not exhausted administrative remedies available under § 37H1/2 and had not sought certiorari review under G.L. c. 249, § 4. The plaintiff countered with the argument that an alternative route to recovery was available to her under M.G.L. c. 76 § 16.<sup>2</sup>

### **III. SJC ANALYSIS**

The SJC held that the Superior Court erred in granting the district’s motion to dismiss due to the plaintiff’s failure to exhaust administrative remedies under § 37H1/2, because M.G.L. c. 76, § 16 “provides a separate and distinct remedy from that available under § 37H1/2.” The Court articulated that M.G.L. c. 76, § 16, “provides a suspended student a parallel and distinct avenue for relief” apart from § 37H1/2 and its administrative remedy requirements. The Court went on to note that “§ 37H1/2 is plainly designed to afford suspended students an immediate opportunity to have their suspensions lifted and to be readmitted to school, to have their suspensions shortened, or to be admitted to alternative educational programs,” while, in contrast, M.G.L. c. 76, § 16 allows the payment of damages to a student, without “relief from the immediate deprivation of a free and appropriate public education.” The SJC held that nothing in § 37H1/2 prevents a student from seeking tort damages under M.G.L. c. 76, § 16, even if he or she has not first pursued/succeeded on a suspension appeal raised under § 37H1/2.

### **IV. CONCLUSION**

A student’s failure to exhaust administrative remedies under § 37H1/2 does not preclude the same student’s recovery of tort damages under M.G.L. c. 76, § 16 under the same facts.

**This advisory is for informational purposes only and may be considered advertising. It is not intended to and does not constitute legal advice with respect to any specific matter and should not be acted upon without consultation with legal counsel.**

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<sup>2</sup> M.G.L. c. 76, § 16, entitled “Children excluded from school; remedies,” states: “Any pupil who has attained age eighteen, or the parent, guardian or custodian of a pupil who has not attained said age of eighteen, who has been refused admission to or excluded from the public schools or from the advantages, privileges and courses of study of such public schools shall on application be furnished by the school committee with a written statement of the reasons therefor, and thereafter, if the refusal to admit or exclusion was unlawful, such pupil may recover from the town or, in the case of such refusal or exclusion by a regional school district from the district, in tort and may examine any member of the school committee or any other officer of the town or regional school district upon interrogatories.”