

KROKIDAS & BLUESTEIN
ATTORNEYS

CLIENT ALERT

EDUCATION LAW UPDATE:

**2014-2015 SCHOOL YEAR BRINGS
NEW REQUIREMENTS FOR CHARTER SCHOOLS**

By July 1, 2014, public and charter public schools must begin taking steps to comply with new state education laws set forth at Chapter 222 of the Acts of 2012, entitled *An Act Relative to Student Access to Educational Services and Exclusion from School*.

The new education laws fundamentally change school districts' responsibilities with respect to suspension and expulsion of students. Previously, no school district in the Commonwealth was required to re-admit or educate excluded students, resulting in students being permanently expelled from an entire public school system. Under the new law, a school district that suspends or expels a student must continue providing educational services during the period of suspension or expulsion. If a student moves to another district, the new school district must admit the student or provide an education service plan as if that district had expelled the student.

The new laws make other significant changes to the educational system and impose additional obligations on schools and school districts. New laws relating to school discipline are likely to apply to charter schools; however, the application of many of these laws to Horace Mann and Commonwealth Charter Schools requires further guidance from the Department of Elementary and Secondary Education (DESE).

This client alert summarizes the important provisions of the new state education laws and makes some recommendations for assuring compliance with the new laws.

➤ **Develop Education Service Plans for Excluded Students**

The new laws require school principals to create a "school-wide education service plan" ("Education Service Plan") to ensure that students who are expelled or suspended for more than ten consecutive days have the opportunity to make academic progress during the period of exclusion. This includes the opportunity to make up assignments and earn credits missed, including homework, quizzes, exams, papers and projects. Though not a requirement, the Educational Service Plan may include tutoring, alternative placement, Saturday school, online or distance learning, and other educational means. The student and his or her parent or guardian

may choose from the list of alternative services provided by the school, and the school must help the student to enroll in that service and verify enrollment. Schools may be reimbursed for certain eligible costs of providing alternate education services.

➤ **90 Day Limit for “Non-Serious” Offenses**

Schools will no longer be able to exclude a student for more than ninety school days for non-serious offenses, starting from the day the student is removed from school. Non-serious offenses include offenses other than possessing a dangerous weapon or controlled substance at school or a school event, assaulting a school employee, or committing a felony.

➤ **Annual Reporting Requirements**

Schools must report the basis for all expulsions and suspensions to DESE. DESE will publicize district-level data without identifying information online. Further guidance from DESE is needed as to the applicability of this requirement to charter schools.

➤ **Investigations by the Department of Elementary and Secondary Education**

Under the new law, DESE will investigate schools that expel a significant number of students or suspend them for more than ten cumulative days in a school year in order to determine whether less severe actions should be pursued. The results of DESE’s analysis will be publicly reported within the school district. DESE must promulgate regulations and implement this portion of the statute.

➤ **Deciding How to Discipline the Student**

When a school decision maker is considering how to discipline a student for a non-serious offense, he or she must exercise discretion, consider ways to return the student into the learning process, and use alternative remedies, before disciplining the student.

Schools must provide prior notice to the school superintendent of any out-of-school suspension of a student enrolled in kindergarten through grade 3.

➤ **Written Notice and Meeting with the Student**

If the student is expelled or suspended for any reason, the school must notify the student and the student’s parent or guardian of the charges and the reason for the suspension or expulsion. The school must also provide the student and parent or guardian with an opportunity to meet with school officials to discuss the charges and reasons for the discipline before the expulsion or suspension takes effect. For non-serious offenses, the school must make a reasonable effort to include the student’s parent or guardian if the student’s parent or guardian does not attend the meeting.

If the school still decides to suspend or expel the student after the initial meeting, the school must give a new notice to the student and the student’s parent or guardian indicating that

the meeting was held. If the school suspends the student for more than ten cumulative days in any school year or expels the student, the notice must state that the student and the student's parent or guardian have the right to appeal, and must set forth the appeal process.

Any such notices described above that are provided to the student and the student's parent or guardian must be written in the primary language spoken in the student's home.

➤ **Students' Appeals Rights**

Students who are suspended for a total of ten days in any school year or expelled will have the right to appeal the suspension or expulsion to the superintendent. The process will begin with a written request for an appeal from the student or his or her parent or guardian to the superintendent. The superintendent must hold a hearing for the student and his or her parent or guardian within three school days of the request for appeal. The hearing may take place without a parent or guardian, provided that the superintendent has made an effort to include them. At the hearing, the student may testify orally or in writing, cross-examine witnesses, and be represented by an attorney. The superintendent must issue a written decision on the appeal within five days of the hearing, which will conclude the matter.

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The law will have other effects on schools beyond school disciplinary procedures, as summarized below:

➤ **Absence Notification Program**

Schools will be required to notify students' parents or guardians when their children are absent if the parents or guardians do not give the school notice of the absence within three days after its occurrence. School committees must have a policy of notifying a student's parent or guardian if the student has five days of unexcused absences or at least two periods of unexcused absences on five different days. Schools must make a reasonable effort to meet with the parent or guardian, and develop a plan to correct the problem with the parent or guardian, student, and other school personnel and public safety, health and human service, housing and nonprofit agency officials.

➤ **Exit Interviews with Students who are Dropping Out**

The new law requires the school to conduct an exit interview when a student who has not graduated will be considered to have permanently left public school. If a student misses ten consecutive days of school, the school must send the student and student's parent or guardian a notice offering times for an exit interview conducted by a team of school personnel including the school superintendent, and the student's parent or guardian. The student or the student's parent or guardian may extend the time for the exit interview by up to two weeks. The interview may take place without the parent or guardian if the superintendent has tried to involve them.

At the exit interview, the superintendent must discuss the reasons the student is dropping out and advise the student and parent or guardian of alternative education or placement opportunities. A team of school personnel will explain the disadvantages of dropping out and the benefits of gaining a high school diploma. Schools can use DESE's model protocol for exit interviews to assist them in implementing the new procedure.

We understand through conversations with DESE personnel that the chairman of the board of trustees of charter schools may serve as the superintendent's designee in these circumstances; for Horace Mann Charter Schools, the role of the school superintendent may be negotiated and expressed in the Memorandum of Agreement with the local school district.

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Next Steps for School Administrators:

- Begin devising an education plan for expelled and suspended students, including what services the school would provide;
- Examine current appeals procedures and notice requirements for students who are expelled or suspended, and create appropriate protocols and forms of notice;
- Develop a plan to conduct exit interviews to prevent students from dropping out;
- Develop a plan regarding truancy notifications; and
- Begin updating school handbooks, including codes of conduct.

As indicated above, further guidance from DESE is needed to determine the specific application of each of these changes to Commonwealth and Horace Mann Charter Schools.

For additional information or guidance on the new education laws, or for any other education-related questions, please contact Attorney Anjali Waikar (awaikar@kb-law.com), Attorney Anthony Cichello (acichello@kb-law.com), or Attorney Elka Sachs (esachs@kb-law.com), at Krokidas & Bluestein LLP.