

KROKIDAS & BLUESTEIN

ATTORNEYS

CLIENT ALERT

“BACK-TO-SCHOOL” REMINDER: TRUANCY PREVENTION

Truancy, the unexcused absence from school, represents a significant challenge for many Massachusetts schools, including charter schools. The U.S. Department of Justice has described truancy as one of the clearest indicators of susceptibility to educational failure and adult delinquency.¹ The Massachusetts Department of Elementary and Secondary Education (“DESE”) has expressed a governmental interest in discouraging truancy in its [Policies and Protocols for Truancy Prevention Programs](#). This Client Alert describes steps that public schools, including charter schools, may take in order to discourage truancy.

State law requires children between the ages of 6 and 16 (“school-aged children”) to attend school. *See* [M.G.L. c. 76, §§ 1, 18](#); [603 C.M.R. 8.02](#). To ensure that school-aged children actually attend school, state law has placed certain obligations upon those responsible for such children, namely schools and parents. For example, public schools, including charter schools, are required to submit annual reports to DESE (“annual reports”) that include their statistics, policies, and procedures relative to truancy and dropout. This information is included in DESE’s yearly performance review of the schools. *See* [M.G.L. c. 69, §11](#). A parent of a school-aged child may be fined up to \$20.00 if, upon complaint by the school’s supervisor of attendance, the school-aged child fails to attend school for (i) 7 day sessions, or (ii) 14 half-day sessions, during any six month period. *See* [M.G.L. c. 76, § 2](#). Unfortunately, the relatively insignificant amount of this fine undermines the effectiveness of this approach.

To bolster the power of a school to actively combat truancy, the Massachusetts legislature created the role of “supervisor of attendance.” Pursuant [M.G.L. c. 76 § 19](#), every school committee, and, as indicated by DESE, the board of trustees of every charter school, must appoint, and establish regulations governing, at least one supervisor of attendance. Supervisors of attendance must be at least 21 years of age and meet the [qualification standards](#) established by DESE. Among powers granted to these school officials, supervisors of attendance may apprehend and take to school without a warrant any truant or absentee student found wandering

¹ *See* U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention article: http://www.ojjdp.gov/mpg/litreviews/Truancy_Prevention.pdf.

the streets or public places, and may, on behalf of the school, file a Child Requiring Assistance (“CRA”)² application in juvenile court for assistance. See [M.G.L. c. 76 § 20](#).

Pursuant to the [Act Regarding Families and Children Engaged in Services](#) passed in November 2012 (the “Act”), DESE is tasked with several duties relating to discouraging truancy and supporting truancy prevention programs. The Act obligates DESE to adopt regulations that (1) establish a truancy prevention program certification process, and (2) require that any truancy prevention program (a) evaluate the level of out-of-school support for students and families, and (b) address conditions that make students more likely to become truant, including previously unidentified or inadequately addressed special needs, bullying, and harassment. See [M.G.L. c. 69 § 10](#). Although school districts are not required to implement truancy prevention programs, DESE encourages school districts to do so. Any truancy prevention program established by a school district must meet the requirements for certification adopted by DESE; however, DESE has not yet adopted regulations setting forth such requirements, and DESE has not indicated when it anticipates doing so. Instead, DESE has issued some guidance for truancy prevention programs in its [Policies and Protocols for Truancy Prevention Programs](#), and has encouraged school districts and charter schools to establish truancy prevention programs that are consistent with this guidance. A school district or charter school which has established a truancy prevention program is obligated to include in its annual report the statistics, policies, and procedures of such program.

The Act also requires DESE to develop a pilot truancy prevention program using a restorative justice format in at least one Massachusetts urban high school, subject to appropriation of funds – which have yet to be appropriated by the Commonwealth.

When a child’s unexcused absences reach the level of “habitually truant,” a school district or charter school may initiate a CRA application for assistance in juvenile court. See [M.G.L. c. 119 § 39E](#). A habitually truant child is one between the ages of 6 and 18 who is not excused from school attendance under the lawful and reasonable regulations of the school, but nonetheless willfully fails to attend school for more than 8 days in a quarter. See [M.G.L. c. 119 § 21](#). A CRA application must state (1) that the child has willfully failed to attend school for more than 8 school days in a quarter, (2) whether or not the child and the child’s family have participated in the school district’s or charter school’s truancy prevention program (if one has been adopted), and (3) if applicable, the specific steps that have been taken under the truancy prevention program to prevent the child’s truancy. Any application filed by a school district or charter school must be dismissed on the child’s 16th birthday. See [M.G.L. c. 119, § 39G](#).

School districts and charter schools must consider a non-attending student truant, rather than a drop-out, unless and until certain procedures have been followed. See [M.G.L. c. 76 § 18](#). Specifically, an administrator of the school which the student last attended must send notice to

² In 2012, CRA proceedings replaced Child in Need of Services (“CHINS”) proceedings.

the student's parent or guardian within 5 days of the student's 10th consecutive absence from school. The notice must:

- (1) be in both English and, if applicable and to the extent practicable, the primary language of the parent or guardian;
- (2) include a minimum of 2 dates and times for an exit interview involving the school system's superintendent or charter school leader (designee), the student, the parent or guardian, and a team of school personnel (such as the principal, guidance counselor, teachers, attendance officer, and other relevant school staff); and
- (3) state that the parties must agree upon a date and time for the exit interview, to occur within 10 days after the notice is sent (although at the request of the parent or guardian, this may be extended up to an additional 14 days).

At the exit interview, the student must be provided with information regarding (1) the detrimental effects of early withdrawal from school, (2) the benefits of earning a high school diploma, and (3) the alternative education programs and services available to the student. DESE has published a [model protocol](#) for conducting exit interviews with students, as well as additional resources to be utilized by school districts during exit interviews. These include the [Impact of Dropping Out Student Flyer](#), the [Impact of Dropping Out Staff Resources Summary](#), and the [Alternative Education Resources and Other Academic Options Overview](#).

The superintendent of every city, town, or regional school district, and the school leader of a charter school, must include in his or her annual report to DESE (1) the number of students 16 years or older who have permanently left school, (2) the reasons for such early withdrawals, and (3) any alternative educational program or other placement pursued by each student who has permanently left school.

If you have any additional questions or if you would like assistance in establishing or reviewing your truancy prevention program or drafting or reviewing your school attendance policy, please contact Attorney Elka Sachs at esachs@kb-law.com, Attorney Gabriel Balzano-Brookes at gbalzano-brookes@kb-law.com, or Law Clerk Allison Belanger at abelanger@kb-law.com.