



CLIENT ALERT

PROPOSED CHANGES TO CALCULATION OF SCHOOL DISTRICTS IN THE LOWEST 10%

The Board of Elementary and Secondary Education (“BESE”) voted at a meeting held on April 20, 2021, to open a public comment period on proposed changes to BESE’s regulations regarding the calculation used in making the list of school districts in the lowest 10% in terms of statewide student performance. This calculation affects the determination of where new charter schools may be approved each year and the statutory cap on Commonwealth charter school tuition that may be charged to a sending district.

The Massachusetts Charter School Statute, G.L. c. 71, § 89(i), requires that at least two of the new Commonwealth charter schools approved in any year be located in districts that rank in the lowest 10% of statewide student performance in the two years preceding the application. Section 89(i) of the Massachusetts Charter School Statute also limits the amount of Commonwealth charter school tuition that may be charged to a sending district in any year. The limit is generally set at 9% of the district’s “net school spending” (which includes spending on school operations from general revenue funds, but excludes certain types of spending such as transportation and grant funds). For schools that rank in the lowest 10%, however, the limit may be increased to up to 18% of net school spending.

Pursuant to state law, the determination of which school districts are in the lowest 10% is based upon student performance on the Massachusetts Comprehensive Assessment System (“MCAS”). Due to the COVID 19 emergency, however, MCAS testing was suspended for 2020 pursuant to emergency legislation (Chapter 56, Section 7 of the Acts of 2020). As a result, there is no MCAS data for the 2019-2020 school year, and a new calculation cannot be performed in the manner contemplated by statute.

The proposed amendment would permit the annual ranking to be performed based upon the two most recent years in which MCAS scores were released, effectively freezing the school rankings as released in the spring of 2020 for the upcoming school year. Going forward, the new regulations would allow the rankings to be performed in years in which no testing occurs due to extraordinary circumstances, and would additionally address situations in which certain

components are not available (such as results for Science, Technology and Engineering tests for students in grades 10, 11 and 12).

Comments may be submitted until May 28, 2021. BESE will consider adoption of the proposed regulations in June 2021. Additional information may be found, and comments may be submitted, at: <https://www.doe.mass.edu/charter/enrollment/CapIncrease/public-comment.html>

If you have any questions about the proposed regulations, please contact Attorneys Elka Sachs, esachs@kb-law.com, or Eric Reustle, ereustle@kb-law.com.

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