



CLIENT ALERT

Charter Schools Must Consider Alternatives to Suspension or Expulsion for Student Code of Conduct Offenses under M.G.L. c. 71, § 37H¾

On August 10, 2022, Governor Baker signed into law Chapter 177 of the Acts of 2022 (An Act Addressing Barriers to Care for Mental Health) which includes modification of due process procedures for student discipline violations under M.G.L. c. 71, § 37H¾. Effective November 8, 2022, school leaders must consider and document alternative remedies to student suspension or expulsion.

Under the previous version of Section 37H¾ and under the related regulations at 603 CMR 53.05, a principal or other decision-maker had discretion to consider ways to re-engage a student in learning and avoid using long-term suspension from school as a consequence until alternatives to suspension had been tried. However, under the amended statute the principal or other decision-maker:

- Must consider ways to re-engage the student in the learning process;
- May not suspend or expel until alternative remedies have been employed and their use and results documented in writing.

Alternative remedies a principal or other decision-maker may consider include, but are not limited to:

- mediation;
- conflict resolution;
- restorative justice; and
- collaborative problem solving.

The amended statute incorporates two exceptions to the new requirements:

- Situations where there are specific reasons why alternative remedies are unsuitable or counter-productive; or
- Situations where a student's continued presence in school would pose a specific concern about the infliction of serious bodily injury or other serious harm upon another person while in school.

In each case, the specific reason or specific concern must be documented.

The principal, headmaster, superintendent, or person acting as a decision-maker must also implement school- or district-wide models to re-engage students in the learning process which

shall include but not be limited to positive behavioral interventions and supports models and trauma sensitive learning models. The Department of Elementary and Secondary Education has indicated that it intends to issue more detailed guidance on alternatives to suspension and expulsion in 2023 as part of its “Rethinking Discipline Initiative: Student Discipline Resources and Information.”

These changes do not affect, and there are no changes to, the statute or regulations relating to student discipline for offenses involving possession of controlled substances or dangerous weapons or assault on a member of the educational staff under M.G.L. c. 71, § 37H or relating to a felony charge or felony complaint under M.G.L. c. 71, § 37H½.

For additional information or questions about student discipline matters, including assistance drafting forms to further compliance with the statute and regulations, please contact Elka Sachs at esachs@kb-law.com or Bettina Toner at btoner@kb-law.com.