

Education Alert
October 27, 2022

**NEW LEGISLATION ADDRESSING BARRIERS TO CARE FOR
MENTAL HEALTH HAS IMPACTS ON PUBLIC SCHOOLS**

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On August 10, 2022, Chapter 177 of Acts of 2022, “An Act Addressing Barriers to Care for Mental Health” was signed by Governor Baker. For public schools, it has impacts on student discipline, special education services, and emergency response plans. The bill goes into effect on November 8, 2022. Set forth below are summaries of the new law’s impact in the identified areas.

Discipline

This bill will have significant effects on student discipline in schools. Specifically, before principals or their designees can suspend a student under Massachusetts General Law, Chapter 71, Section 37H3/4, including for emergency removals, the principal or designee must consider ways to re-engage the student in the learning process and shall not suspend the student until alternative remedies have been employed and their use and results documented. Alternative remedies may include, but shall not be limited to: (i) mediation; (ii) conflict resolution; (iii) restorative justice; and (iv) collaborative problem solving. Principals or designees must document the use and results of alternative remedies. As a result, going forward, principals will need to keep written records of the alternative methods used and the results of those alternative methods. This written record is not only mandated by law, but is an important tool in the unfortunate event of litigation arising from discipline issues.

Nonetheless, principals or designees can bypass utilizing alternative remedies in the following situations: 1) if the alternatives are unsuitable or counter-productive, and 2) in cases where the student’s continued presence in school would pose a specific, documentable concern about the infliction of serious bodily injury or other serious harm upon another person while in school. If a discipline situation does not fit into one of the above two categories, then a principal or designee cannot suspend, including emergency remove the student, until the principal or designee attempts alternative remedies. In the instances where a situation fits into one of the above exceptions, a principal or designee should keep a written record of why the alternative remedies are unsuitable or counter-productive or why the student’s continued presence in school would pose a concern about the infliction of serious bodily injury or other serious harm upon another person while in school.

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These new discipline requirements do not apply to suspensions or expulsions for dangerous weapons, drugs, or assault on staff (37H) or felony charges and convictions (37H1/2).

Interagency Teams

The bill also establishes an interagency review team to collaborate on complex cases for when there is a lack of consensus or resolution between state agencies (such as Department of Children and Families and Department of Mental Health) about current service needs or placement of an individual who: (i) is under the age of 22; (ii) is disabled or has complex behavioral health or special needs; and (iii) qualifies or may qualify for services from 1 or more state agencies, or special education services through the individual's school district.

The team will be composed of the secretary of health and human services or a designee, who shall serve as co-chair; the commissioner of elementary and secondary education or a designee, who shall serve as co-chair; the assistant secretary of MassHealth or a designee; the commissioner of mental health or a designee; the commissioner of children and families or a designee; the commissioner of developmental services or a designee; the commissioner of youth services or a designee; the commissioner of early education and care or a designee; the secretary of the executive office of education or a designee; a representative from the office of the child advocate; and a representative from the school district or districts responsible for any aspect of an individual's education.

An individual may be referred to the team by the individual themselves if the individual is age 16 years or older, a state agency including a representative from the agency's ombudsman's office, the juvenile court, a hospital or emergency service provider, a school district, an attorney representing the individual or the individual's parent or guardian, a physician or behavioral health care provider authorized to act on behalf of a parent or guardian who is seeking access to services for the individual or the individual's parent or guardian.

Within five (5) business days after referral, the team will convene. If the student is waiting in an emergency department or at home for not less than five (5) days to be placed in an appropriate therapeutic setting, the team must convene within one (1) business day after receiving the referral. The team will determine if additional services are needed to meet the current needs of the individual, which agencies shall provide said services, including location or placement where appropriate and ongoing case management services, and which agencies have fiscal responsibilities to pay for such services. The team may order expedited eligibility determinations by a state agency or an extended evaluation at a special education residential school.

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The team will complete its review within thirty (30) business days, except for the emergency circumstance described above in which the team shall complete its review within five (5) business days. The co-chairs can utilize funds from the Liability Management and Reduction Fund to pay for the services that the team authorizes. If the team does not come to resolution regarding which agency or agencies have fiscal responsibility, the co-chairs shall assume joint fiscal responsibility to avoid any delay in an individual receiving needed services. Individuals can appeal the team's determination to the division of administrative law appeals.

This section may aid school districts in providing services to students as it will bring agencies to the table and offers funding. However, although the law states that individuals retain all their rights, it is unclear how this process interacts with the team process under Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act. It appears there may be an inherent conflict between the new interagency team process established in this legislation and the already-existing Section 504 or special education team process. The Commissioner needs to issue regulations pursuant to the statute, but whether the Commissioner will issue regulations, resolving the potential conflict remains to be seen.

Emergency plans

Under the bill, each school committee and charter school must ensure that there is a **written** emergency response plan that addresses both medical and behavioral health crises in each school.

Each plan must have:

- (1) a method for establishing a rapid communication system linking all parts of the school campus, including outdoor facilities and practice fields, to the emergency medical or mobile behavioral health crisis response services and protocols to clarify when the emergency medical services or mobile behavioral health mobile crisis response services and other emergency contact people shall be called;
- (2) a determination of medical or behavioral health emergency response time to any location on the school campus;
- (3) a list of relevant contacts and telephone numbers with a protocol indicating when each person shall be called, including names of professionals to help with post-emergency support;
- (4) a method to efficiently direct emergency medical services or behavioral health mobile crisis personnel to any location on campus, including to the location of available rescue equipment;
- (5) protocols for informing parents and guardians and reporting to the department when police, emergency medical technicians or other non-behavioral health personnel are contacted to respond to a behavioral health crisis;
- (6) safety precautions to prevent injuries in classrooms and

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facilities; (7) a method of providing access to training in cardiopulmonary resuscitation and first aid for teachers, athletic coaches, trainers and other school staff, which may include training high school students in cardiopulmonary resuscitation; and (8) the location of any automated external defibrillator device the school possesses, whether its location is fixed or portable and those personnel who are trained in its use.

The school principal, school nurse, school mental health counselor or social worker, school athletic director, team physicians, coaches, trainers and local police, fire, behavioral health mobile crisis team and emergency personnel will develop the plan. Schools will submit the plans to the Department of Elementary and Secondary Education and local police and fire departments once every three years. They will also identify the availability of automated external defibrillators in each school within the district, including the total amount available in each school, the location of each within the school, whether the device is in a fixed location or is portable, those personnel or volunteers who are trained in its use, those personnel with access to the device during and after regular school hours and the total estimated amount of automated external defibrillators necessary to ensure campus-wide access during school hours, after-school activities and public events.

Schools must practice the response sequence at the beginning of each school year and periodically throughout the year and evaluate and modify the plan as necessary. School officials must review the response sequence with local fire and police officials at least 1 time each year and shall conduct periodic walk-throughs of school campuses.

Conclusion

Based on this legislation, school districts should ensure that they are revamping their policies and procedures relative to discipline, as well as their emergency response plans. If you have any questions about implementation of this new law, please contact Felicia Vasudevan or the attorney representing your district.

This Client Alert was prepared by Felicia Vasudevan, Esq. and was reviewed by Andy Waugh, Alisia St. Florian, David DeLuca, Nan O'Neill, and Brett Cavanaugh. This alert is for informational purposes only and may be considered advertising. It does not constitute the rendering of legal, tax or professional advice or services. You should seek specific detailed legal advice prior to taking any definitive actions.

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