

LEGAL ALERT

From: Stephen J. Finnegan, Esq.
To: All School Committee Members and Superintendents
RE: **Substance Abuse; Pay Equity and Pregnancy Leave**
Date: December 12, 2017

REQUIREMENTS FOR DISTRICTS TO IMPLEMENT SUBSTANCE ABUSE VERBAL SCREENING FOR THE 2017-2018 SCHOOL YEAR.

The Opioid Legislation, Chapter 52 of the Acts of 2016 contains the phrase “subject to appropriation” that requires a legislative appropriation in order to mandate school districts to implement the verbal screening of students recommended to commence in the 7th and 9th grades during the 2017-2018 school year. Without an appropriation, the screening would be subject to local option. No such appropriation was made in 2017 or 2018 until the passage of the 2018 state budget (St. 2017, c.47), which included in the DPH line item 4512-0200 an appropriation of not less than \$200,000.00 to support the implementation of the Opioid Legislation (M.G.L. c.71, section 97).

This sum of money, inadequate as it is, legally meets the requirement of an appropriation, and hence the verbal screenings must commence this school year. In order to increase the appropriation, it is important for school districts to keep track of all expenses associated with the verbal screening of students, in order to justify an increased appropriation.

Many of you have planned to implement the verbal screening of students during this school year and have communicated with the students and parents at the appropriate grade levels.

I have been working with my counterpart at DESE to provide guidance to you since shortly after the budgetary action and you will be receiving from MASC the DESE update as soon as it has been cleared by the appropriate agencies. For those districts that relied upon the “subject to appropriation” language or for any other reason have not yet communicated with students and parents concerning substance abuse screenings it is important to notify the affected students and parents so that they may exercise their right to opt out of such screening, in writing, at any time prior to or during the screening. Such notification must be provided as soon as possible for

the 2017-2018 school year, and for 2018-2019 prior to the start of the school year. The Department of Public Health guidance on SBRIT in Schools includes a sample parent notification letter. The screenings are confidential. The Opioid legislation also amended Chapter 71, Section 96 that requires every school district to revise its policies on substance abuse. MASC forwarded a policy to every district and after its adoption you were required to forward it to DESE. I was recently informed by DESE that 99% of school districts have adopted a policy concerning this matter. *(See reverse side for full text of MGL, Ch.71, s.97)*

PAY EQUITY LAW SIGNED BY GOVERNOR IN 2016 (CHAPTER 177) BECOMES EFFECTIVE ON JULY 1 2018.

This Act amends, in pertinent part, M.G.L. Chapter 149, Section 105A requiring that “ No employer shall discriminate in any way on the basis of gender in the payment of wages, or pay any person in its employ a salary or wage rate less than the rates paid to its employees of a different gender for comparable work...” Exclusions for seniority and educational training are addressed in this statute. The Attorney General may issue regulations interpreting the Pay Equity Law. MASC will let you know where to find the regulations if and when they are promulgated. School districts should contact their Legal Counsel to review various school employment contracts to ensure compliance with Chapter 177 of the Acts of 2016.

PREGNANT WORKERS FAIRNESS ACT

In July of 2017 Governor Baker signed into law the Pregnant Workers Fairness Act (Chapter 54 of the Acts of 2017) effective April 1, 2018. This law provides greater protections to pregnant workers. MASC suggests that you communicate with your Local Counsel in order to ensure proper compliance with this law, particularly possible handbook revisions and notice requirements. Chapter 54 is enforced by the Massachusetts Commission Against Discrimination.

Chapter 71, Section 97

School Districts Shall Screen Students for Substance Use Disorders; Subject to Appropriation

(a) Subject to appropriation, each city, town, regional school district, charter school or vocational school district shall utilize a verbal screening tool to screen pupils for substance use disorders. Screenings shall occur on an annual basis and occur at 2 different grade levels as recommended by the department of elementary and secondary education, in consultation with the department of public health. Parents or guardians of a pupil to be screened pursuant to this section shall be notified prior to the start of the school year. Verbal screening tools shall be approved by the department of elementary and secondary education, in conjunction with the department of public health. De-identified screening results shall be reported to the department of public health, in a manner to be determined by the department of public health, not later than 90 days after completion of the screening.

(b) A pupil or the pupil's parent or guardian may opt out of the screening by written notification at any time prior to or during the screening. A city, town, regional school district, charter school or vocational school district utilizing a verbal screening tool shall comply with the department of elementary and secondary education's regulations relative to consent.

(c) Any statement, response or disclosure made by a pupil during a verbal substance use disorder screening shall be considered confidential information and shall not be disclosed by a person receiving the statement, response or disclosure to any other person without the prior written consent of the pupil, parent or guardian, except in cases of immediate medical emergency or a disclosure is otherwise required by state law. Such consent shall be documented on a form approved by the department of public health and shall

not be subject to discovery or subpoena in any civil, criminal, legislative or administrative proceeding. No record of any statement, response or disclosure shall be made in any form, written, electronic or otherwise, that includes information identifying the pupil.

(d) The department of elementary and secondary education shall notify each school district in writing of the requirement to screen students for substance use disorders pursuant to this section. School districts with alternative substance use screening policies may, on a form provided by the department, opt out of the required verbal screening tool. The form shall be signed by the school superintendent and provide a detailed description of the alternative substance use program the district has implemented and the reasons why the required verbal screening tool is not appropriate for the district.

(e) No person shall have a cause of action for loss or damage caused by an act or omission resulting from the implementation of this section. Added by St.2016, c.52, s.15.

Notes: St.2016, c.52, ss.63-64 contains the following matters pertinent to Section 97.

SECTION 63. Each city, town, regional school district, charter school or vocational school district shall implement the verbal substance use disorder screenings required by section 97 of chapter 71 of the General Laws by the 2017-2018 school year.

SECTION 64. The department of elementary and secondary education, in consultation with the department of public health, shall create a notice and opt out form relative to substance use disorder screenings required by section 97 of chapter 71 of the General Laws.