

# LEGAL ALERT

To: All School Committee Members and Superintendents  
From: Stephen J. Finnegan Esq., MASC General Counsel  
Re: New Requirements for Districts to Implement a Substance Use-Related Screening Tool  
Date: February 7, 2018

I have been working with my counterpart at DESE for the past several months to address many issues concerning the implementation of the required (2017-2018) substance abuse verbal screening of students in grades 7 and 9 (recommended). On January 26, 2018 the following DESE Memorandum was released by the Commissioner of Education. Previously, in an MASC Legal Alert dated December 12, 2017, I provided guidance to you concerning this matter. The statutory requirement (Ch.71, s.97) for conducting confidential substance abuse verbal screenings was subject to appropriation and, prior to August of 2017 there was no such appropriation. Subsequently, St. 2017, c. 47 appropriated in the DPH line item an amount not less than \$200,000 for the implementation of the verbal screenings. While it is estimated that the sum appropriated is not adequate to meet the cost of the implementation of verbal screenings, the school leadership should ensure that an accurate record of the actual costs are maintained. This accounting will assist MASC and other school associations to obtain a more robust appropriation. The Governor's Budget for the Commonwealth has already been released, and the House Budget recommendations will follow in the next several weeks. Please forward your district's best estimate of the costs associated with the substance abuse verbal screenings to MASC as soon as possible.

Notification to the parents and students in the appropriate grade levels must be provided as soon as possible for the 2017-2018 school year in order to allow for the exercise of the statutory right to opt out of the screening at any time. In 2018-2019 such notification shall take place prior to the start of the school year. Two sample opt out letters are included in this mailing.

## **Memo from the Commissioner, January 26, 2018**

The Department has posted guidance explaining a new state law requiring all public school districts to verbally screen students at two grade levels for substance use disorders. This initiative can assist school staff with prevention efforts and with identifying early risk of substance use and misuse among middle and high school students. Mass. General Laws chapter 71, section 97 (as amended by St. 2016, c.52, s.15) provides that, subject to appropriation, each city, town, regional school district, charter school and vocational school is required to use a verbal

screening tool to screen students for substance use disorders. Funds have been appropriated to the Department of Public Health (DPH) to support school districts in implementing the law, including related training.

Beginning in the current school year, districts are expected to:

- Conduct screenings on an annual basis at two different grade levels (grades 7 and 9 are recommended),
- Notify the parents or guardians of the students who will be screened before the screening takes place, and
- Permit a student or the student's parent or guardian to opt out of the screening at any time by giving written notification.

The guidance memo includes more details. Other online resources include Screening, Brief Intervention, and Referral for Treatment in Schools (SBIRT), which has information about training in the CRAFFT-II verbal substance use screening tool prescribed by DPH. School districts may choose to use an approach other than the CRAFFT-II by submitting to ESE an alternative substance use prevention program form (these will be available online) signed by the superintendent or charter school leader and including a description of the chosen alternative program. For more information, please contact the Office of Student and Family Support at [atod@doe.mass.edu](mailto:atod@doe.mass.edu) or Anne Gilligan at 781-338-6309. The full January 26 report from the Commissioner can be accessed online at: <http://www.doe.mass.edu/commissioner/updates.html>

## **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

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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.

## SAVE THE DATES

Friday, March 9

### **MASC Second Annual POVERTY SUMMIT**

Clark University, Higgins Center, Worcester

9:00am-2:30pm

Wednesday, April 25

### **DAY ON THE HILL**

**Program:** 9:30-11:45am

Grand Lodge of Masons, 186 Tremont St., Boston

**Vocational Students Buffet Lunch/Visits with Legislators:** Noon-2:00pm

The State House, Boston

Hall of Flags

## **JUST ANNOUNCED**

Friday/Saturday, July 20-21

### **MASC SUMMER INSTITUTE**

The Marriott Courtyard, Marlboro

Program details to follow