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 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 over
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.
SAMPLE LETTER

Dear Parent or Guardian,

This year all Massachusetts school districts are required to include a substance use preventive screening as part of their annual mandated universal health-screening program. Our district will use the Screening, Brief Intervention, and Referral to Treatment (SBIRT) protocol with students in grades 7 & 9. The SBIRT protocol facilitates a one-on-one conversation between each student and a school nurse or counselor in an effort to prevent or at least delay the start of using harmful substances, such as alcohol and marijuana. This program focuses on reinforcing healthy decisions and addressing concerning behaviors around substance use with the goal of improving health, safety and success in school.

We will use the CRAFFT II screening interview, which is the most commonly used substance use screening tool for adolescents in Massachusetts. All screenings will be conducted in a confidential setting in private one-on-one sessions with one of the nurses or counselors trained in SBIRT screening. Students who are not using substances will have their healthy choices reinforced. The screener will provide brief feedback to any student who reports using substances, or is determined to be at risk for future substance use. What your child tells the screener is confidential, and will not be shared with any other person without prior written consent of the student, parent or guardian, except in cases of immediate medical emergency or when disclosure is otherwise required by state law. No written record of the results of this verbal screening are kept with information that identifies any individual student. Screening results will not be included in your child’s school record.

The student’s parent or guardian may opt-out of the screening by written notification any time prior to or during the screening. Students may also opt out at the time of the screening. Please feel free to contact us should you have any questions or would like your child to opt-out of the screening.

Together, schools and parents CAN make a difference for the youth in our community. One way to prevent youth substance use is to talk with your child about your thoughts and expectations regarding substance use. You can view the CRAFFT tool and other SBIRT resources on www.masbirt.org/schools website.

Regards,

School Principal

(over for second sample letter)
SAMPLE LETTER 2

We are writing to inform you of a new initiative in our schools relating to the use of alcohol, marijuana and other substances. Health survey data consistently demonstrates that a small number of middle school students have used these substances and by the end of high school, many more students report substance use. As trusted providers in the school, we are uniquely positioned to discuss substance use among young people, identify early use, its related risks and intervene when appropriate.

In order to help prevent students from using substances (INSERT SCHOOL NAME) will be incorporating an interview-based screening for 7th and 9th grade students into our annual state mandated universal health screening process. The Screening, Brief Intervention, and Referral to Treatment (SBIRT) focuses on substance use prevention, early detection, risk assessment, brief intervention and a referral process that can be utilized in the school setting. It is approved by MA Department of Public Health and the Department of Elementary and Secondary Education.

Confidential verbal screening sessions will be approximately 5-10 minutes and conducted in private, one-on-one sessions using the CRAFFT screening tool. All students will receive some educational information during the SBIRT screening. Students who are not using substances will have their healthy choices reinforced by the screener. The screener will provide a brief negotiated intervention to students who report using substances or are at risk for future substance use. With consent, referrals may be made for high risk students to school mental health professionals for further assessment and “next steps”.

M.G.L. Chapter 71, Section 97(c) “any statement...made by a pupil during a verbal substance use disorder screening shall be considered confidential and shall not be disclosed by a person receiving the statement...except in cases of immediate medical emergency”. In this case, the screener and student will determine next steps together. No written results with identifying information are kept in any school record.

As with any school screening, you have the right to opt your child out of this screening. Please contact [INSERT CONTACT NAME AND TITLE], via email [INSERT EMAIL ADDRESS] by (INSERT DATE). Additionally, students may opt out at the time of the screening. Screening will be conducted on (INSERT DATES).

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Sincerely,

Nurse Leader

Principal