

QUICK REFERENCE ON SCHOOL DISCIPLINE: A GUIDE FOR CHILD ADVOCATES IN MASSACHUSETTS

BASIC ADVOCACY STEPS FOR PUBLIC SCHOOL STUDENTS FACING DISCIPLINARY HEARINGS

- Request and secure the student record including all evidence against the student. Any record request should be addressed to the school principal and the district's director of special education, if relevant. **Consider requesting a postponement so that you have time to receive and review the evidence and student record.**
- Determine if the student is being disciplined pursuant to MGL c. 71 s. 37H, 37H½, or the school's code of conduct (governed by MGL c. 71 s. 37H¾). This will likely be stated in the notice to the parent from the school or school district.
- **Review the student's record.** Determine if she is already identified as having a disability and is receiving services through an IEP or 504 Plan. If yes, see section BASIC ADVOCACY STEPS FOR STUDENTS IDENTIFIED WITH SPECIAL NEEDS.
- Gather evidence and witnesses in favor of your client and **letters in support** of the student.
- Obtain a copy of the district's code of conduct, which can be found on the district's website or can be obtained at the school.
- In very specific circumstances, regular education students may be able to assert special education protections. See section SPECIAL EDUCATION PROTECTIONS FOR REGULAR EDUCATION STUDENTS. See also 20 USC s.1415(k)(5).
- Ensure proper notice of the disciplinary hearing is given in language of the home (look to student handbook and/or statutory authority for notice requirements).
- Determine if criminal/delinquency charges have been filed. If so, initiate contact with the defense attorney ASAP. If there are concurrent criminal delinquency court proceedings, be mindful that **statements made by the student at the disciplinary hearing may be used against the student in court.** Whenever possible, coordinate the school and court advocacy efforts.
- Ensure that a competent translator is present if needed and that the **hearing is recorded.**
- If the district's case against the student is strong and an exclusion is likely to occur, be prepared to **negotiate** an alternative sanction, e.g. a return to school with a behavior contract or a cap on the length of the exclusion.
- Charter schools are public schools, so laws regarding student discipline that apply to public schools apply to charter schools.

BASIC ADVOCACY STEPS FOR STUDENTS IDENTIFIED WITH SPECIAL NEEDS

- Before a district can exclude a student with special needs for **ten days or more** the special education Team is required to conduct a **manifestation determination review (MDR)**. The student's Team will discuss whether the behavior for which the student is being disciplined is either: 1) substantially related to the student's disability or 2) a result of the district's failure to implement the student's IEP. **Note:** It is the parent's burden to prove the student's behavior was a manifestation.
- **The Ten Day Rule:** a student's right to a MDR is triggered when the school intends to exclude the student for **ten days or more**. This applies to **ten consecutive days** or to **ten cumulative days within a school year** if the exclusions are for a 'pattern of behavior.'
- To prepare for the MDR, discuss with the family, outside agency supports (mentors, youth workers, etc.) and experts (therapists, psychiatrists, etc.) whether the conduct was a manifestation of the child's disability. Consider asking the outside supports to attend the meeting. If they cannot attend the meeting, ask them to write a letter in support of the student.
- Ensure that all relevant members of the special education Team are present at the meeting, including someone who can speak about the student's disability (e.g. psychologist).
- If the student's behavior **is** found to be a manifestation of her disability, the district cannot proceed with disciplinary action against the student and must address the issue through a review of the special education services offered to the student. Student remains in her placement unless it is a 'special circumstance.' See section INTERIM ALTERNATIVE EDUCATIONAL SETTING.
- If the student's behavior **is not** found to be a manifestation of her disability, the district may proceed with disciplinary action against the student. However, even if the student is excluded from school, the district must ensure appropriate delivery of special education services. 20 USC s. 1415(k)(1)(D). **Note:** The MDR outcome may be appealed to the Bureau of Special Education Appeals (BSEA) at any time within the two year statute of limitations on BSEA claims.
- **Note:** All of the above applies to students on a **504 Plan**. However, only students with IEPs are entitled to educational services if ultimately expelled. For further explanation of special education terms and procedures, please refer to the Quick Reference Guide on Special Education, available at <http://clcm.org/QuickReferenceGuide62411.pdf>.

ALTERNATIVE EDUCATION FOR ALL EXCLUDED STUDENTS

- A student excluded for ANY length of time must be given the opportunity to make up all missed work (tests, homework, etc.)
- A student excluded for **more than 10 consecutive school days** must be given access to alternative education. This may include tutoring, Saturday school, night school, or online classes. 603 CMR 53.13

SPECIAL EDUCATION PROTECTIONS FOR REGULAR EDUCATION STUDENTS

- A regular education student can assert the protections—i.e. a manifestation determination review—given to a special education student if the school district knew, or should have known, that the student is a student with a disability.
- A school district is considered to have knowledge if:
 - The parent of the child expressed concern in writing or requested an evaluation of the child, or
 - A teacher of the child or other school district personnel has expressed specific concerns directly to the director of special education or to other supervisory personnel.

INTERIM ALTERNATIVE EDUCATIONAL SETTING

- Special education students who bring weapons or drugs to school, or who cause serious bodily injury to a person can be sent by the school to an interim placement (determined by the Team) for 45 days regardless of the result of the manifestation determination review.
- See 20 USC s.1415(k)(1)(G).
- Outside these circumstances, an interim placement must be agreed upon by both the parent and the school district.

RELEVANT SCHOOL DISCIPLINE LAW

- **MGL c. 71 s. 37H** - Allows a principal/headmaster to expel a student who has been found on school premises or at a school-sponsored or school-related event in possession of a dangerous weapon or a controlled substance as defined in M.G.L. c. 94C, including, but not limited to, marijuana, cocaine, and heroin. Also allows a principal to expel any student who assaults a principal, assistant principal, teacher, teacher's aide, or other educational staff on school premises or at school-sponsored or school-related events.
- **MGL c. 71 s. 37H½** - Allows a principal/headmaster to suspend a student "for a period of time determined appropriate" upon the issuance of a criminal complaint charging the student with a felony or felony delinquency complaint and allows for a principal/headmaster to expel a student upon a conviction of a felony or upon an adjudication or admission in court of guilt with respect to such a felony or felony delinquency. In order to implement either exclusion, a principal/headmaster must determine that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school.
- **MGL c. 71 s. 37H¾** - Governs suspensions and expulsions for behavior NOT covered under 37H or 37H½ (code of conduct violation). Requires the school to use non-exclusionary options prior to suspension or expulsion. Provides due process requirements, including written notice to both student and parent, and the opportunity for both student and parent to meet with the decision-maker prior to exclusion. The Superintendent must be notified before a student in grades K-3 is excluded. Limits the number of days a student can be excluded to 90 per school year, or to the end of the school year, whichever is shorter. Read attendant state regulations at 603 CMR 53 for more details about above as well as about emergency removals and in-school suspension.
- **MGL c. 76 s. 16** - Provides for a tort for unlawful school exclusion.
- **20 USC s. 1415(k)** - Procedural protections of the Individuals with Disabilities Education Act. Read attendant federal regulations at 34 CFR Part 300.

THE APPEAL PROCESS

- **37H** - Expulsion Appeal: Student has the right to appeal to the Superintendent. The student has **10 calendar days** from the date of expulsion to request an appeal with the superintendent. The student has the right to counsel at the hearing.
- **37H½** - Suspension or Expulsion Appeal: Student has the right to appeal the suspension or expulsion to the Superintendent. Request appeal in writing within **5 calendar days** from the date of suspension. The Superintendent must hold a hearing within **3 calendar days** of the request for an appeal. The student has the right to counsel at a hearing. The Superintendent shall render a decision within **5 calendar days** of the hearing.
- **37H¾** - Provides appeal rights for students excluded from school for **10 or more days**. Student has **5 calendar days** to request the appeal and the hearing must be held within **3 school days** of the request. The Superintendent has **5 calendar days** to render a written decision.

RELEVANT BSEA DECISIONS

- **In Re: Swansea Public Schools, BSEA # 07-3824**: Hearing Officer overturned district's finding of no manifestation.
- **In Re: Blue Hills Regional Technical Schools, BSEA #07-4082**: Student's exclusion from school held lawful despite a "significant procedural violation."
- **In Re: Scituate Public Schools, BSEA #07-0521**: Detailed decision regarding when conduct is a manifestation of a disability.
- **In Re: Gil and the Medford Public Schools, BSEA #10-6258**: 37H½ felony complaint suspension is change of placement and requires MDR.
- **In Re: Northampton Public Schools, BSEA #1403325**: Hearing Officer overturned district's finding of no manifestation and found the subsequent expulsion invalid. Good discussion of appropriate procedure and FBAs.

RELEVANT SCHOOL DISCIPLINE CASELAW

- **Goss v. Lopez, 419 U.S. 565 (1975)**: Public education recognized as property interest protected by the due process clause.
- **Nicholas B. v. School Committee of Worcester, 412 Mass. 20 (1992)**: Court will not reverse disciplinary action unless the action was arbitrary and capricious.
- **Doe v. Superintendent of Schools of Worcester, 421 Mass. 117 (1995)**: No fundamental right to education; definition of "dangerous weapon" is not the criminal statutory definition but instead is determined by the principal.
- **Doe v. Superintendent of Schools of Stoughton, 437 Mass. 1 (2002)**: Judicial review can be sought pursuant to M.G.L. c. 249 s. 4. The case is also noteworthy as a decision regarding the process required under M.G.L. c. 71 s. 37H½.

HELPFUL WEBSITES

- DESE - Flow Chart on Student Discipline for Students with Special Needs: www.doe.mass.edu/sped/IDEA2004/spr_meetings/disc_chart.doc
- Bureau of Special Education Appeals: <http://www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/>
- Wrightslaw Special Education Law and Advocacy: www.wrightslaw.com
- Children's Law Center of Massachusetts: www.clcm.org
- The EdLaw Project: www.youthadvocacyfoundation.org/edlaw
- Committee for Public Counsel Services www.publiccounsel.net
- The Center for Law and Education: www.cleweb.org
- Massachusetts Advocates for Children: www.massadvocates.org
- Disability Law Center: www.dlc-ma.org
- Massachusetts Appleseed: www.massappleseed.org

The **Children's Law Center** is located at 298 Union Street, Lynn, MA. Contact and related information at www.clcm.org, 781.581.1977, or on Facebook. This guide was created in conjunction with the **EdLaw Project** (EdLaw), a collaboration of the Law Center and the Committee for Public Counsel Services - Children & Family and Youth Advocacy Divisions, located at 44 Bromfield Street, Boston, MA. Call 617.988.8300 or see youthadvocacyfoundation.org/edlaw for more information. Among other generous funders, CLCM and/or EdLaw are supported by Bank of America, Bingham McCutchen LLP, Boston Bar Foundation, Cummings Foundation, A.W. Dorr Foundation, Eastern Bank, Mass Bar Foundation, Latham & Watkins LLP, MacArthur Foundation, Mass Legal Assistance Corp., Peoples Federal Savings, Proskauer Rose LLP, Goodwin Procter LLP, Salem Five Savings, Gardiner Howland Shaw Foundation, Spinney-Mudge Foundation, and United Way of Mass. Bay and Merrimack Valley.