

QUICK REFERENCE ON SCHOOL DISCIPLINE:

A GUIDE FOR CHILD ADVOCATES IN MASSACHUSETTS

BASIC ADVOCACY STEPS FOR ALL STUDENTS:

1. To prepare for the due process hearing, request and secure the student record, including all evidence against the student. Any record request should at least be addressed to the school principal and the district's director of special education.
2. Interview your client/student both before and after receiving the student record.
3. Determine if the student is being disciplined pursuant to M.G.L. c. 71 s. 37H, 37H 1/2, or the school's code of discipline.
4. Review the student's record. Determine if he/she is already identified as having special needs. i.e. the student is educated pursuant to an Individualized Education Program (IEP).
 - a. If yes, the IDEA's numerous procedural protections are triggered.
 - b. If not, consider the appropriateness of referring the student for a special education evaluation.
 - c. If the student is not already identified, but the school had knowledge that the student has a disability, the student may be entitled to the IDEA's protections. See 20 USC 1415(k)(5).
5. Determine if criminal/delinquency charges have been filed. Initiate contact with the defense attorney ASAP.
6. If there is an upcoming disciplinary hearing:
 - a. Consider postponing the hearing so that you have time to receive and review the evidence, including the school record.
 - b. Ensure that the student received proper notice to the upcoming hearing and the allegations made against him/her.
 - c. Gather evidence in favor of your client: letters supporting the claim that the student is an asset to the school, and certainly not substantially detrimental to the general welfare of the school (see M.G.L. c. 71 s. 37H 1/2), explanations of the law from the Department of Elementary and Secondary Education (formerly the DOE), etc.
 - d. Assert the right to, and ensure the presence of a translator if one is needed.
 - e. Assert the right to, and ensure that the hearing is recorded.
 - f. If there are concurrent criminal court proceedings, be vigilant about the student's right against self-incrimination.
 - g. Be prepared to negotiate (e.g. a return to school with a behavior contract or a cap on the length of the exclusion).
 - h. Protect and try to establish a record that will advance the student's appeal rights.

BASIC ADVOCACY STEPS FOR STUDENTS ALREADY IDENTIFIED WITH SPECIAL NEEDS:

1. Assert the right to a manifestation determination review meeting (MDR) within 10 days of the exclusion in order to determine if the conduct at issue was a manifestation of the child's disability. 20 U.S.C. 1415(k)(1)(E).
2. Determine the student's disability by reviewing the IEP and student record. Research the disability, and contact any experts (therapists, psychiatrists, etc.) who can help determine whether the conduct at issue was a manifestation of the child's disability.
3. Consider having the MDR recorded.
4. Assert the right to, and ensure the presence of a translator if one is needed.
5. Consider bringing one or more of the student's experts to the meeting (therapist, psychiatrist, social worker, etc.)
6. Ensure that a fully constituted special education Team is present at the meeting, including someone who can speak about the student's disability (e.g. psychologist).
7. Ensure that the Team has all the information it needs about the student's conduct, and that the Team was not only provided with a snapshot account.
8. Consider using the MDR as an opportunity to discuss the student's services and placement. ***Remember that the student will continue to be entitled to an education even if he/she is ultimately excluded from school.*** 20 U.S.C. 1415(k)(1)(D).

KEY POINTS TO CONSIDER:

- There is no fundamental right to an education under Massachusetts law.
- When a student is expelled pursuant to M.G.L. c. 71 ss. 37H and H1/2, no public school in the Commonwealth is required to educate him/her.
- Children as young as age 10 have been permanently expelled from school under the state's zero tolerance laws.
- School districts are not mandated to provide alternative education to regular education students expelled from school.
- Students with disabilities can be permanently excluded from school.
- The power to expel children from school is delegated to principals, superintendents and school committees.
- Since charter schools are a type of public school, rules regarding student discipline that apply to public schools apply to charter schools.

RELEVANT SCHOOL DISCIPLINE LAWS:

• **M.G.L. c. 71 s. 37H** - "... (a) Any student who is found on school premises or at school-sponsored or school-related events, including athletic games, in possession of a dangerous weapon, including, but not limited to, a gun or a knife; or a controlled substance as defined in chapter ninety-four C, including, but not limited to, marijuana, cocaine, and heroin, may be subject to expulsion from the school or school district by the principal. (b) 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, including athletic games, may be subject to expulsion from the school or school district by the principal....When a student is expelled under the provisions of this section, no school or school district within the commonwealth shall be required to admit such student or to provide educational services to said student. If said student does apply for admission to another school or school district, the superintendent of the school district to which the application is made may request and shall receive from the superintendent of the school expelling said student a written statement of the reasons for said expulsion."

• **M.G.L. c. 71 s. 37H ½** - "Upon the issuance of a criminal complaint charging a student with a felony or upon the issuance of a felony delinquency complaint against a student, the principal or headmaster of a school in which the student is enrolled may suspend such student for a period of time determined appropriate by said principal or headmaster if said principal or headmaster determines that *the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school*...Upon a student being convicted of a felony or upon an adjudication or admission in court of guilt with respect to such a felony or felony delinquency, the principal or headmaster of a school in which the student is enrolled may expel said student if such principal or headmaster determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school...Upon expulsion of such student, no school or school district shall be required to provide educational services to such student." (emphasis added).

- **M.G.L. c. 76 s. 16**— *Providing for a tort for unlawful school exclusion.*
- **M.G.L. c. 76 s. 17**— *Providing for a right to a hearing before the school committee prior to a permanent exclusion from school.*
- **20 U.S.C. s. 1415(k)**— *Procedural protections of the Individuals with Disabilities Education Act.* (Read attendant federal regulations as well.)

RELEVANT MASSACHUSETTS SPECIAL EDUCATION ADMINISTRATIVE HEARING DECISIONS:

- **In Re: Scituate Public Schools, BSEA #07-0521**
(Detailed decision regarding when conduct is a manifestation of a disability.)
- **In Re: Swansea Public Schools, BSEA # 07-3824**
(Hearing officer overturned district's finding that the conduct was not a manifestation of student's disability.)
- **In Re: Blue Hills Regional Technical Schools, BSEA #07-4082**
(Student's exclusion from school held lawful despite a "significant procedural violation.")

RELEVANT SCHOOL DISCIPLINE CASELAW:

- **Goss v. Lopez, 419 U.S. 565 (1975)**
(Public education recognized as property interest protected by the due process clause.)
- **Board of Education v. School Committee of Quincy, 415 Mass. 240 (1993)**
(School committees not required to provide alternative education to expelled students.)
- **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 is rather 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 M.G.L. c. 71 s. 37H 1/2.)

HELPFUL WEBSITES:

Department of Elementary and Secondary Education Advisory on School Discipline

<http://www.doe.mass.edu/lawsregs/advisory/discipline/AOSD1.html>

Department of Elementary and Secondary Education- Flow Chart on Student Discipline for Students with Special Needs

http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/disc_chart.doc

Homepage for the Bureau of Special Education Appeals (Provides links to BSEA decisions)

<http://www.doe.mass.edu/BSEA>

The **Children's Law Center of Massachusetts (CLCM)** is a non-profit organization that provides free legal assistance to low-income children of the Commonwealth. Our main office is located at 298 Union Street, Lynn, MA 01901. **Contact and other information at www.clcm.org or 781-581-1977 (toll-free 1-888-KIDLAW8).** This Guide was written by Meira J. Russ, Esq. of CLCM, with recognition to Isabel Raskin, Esq. of Suffolk University Law School.



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