

# 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 to receive and review the evidence and student record. Try to negotiate with the school to allow the student to remain pending the hearing.
- Determine if the student is being disciplined pursuant to MGL c. 71, §§ 37H, 37H½, 37H¾. This will likely be stated in the notice to the parent from the school or school district. Review the student discipline regulations, 603 CMR 53; although they primarily address exclusions pursuant to MGL c. 71, § 37H¾, they can be instructive for all exclusions.
- Review the student's record. Determine if they are already identified as having a disability and are receiving services through an IEP or 504 Plan. If yes, see Basic Advocacy Steps for Students Identified with Special Needs box.
- 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 Special Education Protections for Regular Education Students. See also 20 USC § 1415(k)(5).
- Ensure proper notice of the disciplinary hearing is given in the language of the home. (Look to student handbook and/or statutory authority for notice requirements).
- Determine if criminal/delinquency charges have been filed or may be filed. If so, initiate contact with a 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 interpreter 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 more than ten days, 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.
- A student has a right to a MDR when the school intends to exclude the student for more than ten consecutive days or, if multiple exclusions are for a "pattern of behavior," more than ten cumulative days.
- 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 their disability, the district cannot proceed with disciplinary action against the student and must address the issue through a review of the student's special education services. Student remains in their placement unless the parent agrees or it is a "special circumstance." See Weapons, Drugs, and Serious Bodily Injury box.
- If the student's behavior is not found to be a manifestation of their 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 § 1415(k)(1)(D). 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 also applies to students on a 504 Plan. However, only students with IEPs are entitled to special educational services if ultimately expelled. For further explanation of special education terms and procedures, please refer to the Quick Reference Guide on Special Education.

## **ALTERNATIVE EDUCATION UNDER 603 CMR 53.13**

- 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.

## **SPECIAL EDUCATION PROTECTIONS FOR REGULAR EDUCATION STUDENTS**

- A regular education student is entitled to a manifestation determination review if the school district knew, or should have known, that the student has a disability. 20 USC § 1415(k)(5)(A).
- A school district has knowledge if:
  - ⇒ the parent expressed concern in writing to a teacher or school supervisory or administrative personnel that the child requires special education services,
  - ⇒ the parent requested an evaluation, or
  - ⇒ the teacher or other school personnel has expressed specific concern directly to their supervisor or the director of special education about a pattern of behavior of the student.

## **WEAPONS, DRUGS, AND SERIOUS BODILY INJURY**

- Special education students who face discipline for bringing weapons or drugs to school or for causing serious bodily injury to a person can be sent to an interim alternative education setting (determined by the Team) for 45 days regardless of the result of the manifestation determination review. 20 USC § 1415(k)(1)(G).
- The definition of serious bodily injury includes disfigurement and substantial risk of death. 18 USC § 1365(h)(3).

## **RELEVANT SCHOOL DISCIPLINE LAW AND REGULATIONS**

- **MGL c. 71, § 37H:** Allows a principal/headmaster to expel a student for possession of a dangerous weapon or drugs or who has assaulted educational staff on school premises or at a school-sponsored or school-related event.
- **MGL c. 71, § 37H½:** Allows a principal/headmaster to suspend a student “for a period of time determined appropriate” upon the issuance of a felony or felony delinquency complaint. Also 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 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, § 37H¾:** Governs suspensions and expulsions for behavior NOT covered under 37H or 37H½. Prior to excluding under 37H¾, the school must either document non-exclusionary remedies tried or why alternative remedies are not appropriate unless the student’s continued presence in school would pose a specific, documentable concern about the infliction of serious harm upon another person in school. These exclusions may only last 90 days or to the end of the school year.
- **603 CMR 53** (school discipline regulations): Details the process required for exclusions under 37H¾, including written notice to student and parent, the opportunity for both student and parent to meet with the decision-maker prior to exclusion, that schools use non-exclusionary options prior to suspension or expulsion, and that the Superintendent be notified prior to the exclusion of a student in grades K-3. Lays out education service requirements for students excluded under any statute (i.e., 37H, 37H½, or 37H¾).
- **MGL c. 76, § 16:** Provides for tort and monetary damages for unlawful school exclusion.
- **20 USC § 1415(k):** Procedural protections of the IDEA. Read attendant federal regulations at 34 CFR 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 it must be held within 3 school days of the request. The Superintendent has 5 calendar days to render a written decision.
- **Judicial Review:** If a student is unsuccessful in their appeal to the Superintendent, the parent can seek certiorari review in district or superior court. See MGL c. 249, § 4.

## **RELEVANT BSEA DECISIONS**

- **In Re: Student v. Boston Public Schools & Ivy Street School, BSEA #18-08494:** Hearing Officer overturned district’s finding of no manifestation.
- **In re: Adam and Taunton Public Schools, BSEA #17-08888:** School’s failure to conduct an MDR amounted to disability discrimination.
- **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 #14-03325:** 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, § 4. The case is also noteworthy as a decision regarding the process required under M.G.L. c. 71, § 37H½.
- **Goodwin v. Lee Public Schools, 475 Mass. 280 (2016):** The student’s failure to exhaust administrative remedies available under MGL c. 71, § 37H½ did not prevent her from seeking damages under MGL c. 76, § 16.
- **Doe v. Worcester Public Schools, 484 Mass. 598 (2020):** Superintendent must hear the appeal of an exclusion pursuant to MGL c. 71, § 37H and cannot delegate this responsibility to a designee.

## **HELPFUL WEBSITES**

- DESE - Flow Chart on Student Discipline for Students with Special Needs: <https://www.doe.mass.edu/sped/advisories/discipline/>
- Bureau of Special Education Appeals: <https://www.mass.gov/orgs/bureau-of-special-education-appeals>
- Wrightslaw Special Education Law and Advocacy: [www.wrightslaw.com](http://www.wrightslaw.com)

The **Children’s Law Center of Massachusetts (CLCM)** is located at P.O. Box 710, 2 State Street, 2nd Floor, Lynn, MA 01903. Contact and related information available at [www.clcm.org](http://www.clcm.org); call **781-581-1977 (toll-free 1-888-KIDLAW8)** or find us on Facebook. The **EdLaw Project of the Committee for Public Counsel Services, located at 75 Federal Street, 6th Floor, Boston, MA 02110.** Contact and related information at [www.edlawproject.org](http://www.edlawproject.org); email us at [edlawproject@publiccounsel.net](mailto:edlawproject@publiccounsel.net) or call our **Helpline at 617-910-5829**. This project was supported by Grant #15PJD-21-GG-02749-JIDX awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this PowerPoint are those of the author(s) and do not necessarily reflect those of the Department of Justice. **Revised March 2023.**