

## School Suspension and Expulsion for “Delinquent” Behavior<sup>1</sup>

### I. Statutes

1. M.G.L. c. 71 § 37 H – *School Committees to Publish School Rules and Regulations*
  - Every school district shall publish policies regarding conduct of teachers and students.
  - Copies of these policies are available to anyone upon request.
  - Each school districts polices shall include the following: disciplinary proceeding assuring due process; standards and procedures for suspensions and expulsions, including students with special needs; disciplinary measures for cases involving possession of illegal substances, weapons, use of force, vandalism or violation of students’ civil rights.
  - All student handbooks shall include:
    - a) notice that a student may be expelled from the school or school district for possession of a dangerous weapon or controlled substance, on school premises or at school sponsored or school related events;
    - b) notice that a student may be expelled for assaulting a principle, assistant principal, teacher, teacher’s aide, or other educational staff on school premises or school sponsored or school related events;
    - c) if a student is charged with violating any of the above two, he/she shall receive **written notice** and an **opportunity to be heard**. The student may have representation and present evidence and witnesses. The hearing is before the principal.
    - d) the principal can decide to suspend rather than expel;
    - e) students who are expelled shall have the **right to appeal** to the school superintendent, notification of appeal must be made ten days from date of expulsion. Students have the right to counsel at this hearing and the appeal shall to be limited to the whether the student violated the provisions of the statute;
    - f) if a student is expelled no school or school district in the Commonwealth has to admit the student or provide educational services. If an expelled student applies to another school or school district, a request for the reasons for the expulsions can be made and the school shall provide a written statement of the reasons for the expulsions.
  
2. M.G.L. c. 71 § 37H ½ – *Suspension of Student Charged With Felony; Expulsion of Student Convicted of Felony; Appeals* - If a criminal or delinquency complaint for a felony has been issued:

---

<sup>1</sup> Juvenile Defense Network, 12/04

- The principal or headmaster may suspend the student “for a period of time determined appropriate,” if the principal or headmaster determines that the “students continued presence in school would have a **substantial detrimental effect on the general welfare of the school.**”
  - Written notice of the charges and reasons for suspension shall be give before the suspension takes effect.
  - Written notification of the right to appeal the suspension shall be provided, along with the process for appealing.
  - Suspension remains in effect prior to any appeal conducted by the superintendent
  - If suspended, students have the right to appeal to the superintendent.
  - Written notice of appeal shall be made to superintendent no later than 5 calendar days following the effective date of the suspension
  - Hearing before superintendent - within 3 calendar days of request. Student has right to counsel and can present oral and written testimony.
3. M.G.L. c. 71 § 37H ½ – If convicted of a felony or adjudicated delinquent of a felony:
- Student may be expelled if the principal or headmaster determines “students continued presence in school would have a **substantial detrimental effect on the general welfare of the school.**”
  - The same procedures regarding written notice and right of appeal for suspensions apply to expulsions.
  - If a student in expelled no school or school district is required to provide educational services.
4. M.G.L. c. 76 § 16 – *Exclusion from School*
- If refused admission or excluded from a public school, “shall on application,” be provide with a written statement, from the school committee, stating the reason for exclusion. If the exclusion is unlawful, the student may recover from the town/regional school district, in tort, and may examine officers’ from the town or regional school district or any member of the school committee.
5. M.G.L. c. 76 § 17 – *No Exclusion Without a Hearing*
- School committee can not permanently exclude a student without providing an opportunity to be heard.
6. M.G.L. c.76 § 18 – *Students permanently Leaving School*
- No student age sixteen or older is considered to have permanently left school unless the administrator of the school last attended has sent notice within ten days of the student’s fifteenth consecutive absence.
  - Notice must be in English and primary language of parent or guardian.

- Notice is to include that student and parent/guardian may meet with the school committee or its designated representative prior to student permanently leaving, within ten days after notice is sent.
- Purpose of meeting is to discuss the reasons for the student permanently leaving school and alternative or other placement.
- Meeting time can be extended at the request of the parent/guardian, with the consent of the school. Extension can not be longer than fourteen days.
- Superintendents of every school district must report annually, to the department of education, the number of students age sixteen or older who have permanently left school. Said notice shall include the reasons for leaving and alternative placements each student has taken.
- This section does not apply to students who have completed the “regular course of education,” or students who have excused absences.
- This section shall not “be construed to permanently exclude a student who wishes to resume his education.”

II. Special Education Protections (changes in this law are imminent)

1. Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1400 et seq.

- 20 U.S.C. §1401– definitions
- 20 U.S.C. §1414 – eligibility, IEPs, placement, evaluations
- 20 U.S.C. §1415(j) – right to stay put
- 20 U.S.C. §1415(k) – interim alternative setting, manifestation determination

2. Regulations at 34 C.F.R. Part 300

III. Case Law

1. *Doe v. Superintendent of Schools of Stoughton*, 437 Mass. 1 (2002) – SJC upheld schools decision to suspend student, pursuant to G.L. c. 71 § 37 H ½, as a result of felony complaints for Indecent Assault and Battery under 14 and Rape of a Child. The incidents occurred during the summer. The evidence presented at the suspension hearing included the police reports of two officers. The reports encompassed the facts of the case and the juvenile’s description of the incident to the police as a “joke.” The SJC found that 37 H ½ “did not prohibit the principal from drawing an inference of detrimental effect based on the nature of the crime alone.” The court found the allegations “troublesome” and the report showed evidence of “deviant sexual conduct with a young child.” Additionally, the juvenile expressed no remorse and characterized the incident as a “joke.” The court went on to state that schools are afforded substantial deference concerning discipline, and while student’s have an important interest in public education, student can loose this as a result of their conduct. “Because school officials are in the best position to determine when a student’s actions threaten the safety and

welfare of other students, we must grant school officials substantial deference in their disciplinary choices.” A decision to suspend a student will not be overturned unless it is “arbitrary and capricious, so as to constitute an abuse of discretion.”

2. *Goss v. Lopez*, 419 U.S. 565 (1975) – If a student is excluded for school for ten or fewer days the student must be provided with notice (written or oral) and an explanation of the evidence, if disputed; and an opportunity to be heard. The court rejected a requirement that the student be afforded an opportunity to secure an attorney, to confront witnesses, or to call his/her own witnesses. While notice and “hearing” should precede suspension, if the student’s “presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process,” the student can immediately be removed from school and notice can follow. The Court recommended the following procedures for suspensions longer than ten days, and expulsions for the remainder of the school term or permanent removal – written notice of:
  - a. the charges,
  - b. a statement of the evidence,
  - b. date, time, and place of hearing, and
  - c. notice of the right to be represented, to present evidence, and confront/cross-examine witnesses.
  
3. *Commonwealth v. Stone S.*, 45 Mass. App. Ct. 259 (1998) – the juveniles permanent expulsion from school and subsequent delinquency complaints, for the behavior that constituted the expulsion, did not constitute double jeopardy. Expulsion is considered remedial, and therefore does not implicate the constitutional protection against double jeopardy.