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WHEN MY CHILD IS DISCIPLINED AT SCHOOL

A Guide for Massachusetts Families





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MASSACHUSETTS APPLESEED MISSION

MA Appleseed promotes equal rights and opportunities for Massachusetts residents by developing and advocating for systemic solutions to social justice issues.

FOR MORE INFORMATION

Visit our website for more information about MA Appleseed, the “Keep Kids In Class” project, and other MA Appleseed projects: www.massappleseed.org.

ACKNOWLEDGEMENTS >>

A MESSAGE FROM THE EXECUTIVE DIRECTOR

The Massachusetts Appleseed Center for Law and Justice, Inc. offers this guidebook as a tool to help parents and guardians across Massachusetts to become informed advocates both for their children and for fair, equitable school discipline policies. Too often discipline problems at school can result in time out of school and can escalate to juvenile court involvement. MA Appleseed recognizes that parent involvement in schools is critically important to ensure a child's educational progress, to help maintain safe schools, and to minimize the need to remove children from the regular classroom.

PROJECT TEAM

This guide is part of MA Appleseed's signature project, "Keep Kids In Class: Breaking the School to Prison Pipeline." The "Parent Guide" involves MA Appleseed's core competencies of research, dissemination, and advocacy. We extend our sincerest thanks to all of our pro bono partners and collaborators who contributed expertise and resources to assist MA Appleseed to create this Parent Guide. MA Appleseed is particularly grateful to the attorneys at Goodwin Procter LLP for doing the research for the Parent Guide and to the Cummings Foundation, Inc. for its support for the project.

TEXAS APPLESEED

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LEGAL DISCLAIMER

THE INFORMATION IN THIS MANUAL IS PROVIDED AS A MATTER OF PUBLIC SERVICE AND IS FOR INFORMATIONAL USE ONLY. THE INFORMATION DOES NOT CONSTITUTE LEGAL ADVICE AND SHOULD NOT BE USED AS SUCH. WE STRONGLY URGE PARENTS, GUARDIANS, STUDENTS, AND OTHER USERS OF THIS MANUAL TO CONFER WITH LEGAL COUNSEL IN MATTERS INVOLVING STUDENTS AND SCHOOL DISCIPLINE.

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Second Edition © 2015

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MA Appleseed has prepared this Parent Guide to help families who are facing problems resulting from a child's discipline by, or exclusion from, school. When your child is disciplined by his or her school, it is important that you – as the child's parent or guardian – understand:

- Why is your child being disciplined?
- What action is the school taking to discipline your child?
- What steps can you take in order to help your child?
- How can you limit the impact that the discipline has on your child's education?

Parents know that a child's ability to learn and succeed in school can be harmed when that child is excluded from the classroom or punished in another way. When this happens, the most important thing you can do is become involved. As a parent you are your child's best, and sometimes only, advocate.

MA Appleseed has developed this Parent Guide to help you navigate through the discipline process. In it, we discuss the different types of disciplinary actions schools can take and ways to advocate for your child. We also provide detailed information in laymen's terms on the legal framework that applies to different types of offenses and the range of disciplinary actions that may be taken, such as suspension and expulsion.

THE LEGAL FRAMEWORK

The legal framework for school discipline was changed in significant ways in 2014. The primary purpose of these changes is to ensure that discipline practices are fair and appropriate; to limit the time students spend out of school; to keep students engaged in education during a period of suspension or expulsion; and to promote parental involvement in the discipline practices that affect their children.

The Department of Elementary and Secondary Education regulations require schools to think twice before suspending a student for a violation of school rules. Schools are obligated to employ alternatives to suspension and to make efforts to re-engage students in education.

Bear these goals and obligations in mind as you navigate the school discipline process, and use the information in this Parent Guide to help you to be a strong and vocal advocate for your child.

HOW THE PARENT GUIDE IS STRUCTURED

The first thing you will find in this Parent Guide is a list of guiding principles. These are best practices that all parents and guardians should consider, when a child gets into trouble in school and the parent or guardian becomes involved in the school discipline process.

The Parent Guide has two parts. The first part consists of four chapters that explain the discipline process and how to advocate for your child. The chapters include guidance on a parent's first response to school discipline (Chapter 1); meeting with the school about school discipline and when to challenge a school discipline decision (Chapter 2); navigating the school discipline process (Chapter 3); and appealing a school discipline decision (Chapter 4). At the end of the first part, you will find a parent checklist that will help you keep track during the process and help you be an effective advocate for your child.

The first four chapters describe the school discipline process for each of the three categories of student conduct and provide helpful strategies to keep your child in class where he is safe, supported, and available for learning. To use these strategies effectively, you also need to understand the context within which your child is being disciplined. Student conduct is categorized by the level of seriousness of the offense and different rules and procedures govern each category. The second part of the Parent Guide provides information about each category of offense, the disciplinary action that the school may impose in each case, and how to navigate the discipline process. These include the Section 37H¾ non-serious offenses (Chapter 5); the Section 37H serious offenses (Chapter 6); the Section 37H½ criminal complaints and findings of guilt in felony cases and juvenile felony delinquency cases (Chapter 7); and the Massachusetts Anti-Bullying Law (Chapter 8). The final chapter discusses arrest at school and law enforcement-related discipline (Chapter 9).

We have also included an Appendix with a list of additional resources that are referred to throughout the Parent Guide.

Our hope is that you find the Parent Guide helpful during this challenging time for you and your child.

Guiding Principles for Parents, Guardians, and Students

When navigating the school disciplinary process, follow these guiding principles:

- **Get involved! Advocate** for your child.
- **Show respect** to all district employees and ask to be shown respect by all district employees.
- **Visit your child's school and classroom**, attend school activities, and observe class in accordance with district guidelines.
- **Communicate with the school principal or designated administrator** who has the authority to remove your child from class or reassign your child to another classroom.
- **Request a conference with the school principal or designated administrator** to discuss proposed disciplinary actions and possible alternatives. Remind school officials that exclusion from school should be a last resort.
- **Request an interpreter** at parent conferences, school meetings, and other activities if you do not speak or understand English, or need cued speech or sign language.¹
- **Request access to all written school records regarding your child**, including disciplinary records, counseling records, attendance records, teacher and counselor evaluations, and reports of behavioral patterns.
- **Read the school's code of conduct and student handbook.**
- **Obtain information on special education services** for students with disabilities.
- **Request an evaluation** of your child if you suspect he may need special education services.
- **Report possible discrimination, harassment, or bullying** involving your child to the school and school district through a grievance procedure adopted by the local school board.
- **Attend all conferences** or hearings related to the discipline of your child.
- **Appeal discipline actions** such as expulsion, suspension, or assignment to an alternative education program, when available.
- **Participate and provide input** in the development of the school district's discipline policies and procedures.

¹ Public schools, including charter schools and vocational technical schools, have independent legal duties under state and federal law to provide to the parents and guardians of students with limited English proficiency access to important documents relevant to their children's education. For school districts' duties see: Title VI of the Civil Rights Act of 1964, 42 U.S.C §§ 2000d; the Equal Educational Opportunities Act of 1974, 20 U.S.C. 1703 (f); M.G.L. c. 76, s. 5; and 603 CMR 26.02 (2). See M.G.L. c. 71, § 37H½, see 603 CMR 53.06 regarding interpreter services at a discipline hearing.

School Discipline: A Parent's First Response

Your child is accused of breaking the rules at school. Stay calm. As a parent, it is important to keep a clear, calm head when talking with your child, the school, and others involved. Your first step is to talk to your child and the school to find out what happened. It is important that you hear your child's side of the story. Your child may tell you things that the school does not. Most importantly, you can use this conversation to show your child that you are on his side, and to discuss the importance of behaving appropriately at school.

You may receive a letter, a packet, or even just a phone call from the school explaining what happened. You should find out what the school claims your child did to deserve punishment and what support it has for that claim. This conversation can also be used to understand the school's relationship with your child – has your child been disciplined in the past or is this the first time he has been in trouble?

Your next step is to find out what kinds of disciplinary actions could be imposed. Depending on the disciplinary problem, your child could face a range of consequences – from short-term loss of privileges to suspension to expulsion. When the offense is a non-serious offense, Massachusetts law requires that schools seek alternatives to suspension and that exclusion be used as a last resort. For more serious offenses, your child's school district may have zero tolerance policies in place that could trigger your child's immediate removal from the classroom. The situation becomes even more serious if your child is arrested and the juvenile court or municipal court becomes involved.

It is important that you know your child's rights and try to minimize the effect the punishment has on your child's education. Every student that is subject to a suspension or expulsion, whether it is in or out of school, must be given the opportunity by the school to earn credits, and to make up assignments, tests, papers, and other school work while they are excluded from the classroom. In some circumstances, students may be entitled to broader educational options. It is important that you be proactive in asserting these rights so that your child does not miss these opportunities.

The following documents will help you learn about the rules governing student conduct and the discipline policies and

procedures in place at the school. Copies may have been sent home with your child at the beginning of the school year. These documents are also available upon request from the school:

- The School District's Code of Conduct;
- The School's Student Handbook;
- The School District's Bullying Prevention and Intervention Plan.

WHAT IS ZERO TOLERANCE?

Zero tolerance policies are school policies that result in exclusion of a student from his classroom without taking into account the student's intent, the student's discipline history, the student's justification for his actions, e.g. self-defense, or other factors that might have influenced the student's conduct.

A local school district is not required to adopt a zero tolerance policy. There is no federal or state law that requires a school district to take a zero tolerance approach to school discipline.

“The crux of a zero tolerance approach to school discipline is to eliminate discretion by school administrators.... Zero tolerance policies also create an appearance of fairness in that all students must be treated equally under the policy. However, the end result can be unfair to the many more at-risk students whose infractions are minor under the circumstances, but who nevertheless get swept up in the zero tolerance net and pushed out the school doors. Ironically, literature suggests that zero tolerance does not actually make schools safer.”

Massachusetts Appleseed Center for Law and Justice, Inc. | *Keep Kids in Class: New Approaches to School Discipline*²

Some of the most commonly imposed consequences for classroom misbehavior are listed below:

- **Loss of privileges.** Schools may revoke certain classroom or school privileges, such as recess or participation in a sport, or may require your child to complete extra school work to address classroom misconduct.
- **Behavior contract.** A teacher or school administrator may set up a parent meeting or conference to create a behavior contract for your child. The school may also establish regular communication between the school and parents to ensure that your child meets classroom expectations for behavior and academic performance.
- **Detention.** If your child is in detention, he may be required to remain after school, be assigned to a detention classroom during the lunch period, or be required to attend Saturday school to complete his work.
- **In-school suspension.** In-school suspension is an alternative to a short out-of-school suspension. If your child is disruptive, he can be removed from the regular classroom and assigned for one or more days to a separate classroom to complete his class assignments. The school may not always give your child his class assignments. You should make sure classroom assignments are provided to your child so he does not fall behind. In-school suspensions cannot be imposed for more than ten (10) consecutive school days, or for more than ten (10) school days cumulatively for multiple infractions during the school year. If a student is placed in in-school suspension for more than ten (10) school days, consecutively or cumulatively during a school year, the suspension is considered a “long-term suspension” for due process, appeal, and reporting purposes.
- **School or community service requirement.** As a consequence of having broken school rules, your child may be assigned school or community service. Examples include picking up trash, cleaning graffiti, or providing after-school help to a teacher.
- **Out-of-school suspension.** If your child is suspended, he cannot attend school for a specified period of time, which in cases of non-serious offences (Sec. 37H^{3/4}) may not exceed ninety (90) school days. Suspension for up to ten (10) consecutive school days, or up to ten (10) school days cumulatively for multiple infractions during the school year, is considered a “short-term suspension”. The school may not always give your

child his class assignments. You should make sure classroom assignments are provided to your child so he does not fall behind. Out-of-school suspensions are discussed in greater detail in relation to the specific offenses discussed later in this Parent Guide. In some cases, schools may suggest an “informal removal,” where parents are asked to keep their child at home for a short period without any formal disciplinary action, in exchange for not putting this on their child’s school record. This can be a good opportunity for parents to have a dialogue about school engagement and any specific difficulties their child is experiencing. However, this could become a problem if it happens frequently, because the repeated action suggests that the school is not addressing the underlying issues. Lack of a record also makes it difficult to hold a school accountable for its disciplinary practices.

- **Removal to an alternative education program.** In some districts, your child can be assigned to an alternative education program when your child violates the school district’s code of conduct. According to the Department of Elementary and Secondary Education, this qualifies as a suspension.³
- **Expulsion.** If your child is expelled, he is prohibited from attending his regular school for a specified period of time in excess of ninety (90) days, or permanently, depending on the offense. Expulsion from school is discussed in greater detail in relation to the specific offenses discussed in a later section of this Parent Guide.

If you generally disagree with the way your district or school disciplines students for certain offenses, you and other interested parents should talk to your principal. If you believe that zero tolerance policies are counterproductive, you can share your concerns at the school or district level. Attend school board meetings when disciplinary policies are addressed. Consider talking to like-minded parents and organizing an effort to change zero tolerance policies in your school district. You also have the right to contact your school superintendent or school board members to request a meeting to discuss concerns or to recommend changes to school or district-wide disciplinary policy.

How to Stay Involved When Your Child is Disciplined at School

Here are some ways for parents to stay informed and actively engaged when a child is disciplined.

- STEP 1** Remain calm and listen to both your child and the school.
- STEP 2** Gather information from your child. Ask your child what happened and who was involved. Use this opportunity to find out if your child feels misunderstood or wrongly accused. Write down what you learn.
- STEP 3** Collect any evidence; take pictures if your child has been hurt.
- STEP 4** Make sure your child feels safe to return to school after the incident. If not, contact the school immediately and ask for help in creating a safe environment for your child.
- STEP 5** Read the school district's code of conduct and the school's student handbook. These documents will explain the rules that govern student behavior and the punishments, the discipline process, and important timeframes.
- STEP 6** Contact the school and ask for all incident reports or other documents related to the incident and your child's conduct. Remember that you have a right to your child's educational records and file. You do not have a right to access educational records or files of another child.
- STEP 7** Ask your child and his teachers if he is having trouble keeping up in class or is experiencing any other problems at school, such as bullying.
- STEP 8** Find out if your school is committed to considering alternatives to exclusion and whether it has a zero tolerance policy for certain kinds of offenses. Refer to your school district's code of conduct to see whether these policies are included along with information about whether intent, self-defense, and discipline history are considered before disciplinary decisions are made.
- STEP 9** Find out whether the discipline offense will become part of your child's student record – and if it is serious, whether your child will be arrested or required to appear in court.
- STEP 10** Keep a log. Write down the name, job title, phone number, and email address of all the people that you contact regarding your child's discipline issue. Recording the date and time of all conversations will make future contacts easier and will document your progress.
- STEP 11** **SAVE EVERYTHING!** Keep all written and emailed communications from the school about the disciplinary incident – including any parent conference or hearing notices. Make copies of anything you send through the mail or electronically to the school. Keep all of this together in one folder for easy reference throughout the process.
- STEP 12** Be aware of all deadlines. Mark important dates on the calendar for meetings with teachers, principals, and superintendents, or court hearings. Your child may have the right to ask for certain meetings, hearings, or appeals – but only within certain time limits.

² MASS. APPLESEED CTR. FOR LAW & JUSTICE, KEEP KIDS IN CLASS: NEW APPROACHES TO SCHOOL DISCIPLINE, 5-6 (2011).

³ According to the Massachusetts Department of Elementary and Secondary Education, in its response to public comments on Chapter 222 of the Acts of 2012, when a student is involuntarily removed from the school or education program to which she or he is regularly assigned following a disciplinary incident and placed in an alternative education program, this qualifies as a suspension. Available at www.massadvocates.org/wp-content/uploads/SummaryofCommentsandResponsesApril2014.pdf.



WHAT IF...

Your child is in trouble for fighting at school. Your child says that she acted in self-defense when another student attacked her.

What should you do first?

- Remain calm.
- Talk to your child. Ask her to explain what happened. Ask questions so that you fully understand how the fight started, and take notes.
- Ask her if any of her friends or other students saw what happened.
- Ask your child if the situation has been resolved among the students. Does she feel safe returning to school?
- Ask your child about the school's culture. For example, do fights between students happen often? Are school staff members attentive to student behavior or do school staff members ignore problems?
- Ask your child if she knows what disciplinary action the school intends to take. You should receive written or oral notice of the contemplated disciplinary action, as well as a hearing with the principal, before any suspension or expulsion may go into effect.
- Determine whether a juvenile or criminal complaint was filed, or may be filed, with the court. If so, get a copy of the complaint and consider consulting with an attorney prior to the discipline hearing at school. The Appendix contains a list of legal services organizations. Make sure you know when you have to be in court for any court hearings.
- If the school has not already contacted you, call the school to schedule a conference to discuss the fight. Try to get a sense of what steps the school is considering.
- If your meeting with the school is not for several days, ask if your child will be allowed to attend her regular classes while the school is considering what discipline measures to take for the fight. Will the school refer your child to in-school suspension or out-of-school suspension instead?
- If your child is suspended, make sure you and your child ask teachers for any assignments your child will need to complete during the suspension period. All children that are removed from the classroom must be given the opportunity to make up classroom assignments and keep up with the curriculum.

Meeting with the School and When to Challenge a School Discipline Decision

Open communication between parents and the school is critical when a student is struggling with behavioral issues. At any time, either you or the school can schedule a meeting to discuss these issues. Having clear goals and priorities is important when meeting with teachers and administrators to discuss a disciplinary issue. Your goals will be different at each stage of the process, but keeping your child educationally engaged should be one of your main objectives at all times. If you are not a comfortable English speaker, you should always request an interpreter.

When attending a school meeting or conference about a disciplinary matter, it is important to know whether you are attending a disciplinary hearing. A disciplinary hearing is a formal meeting where serious misconduct is discussed and a range of disciplinary actions are considered. Schools must notify you and your child when scheduling a disciplinary hearing and must document reasonable efforts to enable you – the child’s parents – to attend the hearing. At such a hearing, you and your child have a right to address the circumstances surrounding your child’s conduct, the disciplinary action proposed by the school, and alternative courses of action.

If you do not attend a disciplinary conference or hearing, the school may move ahead and decide how to discipline your child without your input.

DEFINING YOUR GOALS

Having clear goals and priorities is important when meeting with teachers and administrators to resolve a disciplinary issue. As you move through the process, your goals may include one or more of the following:

- ✓ To gather information and understand what the school believes happened and how your child was involved.
- ✓ To return your child to school and to the regular classroom as soon as possible.
- ✓ To request an evaluation for special education services if you feel that your child’s behavior is related to a disability or special need. This request should be in writing.
- ✓ To request an alternative to suspension or expulsion.

- ✓ To reverse the discipline decision.
- ✓ To reduce the length or severity of the punishment.
- ✓ To negotiate a reduced punishment in exchange for changes in your child’s conduct and agreed upon out-of-classroom work, community service, or other consequences.
- ✓ To minimize the impact of the disciplinary action on your child’s academic studies. For example, make sure your child will receive assignments while suspended from school.
- ✓ To schedule suspension days or detentions so they do not conflict with tests or other schoolwork that may be difficult to reschedule.
- ✓ To modify an Individualized Education Program (IEP) if your child already receives special education services.
- ✓ To start your child on an education service plan if they have been expelled or suspended from school for more than ten (10) consecutive school days. Each school will have a list of opportunities offered under their own education service plans. See Chapters 5 - 7 for more information on your child’s right to receive a list of education service plans.
- ✓ To take steps to resolve or avoid any future conflicts with particular students or teachers.

PLANNING FOR A DISCIPLINARY HEARING

As noted in Chapter 1, when your child gets into trouble at school, you must be invited to attend an initial meeting with the school to find out what happened. If this does not happen, you should consider requesting such a meeting. The goals of this meeting should include gathering sufficient information from the school so that you have a detailed understanding of the incident, how the school believes your child was involved, and what types of disciplinary action may be imposed as a result. Ask the principal to consider alternatives to suspension or expulsion; this is required by the regulations regarding non-serious offenses.

In some cases, including if your child has been removed from the classroom based on the school’s authority to

implement an emergency removal, this initial meeting may be a formal hearing. Review the rest of this chapter, and Chapter 3, to decide how to conduct yourself in the hearing. In cases of emergency removals, you should also ensure that your child is able to keep up with his schoolwork during the emergency removal period.

Remember to review the Parent Checklist at the end of Chapter 4 to prepare for these meetings.

WHEN TO CHALLENGE A SCHOOL DISCIPLINE DECISION

By gathering information and talking to both your child and the school, you can better decide whether your child should accept the consequences for his conduct or if the school's disciplinary action should be challenged. There are many possible reasons why you may wish to question the school's decision. The following list is not exhaustive but is meant to help you think through the most productive or beneficial course of action given the particular circumstances of your child's situation.

- **Your child is innocent.**
Students can be wrongly accused, wrongly identified, or their actions misunderstood, but it is difficult to refute a claim by a teacher or administrator without witnesses or other evidence supporting your child's account of what occurred. Acknowledge that you did not see the conduct that occurred at school. Then ask lots of questions to help reconstruct the incident and help clarify how your child was involved.
- **Your child's conduct did not violate a school rule.**
Massachusetts law requires school districts to include discipline policies for certain kinds of offenses in their codes of conduct. In addition to the state law requirements, your school district's code of conduct may also have its own set of school rules with a list of the actions that can result in discipline. If your child is disciplined for conduct that does not violate a written school rule, bring it to the school's attention.
- **Your child acted in self-defense; there were extenuating circumstances.**
Student actions can be misunderstood. Teachers or administrators may not know what circumstances led to an incident. It can be difficult to refute a teacher's claim without witnesses or evidence to support your

child's account of what occurred. Acknowledge that you did not see the conduct that occurred at school. Ask a lot of questions to help understand the context of the incident. Help to clarify how your child was involved and what circumstances led to your child's actions.

- **The enforcement of the proposed discipline violates your child's civil rights.**
In some cases, a school may impose a punishment that is not legally valid and should not be enforced. For instance, your child uses a home computer after school to post on a social networking website that he strongly dislikes a specific teacher. This information is reported to the school and school officials decide to suspend your child. The school may have violated your child's civil rights, in this example, the First Amendment right to free speech.

A school district may be reluctant to address a claim that it violated your child's civil rights while in the middle of discipline proceedings. Continue to raise your concerns during the proceedings and document them in a letter written to the school principal and to the school district. A court can overturn a school disciplinary action that violates the law or reverse a disciplinary policy that punishes student conduct that is protected by state or federal law.

- **The punishment does not fit the situation.**
A punishment may seem too extreme. For example, your family has gone on a weekend camping trip. On Sunday night, your child empties his backpack to use for school the next day and, without realizing it, leaves a small Boy Scout knife he brought on the trip in the backpack. Under a zero tolerance policy, the punishment may be an automatic expulsion for bringing a knife to school even though your child had no intention of harming anyone.

Under Massachusetts General Laws, Chapter 71, Sections 37H, 37H½, and 37H¾, the school district has broad discretion to make disciplinary decisions. This means that school officials may consider a student's intent when making a disciplinary determination but are not required to do so. Please refer to Chapters 5 – 8 for more information regarding specific offenses governed by state statute. Read your school district's code of conduct to find out whether the school will consider your child's intent when deciding on a

punishment. If the school district's code of conduct says nothing about a student's intent, ask the school district if it will consider your child's intent as the basis to impose a less severe disciplinary action under the circumstances.

- **Your child was singled out unfairly.**

Research consistently has shown that minority students and students with disabilities are disproportionately suspended and expelled compared to their percentage in the overall school population – giving evidence to possible discrimination in school discipline decisions. However, proving discrimination in an individual situation can be difficult.

If you feel this may be happening in your child's case, it is important to find out if other children have been disciplined differently for the same behavior or if some students are punished for this behavior and others are not.⁴ Student disciplinary records are confidential. The school cannot give you access to specific information about the punishment of another student. It may be helpful for you to talk to other parents about their experiences. If you decide to raise the question of discrimination, begin at the school and possibly proceed to the school district level:

- o Use specific facts to back up your concerns;
- o Clearly state what disciplinary actions, if any, you think the school should take.

If you feel your child's discipline hearing at school was not fair because of discrimination, it is possible to file a complaint with the U.S. Department of Education's Office for Civil Rights (see Chapter 4).

- **The school did not follow your child's Individualized Education Program (IEP).**

If your child receives special education services, review the IEP to determine how the school must address your child's behavioral and emotional needs. This could include a Functional Behavioral Assessment, a Behavior Intervention Plan, and psychological services such as individual and group counseling.

The school district must conduct a Manifestation Determination Review if the school decides to take disciplinary action against your child and to change your child's placement for more than ten

(10) consecutive school days, for more than ten (10) cumulative school days in one school year, or if there has been a pattern constituting a change in placement. The IEP team will review all relevant information in your child's file, from teachers and from you to determine if your child's conduct was substantially related to his disability or was a result of the school district's failure to implement his IEP.

If the IEP team determines that your child's actions were not related to his disability and that the IEP was properly implemented (or not properly implemented but that did not give rise to the discipline), then the school may conduct a regular disciplinary hearing. If that hearing results in an exclusion from school, the IEP team may approve your child's placement in an alternative setting. If this happens, make sure that your child's educational and emotional needs are being met in accordance with the IEP and Behavior Intervention Plan. An alternative education placement must ensure that your child continues to make progress towards his IEP goals and receives positive behavioral supports and interventions to address the behavior that led to the exclusion.

Important tip: You are entitled to appeal an unfavorable Manifestation Determination Review to the Bureau of Special Education Appeals (BSEA). Such an appeal will be placed on track for an expedited hearing. You can also appeal to the BSEA if you do not believe that your child is receiving an appropriate education in his new educational setting.⁵

Your child cannot be removed from his current placement if the IEP team determines that your child's conduct was a manifestation of his disability, unless the conduct involved drugs, weapons, or serious bodily injury. The Appendix includes a list of organizations that may be helpful to you in navigating these issues.

- **The school did not follow its own rules.**

In some instances, the school may not have followed the discipline procedures contained in its own school district's code of conduct or required by state law. Examples of procedural problems can include improper student or parent notification and failure to hold a required suspension or expulsion hearing before imposing discipline. Procedural errors alone

do not necessarily change the disciplinary action. It is important, however, that any errors are pointed out to school administrators in order for them to be corrected and to ensure your child has a fair hearing. Such errors may also be addressed in an appeal.

- ***The school misused emergency removal.***
At times, schools may misuse the emergency removal policy. Emergency removal from school to the home or to an alternative education program should not be a punishment in itself, but a temporary course of action to allow the school to restore order, investigate the situation, and determine the proper disciplinary action.

Under Massachusetts law (603 CMR 5.07), a student may be removed temporarily if he poses a danger to other students or to school administrators, or substantially disrupts the order of the school, and the principal believes there is no other alternative. However, the temporary removal cannot exceed two (2) days and must follow the procedural rules set out in the regulations (refer to Chapter 1 for more detail on these procedures). Each school district has additional rules and procedures. Please read your school district's code of conduct and school's student handbook to find out when and how emergency removal can be used. It is critical to ensure that your child's school follows the regulations and the rules it has established for itself regarding emergency removal.

If there is no real emergency and your child is not posing an immediate danger, ask the school to allow your child to return to class while you meet with school administrators to resolve the issue. Check with your child to make sure that he feels safe before returning to school. If not, consult with the school to take appropriate steps to ensure the safety of all concerned.

EMERGENCY REMOVALS FROM SCHOOL

Emergency school removals or placements in alternative education programs may happen when a student's conduct requires immediate action on the part of the school. Under Massachusetts law (603 CMR 5.07), the student may be removed temporarily if they pose a danger to other students or school administrators, or substantially disrupt the order of the school, and the principal believes there is no other alternative. However, the temporary removal cannot exceed two (2) school days, following the day of removal. During these two days, the school must make an immediate and reasonable effort to provide the parent and child with verbal notice of the emergency removal, as well as subsequent written notice including details of the disciplinary offense, the basis for the charge, possible consequences for the student, and details of a hearing where the student will have the opportunity to explain the incident and refute the charge. Unless otherwise agreed, the hearing must take place within the two day removal period, and an oral decision must be given on the same day, followed by a written decision the next day. Parents have a right to attend an emergency removal hearing, and are entitled to an interpreter if necessary. An emergency removal may not be implemented unless adequate provisions are made for the student's safety and transportation.

⁴The state reports discipline data – by race – for each school. See: http://profiles.doe.mass.edu/state_report/ssdr.aspx.

⁵To learn more about the BSEA process, please refer to the BSEA website and the BSEA *Pro Se* Guide, located at www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/.

Navigating the Discipline Process

Once you have all of the facts, consider whether you believe your child is at fault and whether you believe the school should take disciplinary action. You and your child have a right to address the circumstances surrounding your child's conduct and the disciplinary action proposed by the school during the disciplinary hearing. A disciplinary hearing is a formal meeting where serious misconduct is discussed and a range of actions are considered. Schools must notify you and your child when scheduling a disciplinary hearing. Request an interpreter if necessary. If you do not attend a disciplinary conference or hearing, the school may move ahead and decide how to discipline your child without your input.

WHEN YOU AGREE WITH THE SCHOOL'S FINDING OF FAULT AND DECISION TO TAKE DISCIPLINARY ACTION

Even if you agree with the school's finding of fault and decision to take disciplinary action, it is important to advocate for your child in a variety of ways.

Working with the school can reduce the amount of time your child spends outside the classroom. As the parent or guardian, you can make the school aware of whether you think your child's conduct was intentional or not, and if your child has learned a lesson. Let the school know what consequences have been imposed at home. If your child did violate the school district's code of conduct and is sorry, consider having your child apologize. This may not be a viable option, however, if you think your child may be charged with a crime, and you may want to consult with an attorney before having your child say anything about the incident.

If you believe that the school's culture makes it more likely for such incidents to occur, talk to the school administrator about this. Ask the school administrators if they are aware of a larger problem and if they are prepared to make changes to address the problem.

Even if you agree that the school is taking appropriate action to discipline your child, you should partner with the school to make sure that your child learns how to conduct himself and continues to progress academically. You may want to meet with teachers, a school counselor or school administrators, as well as a behavioral counselor if your child is experiencing more serious or more frequent behavior problems.

It is important that you consult with the school or an outside specialist to determine whether or not a learning disability, emotional disorder, or other condition may be affecting your child's behavior. If you do suspect that your child may have a disability, you can request a special education evaluation from the school district at any time. Make sure to put the request to the school in writing. If you are uncomfortable with the pace or support you are receiving in exploring this with your local school, contact your principal, school district, or state special education leaders. You may also want to consider hiring an advocate that specializes in special education to assist you during this process. Please see the Appendix for a list of organizations that may be helpful to you.

If testing uncovers a need for special education services or other learning accommodations, you can request that the school accommodate the learning needs of your child. It is very important to maintain close contact with school staff to make sure that any new accommodations are having the desired positive effects on your child's learning and behavior.

WHEN YOU AGREE THAT YOUR CHILD IS AT FAULT BUT DISAGREE WITH THE PROPOSED DISCIPLINARY ACTION

If you agree that your child should be punished, but you disagree with the disciplinary measure proposed by the school, you can ask the school administrators if they will discuss other discipline options with you. Remember that the law requires that long-term suspension be used as a last resort for students who have committed a non-serious offense. For serious offenses, some school districts may still have zero tolerance policies that dictate rigid consequences, while others allow school administrators to use their discretion to decide the disciplinary action.

Regardless, it is critical that you attend any requested school meetings, required school conferences, or exclusion hearings to ensure that the discipline imposed is fair and in your child's best interests. In those meetings, conferences, or hearings:

- Remain calm.
- Listen to what school representatives have to say about the disciplinary incident.

- Present supporting documents. This may include a letter of apology from your child if appropriate (and provided that there will be no court involvement, in which case you may want to advise your child to say nothing until consulting with an attorney).
- Explore and suggest alternatives to the school administrator's disciplinary approach.
- If the school administrators insist on taking a zero tolerance approach, remind them that no federal or state law requires them to do so. If the conduct is a non-serious offense, remind the administration that the state law requires them to consider alternatives to suspension.
- Reach agreement on your child's educational needs. Identify how your child's needs will be met during the disciplinary period and how your child can return to the classroom as soon as possible. Refer to the Appendix for an overview of the legal issues that pertain to disciplining a student with disabilities.
- Maintain regular contact with teachers concerning your child's conduct and academic performance in the regular classroom or in an alternative placement. For example, work with the school to identify a contact person to provide you with regular updates. Schedule specific times at which these update meetings or telephone calls will take place.
- State clearly the reasons why you disagree and your desired outcome for your child. Present the most persuasive arguments first to support a disciplinary approach that you believe best meets your child's educational and emotional needs. Be concise.
- If the school administrators insist on taking a zero tolerance approach, remind them that no federal or state law requires them to do so. If the conduct is a non-serious offense, remind the administration that the state law requires them to consider alternatives to suspension.
- Explore and present options to the school's approach. For example, request a "behavior contract" for your child or another alternative to school exclusion to avoid escalating the consequences of your child's conduct to an out-of-classroom disciplinary placement. The school district's code of conduct may list alternatives that you can consider. Make sure the terms are reasonable and realistic for your child.
- Stay informed about your child's conduct and academic performance in the regular classroom or in an alternative placement. Consider working with the school to identify a contact person to provide you with regular updates. Schedule specific times at which these update meetings or telephone calls will take place.
- Ask your principal or teacher about the process for appealing disciplinary decisions in your school district. While state law requires an appeals process for certain exclusions, local school districts set their own procedure for appealing other disciplinary decisions. The appeals process should be included in the school district's code of conduct. It is important to check with the school district to see what opportunities to appeal are available to you.

IF YOU DECIDE TO CHALLENGE A SCHOOL DISCIPLINE DECISION

If you decide to challenge a school disciplinary decision, be sure to keep the lines of communication open with the school administrators involved. Write down your reasons for challenging the proposed discipline for your child and decide what your preferred outcome would be. It is critical that you attend all meetings, disciplinary conferences or hearings. In those situations:

- Remain calm.
- Let school representatives present their side first. You may learn new information.

CORPORAL PUNISHMENT⁶

Corporal punishment of students is prohibited in Massachusetts. Under Massachusetts General Laws Chapter 71, Section 37G, “[t]he power of the school committee or of any teacher or any other employee or agent of the school committee to maintain discipline upon school property shall not include the right to inflict corporal punishment upon any pupil.”⁷

In the event of any corporal punishment, you may want to contact your local police department. If corporal punishment at school results in an injury to your child, you may want to consult with a physician or to take your child to an emergency room. Remember to document your findings. You may want to have photographs taken of the injury, and to ask the physician to report the injury to the local child protective agency.

For more resources on taking action against corporal punishment, please refer to the Center for Effective Discipline’s website: www.stophitting.com/advocacy/. Refer also the Human Rights Watch, American Civil Liberties Union report, *A Violent Education: Corporal Punishment of Children in U.S. Public Schools* (2008), www.hrw.org.

Source: Alice Farmer, Neier Fellow
ACLU / Human Rights Watch

⁶ Restraint and seclusion is a topic area separate and apart from school discipline and corporal punishment. Many federal and state regulations govern the use of restraint and seclusion. The Massachusetts Department of Elementary and Secondary Education has restraint rules for public schools that permit physical restraint “only in emergency situations, after other less intrusive alternatives have failed or been deemed inappropriate.” Physical Restraint, 603 C.M.R. § 46.01 (2011). Physical restraints are used “to protect a student and/or a member of the school community from imminent, serious, physical harm and to prevent or minimize any harm to the student as a result of the use of physical restraint.” *Id.* The Disability Law Center of Massachusetts is committed to reducing or eliminating the use of restraint and seclusion in private and public facilities serving individuals with disabilities. Consider contacting the Disability Law Center of Massachusetts if you feel that your child has been unlawfully restrained. Contact information is included on the Resource page in the Appendix.

⁷ MASS. GEN. LAWS ch. 71, § 37G (2011).

Appealing a School Discipline Decision

If you disagree with the school's decision to discipline your child, or with the disciplinary action that has been taken, you may have the right to file an appeal. This will depend on your child's conduct; the type of disciplinary action taken by the school; and, in some cases, school policies. If you do not have the right to appeal, there may be other grievance procedures that you can follow. This chapter briefly outlines some of these options.

THE RIGHT TO APPEAL

If you disagree with a school discipline decision, you may have a right to appeal. State law guarantees an appeal process for exclusions imposed for certain types of conduct. In other cases, appeal procedures vary among school districts. Read the school district's code of conduct for any appeal procedures that may be in place in your child's school. In some districts, you may be able to appeal a principal's decision to the superintendent; in other districts, the principal's decision is final. When navigating the appeals process, it is important to find out who makes the final decision to discipline your child.

If appealing a lengthy exclusion from school for serious conduct, you may want to consult an education advocate or an attorney who is knowledgeable about school discipline procedures. A list of available resources is provided in the Appendix.

Chapters 5 – 8 of this Parent Guide will help you determine whether you have a right to appeal in the particular circumstances of your child's case, and provide important information on the appeals process. Read the chapter that applies to the category of your child's misconduct. If you are considering an appeal, it is extremely important that you note the deadlines for initiating this process.

SCHOOL GRIEVANCE PROCEDURE

In some districts, the school district's code of conduct may give a student the right to file a grievance regarding discipline decisions when no other formal right of appeal is available.

Please read your school district's code of conduct to find out if this is an option in your child's district. If so, and you decide to file a grievance, follow any procedures outlined in the school district's code of conduct.

FILING A COMPLAINT WITH THE MASSACHUSETTS DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

The Massachusetts Department of Elementary and Secondary Education (DESE) is available to help individuals and school districts resolve problems promptly. The Problem Resolution System (PRS) is the DESE's process for addressing complaints from the public about students' educational rights and the legal requirements for education. The DESE is authorized to resolve a complaint (1) about a student's current general education program; or (2) about a special education requirement that has been violated. The DESE strongly encourages parents to attempt to resolve disputes at the local level before filing a complaint with the DESE.

Please visit the DESE's website for more information regarding its Program Quality Assurance (PQA) Services and PRS at www.doe.mass.edu/pqa/prs/. You may also call (781) 338-3700 or send an email to DESE staff (compliance@doe.mass.edu).

FILING A COMPLAINT WITH THE OFFICE FOR CIVIL RIGHTS

If you believe your child has been discriminated against based on race, color, national origin, gender, sexual orientation, disability, or age, you can contact the Office for Civil Rights of the U.S. Department of Education (OCR). OCR generally recommends that parents attempt to resolve the situation first at the school level, and then with the superintendent at the district level. However, you are not required to file a complaint with the school or the district before filing a complaint with OCR.

A complaint must be filed with OCR within one hundred eighty (180) calendar days of the date that the alleged discrimination occurred. OCR will not take your case if your complaint is already being addressed by another agency or through the school's formal grievance procedure and OCR anticipates that you will be provided with a resolution process comparable to OCR's. Once the other complaint process is completed, you have sixty (60) days to re-file a complaint with OCR.

More information and the complaint form can be found online at www.ed.gov/about/offices/list/ocr/complaintprocess.html.

Steps to Take When My Child is Disciplined at School

- 1. Remain calm and be diplomatic.
- 2. Gather all relevant information – take notes on conversations with your child, witnesses, teachers, and counselors.
- 3. Find out from your child if the incident that led to the disciplinary action is resolved and whether your child feels safe about returning to school.
- 4. Read your school district’s code of conduct and school’s student handbook to learn what consequences (including removal from school) your child could face for violating the school’s rules for student behavior.
- 5. Check the school district’s code of conduct for any mention of the school’s taking a “zero tolerance” approach to applying discipline to some or all offenses.
- 6. Find out if self-defense, intent, and discipline history will be considered when your school decides whether to discipline a student. This should be included in the school district’s code of conduct.
- 7. If your child receives special education services, obtain a copy of his or her Individualized Education Plan (IEP) to see if it adequately addresses your child’s learning and behavioral needs. Determine if failure to follow the IEP is contributing to your child’s behavior problems.
- 8. Meet with an administrator or teacher involved to discuss the disciplinary situation.
- 9. Be present and on time for any school conference and for any scheduled disciplinary hearing. Remember to always take notes.
- 10. If you are satisfied that the school has taken appropriate disciplinary action, talk to the principal and the teacher about ways to support the decision at home.
- 11. If you disagree with the disciplinary action taken against your child, read the school district’s code of conduct for appeal procedures.
- 12. Ask an administrator about your child’s educational options while excluded from school. Schools are required to provide continued educational services to students who are excluded for more than ten (10) school days. Whenever a child is removed from the classroom for disciplinary action, at a minimum they must be given an opportunity to make up missed classwork, including quizzes and tests.
- 13. If your child is arrested at school or is later summonsed and must go to court, be present and on time for any court appearance. Make the court aware of any circumstances that would affect the assigned timetable for paying a fine or your child’s completing community service. Consider retaining an attorney to represent your child.
- 14. Read the resources section in this guide if you need to contact an education advocate, a legal aid center, or for additional information.

Suspension for Non-Serious Offenses

The disciplinary framework for non-serious offenses is found in Massachusetts General Laws, Chapter 71, Section 37H ³/₄. These offenses, which are defined in the regulations as “Disciplinary Offenses,” include any disciplinary infraction that is not: possession of a dangerous weapon, possession of a controlled substance, assault of educational staff, or having been charged with or found guilty of a felony in adult criminal court or juvenile delinquency court.

THE DISCIPLINARY ACTION

The most serious disciplinary action that may be imposed for a non-serious offense is a suspension from school. A suspension may be short-term or long-term, and may be served in-school or out-of-school at the principal’s discretion.

A **short-term suspension** is when a student is excluded from the school premises for a period of not more than ten (10) consecutive school days (or up to ten (10) school days cumulatively for multiple disciplinary offenses in any school year).

A **long-term suspension** is when a student is excluded from the school premises for a period of more than ten (10) school days but no more than ninety (90) school days.

A student may not be suspended for one or more non-serious offenses for more than ninety (90) school days cumulative in a school year. In addition, a long-term suspension may not extend beyond the end of the school year in which it is imposed. Exclusion from participation in extracurricular activities and school-sponsored events, which does not entail exclusion from the classroom, is not counted as suspension when calculating the number of school days for which a student was suspended.

If your child faces the possibility of a short-term suspension, then the principal, at his or her discretion, may use in-school suspension as an alternative. Generally, it may be beneficial to keep your child in school, even if he is removed from the classroom, so be sure to advocate for this alternative during your child’s hearing.

THE DISCIPLINE PROCESS

In-School Suspensions: If the principal decides to impose a short-term, in-school suspension, your child is not entitled under state law to dispute the charges in a hearing.

DEFINITIONS

“**Short-Term Suspension**” means out-of-school exclusion from the regular classroom for a period of not more than ten (10) consecutive school days, or up to ten (10) school days cumulatively for multiple disciplinary offenses in any school year.

“**Long-Term Suspension**” means exclusion from the school premises for more than ten (10) school days, but no more than ninety (90) school days.

“**Expulsion**” means exclusion from the school premises for more than ninety (90) school days in a school year.

A child may not be expelled from school for a non-serious offense.

However, you should check the policy of your child’s school to determine whether your child has such a right under the school policy. A child’s exclusion from the classroom for any period of time can be very detrimental and should be avoided if at all possible. Regardless of whether your child has a right to a hearing, you should receive written notification of the principal’s decision to suspend your child.

Out-of-School Suspensions: Before an out-of-school suspension can be imposed, the school must notify you and your child verbally and in writing of the charges and the reasons for the suspension. The school must provide the student with an opportunity for a hearing on the charges, and parents or guardians must have the opportunity to participate in the hearing. The principal must make reasonable efforts to notify a parent verbally of this opportunity. Written notice of the hearing must be in English and in the primary language of the home, if other than English. The notice must identify the offense with which your child is charged, the basis for the charge, and the potential consequences, including the potential length of time for which your child may be suspended. During the hearing, you and your child will have the opportunity to advocate for an appropriate punishment. Make sure

to take the time to discuss with your child what actually happened to lead to the offense. Refer to Chapters 1 – 3 of this Parent Guide, and to the Parent Checklist at the end of Chapter 4, to prepare for the hearing.

If your child faces the possibility of suspension for more than ten (10) consecutive school days or for a cumulative period of more than ten (10) school days in the current school year for multiple infractions, he also has the following rights:

- To review his student record before the hearing, and the documents upon which the principal may rely in making a determination to suspend the student or not;
- To be represented by counsel or a lay person of the student’s choice, at the student’s or parent’s expense;
- To produce witnesses and to present his explanation of the alleged incident;
- To cross-examine witnesses presented by the school district; and
- To request that the hearing be recorded and to receive a copy of the recording.

Students who face a possible suspension for less than ten (10) school days do not have these same appeal rights. You should check the school’s policies and procedures to learn what, if any, additional rights your child may have under these circumstances pursuant to the local school rules.

If the principal decides to suspend your child, then both you and your child should receive a written notification of the decision (the “Suspension Notice”). If the suspension is for more than ten (10) school days, you and your child should also receive written notification of the right to appeal the decision to the superintendent and the process for doing so. Your child will be suspended while an appeal is pending.

Regardless of the amount of time for which your child is suspended, Massachusetts law requires that the principal notify both you and your child about the opportunity to make up assignments and other school work while he is excluded from the classroom. If your child has been excluded for more than ten (10) school days, he should be given the opportunity to continue to receive education services. In this case, the Suspension Notice must include

a list of the specific education services that are available to the student and contact information for a school district staff member who can provide more detailed information. For more information on alternative education services, see the section entitled “Keeping your child engaged in education” in this chapter, below.

THE APPEAL PROCESS

If your child is excluded from school for more than ten (10) school days, he has the right to appeal the decision to the superintendent.

To appeal the decision, you and your child must notify the superintendent in writing within five (5) calendar days from the effective date of the exclusion that you request an appeal. You can request an extension to appeal for up to an additional seven (7) calendar days. The superintendent must hold a hearing within three (3) school days of receiving the request for appeal. At the hearing, your child has the right to present favorable testimony, witnesses, or evidence, and also has the right to have an attorney present. The superintendent must make a decision within five (5) calendar days of the hearing.

The superintendent may overturn or amend the principal’s decision. The superintendent’s decision is final. It is important for you and your child to prepare for the hearing and consult an attorney if possible.

EDUCATION SERVICES DURING AN EXCLUSION FROM SCHOOL

Massachusetts law requires schools to provide continued educational services to students who are expelled or suspended for more than ten (10) school days, regardless of the offense. Students subject to a short-term suspension are entitled to make-up work that is missed, including any quizzes and tests.

Ask the principal about these educational services and read your school district’s code of conduct, or talk to a school administrator to learn more. Education service plans may include tutoring, alternative placement, Saturday school, and online or distance learning. Any student or parent of a student who has been excluded from school for more than ten (10) school days must be provided with a list of possible education service plans. You should request this list if you do not receive one.

If you move to another district during the period of your child's suspension or expulsion, your new school district must enroll your child and allow him to return to the classroom or provide him with educational services under an education service plan.

Some important things to remember:

- Prepare for and attend all disciplinary hearings.
- Speak up for your child.
- Consider appealing a decision to exclude your child from school, especially in cases of long-term exclusion.
- Make sure your child will be able to make up school work and to keep up with his class during any period of exclusion.

STUDENTS WHO RECEIVE OR ARE ELIGIBLE FOR SPECIAL EDUCATION SERVICES

The Individuals with Disabilities Education Act (IDEA) provides additional due process protections in discipline proceedings against students who receive or are eligible to receive special education services, if the school had a prior basis of knowledge that the student has a disability.

For more information on discipline and due process for special education students, or if your child does not receive special education services or accommodations for a disability but you feel that he should be evaluated, please read the Appendix section entitled Special Education Services.



WHAT IF...

Your child is in trouble for pointing an imaginary weapon at her classmates while making video-game like shooting sounds. The school says your child threatened her classmates and is contemplating a long-term suspension.

What should you do?

- Remain Calm.
- Speak to your child and find out what happened. If appropriate (and provided that there is no chance of court involvement), have your child prepare and deliver a written apology to her classmates.
- Read the school district's code of conduct to determine whether the school has any discretion in determining whether your child should be suspended.
- If the principal has discretion, ask for a meeting to discuss alternatives to suspension.
- If the principal insists on a formal hearing, find out when the school intends to hold the suspension hearing. Plan to attend the hearing with your child.
- Make sure you are prepared. Ask your child to apologize and to explain her behavior. Gather any favorable evidence to support your child to present at the hearing.
- You may influence the outcome if you can show that your child is a good student, has never been in trouble before, or deserves another chance before being suspended.
- If the principal insists on excluding your child from the classroom for some period of time, advocate for a short-term suspension, and if possible, an in-school suspension.
- Make sure that your child will be able to keep up with her schoolwork during any period of in-school or out-of-school suspension.
- If your child is given a long-term suspension, file an appeal with the superintendent within the required time frame. At the same time, make sure that you receive a list of education service plans so that your child can continue to make educational progress during the period of suspension.

Suspension and Expulsion for Serious Offenses

Massachusetts law requires school districts to follow certain policies and procedures when disciplining a student for the following serious offenses: possession of dangerous weapons, possession of controlled substances, or assault on school personnel. These serious offenses and the policies that accompany them are explained in detail below.

SERIOUS OFFENSES

Under Massachusetts General Laws Chapter 71, Section 37H, students who commit the following offenses on school premises or at school functions may be subject to expulsion:

- Possession of dangerous weapons, such as a gun or a knife. The Massachusetts Department of Elementary and Secondary Education (DESE) takes the view that the definition of “dangerous weapon” depends on the circumstances. The DESE encourages schools to analyze the circumstances of each incident before making this determination. For example, if a student uses a baseball bat to assault another student, the bat will likely be considered a dangerous weapon;
- Possession of controlled substances, such as cocaine and heroin; and
- Assault on educational staff. The DESE is of the opinion that this offense requires either (a) an actual physical assault that is an intentional, unlawful injury, or (b) a threat the student is capable of carrying out coupled with a reasonable fear of imminent danger on the part of the school personnel at whom the threat is directed.

Expulsion is defined as exclusion from the regular classroom for a period of time in excess of ninety (90) school days. This includes permanent expulsion from school. The school principal may have discretion to suspend rather than expel your child, thereby reducing the number of days for which your child will be excluded from the classroom. Check your school’s code of conduct to determine whether suspension is an option.

THE DISCIPLINE PROCESS

If your child is charged with one of the serious offenses described above, the school must follow the disciplinary process set out below:

- Your child must be notified in writing of the opportunity for a hearing before the school imposes discipline.
- At the hearing, your child may have an attorney present and may present evidence and witnesses.
- After the hearing, the principal may suspend or expel your child if he finds that your child committed the offense.
- If your child is **expelled**, he has the right to appeal the expulsion decision to the superintendent. The hearing should be recorded.⁸

You should also check your school’s code of conduct to determine whether the disciplinary process for serious offenses creates any additional rights or procedures with which your child must comply. It is crucial that you fully prepare for and attend the disciplinary hearing with your child. Refer to Chapters 1 – 4 of this Parent Guide for guidance on how to advocate for the best outcome for your child.

Because of the severe consequences of expulsion, it is extremely important that you consult with an attorney, if possible, before the disciplinary hearing. It is particularly critical to do so if your child was arrested as a result of this same incident. You do not want to do or say anything in a school hearing that could have a negative effect on the outcome of a pending case in the juvenile or municipal court. Refer to Chapter 9 of this Parent Guide for more information in cases where your child has become court-involved as a result of misconduct at school.

THE APPEAL PROCESS

If your child is charged with one of the serious offenses described above, the school must follow the disciplinary process set out. If your child is expelled for a violation

of Section 37H, he has the right to appeal the expulsion decision to the superintendent within ten (10) calendar days from the date of expulsion. State law does not require the superintendent to hold the hearing or render a decision within a specified period of time. Read the school district's code of conduct for this information, and ask school officials whether the school has set timelines for these actions if such information is not provided in the code of conduct.

Your child has certain rights at the appeal hearing. These include the right to have an attorney present, the right to present evidence and witnesses in his favor, and the right to present other mitigating evidence beyond the factual question of whether he violated a provision of the school district's code of conduct. The superintendent's decision is final. It is important at this stage for you and your child to take advantage of the opportunity to present any favorable evidence.

Massachusetts General Laws Chapter 71, Section 37L requires that the superintendent report any incident involving a student's possession or use of a dangerous weapon on school grounds to the local police department and to the Department of Children and Families, and to refer the student to the office of student services in the local school district for assessment and counseling services.

KEEPING YOUR CHILD ENGAGED IN EDUCATION DURING A PERIOD OF SUSPENSION OR EXPULSION

As of July 1, 2014, Massachusetts law requires schools to provide continued educational services to students who are expelled or suspended for more than ten (10) school days, regardless of the offense.

Ask the principal about these services and read your school district's code of conduct or talk to a school administrator to learn more. Education service plans may include tutoring, alternative placement, Saturday school, and online or distance learning. Any student or parent of a student who has been expelled or suspended for a period in excess of ten (10) school days must be provided with a list of possible education service plans. You should request this list if you do not receive one.

If you move to another district during the period of your child's suspension or expulsion, your new school district must enroll your child and allow him to return to the classroom or provide him with educational services under an education service plan.

⁸*Nicholas B. v. School Committee of Worcester*, 412 Mass. 20 (1992).



WHAT IF...

Your child is in trouble for fighting at school. The school says that a weapon was involved. The school is taking action to expel her.

What should you do?

- Remain Calm.
- Consult with an attorney. Expulsion is a serious disciplinary consequence. A list of available resources is provided in the Appendix.
- Gather information from your child. How did the fight start? What was the weapon and how was it involved?
- Find out when the school intends to hold the expulsion hearing. Plan to attend the hearing with your child.
- Make sure you are prepared. The expulsion hearing is more formal than the conference or discipline hearing that a school would typically hold for non-serious offenses. While it is not a courtroom setting, some procedures will be similar.
- Read the school district's code of conduct to determine whether the school has any discretion to decide whether your child should be expelled.
- Gather any favorable evidence to support your child to present at the hearing.
- You may influence the outcome if you can show that your child is a good student, has never been in trouble before, or deserves another chance before being expelled.
- *If your child was arrested as a result of this same incident or the school has stated that they will seek a criminal complaint,* make sure you consult with an attorney prior to the expulsion hearing. You do not want to do or say anything in an expulsion hearing that could have a negative effect on the outcome of a pending case in the juvenile or municipal court.

Exclusion from School for Criminal Complaints and Findings of Guilt in Felony Cases and Juvenile Felony Delinquency Cases

A student may be excluded from school for actions that occur outside of the school, when the student's conduct is the subject of a felony complaint, or the student has been found guilty of a felony or a juvenile felony. This is the case even when your child's conduct took place far from school grounds and had no connection to any school function.

Massachusetts General Laws, Chapter 71, Section 37H½ requires school districts to follow certain policies and procedures when disciplining a student who has been charged with or found guilty of a felony in adult criminal court or juvenile delinquency court. In these two specific circumstances, a student may be excluded from school with fewer due process protections than to which he would be entitled normally pursuant to Sections 37H or 37H¾.

CRIMINAL COMPLAINTS AND FINDINGS OF GUILT IN ADULT OR JUVENILE FELONY CASES

If your child has been charged with a felony criminal complaint or a juvenile felony delinquency complaint, your child may be excluded from school. If your child is found guilty of one of these charges, either by an actual conviction, an admission of guilt, or any other court finding, your child may also be expelled, i.e., excluded for a period in excess of ninety (90) school days, and expelled permanently.

In order to suspend or expel your child under either of these circumstances – whether your child has merely been charged with one of these offenses or found guilty – the principal must decide, in his sole discretion, whether your child's continued presence in school would have a "substantial detrimental effect on the general welfare of the school." The law does not define a "substantial detrimental effect."

THE DISCIPLINE PROCESS

Before a suspension or expulsion may be imposed, the school must notify your child in writing of the charges and the reasons for suspension or expulsion. However, Massachusetts law does not expressly provide your child with a right to a hearing before being suspended or expelled under these circumstances. Your child should be notified in writing of the right to appeal this decision to the superintendent with an explanation of the appeals process. Your child will be suspended while the appeal is pending.

THE APPEAL PROCESS

If your child is suspended or expelled under Massachusetts General Laws Chapter 71, Section 37H½, he has the right to appeal the decision to the superintendent.

Once the school principal suspends or expels your child for a Section 37H½ violation, the appeal process should be as follows:

- You or your child must notify the superintendent in writing within five (5) calendar days from the effective date of the suspension or expulsion to request an appeal.
- The superintendent must hold a hearing within three (3) calendar days of receiving the request for appeal. At the hearing, your child has the right to present favorable testimony, witnesses, or evidence, and also has the right to have an attorney present.
- The superintendent must make a decision within five (5) calendar days of the hearing.

The superintendent may overturn or amend the principal's decision. The superintendent's decision is final at the school district level. It is important for you and your child to fully prepare for the hearing and consult an attorney if possible.

KEEPING YOUR CHILD ENGAGED IN EDUCATION DURING A SUSPENSION

As of July 1, 2014, Massachusetts law requires schools to provide continued educational services to students who are expelled or suspended for more than ten (10) school days, regardless of the offense. Ask the principal about available educational services and read your school district's code of conduct or talk to a school administrator to learn more. Education service plans may include tutoring, alternative placement, Saturday school, and online or distance learning. Any student or parent of a student who has been expelled or suspended for a period in excess of ten (10) school days must be provided with a list of possible education service plans. You should request this list if you do not receive one.

If you move to another district during the period of your child's suspension or expulsion, your new school district must enroll your child and allow him to return to the classroom or provide him with educational services under an education service plan.

STUDENTS WHO RECEIVE OR ARE ELIGIBLE FOR SPECIAL EDUCATION SERVICES

The Individuals with Disabilities Education Act (IDEA) provides additional due process protections in discipline proceedings against students who receive special education services and students who are eligible for special education services, if the school had a prior basis of knowledge that the student has a disability.

If your child does not receive special education services or accommodations for a disability, but you feel that he should be evaluated, please read the Appendix section entitled Special Education Services for insight on how to approach these issues when a student is subject to school discipline.

Massachusetts Anti-Bullying Law

Under Massachusetts General Laws Chapter 71, Section 37O, bullying and retaliation are prohibited on school grounds, at school functions and in certain circumstances that are not school-related but have an effect on the school environment.⁹ The law requires your school district to have a bullying prevention and intervention plan that defines bullying and retaliation and explains how the school will report, investigate, and respond to alleged acts of bullying and retaliation.

If your child has been accused of bullying, make sure to read your school district's bullying prevention and intervention plan to learn how the school will handle the situation.

DEFINITIONS OF BULLYING, CYBERBULLYING, AND RETALIATION

“Bullying” occurs when a student, or member of the school staff, repeatedly uses words (written or spoken), does a physical act, or makes gesture against another student that:

- (i) hurts the bullied student physically, emotionally, or damages his property;
- (ii) causes the bullied student to reasonably fear that he will be harmed or his property will be damaged;
- (iii) creates a hostile environment at school for the bullied student. A hostile environment means that the school environment is so filled with intimidation, ridicule, or insult that it effects the bullied student's education;¹⁰
- (iv) infringes on the rights of the bullied student at school; or
- (v) materially and substantially disrupts the education process or the orderly operation of a school.¹¹

There are a few other important concepts defined in the anti-bullying law of which parents and guardians should be aware. “Cyberbullying” is bullying by “use of technology or electronic devices such as telephones, cell phones, computers, and the Internet.” This can include things like email, instant messages, text messages, and Internet postings.¹²

“Retaliation” is “any form of intimidation, reprisal, or harassment directed against a person who reports bullying, provides information during an investigation of bullying, or witnesses or has reliable information about bullying.”¹³

WHEN CAN MY CHILD BE DISCIPLINED FOR BULLYING AND FOR RETALIATION?

Your child may be disciplined for bullying and retaliation that takes place at the following locations:

- on school grounds, including at the school bus stop and on the bus;
- at school functions;
- through the school's electronic devices, for example, a school computer; and
- bullying off school grounds or through personal electronic devices if the bullying has a negative effect on the bullied student in school or the education process. For example, a child might bully a classmate over the weekend, through social media, or text messages at home. In such a situation, it is possible that a child will be disciplined at his school.

INVESTIGATION AND PARENTAL NOTIFICATION

If the school receives a report that your child has engaged in bullying, you can expect the school to take certain steps in response. Schools take reports of bullying very seriously. If the school's investigation finds that bullying or retaliation has occurred, the principal is required to notify both you, as the parent of the bully, and the parents of the bullied-student about the incident, and tell you how the school will respond to the bullying incident. School officials must provide this notification in the primary language spoken in the home.

LAW ENFORCEMENT NOTIFICATION

Once a principal receives a report of bullying, he is also required to notify the local police department if he has reason to believe that criminal charges may be pursued against the bully. Bullying itself is not a crime; however, a

bullying incident may include criminal acts, for example, assault. If the principal does not have reason to believe that criminal charges may be pursued, he may choose to handle the incident in the school, rather than report your child's actions to the police. In doing so, the principal must take appropriate disciplinary action that balances the need for accountability with the need to teach appropriate behavior. Please be aware that the police may become involved before the school has completed its own investigation into whether your child committed an act of bullying.

BULLYING OFFENSES

The Massachusetts Anti-Bullying and Retaliation Law does not define the types of discipline a student may face if he engages in bullying. If your child is accused of bullying, consult the following sources to ensure that the school follows the necessary procedures and imposes appropriate discipline:

- The school district's bullying prevention and intervention plan, which must state the disciplinary actions a school may take in response to bullying; and
- The school's student handbook for any references to or discussion of the bullying prevention and intervention plan.

Your school's bullying prevention and intervention plan should be consistent with the state laws that govern the relevant conduct, and will depend on the category of the bullying conduct. For example, if the bullying behavior consisted of an assault, the rules described in Chapter 6 would apply, whereas if the bullying behavior was teasing, the punishments and procedures in Chapter 5 would be relevant. If you feel that your school's bullying prevention and intervention plan does not comply with these rules, you should discuss this with the school administration.

RESOURCES

The Massachusetts Anti-Bullying and Retaliation Law requires schools to include in the bullying prevention and intervention plan a strategy for providing counseling or referrals to appropriate services for a bully as well as for family members of that student. When bullying or retaliation have occurred, the school must also inform the parents or guardians of the bullied-student about the Massachusetts Department of Elementary and Secondary Education's (DESE) "Problem Resolution System" (PRS) and the process for seeking assistance or filing a claim.

For more information on the PRS, visit the DESE's website at www.doe.mass.edu/pqa/prs/. You may also call (781) 338-3700 or send an email to the DESE staff (compliance@doe.mass.edu).

⁹ MASS. GEN. LAWS ch. 71, § 37O (2011).

¹⁰ MASS. DEP'T OF ELEMENTARY & SECONDARY EDUC., MODEL BULLYING PREVENTION AND INTERVENTION PLAN 13 (2010), available at www.doe.mass.edu/bullying/BPIP.pdf.

¹¹ MASS. GEN. LAWS ch. 71, § 37O (2011).

¹² MASS. DEP'T OF ELEMENTARY & SECONDARY EDUC., MODEL BULLYING PREVENTION AND INTERVENTION PLAN, *supra* note 9, at 17.

¹³ *Id.*

¹⁴ Susan M. Brazas, *Is Your Child a Bully?*, LAWYERS.COM, <http://education-law.lawyers.com/school-law/is-your-child-a-bully.html> (August 15, 2014).



WHAT IF...

Your child is in trouble for fighting at school. School officials tell you the fight started because your child was bullying another student through text messages.

What should you do first?

- Remain calm.
- Talk to your child. Ask her to explain what happened. It is important to get all of the details of the incident. Ask her if any friends or other students saw or heard what happened.
- Ask the school to explain what happened.
- Learn about the possible disciplinary actions your school may take by reading your school's bullying prevention and intervention plan and look in your school's student handbook for any references to bullying and retaliation.
- If you believe your child has a bullying problem, look to your school's bullying prevention and intervention plan for resources that are available to help your child. Talking to school counselors, social workers, or child psychologists may provide insight into how to help your child.¹⁴
- Determine whether the police have been notified or a juvenile complaint has been filed with the courts. If so, get a copy of the complaint and consider consulting with an attorney prior to any disciplinary hearing. The Appendix contains a list of legal services organizations. Make sure you know when you have to be in court for any court hearings.
- If the school has not already set up a meeting to discuss the bullying incident, call the school to schedule a conference. Try to get a sense of what steps the school is considering.
- If your meeting with the school is not for several days, ask if your child will be allowed to attend her regular classes while the school is considering what disciplinary measures to take for the bullying incident.
- If your child is suspended, make sure you and your child ask teachers for any assignments your child will need to complete during the suspension period.
- If your child receives a long-term suspension (more than ten (10) days) or expulsion, make sure you ask for a list of education service plans for your child so that your child can remain engaged in education during the period of suspension.

Arrest at School and Law Enforcement-Related Discipline

When a child commits a disciplinary offense that is also a delinquent act or criminal offense, the child may be subject to an internal school discipline process as well as an external judicial process. This chapter deals with the judicial process that may be relevant to school misconduct, and supplements Chapters 5 – 8 of this Parent Guide, which deal with the internal school discipline processes.

There is a growing trend of increased police presence in schools.¹⁵ The presence of law enforcement on campus makes it more likely that juvenile complaints for student delinquency will be filed. Furthermore, police presence in the school increases the likelihood that students will be taken into custody or arrested at school if they commit an offense that could also be considered a delinquent or criminal act. School districts vary as to their policies and procedures for filing juvenile complaints, taking students into custody, or arresting students on school campuses.

Any juvenile complaint or arrest of a student at school should be taken seriously.

ARREST AT SCHOOL

School Resource Officers and Campus police officers can arrest students accused of a criminal offense at school. Even before a student is arrested, school officials who have a reasonable suspicion that a student has committed a crime may search the student's belongings. Schools have greater leeway to search students at school than in typical law enforcement settings. Student privacy rights are balanced against the school's interest in safety and student discipline.¹⁶

School officials do not generally have to provide *Miranda* warnings¹⁷ when questioning students about an incident at school. School officials have been known to ask students to sign "confessions." ***These confessions may be used against students in court proceedings.*** It is very important that students ask to speak with a parent and have a parent present if they are being questioned or asked to write a statement about a school offense, which may also be considered a delinquent act or criminal offense. It is appropriate for students to tell a school administrator that they will cooperate, but only with an attorney present. Even if the complaint against your child is for a minor misdemeanor offense, you should always consult an attorney when your

child is questioned about, or taken into custody for, a delinquent act or criminal offense. Any criminal process can have unanticipated consequences.

Once a student is taken into police custody, the student has a right to have a parent present and, as with all criminal defendants, will be read *Miranda* warnings.

JUVENILE JUSTICE GUIDE

For more information about what to do if your child has been arrested, please refer to the following resources from the Youth Advocacy Department:

- Youth Advocacy Division, *Parent FAQ*, available at www.publiccounsel.net/ya/wp-content/uploads/sites/6/2014/06/parentfaq.pdf.
- Wendy Wolf, Youth Advocacy Department, *Miranda and Juveniles: An Outline of the Law in Massachusetts*, available at www.publiccounsel.net/ya/wp-content/uploads/sites/6/2014/08/Miranda-Outline-January.2015.pdf

SEARCHES AT SCHOOL

Schools have wide discretion to search a student's locker or backpack if the school suspects that a student is in possession of an illegal substance, stolen property, or a weapon. However, the school's authority to search a student's physical person is very limited.

If your child has been strip searched at school, contact an attorney to find out whether all legal standards and procedures governing a body search have been followed.

GOING TO COURT

It is important to keep a written record of court dates for a delinquent or criminal charge. Find out who will prosecute your child's case, what the exact charge(s) against your child are, the

range of potential court-imposed punishments, and how long your child might be removed from the regular classroom.

It is important that you accompany your child to all court appearances to show the court that there is an adult, authority figure in your child's life. Be on time and dress appropriately for any appearances at court. Professional or "Sunday best" dress is appropriate for court.¹⁸ Avoid large jewelry, bright colors and noisy accessories as they are distracting to the court. It is important to maintain a positive attitude and to have all supporting documents with you. Preparation is key.

If your child cannot go to court on the appointed date, you may ask your lawyer if the court will change the date. The court does not have to change the date. Be prepared to go on the date originally scheduled. If your child is unable to go to court on the day of a scheduled appearance, call your lawyer immediately to let him know why your child is unable to attend, e.g., due to illness or another emergency. The attorney will have to explain your child's absence to the judge.

COURT DECISIONS

Once the court has reached a decision in your child's case, it is important to follow through on any court-imposed judgment.

- If a fine is assessed, ask if it is possible to pay it in installments. Be sure to make the payments on time.
- If your child is assigned community service hours, alert the court to any transportation difficulties and family situations that should be taken into account when determining how long your child will have to complete community service.

- Ask what the arrest will mean on your child's legal record. In Massachusetts, your child's juvenile court record can be sealed three (3) years after he has finished serving his sentence if certain requirements are met. For more information on sealing a juvenile court record, you can refer to the Children's Law Center of Massachusetts' publication entitled "Sealing Juvenile Records," at www.clcm.org/edsealingrecords.html#expunge.
- Keep a record of any court-imposed deadlines for paying fines or completing any other requirements. Keep receipts for any and all payments made to the court. Be aware that failure to comply with court-imposed deadlines can mean additional penalties. ***If your child does not comply with court orders, the court can issue a warrant for his arrest.***

¹⁵ TRAVIS & COON, THE ROLE OF LAW ENFORCEMENT IN PUBLIC SCHOOL SAFETY: A NATIONAL SURVEY 5 (2005), available at www.ncjrs.gov/pdffiles1/nij/grants/211676.pdf.

¹⁶ See *New Jersey v. T. L.O.*, 469 U.S. 325, 339-340 (1985).

¹⁷ The term "Miranda warning" refers to the obligation that police officers have to warn a person, prior to arrest or interrogation for a crime, of certain rights against self-incrimination, such as the right to remain silent and the right to legal counsel.

¹⁸ PARENTS HELPING PARENTS, YOU ARE NOT ALONE: AN EMPOWERING GUIDE FOR PARENTS WHOSE CHILDREN ARE IN DCF FOSTER CARE 25 (2010), available at www.parentshelpingparents.org/#!news/cqna.



WHAT IF...

Your child is in trouble for fighting at school. A complaint is filed with the juvenile court.

What should you do first?

- Remain calm.
- Even though this complaint may be for a minor misdemeanor offense, you will want to consult with an attorney. A complaint can trigger unanticipated consequences for your child.
- It is important to keep a written record of court dates for a criminal or delinquent charge. Find out who will prosecute your child's case, what the exact charges against your child are, the range of potential court-imposed punishments, and how long your child might be removed from the regular classroom.
- It is important that you accompany your child to all court appearances to demonstrate to the court that

there is an authority figure in your child's life. Be on time and dress appropriately for any court appearances. Professional or "Sunday Best" dress is appropriate for court. Avoid large jewelry or bright clothing that would be distracting. Avoid carrying items in your pockets that jingle, for example, keys or coins. It is important to maintain a positive attitude and to have all supporting documents with you. Preparation is key.

- If you believe your child acted in self-defense, make sure your child's attorney is aware of these facts. Self-defense is a legal defense in a court of law, even though a school is not required to consider it during discipline proceedings.
- Make sure your child can comply with court-ordered community service. If your child has a disability or there

are family issues that will make completion of community service difficult within a specified period of time, make sure the prosecutor and judge are aware of those facts.

- Make sure your child successfully completes anything she is ordered to do by the court. Failure to comply with court-imposed deadlines can mean additional penalties. If your child does not complete the community service, both you and your child may be ordered to appear before the court again for a contempt hearing. If your child does not comply with court orders, the court can issue an arrest warrant.

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If your child is facing discipline at school, these are some commonly used terms that you may hear as you navigate the discipline process. You may want to familiarize yourself with the following terms as part of your preparation.

Alternative Education – Alternative education is an initiative within a school district established to serve “at-risk” students whose needs are not being met in a traditional school setting. Alternative education is not required by state or federal law but may be provided at the discretion of a school district. Alternative education may operate as a part of a traditional school district or as an independent program outside of the school district with its own schedule, teachers, and facilities. Alternative education programs must adhere to the Massachusetts student learning requirements. However, alternative education programs may not have comparable facilities, transportation services, non-core courses, extra-curricular activities, or even educational curriculum to that of a traditional school.¹

For more information about alternative education, please visit the Massachusetts Department of Elementary and Secondary Education (DESE) website (www.doe.mass.edu/alted/). The DESE website also has a list of alternative education programs in Massachusetts (<http://profiles.doe.mass.edu/search/search.aspx>).

Alternative education is different from the obligation all schools have to provide education services to students who are suspended or expelled for more than ten (10) consecutive school days.

Behavior Contract – A Behavior Contract is a written agreement

between the school and the student whereby the student and school agree to try to change a specific behavior. Such a contract might have terms such as a goal, rewards for successful completion, timeframe, consequences for failure to comply, etc.

Behavior Intervention Plan – Pursuant to the Individuals with Disabilities Education Act (IDEA), special education students experiencing behavioral problems may undergo a functional behavioral assessment and the findings are then translated into a concrete plan of action for managing the student’s conduct. The Behavior Intervention Plan may specify ways to change the learning environment to prevent certain conduct, to reinforce good behavior and to provide supports so that a student will not be driven to act out due to frustration or to fatigue.

Bullying Prevention and Intervention Plan – Massachusetts law requires every school district to have a bullying prevention and intervention plan in place. The plan must define bullying and retaliation, and explain how the school will report, investigate, and respond to alleged acts of bullying and retaliation.

The bullying prevention and intervention plan should be available from the school’s principal upon request.

Change of Placement – A change of placement because of a disciplinary removal occurs if a child with a disability is removed from his or her current educational placement for more than ten (10) consecutive school days, or the child is subjected to a series of removals that constitutes a pattern because: (1) the removals total more than ten (10) school days in a school year; (2) the child’s behavior is substantially similar to previous incidents that resulted in the series of

removals, and (3) additional factors such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another constitute a pattern.²

Code of Conduct – The code of conduct is the school’s rules and expectations for student conduct. It is unique to each school district. The code of conduct should be displayed openly at every school and is available from the principal of any school upon request. Often a school will post its code of conduct on its website. The code of conduct should outline what disciplinary actions can be taken for specific behaviors. Please note this document may be referred to as a discipline code in your district.

Due Process – A school must follow certain procedures before excluding a student from school temporarily or permanently to ensure that a student is treated fairly and that a student’s rights are upheld. For example, a student has a right to be informed of his alleged conduct and to respond to the accusations. Depending on the conduct, a student may have the right to a discipline conference or a more formal exclusion hearing where court-like procedures are required by state or federal law.

Emergency Placement or Emergency Exclusion – Under limited conditions, a principal may order a student removed immediately from the regular classroom setting and placed in an alternative education program or sent home. Please refer to Chapter 1 of this Parent Guide for a discussion of Massachusetts law that governs emergency removals.

Expulsion – Pursuant to Massachusetts regulations, expulsion is defined as exclusion from the school premises

for more than ninety (90) school days in a school year. A student may be expelled for serious offenses included in Sections 37H and 37H½. Please refer to Chapters 5 – 7 of this Parent Guide for more details.

In-School-Suspension – When minor infractions happen, a principal may assign a student one or more days of suspension outside the regular classroom and within the school premises, under the supervision of a certified teacher or paraprofessional on school grounds. An in-school suspension for less than ten (10) school days is considered a short-term suspension. An in-school suspension for more than ten (10) school days (consecutively or cumulatively in a school year) is considered a long-term suspension. A student has a right to make up assignments and other school work during an in-school suspension.

Intent – Intent means a student’s reason or motivation for his conduct that resulted in a violation of the school district’s code of conduct. A school district’s code of conduct should state the circumstances under which intent is considered in determining appropriate discipline. In cases of code of conduct violations that constitute non-serious offenses, i.e., those offenses that do not fall within Sections 37H or 37H½, schools are obligated to try alternatives to suspension and may not take a zero tolerance approach. See Chapter 5 of this Guide for more information on non-serious offenses.

IDEA – The Individuals with Disabilities Education Act (IDEA) is the federal law that ensures that schools provide special educational services to children with disabilities. The IDEA governs how states and public agencies provide early intervention, special education and

related services to eligible infants, toddlers, children, and youth with disabilities. The IDEA sets out the discipline procedures that a school must follow when disciplining special education students.

Individualized Education Program (IEP) – An IEP is a written document, created by the school’s special education team that outlines how the school will meet the educational needs of an individual student who qualifies for special education services or related services. The IEP can include a Behavior Intervention Plan.

Manifestation Determination Review (MDR) – The school must conduct an MDR for students who qualify for special education services or related services before a student can be suspended, expelled, or subjected to a significant change in placement. The MDR will determine whether the student’s conduct was related to his disability. The review committee is comprised of members of the student’s IEP team and other “qualified personnel”. The standard of review is whether the conduct was “caused by” or had a “direct and substantial relationship” to the student’s disability, or was the “direct result” of a school district’s failure to implement the IEP. A MDR is only required when a student is removed for more than ten (10) consecutive school days, or when a student is removed for more than ten (10) cumulative school days in an academic year and the removal is part of a pattern constituting a change of placement.

Out-of-School Suspension – An out-of-school suspension takes place when the school suspends a student for violating the school district’s code of conduct and requires that the student stay off the school premises during the suspension. An out-of-

school suspension may be a “short-term suspension,” which means exclusion from the regular classroom for a period of not more than ten (10) consecutive school days, or up to ten (10) school days cumulatively in a school year. A “long-term suspension,” is an exclusion from the regular classroom for more than ten (10) school days, but no more than ninety (90) school days consecutively or cumulatively within a school year.

Student Handbook – The student handbook is the school’s rules and regulations. It is unique to each school. Student handbooks typically cover topics such as attendance policy, dress code, and extracurricular activities, etc. The student handbook should be displayed openly at school and is available from the principal of any school upon request. Often a school will post its student handbook on its website.

Zero Tolerance Policy – A zero tolerance policy is adopted by a school that dictates automatic, inflexible consequences for certain categories of student conduct regardless of the specific circumstances of the particular conduct. Massachusetts law does not permit automatic discipline responses for non-serious offenses, and requires schools to consider ways to avoid suspension.

¹ See MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC., ALTERNATIVE EDUCATION, available at <http://www.doe.mass.edu/alted/>.

² See MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC., “Discipline of Special Education Students Under IDEA 2004,” available at http://www.doe.mass.edu/sped/IDEA2004/spr_meetings/disc_chart.pdf.

The Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 provide additional due process protections when disciplining students who receive special education or related services and students who have not yet been deemed eligible for special education services if the school had a prior basis of knowledge that the student has a disability.

If your child does not receive special education or related services or accommodations for a disability, but you feel that he should be evaluated, this section will give you insight into how to approach these issues when a student is subject to school discipline.

If you suspect that your child has disabilities but your child has not been evaluated for special education and related services:

Request an evaluation for special education and related services in writing. The primary reason for your child to receive special education and related services is to progress academically. A collateral benefit of special education status is the additional protection for your child for any problem behaviors related to his disability that might lead to discipline issues.

If your child receives Section 504³ services and violates a school rule:

Section 504 of the Rehabilitation Act of 1973 protects qualified individuals from discrimination based on their disability. Children with disabilities who do not receive special education services under the IDEA may qualify for Section 504 services. Section 504 regulations require a school district to provide a 'free appropriate public education' (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability. Under Section 504, free appropriate public education means the provision of regular or special education and related aids and services, designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met.⁴ Children receiving Section 504 services to meet educational needs do not necessarily receive the extensive services that are part of the IDEA. It is important to keep in mind that Section 504 status does not offer the same legal protection as the IDEA against discipline consequences outlined in the school district's code of conduct.

If your child receives special education services and violates a school rule:

Make sure that your child has a Behavior Intervention Plan stating how specific problem behaviors will be addressed. The Behavior Intervention Plan should be based on a recent Functional Behavior Assessment and can be updated by working through the IEP team. The educators in your child's school need time to become familiar with your child's educational needs and to learn how best to prevent and redirect problem behavior. If you disagree with the Functional Behavior Assessment performed by the school or with the Behavior Intervention Plan designed by the IEP team, you may want to consult "A Parent's Guide to Special Education,"⁵ for advice on advocating for your child. The Behavior Intervention Plan acts as a modification of a school district's code of conduct as it applies to your child.

If your child has been referred for disciplinary measures for violating a school rule:

The school *may consider a student's unique circumstances* when deciding whether to discipline a special education student for any violation of the school district's code of conduct. The school may consider such factors as your child's discipline history, ability to understand the consequences, expression of remorse, and support provided to him before the conduct occurred. The school has the option not to discipline your child. In Massachusetts, a school district may specify in its code of conduct whether a disability that clearly prevents a child from understanding that what he did was wrong will be factored into a discipline decision.

If your child receives special education and related services and has been suspended for less than ten (10) consecutive school days and removals total less than ten (10) cumulative school days in the school year for misbehavior:

The school is *not required* to conduct a Manifestation Determination Review, or review your child's Individualized Education Program or placement.

Your child is entitled to a Manifestation Determination Review (MDR), a special meeting to determine whether the conduct was caused by, or had a direct and substantial relationship to, your child's disability, or was the direct result of the school's failure to implement his Individualized Education Program (IEP). If the MDR

committee finds a causal relationship exists, your child will remain in his current classroom placement. An exception to this rule exists if your child brought a weapon or illegal drugs to school or caused a serious bodily injury. Then, your child can be sent to an alternative education program even if the MDR committee found the conduct to be a manifestation of a disability or the school's failure to implement your child's IEP.

Even if the MDR committee finds that your child's behavior was not a manifestation of a disability or due to the school's failure to implement his IEP, the school must continue to provide a free appropriate public education. If your child has a Section 504 Plan, your child will be disciplined like his non-disabled peers as set out in the school district's code of conduct.

You are entitled to appeal any unfavorable decision by the MDR committee to the Bureau of Special Education Appeals (BSEA). Such an appeal will be placed on track for an expedited hearing. You can also file an appeal with the BSEA if you do not believe that your child is receiving an appropriate education in his new educational setting.⁶

³ Section 504 of the Rehabilitation Act of 1973 states that no qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity" receiving federal financial assistance, which includes public schools. See 29 U.S.C. § 794.

⁴ See U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, PROTECTING STUDENTS WITH DISABILITIES (2011), <http://www2.ed.gov/about/offices/list/ocr/504faq.html>.

⁵ "A Parent's Guide to Special Education" is available at www.fcsn.org/parents-guide.

⁶ To learn more about the BSEA, visit www.doe.mass.edu/bsea/default.html.

Under Massachusetts General Laws Chapter 201F, Section 2, a parent may authorize a caregiver to consent to educational and medical treatment decisions on behalf of a child.⁷ A caregiver could be a relative or other person providing full time care of a child. This section focuses on the education portion of the kinship care law. The kinship care law gives the caregiver the authority to make educational decisions for a child, just as a parent is able to do so. For example, the caregiver can access educational records, represent a child in enrollment, discipline proceedings, and special education or other educational matters, sign permission slips for school activities, and make other decisions that contribute to a positive educational experience for a child.⁸ A parent does not give up any parental rights by authorizing a caregiver to act on a child's behalf, and the parent retains the right to make all medical and educational decisions for a child as well. In fact, if the parent does not agree with the caregiver, the parent makes the final decision.

To authorize a caregiver, a parent must fill out a Caregiver Authorization Affidavit. The affidavit may be valid for up to two (2) years, but the parent has the right to change the affidavit, and the caregiver's authority to make decisions on behalf of a child, at any time by notifying the caregiver in writing. Caregiver Authorization Affidavits are available on the Massachusetts courts website (www.mass.gov/courts/docs/courts-and-judges/courts/probate-and-family-court/upc/documents/caregiverauthorizationaffidavitform.pdf).

After the affidavit is completed, the parent must give a copy of the affidavit to the child's school, doctor, and dentist. It is important to keep a list of the people who have a copy of the form so the parent can notify the caregiver of any changes to the authority given to the caregiver.

Please visit the Massachusetts probate and family law court website for additional information about the kinship care law and to learn more about the caregiver authorization affidavit process (www.mass.gov/courts/docs/courts-and-judges/courts/probate-and-family-court/guide-relative-caregivers-southeast-cape.pdf).

⁷ MASS. GEN. LAWS ch. 201F, § 2 (2011).

⁸ MASS. GEN. LAWS ch. 201F, § 3 (2011).

SAMPLE LETTER TO APPEAL A SCHOOL SUSPENSION OR EXPULSION>>

_____ (Date)

Office of the Superintendent

_____ (School District Name)

_____ (Street Address)

_____ (City, State, ZIP)

Re: Student Name - _____
Student ID# or Date of Birth - _____

To Whom It May Concern,

I, _____ (Student's name/Name of Parent or Guardian), am appealing the _____ (suspension/expulsion) of myself / my child / my ward (circle one) pursuant to the decision received on _____ (Date of suspension/expulsion). _____ (Student's name), a _____ (Student's Grade Level) at _____ (Student's school), was suspended/expelled by _____ (School Administrator).

I respectfully request that this appeal be scheduled as quickly as possible. Unfortunately, I will not be available on _____ (Days) at _____ (Time) due to prior obligations. I ask that you schedule a hearing when I am available to attend.

If you have any questions, please contact me at phone (____) ____ - _____ or by email _____.

Very truly yours,

(Parent Signature)

(Printed Name)

Center for Law and Education – Boston

99 Chauncy Street, Suite 700 | Boston, MA 02111
Tel: (617) 451-0855
www.cleweb.org

Children’s Law Center of Massachusetts

298 Union Street | Lynn, MA 01901
Tel: (781) 581-1977
www.clcm.org

Citizens for Juvenile Justice

44 School Street, Suite 400 | Boston, MA 02108
Tel: (617) 338-1050
www.cfjj.org

**Committee for Public Counsel Services
Children and Family Law (CAFL) Division**

44 Bromfield Street | Boston, MA 02108
Tel: (617) 482-6212
www.publiccounsel.net

CAFL offices are also located in Brockton, Lowell, Pittsfield, Salem, Springfield, and Worcester.

Department of Elementary and Secondary Education

www.doe.mass.edu

Disability Law Center – Boston

11 Beacon Street, Suite 925 | Boston, MA 02108
Tel: (617) 723-8455 | Toll Free: (800) 872-9992
www.dlc-ma.org

Disability Law Center – Western Massachusetts

32 Industrial Drive East | Northampton, MA 01060
Tel: (413) 584-6337 | Toll Free: (800) 222-5619
www.dlc-ma.org

The EdLaw Project

44 Bromfield Street, 2nd Floor | Boston, MA 02108
Tel: (617) 988-8460
www.publiccounsel.net/edlaw/

The Federation for Children with Special Needs

The Schrafft’s Center | 529 Main Street, Suite 1M3
Boston, MA 02129
Tel: (617) 236-7210 | Toll Free in MA: (800) 331-0688
www.fcsn.org

**The Lawyers’ Committee for Civil Rights and
Economic Justice**

294 Washington Street, Suite 443 | Boston, MA 02108
Tel: (617) 482-1145
www.lawyerscom.org

Massachusetts Advocates for Children

25 Kingston Street, 2nd Floor | Boston, MA 02111
Tel: (617) 357-8431
www.massadvocates.org

Massachusetts Office of the Child Advocate

One Ashburton Place, 5th Floor | Boston, MA 02108
Tel: (617) 979-8360 | Toll Free: (866) 790-3690
www.mass.gov/childadvocate

Massachusetts State PTA

405 Waltham Street, Suite 147 | Lexington, MA 02421
Tel: (617) 861-7910
www.masspta.org

Mental Health Legal Advisors Committee

24 School Street, 8th Floor | Boston, MA 02108
Tel: (617) 338-2345 | Toll Free: (800) 342-9092
www.mhlac.org

**US Department of Education’s Office for Civil Rights –
Boston Office**

5 Post Office Square, 8th Floor | Boston, MA 02109-3921
Tel: (617) 289-0111 | TDD: (800) 877-8339
Email: OCR.Boston@ed.gov
http://www2.ed.gov/about/

**Parent Professional Advocacy League (PPAL) –
Statewide Office**

15 Court Square, Suite 660 | Boston, MA 02108
Toll Free: (866) 815-8122
www.ppal.net

**Parent Professional Advocacy League (PPAL) –
Central MA Office**

40 Southbridge Street, Suite 310 | Worcester, MA 01608
Tel: (508) 767-9725
www.ppal.net

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