

HOUSE No. 4131

The Commonwealth of Massachusetts

—
In the Year Two Thousand Twelve
—

An Act relative to student access to educational services and exclusion from school.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 37H of chapter 71 of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by striking out paragraph (e) and inserting in place thereof
3 the following sentences:- Any school district that expels a student under the provisions of this
4 section shall continue to provide educational services to the student during the period of
5 expulsion, as provided in section 21 of chapter 76. If the student moves to another district during
6 the period of expulsion, the new district of residence shall either admit the student to its schools
7 or provide educational services to the student under an education service plan, as provided in
8 section 21 of chapter 76.

9 SECTION 2. Section 37H½ of chapter 71 of the General Laws, as appearing in the 2010
10 Official Edition, is hereby amended by striking out the last paragraph and inserting in place
11 thereof the following sentences:- Any school district that expels a student under the provisions of
12 this section shall continue to provide educational services to the student during the period of
13 expulsion, as provided in section 21 of chapter 76. If the student moves to another district during
14 the period of expulsion, the new district of residence shall either admit the student to its schools
15 or provide educational services to the student under an education service plan, as provided in
16 section 21 of chapter 76.

17 SECTION 3. Chapter 71 of the General Laws is hereby amended by inserting after
18 section 37H½ the following new section:-

19 Section 37H¾. Other suspensions and expulsions.

20 This section regulates the suspension and expulsion of students enrolled in a public
21 school in the commonwealth who are not charged with a violation of paragraph (a) or (b) of
22 Section 37H or with a felony in accordance with Section 37H½.

23 (1) For any suspension or expulsion under this section, the principal or headmaster of a
24 school in which the student is enrolled, or his or her designee, shall provide, to the student and to
25 the parent or guardian of the student, a written notification of the charges and the reason for the
26 suspension or expulsion in English and in the primary language of the home. The student shall
27 receive the written notification and shall have the opportunity to meet with the principal or
28 headmaster, or his or her designee, to discuss the charges and reasons for the suspension or
29 expulsion prior to the suspension or expulsion taking effect. The principal or headmaster, or his
30 or her designee, shall also make reasonable efforts to include the parent or guardian of the
31 student in the meeting. If a decision is made to suspend or expel the student after the meeting, the
32 principal or headmaster, or his or her designee, shall update the notification of the reasons for the
33 suspension or expulsion to reflect the meeting with the student. If a student has been suspended
34 or expelled from school for more than 10 school days for a single infraction or for more than 10
35 school days cumulatively for multiple infractions in any school year, the student and the parent
36 or guardian of the student shall also receive, at the time of the suspension or expulsion decision,
37 written notification of a right to appeal and the process for appealing the suspension or expulsion
38 in English and in the primary language of the home; provided, however, that the suspension or
39 expulsion shall remain in effect prior to any appeal hearing. The principal or headmaster shall
40 notify the superintendent in writing, including, but not limited to, by electronic means, of any
41 out-of-school suspension imposed on a student enrolled in kindergarten through grade 3 prior to
42 such suspension taking effect. Such notification shall describe the student's alleged misconduct
43 and the reasons for suspending the student out-of-school. For the purposes of this section, the
44 term "out-of-school suspension" shall mean a disciplinary action imposed by school officials to
45 remove a student from participation in school activities for 1 day or more.

46 A student who has been suspended or expelled from school for more than 10 school days
47 for a single infraction or for more than 10 school days cumulatively for multiple infractions in
48 any school year shall have the right to appeal the suspension or expulsion to the superintendent.
49 The student or his or her parent or guardian shall notify the superintendent in writing of a request
50 for an appeal no later than 5 calendar days following the effective date of the suspension or
51 expulsion; provided that a student and his or her parent or guardian may request, and if so
52 requested, shall be granted an extension of up to 7 calendar days. The superintendent or his or
53 her designee shall hold a hearing with the student and his or her parent or guardian within 3
54 calendar days of the student's request for an appeal; provided that a student or his or her parent
55 or guardian may request and, if so requested, shall be granted an extension of up to 7 calendar
56 days; provided, further, that the superintendent, or his or her designee, may proceed with a
57 hearing without a parent or guardian if the superintendent, or his or her designee, makes a good
58 faith effort to include the parent or guardian. At the hearing, the student shall have the right to
59 present oral and written testimony, cross-examine witnesses, and shall have the right to counsel.
60 The superintendent shall render a decision on the appeal in writing within 5 calendar days of the
61 hearing. Such decision shall be the final decision of the city, town or regional school district with
62 regard to the suspension or expulsion.

63 (2) Under this section, no student shall be suspended or expelled from a school or school
64 district for a time period that exceeds 180 school days, beginning the first day the student is
65 removed from an assigned school building.

66 (3) Any principal, headmaster, superintendent, or or other person acting as a decision-
67 maker at a student meeting or hearing, when deciding the consequences for the student, shall
68 exercise discretion; consider ways to re-engage the student in the learning process; and avoid
69 using expulsion as a consequence until other remedies and consequences have been employed.

70 (4) Districts shall report to the department of elementary and secondary education the
71 specific reasons for all suspensions and expulsions, regardless of duration or type. The
72 department of elementary and secondary education shall use its existing data collection tools to
73 obtain this information from districts, and shall modify those tools, as necessary, to obtain the
74 information. On an annual basis, the department of elementary and secondary education shall
75 make district-level de-identified data and analysis, including the total number of days each
76 student is excluded during the school year, available to the public online in a machine readable
77 format.

78 Pursuant to regulations to be promulgated by the department, for each school that
79 suspends or expels a significant number of students for more than ten days cumulatively in a
80 school year, the commissioner shall investigate and, as appropriate, shall recommend models that
81 incorporate intermediary steps prior to the use of suspension or expulsion. The results of the
82 analysis shall be publicly reported at the school district level.

83 SECTION 4. Chapter 76 of the General Laws, as appearing in the 2010 Official Edition,
84 is hereby amended by inserting after section 20 the following new section:-

85 Section 21. Principals shall ensure that students who are suspended from school for 10 or
86 fewer consecutive days, whether in or out of school, shall have an opportunity to make academic
87 progress during the period of their suspension, to make up assignments and earn credits missed
88 including, but not limited to, homework, quizzes, exams, papers, and projects missed. Principals
89 shall develop a school-wide education service plan for all students who are expelled or
90 suspended from school for more than 10 consecutive school days, whether in or out of school.
91 Principals shall ensure these students have an opportunity to make academic progress during the
92 period of their suspension or expulsion, to make up assignments and earn credits missed,
93 including, but not limited to, homework, quizzes, exams, papers, and projects missed. Education
94 service plans may include, but are not limited to, tutoring, alternative placement, Saturday
95 school, and online or distance learning. In developing the education service plan, principals may
96 seek the cooperation or input of relevant health and human service, housing and nonprofit
97 agencies, and other service providers. Any school or school district that expels a student or
98 suspends a student for more than 10 consecutive school days shall provide the student and his or
99 her parent or guardian with a list of alternative educational services. Upon selection of an

100 alternative educational service by the student and his or her parent or guardian, the school or
101 school district shall facilitate and verify enrollment in said service. Students exempt from
102 attending school under section 1 of chapter 76 shall not be subject to this provision.

103 Instructional costs associated with implementing an education service plan pursuant to
104 this section shall be eligible for reimbursement under section 5A of chapter 71B, subject to
105 appropriation. Said reimbursements shall be in addition to amounts distributed pursuant to
106 chapter 70 and shall not be included in the calculation of base aid, as defined in said chapter 70,
107 for any subsequent fiscal year. Instructional costs eligible for reimbursement shall include only
108 those costs directly attributable to providing alternative educational services under an education
109 service plan, such as salary of educational personnel, salary of related services personnel, costs
110 for specialized books, materials, or equipment, tuition costs, if the student is receiving services
111 from other than the local public school, consultant costs if directly attributable to the student's
112 instructional program, and instructional costs of extended day or year services if such services
113 are a part of the education service plan. Such costs shall be prorated as appropriate to reflect
114 group activities or costs for part time services. Instructional costs shall not include transportation
115 costs, administrative or overhead costs, the costs of adapting classrooms or materials that are
116 used by more than one student, the costs of fringe benefits of personnel employed by the school
117 district, nor the costs associated with the development of the education service plan, or service
118 coordination for the student. Instructional costs associated with an education service plan shall be
119 reported to and approved by the department, and shall be reimbursed according to the formula
120 and procedures set forth in section 5A of chapter 71B.