

HOUSE No. 3435

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to help students stay in 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 WHEREAS: It was the intention of the General Court in 1993, by enacting the School
2 Reform Act, to improve education throughout the Commonwealth of Massachusetts for all
3 children;

4 WHEREAS: As part of this reform, the General Court enhanced the powers of school
5 principals over their schools, in part, by vesting principals with the power to exclude students for
6 misconduct that threatens the safety of other students and staff and is inconsistent with a safe
7 learning environment;

8 WHEREAS: While many school principals have used these increased powers judiciously,
9 others have been unduly influenced by community and other pressures to effectively impose a
10 presumption of long-term exclusion for many acts of misconduct that do not seriously threaten
11 student and staff safety and were not contemplated by the General Court in 1993 as appropriate
12 bases for excluding students from school;

13 WHEREAS: This tendency has caused a tremendous increase in the use of long-term
14 suspension and expulsion;

15 WHEREAS: Educational research strongly suggests that out-of-school exclusion is
16 linked to students dropping out of school;

17 WHEREAS: Students who drop out of school earn and accrue substantially less in wages,
18 pay less in taxes, and, left with fewer options, are more likely to engage in criminal activity than
19 high school graduates, taxing the resources of this Commonwealth;

20 WHEREAS: Suspension and expulsion are visited disproportionately upon students of
21 color, often for the same rule infractions that result in lesser discipline for non-minority students,
22 which tends to perpetuate the gap in achievement between these students as well as racial
23 stratification and inequities;

24 WHEREAS: For the reasons stated, it is a crucial matter of public policy to reduce the
25 incidence of school suspension and expulsion and limit school exclusion to those students who
26 truly represent a credible threat to school safety.

27 WHEREFORE: The General Court enacts the Act to Help Students Stay in School in
28 order to: require fair procedures and set clearer standards governing suspension and expulsion; to
29 prevent undue and unfair school exclusion; to prevent students from dropping out of school.

30 SECTION 1. Chapter 71 of the Massachusetts General Laws, as appearing in the 2006
31 Official Edition, is hereby amended by striking Section 37H and inserting in place thereof the
32 following section:—

33 Chapter 71: Section 37H. Policies relative to conduct of teachers or students; student
34 handbooks

35 Section 37H. The superintendent of every school district shall publish the district's
36 policies pertaining to the conduct of teachers and students. Said policies shall prohibit the use of
37 any tobacco products within the school buildings, the school facilities or on the school grounds
38 or on school buses by any individual, including school personnel. Copies of these policies shall
39 be provided to any person upon request and without cost by the principal of every school within
40 the district.

41 Each school district's policies pertaining to the conduct of students shall include the
42 following: disciplinary proceedings, including procedures assuring due process; standards and
43 procedures for suspension and expulsion of students; non-exclusionary alternatives to suspension
44 and expulsion; procedures pertaining to discipline of students with special needs; standards and
45 procedures to assure school building security and safety of students and school personnel; and
46 the disciplinary measures to be taken in cases involving the possession or use of illegal
47 substances or weapons, the use of force, vandalism, or violation of other student's civil rights.
48 Codes of discipline, as well as procedures used to develop such codes shall be filed with the
49 department of education for informational purposes only.

50 In each school building containing the grades nine to twelve, inclusive, the principal, in
51 consultation with the school council, shall prepare and distribute to each student a student
52 handbook setting forth the rules pertaining to the conduct of students. The school council shall
53 review the student handbook each spring to consider changes in disciplinary policy to take effect
54 in September of the following school year, but may consider policy changes at any time. The

55 annual review shall cover all areas of student conduct, including but not limited to those outlined
56 in this section.

57 Notwithstanding any general or special law to the contrary, all student handbooks shall
58 contain the following provisions:

59 (a) Consistent with 20 U.S.C §7151, the Gun-Free Schools Act, any student who is
60 determined to have brought a firearm to school, or to have possessed a firearm at school, shall be
61 expelled for one year, provided that the superintendent may modify this expulsion to a lesser
62 amount of time on a case-by-case basis, provided such modification is in writing, pursuant to the
63 Gun-Free Schools Act

64 (b) Any student who is found on school premises or at school-sponsored or school-related
65 events, including athletic games, knowingly in possession of a dangerous weapon, as set forth in
66 18 USC § 930(g)(2); or who is found to be trafficking in a controlled substance as defined in
67 G.L. c. 94C., including, but not limited to, marijuana, cocaine, and heroin, may be subject to
68 expulsion for a maximum of 90 school days from the school by the principal, so long as the
69 continued presence of the student in school is determined to have a substantial detrimental effect
70 on the general welfare of the school in accordance with §37H³/₄.

71 (c) Any student who intentionally commits an assault and battery upon a principal,
72 assistant principal, teacher, teacher's aide or other educational staff on school premises or at
73 school-sponsored or school-related events, including athletic games, may be subject to expulsion
74 for a maximum of 90 school days from the school by the principal, so long as the continued
75 presence of the student in school is determined to have a substantial detrimental effect on the
76 general welfare of the school in accordance with §37H³/₄.

77 (d) Any student who is charged with a violation of subsections (a), (b) or (c) that could
78 result in an exclusion from school for a period in excess of 10 school days, shall be notified in
79 writing, in the primary language of the home, of an opportunity for a hearing before the principal
80 in accordance with § 37H¾.

81 (e) The student shall have the right to appeal the exclusion to the superintendent. The
82 student shall notify the superintendent in writing of his request for an appeal no later than 30
83 calendar days following the effective date of the exclusion. The superintendent shall hold a
84 hearing with the student and the student's parent or guardian within 5 calendar days of the
85 student's request for an appeal, in accordance with § 37H¾, may overturn, alter or amend the
86 prior decision, and shall render a decision on the appeal within 5 calendar days of the hearing.
87 Such decision shall be the final decision of the school district with regard to the exclusion.

88 (f) When a student is expelled from a school district under the provisions of this section,
89 other school districts within the commonwealth may review the previous expulsion decision
90 under § 37H¾(5), shall consider the factors set forth in § 37H¾(4), and may exclude the student
91 for the remainder of the period of expulsion, not to exceed 90 school days, if the superintendent
92 of the other school district determines that the presence of the student in school would have a
93 substantial detrimental effect on the general welfare of the school if admitted to the other district.

94 SECTION 1. Chapter 71 of the Massachusetts General Laws, as appearing in the 2006
95 Official Edition, is hereby amended by striking Section 37H½ and inserting in place thereof the
96 following section:—

97 Chapter 71: Section 37H½. Felony complaint or conviction of student; suspension;
98 expulsion; right to appeal

99 Section 37H½. Notwithstanding the provisions of section eighty-four and sections sixteen
100 and seventeen of chapter seventy-six:

101 (1) Upon a court’s issuance of a criminal complaint charging a student with a felony or
102 upon the issuance of a felony delinquency complaint against a student: involving the use of or
103 attempt to use violence towards a person or involving the use of a dangerous weapon as set forth
104 in G.L. c. 269, §§ (a) – (c); a sexual assault, as defined in G.L. c. 11, § 72K; or trafficking in a
105 controlled substance as defined in G.L. c. 94C, the principal of a school in which the student is
106 enrolled shall consider non-exclusionary alternatives to suspension and expulsion but may
107 suspend such student if such principal, in accordance with § 37H¾, determines that the student's
108 continued presence in school would have a substantial detrimental effect on the general welfare
109 of the school, provided however that no suspension shall extend beyond the date upon which the
110 court issues a disposition on the felony or felony delinquency charge, including a continuance
111 without a finding or general continuance, or a maximum of 90 school days, whichever comes
112 sooner.

113 The student shall have the right to appeal the suspension to the superintendent. The
114 student shall notify the superintendent in writing of his request for an appeal no later than 30
115 calendar days following the effective date of the suspension. The superintendent shall hold a
116 hearing with the student and the student's parent or guardian within 5 calendar days of the
117 student's request for an appeal, in accordance with § 37H¾, may overturn, alter or amend the
118 prior decision, and shall render a decision on the appeal within 5 calendar days of the hearing.
119 Such decision shall be the final decision of the school district with regard to the suspension.

120 (2) Upon a student being convicted or found delinquent of a felony or felony delinquency
121 involving the use of or attempt to use violence towards a person or involving the use of a
122 dangerous weapon as set forth in 18 USC § 930(g)(2); a sexual assault as defined in G.L. c. 11,
123 §72K; or trafficking in a controlled substance as defined in G.L. c. 94C, excluding a continuance
124 without a finding, the principal of a school in which the student is enrolled shall consider non-
125 exclusionary alternatives to suspension and expulsion and may, in accordance with § 37H³/₄,
126 expel said student for a maximum of 90 school days if such principal determines that the
127 student's continued presence in school would have a substantial detrimental effect on the general
128 welfare of the school.

129 (3) The student shall have the right to appeal the expulsion to the superintendent. The
130 student shall notify the superintendent, in writing, of his request for an appeal no later than 30
131 calendar days following the effective date of the expulsion. The superintendent shall hold a
132 hearing with the student and the student's parent or guardian in accordance with § 37H³/₄ and
133 may overturn, alter or amend the prior decision. Such decision shall be the final decision of the
134 school district with regard to the expulsion.

135 (3) When a student is expelled under the provisions of this section, other school districts
136 within the commonwealth may review the previous expulsion decision under § 37H³/₄(5), shall
137 consider the factors set forth in § 37H³/₄(4) and may exclude the student for the remainder of the
138 period of expulsion, not to exceed 90 school days, if the superintendent of the other district
139 determines that the presence of the student in school would have a substantial detrimental effect
140 on the general welfare of the school if admitted to the other district.

141 (4) Any student who is subject to exclusion under subsection (1) or (2) that could result in
142 an exclusion from school for a period in excess of 10 school days, shall be notified in writing, in
143 the primary language of the home, of an opportunity for a hearing before the principal in
144 accordance with § 37H³/₄.

145 (5) Nothing under this section shall be construed to permit an exclusion in excess of 90
146 school days.

147 SECTION 1. Chapter 71 of the Massachusetts General Laws, as appearing in the 2006
148 Official Edition, is hereby amended by adding the following section:—

149 Section 37H³/₄ (1) No student may be suspended or expelled for a period in excess of 10
150 school days for any single infraction, or for more than 10 school days for multiple infractions in
151 any school year, under §§ 37H and 37H ¹/₂, or G.L. c. 76, § 17, or any other source of law or state
152 and local policy or under any school or district handbook, unless the student's presence in school
153 is determined by the applicable authority to present a substantial detrimental effect to the general
154 welfare of the school as defined in subsections (4) and (5) of this section, in accordance with the
155 procedures set forth in subsection (3) of this section. Nothing in this section shall be construed to
156 alter existing procedural rights governing exclusion for 10 school days or less.

157 (2) No student may be suspended or expelled under subsection (1) of this section unless
158 first provided written notice, in the primary language of the home, and a hearing for the purpose
159 of determining whether exclusion of the student from school is supported by clear and
160 convincing evidence that the student engaged in conduct subjecting the student to exclusion
161 under subsection (1) and that suspension or expulsion is warranted under subsections (4) and (5)
162 of this section.

163 (3) Hearings shall be held within 10 calendar days of any pre-hearing decision to suspend
164 or expel, subject to subsection (5) of this subsection, provided however that the principal or
165 superintendent may impose the exclusion prior to hearing by making a preliminary
166 determination, set forth fully in writing, that there is substantial evidence that the student will
167 engage in further conduct or incite others to conduct that is violent or seriously threatens
168 violence if not immediately barred from school premises, in which case, subject to subsection (5)
169 of this section, hearing must be held within 5 calendar days of the infraction. Notice of hearing
170 shall apprise students and parents of their rights at hearing, including:

171 that the student may have representation or legal counsel;

172 that the hearing will be memorialized by reliable means of audio or video/audio
173 recording;

174 that the student shall be afforded the opportunity to present evidence and witnesses, as
175 well as to cross-examine adverse witnesses, provided that testimony may be limited if the
176 presiding officer at hearing specifically rules in writing, with reasons set forth in detail, that, the
177 presence of a witness would endanger the witness' physical safety, in which case, the witness
178 may testify by oral recording or in writing, provided that any such testimony is sworn under the
179 pains and penalties of perjury;

180 a description of any evidence, inculpatory or exculpatory, of which the school district is
181 aware bearing on the question of whether the student committed the alleged violation or whether
182 the student's continued presence in school may have a substantial detrimental effect on the
183 general welfare of the school, as set forth in this section, including the specific evidence that the
184 school district will rely on, and copies of any documentary evidence;

185 that the student may request and shall be afforded a reasonable extension of time from the
186 scheduled date of hearing in order to obtain representation or legal counsel or to otherwise
187 prepare for hearing;

188 that a qualified interpreter will be provided, upon request, for any student, parent, or
189 guardian whose first language is not English;

190 a list of available providers of free and low-cost legal assistance for students unable to
191 afford representation or legal counsel;

192 notice that any statement of a student may be employed in the course of proceedings to
193 determine the student's guilt or innocence of any adult criminal or delinquency charge. Such
194 notice shall be read to the student at the beginning of any hearing under this section.

195 (4) No student's presence in school shall be determined to present a "substantial
196 detrimental effect" to the general welfare of the school under any state or local policy or school
197 or district handbook or §§ 37H and 37H½, unless the principal and, upon appeal from a
198 principal's decision, the superintendent, or a school committee acting under G.L. c. 76, § 17, in
199 accordance with subsection (2) of this section, determines that clear and convincing evidence
200 supports all the following conclusions:

201 that the student knowingly or intentionally engaged in one or more acts of misconduct
202 satisfying the criteria as set forth in §§ 37H and 37H½, or, if the school district is proceeding
203 under G.L. c. 76, § 17, violated school rules with violent conduct of comparable severity;

204 that there is a substantial likelihood that the student will engage in further conduct or
205 incite others to conduct that is violent or seriously threatens violence so as to undermine the

206 personal security that students and school staff need to learn and teach, or that it is likely that the
207 student will use school premises to engage in an illegal business in controlled substances and
208 promote illegal drug use;

209 that there is a clear nexus between the underlying misconduct and the general welfare of
210 the school.

211 (5) Before determining that suspension or expulsion of a student eligible for exclusion
212 under subsection (4) of this section is warranted, consideration shall be given to the following
213 factors:

214 (a) whether no-exclusionary alternatives to suspension and expulsion are appropriate;

215 (b) whether the incident occurred in or within close proximity of the school;

216 (c) whether other students from the school were involved;

217 (d) whether the conduct was egregious and involved violence or threats of violence
218 causing or capable of causing serious bodily harm;

219 (e) the student's relative culpability given his or her chronological and developmental
220 age and ability to understand the consequences of the misconduct;

221 (f) whether the student has been identified or been referred for evaluation for special
222 needs;

223 (g) whether it was the student's intention to cause or create fear of serious bodily
224 harm;

225 (h) whether the student was the aggressor in any incident or acted out of a perceived
226 defensive necessity, even if the student's response to this perception did not meet the legal
227 definition of self-defense;

228 (i) whether any violent incident involving physical conflict involved a weapon and/or
229 more than two students as active participants (not including any student(s) intervening to cause
230 the conflict to cease);

231 (j) whether the incident involved the use, as opposed to the possession, of a
232 dangerous weapon, as set forth in G.L. c. 269, §§ (a) – (c), and whether the use or possession
233 was or was intended to be defensive or offensive;

234 (k) whether the student's prior school history suggests that similar conduct in the
235 future is unlikely;

236 (l) whether other circumstances exist that suggests that similar conduct in the future
237 is unlikely;

238 (m) with respect to drug infractions, the relative seriousness of the controlled
239 substance involved and the quantity found in the student's possession;

240 (n) whether any genuine threat posed by the student may be ameliorated by transfer
241 of the student to another school or program within the district or to another district in accordance
242 with G.L. c. 76, §§ 12, 12A, and 12B.

243 (6) Any principal who suspends or expels a student under state or local policy or a school
244 or district handbook or §§ 37H and 37H½, and any superintendent who upholds such a
245 determination, any school committee under G.L. c. 76, § 17, or any other person who presides

246 over a suspension or expulsion hearing as described in subsection (1) of this section, must issue a
247 written decision within 10 days of any hearing, or 5 days if the student is out of school pending
248 the hearing decision, evidencing consideration of the requisite factors set forth in subsections (4)
249 and (5) of this section, respectively, as well as any other relevant matter. The decision shall not
250 be in a formulaic or check listed format, but shall be a detailed narrative reflecting an analysis
251 specific to the student that fully explains why clear and convincing evidence supports the
252 conclusion that the student is guilty of any school infraction as well as the principal or
253 superintendent's reasoning in concluding that the student's conduct was so threatening that the
254 student's continued presence in school would have a substantial detrimental effect on the general
255 welfare of the school, including a description of all relevant evidence and the specific nexus
256 between the evidence and the conclusions. Any decision shall notify the student of any
257 applicable appeal rights and relevant timelines. Any discipline determined at hearing shall
258 remain in effect prior to any appeal decision by the superintendent or commissioner of
259 elementary and secondary education.

260 (7) A student who has been excluded for a period in excess of 10 school days in one
261 school year may appeal the last applicable decision to the commissioner of elementary and
262 secondary education within 30 calendar days of the school district's final decision. Upon being
263 served with a notice of appeal, the school district shall provide the commissioner and the student
264 with a complete copy of the hearing record within 5 days of its receipt of the notice of appeal.
265 All written submissions by the student must be filed by regular mail with the commissioner
266 within 20 calendar days of the student's receipt of the complete copy of the hearing record. The
267 commissioner shall forward a copy of the student's submission to the school principal or school
268 district within 3 days of receipt. All submissions by the school district must be submitted and

269 served on the student within 10 calendar days of its receipt of the written submissions by the
270 student. The decision of the school district may be implemented during the appeal to the
271 commissioner.

272 (8) In an appeal under this section, the commissioner may affirm the decision of the
273 school district or may reverse or modify the decision if the rights of the student have been
274 prejudiced because the administrative findings, inferences, conclusions or decisions are:

- 275 (a) in violation of constitutional provisions;
- 276 (b) in excess of the statutory authority or jurisdiction of the school district;
- 277 (c) made upon unlawful procedure;
- 278 (d) affected by other error of law;
- 279 (e) unsupported by substantial evidence in view of the entire record submitted;
- 280 (f) arbitrary or capricious; or,
- 281 (g) the disposition, based on the facts determined:
 - 282 i. does not adequately reflect consideration of the factors listed in subsection (5) of
283 this section; or,
 - 284 ii. is excessive or unreasonable, and is unnecessary to protect the safety of other
285 students or school staff.

286 (9) The commissioner shall make a final decision based upon the record. The
287 commissioner shall issue a decision within 20 calendar days of receiving the entire record and
288 the parties' written submission on appeal.

289 (10) Nothing in this section shall limit any other available source of review of a decision
290 of the principal, superintendent, school committee, or commissioner.

291 (11) The Commissioner shall, consistent with this section, devise and issue detailed
292 procedural rules governing the conduct of appeals required under this section, including
293 informal appeal processes designed to reasonably address practical problems and prevent
294 suspension and expulsion. Explanatory comments accompanying rules shall be designed to
295 explain due process requirements and the educational importance of procedural fairness, as well
296 as to promote fairness and uniformity between schools and districts. The Commissioner shall
297 devise a simple appeal form to facilitate students' use of procedures set forth herein.

298 (12) To the extent that any school district chooses to provide alternative education to any
299 student excluded from school in accordance with §§ 37H and 37H½, G.L. c. 76, §17, or any
300 other source of authority it shall do so in a manner consistent with the academic standards and
301 curriculum frameworks established for all students under G.L. c. 69, §§ 1D and 1E.

302 (13) Each superintendent shall notify the commissioner of any disciplinary exclusion of
303 any student from school and shall report to the commissioner the opportunities for alternative
304 education provided to the student. The commissioner shall file a report on an annual basis with
305 the joint committee on education, arts and humanities concerning the number of disciplinary
306 exclusions in public schools, the duration of each exclusion, the reason for each exclusion, the
307 alternative education options provided to students and the number of students re-admitted under

308 the provisions of this section. Each superintendent shall ensure that the reporting of data on
309 disciplinary exclusions shall be made on an annual basis to the state and to the public. To ensure
310 consistency with federal reporting requirements, as part of the annual public reports required by
311 this Act, both the superintendent and commissioner shall collect and report publicly the
312 disaggregated school discipline data at the state and district level for all students, including those
313 not identified as having a disability, by all the categories currently required by 20 U.S.C. § 1418.

314 SECTION 1. Chapter 76 of the Massachusetts General Laws, as appearing in the 2006
315 Official Edition, is hereby amended by striking Section 17 and inserting in place thereof the
316 following section:—

317 Chapter 76: Section 17. Hearing prerequisite to exclusion

318 Section 17. A school committee shall not exclude a pupil from the public schools for any
319 period in excess of 90 school days and may not exclude a pupil for alleged misconduct without
320 first giving him and his parent or guardian an opportunity to be heard in accordance with G.L. c.
321 71, Section 37H³/₄.