

**HOUSE . . . . . No. 178**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Alice K. Wolf*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Alice K. Wolf</i>	<i>25th Middlesex</i>	<i>5/29/2012</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/24/2011</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	<i>2/4/2011</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>1/28/2011</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>	<i>1/27/2011</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>1/28/2011</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>	<i>2/1/2011</i>
<i>William N. Brownsberger</i>		<i>2/2/2011</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>	<i>2/2/2011</i>
<i>Patricia D. Jehlen</i>		<i>2/3/2011</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/3/2011</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>2/4/2011</i>
<i>Steven A. Tolman</i>		<i>2/3/2011</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>2/4/2011</i>

**HOUSE . . . . . No. 178**

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By Ms. Wolf of Cambridge, a petition (accompanied by bill, House, No. 178) of Alice K. Wolf and others relative to long-term suspensions and expulsions of school students. Education.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 3435 OF 2009-2010.]

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Eleven**  
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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 Chapter 71 of the General Laws is hereby amended by inserting after section 37H ½ the  
2 following section:-

3 Section 37H ¾. (1) In this Act, the term “excluded” shall include “suspended” and  
4 “expelled.”

5 (2) A student shall not be excluded from school for a period of more than ten school days  
6 for any single infraction or for more than ten school days for multiple infractions in any school  
7 year unless the authorized official, in accordance with the procedures set forth in subsection (3)  
8 of this section, makes a determination that the student’s presence in school would have a  
9 substantial detrimental effect on the general welfare of the school, as defined in subsection (5).

10 Nothing in this section shall be construed to alter the procedures and procedural rights governing  
11 exclusion for ten school days or a lesser period.

12 (3) A student shall not be excluded under subsection (2) unless the school has provided  
13 the student with prior written notice of the student's alleged misconduct, as described in  
14 subsection (4), in the primary language of the home, and the school has conducted a hearing to  
15 determine whether the student's exclusion from school is supported by the preponderance of the  
16 evidence at that hearing that the student engaged in the alleged misconduct and that exclusion is  
17 warranted under subsection (5).

18 (4) The school shall conduct a hearing within ten calendar days of any pre-hearing  
19 decision to exclude a student under subsection (2). The principal or superintendent may exclude  
20 a student prior to hearing by making a preliminary written determination that there is substantial  
21 evidence, as described in the written determination, that the student will engage in further  
22 misconduct, or incite others to misconduct, which is violent or which threatens violence if the  
23 student is not immediately barred from school premises; provided that, when the school has  
24 ordered an immediate exclusion of a student, a hearing must be held within five days of the  
25 alleged misconduct. In all cases, the school shall provide written notice at least three days prior  
26 to the hearing, advising the student and the student's parents or guardian of the date and time of  
27 the hearing, of the procedures for the conduct of the hearing, and of their rights at the hearing,  
28 including:

29 (a) that the student may be represented by a lawyer or an advocate;

30 (b) that an impartial building administrator will preside at the hearing;

31 (c) that the school will provide equipment for making an audio recording of the  
32 hearing and that the student may also bring recording equipment;

33 (d) that the student will have the opportunity to present evidence and witnesses and to  
34 cross-examine adverse witnesses; provided that testimony may be limited if the presiding officer  
35 makes a written finding, stating the specific reasons that the presence of a witness would  
36 endanger the witness' physical safety, in which case, the witness may testify by oral recording or  
37 in writing;

38 (e) a description of any evidence of which the school is aware, including copies of any  
39 written statements and reports on which the school may rely, concerning whether the student  
40 committed the alleged misconduct and whether the student's continued presence in school would  
41 have a substantial detrimental effect on the general welfare of the school;

42 (f) that the student may request and shall be given a reasonable extension of time from  
43 the scheduled date of hearing in order to obtain representation or legal counsel or to otherwise  
44 prepare for the hearing;

45 (g) that a qualified interpreter will be provided, upon request, for any student, parent,  
46 or guardian whose first language is not English;

47 (h) a list of available free and low-cost legal services for students who cannot afford to  
48 retain a lawyer or representation;

49 (i) notice that statements at the hearing may be used against the student in  
50 investigative or criminal or delinquency proceedings. The presiding school official shall restate  
51 this notice by reading it to the student at the beginning of the hearing.

52 (5) A student's presence in school shall not be determined to present a substantial  
53 detrimental effect on the general welfare of the school unless the principal and, upon appeal from  
54 a principal's decision, the superintendent, or a school committee acting under section 17 of  
55 chapter 76, in accordance with subsection (3) of this section, determines that the preponderance  
56 of the evidence supports the conclusions:

57 (a) that the student engaged in one or more acts of intentional misconduct alleged in  
58 the prior written notice satisfying the criteria as set forth in sections 37H and 37H ½; or, if the  
59 school district is proceeding under section 17 of chapter 76, that the student violated school  
60 rules by engaging in misconduct of comparable severity;

61 (b) that the student's misconduct, because of its severity or a pattern of similar  
62 misconduct, indicates that if the student remains in school, the student is likely to engage in  
63 further misconduct threatening the institutional and personal security necessary for the learning  
64 and teaching environment, or that the student is likely to engage in illegal dealings in controlled  
65 substances and promote illegal drug use on school premises; and

66 (c) that there is a clear nexus between the student's misconduct and the general  
67 welfare of the school.

68 (6) A principal who excludes a student or a superintendent who upholds such a  
69 determination, a school committee which acts under section 17 of chapter 76, and a person who  
70 presides over an exclusion hearing shall issue a written decision within ten calendar days of any  
71 hearing or of a decision upholding a hearing officer's determination, or five calendar days if the  
72 student is excluded prior to the hearing decision. A written decision shall demonstrate that the  
73 standards required by subsection (5) and other relevant matters have been considered and

74 evaluated. The written decision shall not be only a check-listed format, but shall be a narrative  
75 reflecting an individualized analysis, specific to the student, that sets out whether and how the  
76 preponderance of the evidence supports the conclusion that the student should be excluded based  
77 on the requirements of subsection (5). The decision shall notify the student of alternative  
78 education options offered to the student. The decision shall notify the student of any rights to  
79 appeal and state the schedule and deadlines for submissions to the identified appellate body.  
80 Any discipline determined after consideration of evidence at a hearing shall remain in effect until  
81 such time that the superintendent makes a decision on a student's appeal.

82 (7) Pursuant to section 7151 of Title 20 of the United States Code, a student who is  
83 determined to have brought a firearm to school, or to have possessed a firearm at school, shall be  
84 excluded for one year, provided that the superintendent may modify this exclusion to a lesser  
85 period, on an individualized basis, provided such modification is in writing, and is consistent  
86 with the requirements of federal law. A student who is determined to have committed any other  
87 infraction under sections 37H or 37H ½ or under section 17 of chapter 76, or under any other  
88 provision of law or stated policy or regulation or provision of a school or district handbook, shall  
89 not be excluded for more than one year.

90 SECTION 2. Chapter 76 of the General Laws is hereby amended by striking out section  
91 17, as appearing in the 2008 Official Edition, and inserting in place thereof the following  
92 section:-

93 Section 17. A school committee shall not exclude a student from public schools for any  
94 period in excess of one year and shall not exclude a student for alleged misconduct without first

95 providing the student and the student's parents or guardian the procedures and hearing in  
96 accordance with section 37H ¾ of chapter 71.

97 SECTION 3. Said chapter 76 is hereby further amended by inserting after section 20 the  
98 following section:-

99 Section 21. Principals shall ensure that students who are suspended from school for ten or  
100 fewer consecutive school days, whether in or out of school, shall have an opportunity to make  
101 academic progress during the period of their exclusion, to make up assignments and earn credits  
102 missed including, but not limited to, homework, quizzes, exams, papers, and projects missed.  
103 Pursuant to regulations to be promulgated by the department of elementary and secondary  
104 education, principals shall develop a school-wide education service plan for all students who are  
105 excluded from school for more than ten consecutive school days. Principals shall ensure these  
106 students have an opportunity to receive instruction, make academic progress, make up  
107 assignments and earn credits missed, including but not limited to, homework, quizzes, exams,  
108 papers, and projects missed. Education service plans may include, but are not limited to,  
109 tutoring, alternative placement, Saturday school, and online or distance learning. In developing  
110 the education service plan, principals may seek the cooperation or input of relevant health and  
111 human service, housing and nonprofit agencies, and other service providers.