

Keeping Kids in School and Out of the Pipeline:

Ensuring Due Process and Chapter 222

Thomas Mela, Esq.

Senior Project Director

Amanda Klemas, Esq.

Staff Attorney

Massachusetts Advocates for Children



* School Discipline in Massachusetts

1. Codes of Student Conduct
2. Manifestation Determination Reviews
3. Chapter 222 of the Acts of 2012

* Codes of Student Conduct

- “ Every school district and every charter school in the Commonwealth is required to publish its policies pertaining to the conduct of its students and teachers
- “ Every public high school (including charter schools) must also publish a student handbook setting forth rules pertaining to student conduct
 - ❖ Annual spring review by school council

* Codes of Student Conduct

Due Process:

- ” U.S. Constitution requires that -
 - ❖ For suspensions 10 days or less
 - School must provide oral or written notice of charges; and
 - If student denies the charges, school must provide explanation of the evidence and an opportunity for the student to present his side of the story

* Codes of Student Conduct

- ❖ For suspensions more than 10 days and expulsions
 - School may be required to provide “more formal procedures”

* Codes of Student Conduct

Substantive Requirements:

- ” Prohibit bullying

- ” The three serious offenses
 - ❖ Students may be subject to **expulsion** by the principal for offenses involving -

- Possession of a dangerous weapon
- Possession of a controlled substance
- Assault on school staff

* Codes of Student Conduct

Substantive Requirements:

” Felony Charges and Convictions (G.L. c. 71, § 37H½)

Felony charge



Student's continued presence would have a **substantial detrimental impact** on school's general welfare



**Indefinite
Suspension**

Felony conviction
(or guilty plea)



Student's continued presence would have a **substantial detrimental impact** on school's general welfare



Expulsion

* Codes of Student Conduct

Procedural Requirements:

The three serious offenses

School-level Hearing

- ❖ Written notice
- ❖ Hearing before principal
- ❖ Right to representation
- ❖ Opportunity to present evidence and witnesses

* Codes of Student Conduct

Procedural Requirements:

The three serious offenses

” Superintendent’s Appeal

- ❖ Student expelled by principal
- ❖ Hearing before superintendent
- ❖ 10 days from date of expulsion to file appeal
- ❖ Right to representation
- ❖ Appeal not solely a factual determination of whether student committed the violation

* Codes of Student Conduct

Procedural Requirements:

Felony Charges and Convictions

” Notice

- ❖ Written notification of the charges and reasons for suspension/expulsion
- ❖ Written notification of right to appeal to the superintendent

* Codes of Student Conduct

Procedural Requirements:

Felony Charges and Convictions

“ Superintendent’s Appeal

- ❖ Hearing before superintendent
- ❖ 5 days from date of suspension/expulsion to file appeal
- ❖ Hearing within 3 days of appeal
- ❖ Decision within 5 days of hearing
- ❖ Right to representation
- ❖ Right to present oral and written testimony

* Codes of Student Conduct

Continuing Education:

- “ *Current Massachusetts law does not require any district or charter school to provide educational services to a general education student who has been expelled from school*
- “ **Beginning July 2014, districts and charter schools will be required to provide educational services to all students excluded from school, pursuant to Ch. 222 of the Acts of 2012**

* Codes of Student Conduct

Approved Private Special Education Schools

Suspensions

- “ Every Ch. 766 approved private school is required to provide written policy on suspension
- “ Procedural Requirements:
 - ❖ Immediate notice of suspension to parents or DCF and school district
 - ❖ Written statement explaining reasons for suspension to parents or DCF and school district within 24 hours

* Codes of Student Conduct

Approved Private Special Education Schools

Suspensions

“ Once a student is suspended for 3 consecutive school days or 5 non-consecutive schools days in a school year, private school, parents, and district must explore program modifications within the school to prevent “total suspension”

* Codes of Student Conduct

Approved Private Special Education Schools

Termination

- “ Private school maintains the student’s placement until the school district can find an alternative placement
- “ Team meeting to develop termination plan

* Codes of Student Conduct

Best Practices for Students with Disabilities

- “ IEP Team discusses the code of conduct and determines whether the student is required to follow the code
- “ *Example* - Boston Public Schools IEP form

* Manifestation Determinations

- “ Federal Individuals with Disabilities Education Act (IDEA) guarantees the right of students with disabilities to receive a Free Appropriate Public Education (“FAPE”)
- “ IDEA contains procedural protections for students with disabilities against school discipline that results in a “change in placement” in order to ensure students are continuing to receive FAPE

* Manifestation Determinations

“Change in Placement”

- ” Student receiving special education and/or related services excluded from school
 - ❖ For more than 10 days **consecutively** or
 - ❖ For more than 10 days **cumulatively** in a school year (Massachusetts)

* Manifestation Determinations

Manifestation Determination Review Meeting

- “ Meeting within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct

* Manifestation Determinations

Manifestation Determination Review Meeting

” Participants -

- ❖ School district (i.e., Team chairperson)
- ❖ Parent
- ❖ Relevant members of the IEP Team

” Participants review all relevant information in the student’s file -

- ❖ IEP
- ❖ Teacher observations
- ❖ Relevant information provided by parents

* Manifestation Determinations

Manifestation Determination Review Meeting

“ Participants determine whether -

a) Conduct in question was **caused by** or had a **direct and substantial relationship** to the disability; or

b) Conduct in question was the direct result of the district’s **failure to implement the IEP**

“ If a) or b), conduct is a “manifestation” of the student’s disability

* Manifestation Determinations

Manifestation Determination Review Meeting

” If the conduct was a “manifestation” of the student’s disability -

- ❖ Student can return to school
- ❖ District conducts or updates functional behavioral assessment (FBA) and implements or modifies a behavioral intervention plan (BIP)

* Manifestation Determinations

Manifestation Determination Review Meeting

“ If the conduct was not a “manifestation” of the student’s disability -

- ❖ School can exclude student as it would exclude students without disabilities; however
- ❖ Student entitled to continue receiving educational services and to make progress towards IEP goals

* Manifestation Determinations

Special Circumstances

- ” Student can be removed to an interim alternative educational setting (IAES) for up to 45 school days, regardless of whether the conduct was a manifestation of the student’s disability if -
- ❖ Student carries or possesses a weapon
 - ❖ Student knowingly possesses, uses, sells or solicits the sale of drugs
 - ❖ Student inflicts serious bodily injury

* Manifestation Determinations

Determination of Placement

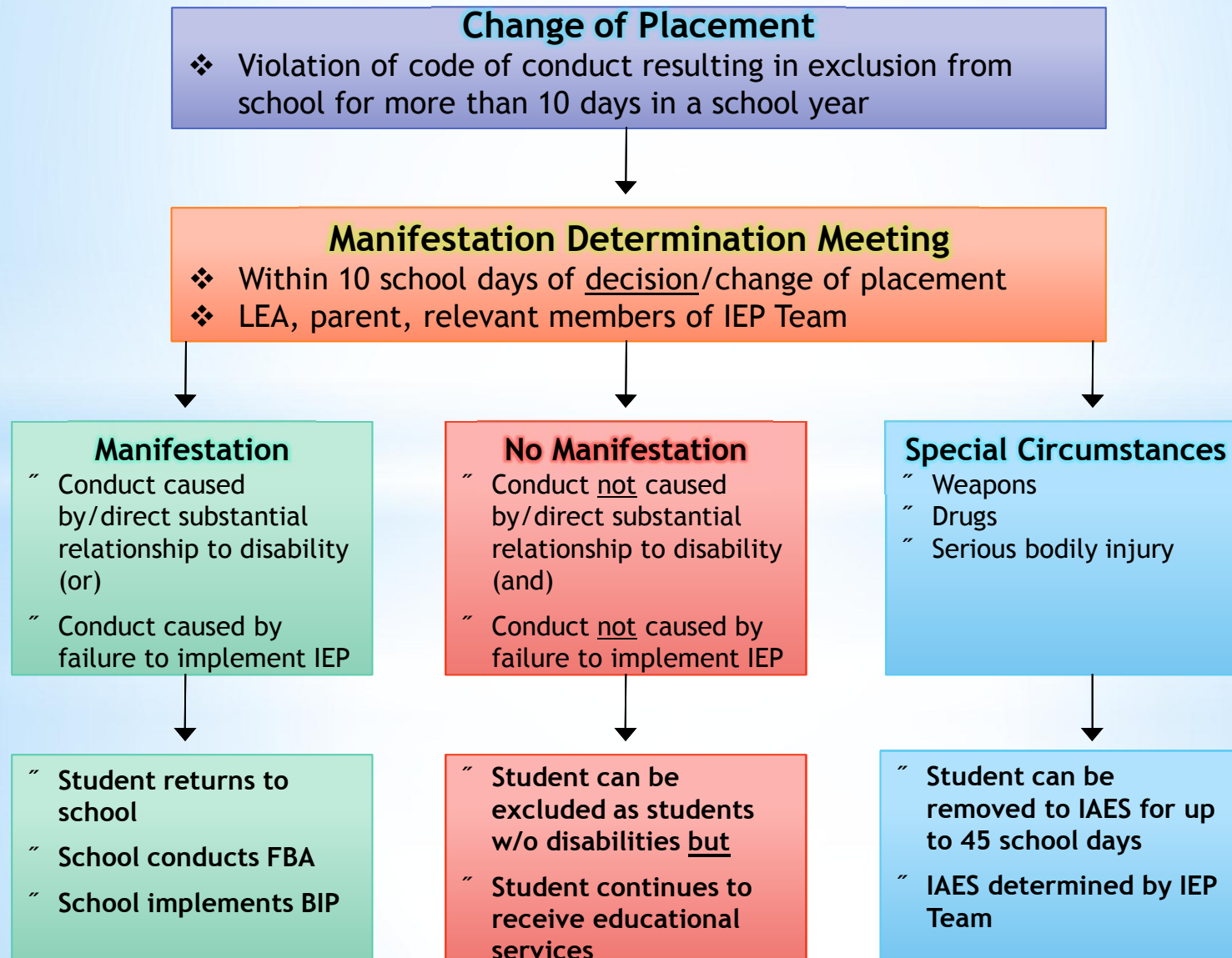
“ Interim Alternative Educational Setting (IAES) is determined by the student’s IEP Team

Appeals

“ Manifestation determinations and placement decisions are appealable to the Bureau of Special Education Appeals

- ❖ Mediation
- ❖ Due Process Hearings

* Manifestation Determinations



* Chapter 222 of the Acts of 2012

- “ Massachusetts school discipline law passed in July 2012 and effective July 2014
- “ Applies to all public schools and charter schools

* Chapter 222 of the Acts of 2012

Regulations

- ” DESE required to issue regulations
 - ❖ Due process procedures
 - ❖ Data submission and follow-up
- ” Regulations timeline
 - ❖ December 2013 - DESE expected to issue draft regulations for public comment
 - ❖ April 2014 - DESE expected to issue final regulations

* Chapter 222 of the Acts of 2012

“ Alternatives to Exclusion

- ❖ Required for non-serious offenses

“ Limitation on Exclusion

- ❖ Required for non-serious offenses

“ Due process

- ❖ Required for non-serious offenses

“ Continuing educational services and progress

- ❖ Required for all exclusions

* Chapter 222 of the Acts of 2012

Alternatives to Exclusion

” When a student charged with violating the code of student conduct, the school shall

- ❖ Exercise discretion
- ❖ Consider ways to reengage the student in the learning process
- ❖ Avoid using expulsion as a consequence until other remedies and consequences have been employed

* Chapter 222 of the Acts of 2012

Alternatives to Exclusion

” Examples -

- ❖ Positive Behavioral Interventions and Supports (PBIS)
- ❖ Massachusetts Tiered Interventions and Supports (MTSS)
- ❖ Restorative Justice Practices
- ❖ Other school-based or district-based alternatives

* Chapter 222 of the Acts of 2012

Limitation on Exclusions

- “ Student can only be suspended or expelled for non-serious offenses from any school or school district up to 90 school days

* Chapter 222 of the Acts of 2012

Due Process

" School meeting

- ❖ Suspensions and expulsions of any duration
- ❖ Notice of charges and reason for suspension or expulsion
- ❖ Meeting with principal, student, and parent to discuss charges and reason for exclusion prior to exclusion taking effect
- ❖ Updated notice to reflect meeting

* Chapter 222 of the Acts of 2012

Due Process

” Superintendent Appeal

- ❖ Suspensions and expulsions more than 10 school days
 - Consecutively
 - Cumulatively in school year
- ❖ Written notice of right to appeal and appeals process

* Chapter 222 of the Acts of 2012

Due Process

” Superintendent Appeal

- ❖ File request in writing within 5 calendar days (w/ extension up to 7 calendar days, if requested)
- ❖ Hearing within 3 school days (w/ extension up to 7 calendar days, if requested)
- ❖ Decision in writing within 5 calendar days of the hearing

* Chapter 222 of the Acts of 2012

Due Process

” Superintendent Appeal

- ❖ At hearing, student has right to
 - Present oral and written testimony
 - Cross-examine witnesses
 - Right to counsel

* Chapter 222 of the Acts of 2012

Due Process

” Superintendent Appeals

❖ Superintendent required to -

- Exercise discretion
- Consider ways to reengage the student in the learning process
- Avoid using expulsion as a consequence until other remedies and consequences have been employed

* Chapter 222 of the Acts of 2012

Continuing Educational Services and Progress

- ” All students, regardless of the offense
- ” Suspensions up to 10 school days
 - ❖ Student has opportunity to make academic progress, make up assignments, and earn credits missed, including but not limited to, homework, quizzes, exams, papers, and projects missed

* Chapter 222 of the Acts of 2012

Continuing Educational Services and Progress

“ Suspensions more than 10 consecutive school days and expulsions

- ❖ Student has opportunity to make academic progress, make up assignments, and earn credits missed including but not limited to, homework, quizzes, exams, papers, and projects missed
- ❖ Student has right to alternative education

* Chapter 222 of the Acts of 2012

Continuing Educational Services and Progress

- ❖ School-wide educational service plan
 - Examples -
 - Tutoring
 - Alternative placement
 - Saturday School
 - Online distance learning
- ❖ School provides parent with list of alternative educational services
- ❖ Student and parent select alternative educational service

* Chapter 222 of the Acts of 2012

Suspension for K-3 Students

- “ Principal must notify superintendent in writing prior to the suspension taking effect

* Chapter 222 of the Acts of 2012

Additional Requirements

- “ All notices are required to be sent in English and in the primary language spoken in the home of the student
- “ School must document reasonable efforts to include parent/guardian in meeting and superintendent must make good faith effort to include parent/guardian at appeal hearing

* Chapter 222 of the Acts of 2012

Boston Public Schools

” Early adopter of the new law

” 2013 BPS Code of Student Conduct:

http://www.bostonpublicschools.org/files/2013-09-05_code_of_conduct_final.pdf

Summary of changes:

http://www.bostonpublicschools.org/files/2013-09-04_code_of_conduct_summary_v5.pdf

* **Additional Information**

Massachusetts Advocates for Children, Ch. 222

Summary:

<http://massadvocates.org/documents/SummaryofChapter222oftheActsof2012.pdf>

Children's Law Center of Massachusetts, Quick Reference Guide on School Discipline:

http://www.clcm.org/quick_reference_guide-discipline-2013-5-20.pdf

Massachusetts Appleseed Center for Law and Justice, When My Child is Disciplined at School:

http://www.massappleseed.org/pdfs/parent_guide_school_discipline.pdf



* Additional Information

Massachusetts Advocates for Children

617-357-8431 x 224

www.massadvocates.org

