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

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:**

Å 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:**

Å *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.*

Å *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 school 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

Å 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

Å 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

Å 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**

**Change of Placement**
- Violation of code of conduct resulting in exclusion from school for more than 10 days in a school year

**Manifestation Determination Meeting**
- Within 10 school days of decision/change of placement
- LEA, parent, relevant members of IEP Team

**Manifestation**
- Conduct caused by/direct substantial relationship to disability (or)
- Conduct caused by failure to implement IEP

**No Manifestation**
- Conduct not caused by/direct substantial relationship to disability (and)
- Conduct not caused by failure to implement IEP

**Special Circumstances**
- Weapons
- Drugs
- Serious bodily injury

- Student returns to school
- Student can be excluded as students w/o disabilities but
  - School conducts FBA
  - School implements BIP

- Student can be removed to IAES for up to 45 school days
- IAES determined by IEP Team
*Chapter 222 of the Acts of 2012

Å Massachusetts school discipline law passed in July 2012 and effective July 2014

Å 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
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

Å 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

Å 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:
  

Summary of changes:

Additional Information
Massachusetts Advocates for Children, Ch. 222 Summary:


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


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