

HOUSE No. 00178

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 passage of the accompanying bill:

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

PETITION OF:

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

HOUSE No. 00178

By Ms. Alice K. Wolf of Cambridge, petition (accompanied by bill, House, No. 00178) of Kevin G. Honan and others relative to long-term suspensions and expulsions of school students . Joint Committee on Education.

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

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 “expelled.”
- 4 (2) A student shall not be excluded from school for a period of more than ten school days for
- 5 any single infraction or for more than ten school days for multiple infractions in any school year
- 6 unless the authorized official, in accordance with the procedures set forth in subsection (3) of this
- 7 section, makes a determination that the student’s presence in school would have a substantial
- 8 detrimental effect on the general welfare of the school, as defined in subsection (5). Nothing in

9 this section shall be construed to alter the procedures and procedural rights governing exclusion
10 for ten school days or a lesser period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

91 Section 17. A school committee shall not exclude a student from public schools for any period
92 in excess of one year and shall not exclude a student for alleged misconduct without first
93 providing the student and the student's parents or guardian the procedures and hearing in
94 accordance with section 37H ¾ of chapter 71.

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

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