

HOUSE No. 595

By Ms. Wolf of Cambridge, petition of Alice K. Wolf and others relative to disciplinary exclusions for students. Education.

The Commonwealth of Massachusetts

PETITION OF:

Alice K. Wolf	Jay R. Kaufman
Patricia A. Haddad	Richard J. Ross
Marie P. St. Fleur	Barbara A. L'Italien
Robert L. Rice, Jr.	William N. Brownsberger
Michael A. Costello	Denise Provost
David Paul Linsky	Michael E. Festa
Frank I. Smizik	Carl M. Sciortino, Jr.
Elizabeth A. Malia	Steven A. Tolman
Matthew C. Patrick	Gloria L. Fox
Tom Sannicandro	Joyce A. Spiliotis
Benjamin Swan	Kay Khan
Kathi-Anne Reinstein	Patricia D. Jehlen

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO ALTERNATIVE EDUCATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 37H of Chapter 71, as appearing in the 2004
2 Official Edition, is hereby amended by adding at the end thereof the
3 following clause:—
4 (f) The superintendent shall complete a review of any disciplinary
5 exclusion, as defined herein, under this section, Section 37 ½, or
6 Section 17 of Chapter 76, not later than 6 months after the date of
7 the disciplinary exclusion for any student, unless a review is
8 requested by the student, or the student’s parents or legal guardian
9 prior to the 6 month review, for the purpose of determining whether
10 the student should be re-admitted to school prior to the end of the
11 disciplinary exclusion. The superintendent shall consult with the
12 principal concerning the student’s re-admittance and shall accept
13 and consider written reports and any testimony submitted by the

14 student or student's parents or legal guardian relevant to the question
15 of whether the student should be re-admitted. The student or the stu-
16 dent's parents or legal guardian may be represented by counsel or by
17 any person they designate to speak on their behalf. The student shall
18 be re-admitted if the student can demonstrate the following:—

19 (1) that the student presents mitigating evidence or demonstrates
20 that the student has addressed satisfactorily the behavior that led to
21 the disciplinary exclusion and

22 (2) that the student's presence in school will not pose a danger to
23 others. The parents, legal guardian or student whose family income
24 is below 400% of the federal poverty guidelines may request from
25 the district an evaluation as part of this review from an independent
26 qualified evaluator of their choice who is certified, registered,
27 licensed or otherwise approved and who abides by rates set by the
28 state agency responsible for setting such rates. If, following a review
29 hearing, the superintendent does not re-admit the student, further
30 review hearings to consider the student's re-admittance shall be con-
31 vened by the superintendent at least every three months following
32 the first review hearing.

33 The superintendent shall, at the time of the disciplinary exclusion,
34 notify in writing the student, the student's parents, or legal guardian
35 of the rights set forth in this section. Any notification sent shall be in
36 the language understandable to the student, parents or legal
37 guardian.

38 Within ten school days of any review hearing under this section,
39 the superintendent shall notify in writing the student and the stu-
40 dent's parents or legal guardian of the decision as to the student's
41 right to attend school within the school system. If the superintendent
42 determines that the disciplinary exclusion shall remain in effect, the
43 letter shall state the conditions that are reasonably related to the
44 school safety concerns underlying the decision to exclude the stu-
45 dent and designed to mitigate such concerns, the date of the next
46 review hearing, and any alternative education options that exist for
47 the student.

48 The superintendent shall notify the commissioner of education of
49 any disciplinary exclusion of any student from school and shall
50 report to the commissioner the opportunities for alternative educa-
51 tion provided to the student. The commissioner shall file a report on
52 an annual basis with the joint committee on education, arts and

53 humanities concerning the number of disciplinary exclusions in
54 public schools, the alternative education options provided to students
55 and the number of students re-admitted under the provisions of this
56 section. Each superintendent shall ensure that the reporting of data
57 on disciplinary exclusions shall be made on an annual basis to the
58 state and to the public. To ensure consistency with federal reporting
59 requirements, as part of the annual public reports required by this
60 Act, both the superintendent and commissioner shall collect and
61 report publicly the disaggregated school discipline data at the state
62 and district level for all students, including those not identified as
63 having a disability, by all the categories currently required by 20
64 U.S.C. Section 1418.

65 The term “disciplinary exclusion” shall mean any disciplinary
66 action, however termed, taken under the authority of the school com-
67 mittee, superintendent, or principal to prohibit a student from
68 attending classes the student would have attended but for the disci-
69 plinary action for more than 10 consecutive school days.

1 SECTION 2. Chapter 76, as so appearing, is hereby amended by
2 inserting after section 17 the following section:—

3 Section 17A. Notwithstanding any general or special law to the
4 contrary, any student who has not reached the ninth grade may not
5 be excluded from school for more than 10 consecutive school days
6 unless the school district first proves by clear and convincing evi-
7 dence to a court of competent jurisdiction that the student is a danger
8 to others, and the district receives permission of the court to exclude
9 the student. Any student excluded from school under this section
10 shall retain the rights of hearing and appeal as set forth in Section
11 37H of Chapter 71 of the General Laws, and shall retain the right of
12 judicial review as set forth in Section 14 of Chapter 30A of the
13 General Laws.

1 SECTION 3. Section 2 of Chapter 70 of the General Laws, as so
2 appearing, is hereby amended by inserting after the word “October”,
3 in line 226, the following sentences:—

4 The department shall promulgate regulations to ensure that no
5 student excluded for more than 10 consecutive school days by a
6 school district shall be included in the department’s calculation of
7 the said district’s foundation budget, unless the student is provided

8 with alternative education as defined in Section 1N(a) of Chapter 69,
9 in accordance with Sections 1D and 1E of Chapter 69 and Section
10 38G of Chapter 71. The department shall adjust the district's
11 October first enrollment report upon notification of the district that a
12 student has been excluded for more than 10 consecutive school days.
13 School districts shall report each such exclusion of any student to the
14 department no later than 10 days after the conclusion of the school
15 district's administrative process resulting in the exclusion. Reports
16 shall include the State Assigned Student Identifier of each such stu-
17 dent excluded and state whether such students are receiving full-time
18 alternative education services from the school district. Disburse-
19 ments of funds by the department under Chapter 70 to the school
20 district issuing more than 30 days after the exclusion report shall be
21 reduced *pro rata* to reflect those students excluded and not afforded
22 a full-time alternative program.

1 SECTION 4. Section 3 of Chapter 71B is hereby amended by
2 adding a new paragraph at the end:—

3 The principal of a school or the principal's designee shall deter-
4 mine whether a referral for an evaluation should be made for any
5 child attending said school who has been suspended or truant more
6 than five days in any quarter and shall provide notice to the student's
7 parents or legal guardian in the language understandable to them.

1 SECTION 5. Nothing in this Act or any amendment made by this
2 Act shall be construed to supersede any provision of any federal or
3 state law or regulation regarding the rights of students with disabili-
4 ties.