

# **HOUSE . . . . . No. 4332**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, July 26, 2012.

The committee on Ways and Means, to whom was referred the Bill relative to student access to educational services and exclusion from school (House, No. 4131), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4332) [Representative Webster of Pembroke dissenting].

For the committee,

BRIAN S. DEMPSEY.

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Twelve**  
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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 SECTION 1. Section 37H of chapter 71 of the General Laws, as appearing in the 2010 Official  
2 Edition, is hereby amended by striking out subsection (e) and inserting in place thereof the  
3 following sentences:- Any school district that suspends or expels a student under the provisions  
4 of this section shall continue to provide educational services to the student during the period of  
5 suspension or expulsion, as provided in section 21 of chapter 76. If the student moves to another  
6 district during the period of suspension or expulsion, the new district of residence shall either  
7 admit the student to its schools or provide educational services to the student under an education  
8 service plan, as provided in section 21 of chapter 76.

9 SECTION 2. Said section 37H of said chapter 71, as so appearing, is hereby further amended by  
10 inserting after subsection (e) the following new paragraphs:-

11 Districts shall report to the department of elementary and secondary education the specific  
12 reasons for all suspensions and expulsions, regardless of duration or type, in a manner and form,  
13 established by the commissioner. The department of elementary and secondary education shall

14 use its existing data collection tools to obtain this information from districts, and shall modify  
15 those tools, as necessary, to obtain the information. On an annual basis, the department of  
16 elementary and secondary education shall make district-level de-identified data and analysis,  
17 including the total number of days each student is excluded during the school year, available to  
18 the public online in a machine readable format. This report shall include district level data  
19 disaggregated by student status and categories established by the commissioner.

20 Pursuant to regulations to be promulgated by the department, for each school that suspends or  
21 expels a significant number of students for more than ten days cumulatively in a school year, the  
22 commissioner shall investigate and, as appropriate, shall recommend models that incorporate  
23 intermediary steps prior to the use of suspension or expulsion. The results of the analysis shall be  
24 publicly reported at the school district level.

25 SECTION 3. Section 37H½ of said chapter 71, as so appearing, is hereby further amended by  
26 striking out the last paragraph and inserting in place thereof the following sentences:- Any school  
27 district that suspends or expels a student under the provisions of this section shall continue to  
28 provide educational services to the student during the period of suspension or expulsion, as  
29 provided in section 21 of chapter 76. If the student moves to another district during the period of  
30 suspension or expulsion, the new district of residence shall either admit the student to its schools  
31 or provide educational services to the student under an education service plan, as provided in  
32 section 21 of chapter 76.

33 SECTION 4. Said chapter 71 is hereby further amended by inserting after section 37H½ the  
34 following new section:-

35 Section 37H¾. Other suspensions and expulsions.

36 This section regulates the suspension and expulsion of students enrolled in a public  
37 school in the commonwealth who are not charged with a violation of paragraph (a) or (b) of  
38 Section 37H or with a felony in accordance with Section 37H½.

39 (1) Any principal, headmaster, superintendent, or or other person acting as a decision-  
40 maker at a student meeting or hearing, when deciding the consequences for the student, shall  
41 exercise discretion; consider ways to re-engage the student in the learning process; and avoid  
42 using expulsion as a consequence until other remedies and consequences have been employed.

43 (2) For any suspension or expulsion under this section, the principal or headmaster of a  
44 school in which the student is enrolled, or his or her designee, shall provide, to the student and to  
45 the parent or guardian of the student, notice of the charges and the reason for the suspension or  
46 expulsion in English and in the primary language of the home. The student shall receive the  
47 written notification and shall have the opportunity to meet with the principal or headmaster, or  
48 his or her designee, to discuss the charges and reasons for the suspension or expulsion prior to  
49 the suspension or expulsion taking effect. The principal or headmaster, or his or her designee,  
50 shall ensure that the parent or guardian of the student is included in the meeting, provided that  
51 such meeting may take place without the parent or guardian only if the principal or headmaster,  
52 or his or her designee, can document reasonable efforts to include the parent or guardian in such  
53 meeting. The department shall promulgate rules and regulations that address a principal's duties  
54 under this subsection and procedures for including parents in student exclusion meetings,  
55 hearings, or interviews under this act.

56 If a decision is made to suspend or expel the student after the meeting, the principal or  
57 headmaster, or his or her designee, shall update the notification of the reasons for the suspension

58 or expulsion to reflect the meeting with the student. If a student has been suspended or expelled  
59 for more than 10 school days for a single infraction or for more than 10 school days cumulatively  
60 for multiple infractions in any school year, the student and the parent or guardian of the student  
61 shall also receive, at the time of the suspension or expulsion decision, written notification of a  
62 right to appeal and the process for appealing the suspension or expulsion in English and in the  
63 primary language of the home; provided, however, that the suspension or expulsion shall remain  
64 in effect prior to any appeal hearing. The principal or headmaster shall notify the superintendent  
65 in writing, including, but not limited to, by electronic means, of any out-of-school suspension  
66 imposed on a student enrolled in kindergarten through grade 3 prior to such suspension taking  
67 effect. Such notification shall describe the student’s alleged misconduct and the reasons for  
68 suspending the student out-of-school. For the purposes of this subsection, the term “out-of-  
69 school suspension” shall mean a disciplinary action imposed by school officials to remove a  
70 student from participation in school activities for 1 day or more.

71 A student who has been suspended or expelled from school for more than 10 school days for a  
72 single infraction or for more than 10 school days cumulatively for multiple infractions in any  
73 school year shall have the right to appeal the suspension or expulsion to the superintendent. The  
74 student or his or her parent or guardian shall notify the superintendent in writing of a request for  
75 an appeal no later than 5 calendar days following the effective date of the suspension or  
76 expulsion; provided that a student and his or her parent or guardian may request, and if so  
77 requested, shall be granted an extension of up to 7 calendar days. The superintendent or his or  
78 her designee shall hold a hearing with the student and his or her parent or guardian within 3  
79 school days of the student’s request for an appeal; provided that a student or his or her parent or  
80 guardian may request and, if so requested, shall be granted an extension of up to 7 calendar days;

81 provided, further, that the superintendent, or his or her designee, may proceed with a hearing  
82 without a parent or guardian if the superintendent, or his or her designee, makes a good faith  
83 effort to include the parent or guardian. At the hearing, the student shall have the right to present  
84 oral and written testimony, cross-examine witnesses, and shall have the right to counsel. The  
85 superintendent shall render a decision on the appeal in writing within 5 calendar days of the  
86 hearing. Such decision shall be the final decision of the city, town or regional school district with  
87 regard to the suspension or expulsion.

88 (3) Under this section, no student shall be suspended or expelled from a school or school  
89 district for a time period that exceeds 90 school days, beginning the first day the student is  
90 removed from an assigned school building.

91 SECTION 5. Section 1 of chapter 76 of the General Laws, as appearing in the 2010 Official  
92 Edition, is hereby amended by striking out, in lines 2 to 13, inclusive, the words “, except a child  
93 between fourteen and sixteen who meets the requirements for the completion of the sixth grade  
94 of the public school as established by said board and who holds a permit for employment in  
95 private domestic service or service on a farm, under section eighty-six of chapter one hundred  
96 and forty-nine, and is regularly employed there under for at least six hours per day, or a child  
97 between fourteen and sixteen who meets said requirements and has the written permission of the  
98 superintendent of schools of the town where he resides to engage in non-wage-earning  
99 employment at home, or a child over fourteen who holds a permit for employment in a  
100 cooperating employment, as provided in said section eighty-six,”.

101 SECTION 6. Said section 1 of said chapter 76, as so appearing, is hereby further amended by  
102 striking out, in line 14, the word “said” and inserting in place thereof the word:- his.

103 SECTION 7. Said section 1 of said chapter 76, as so appearing, is hereby further amended by  
104 striking out the fourth paragraph.

105 SECTION 8. Said chapter 76 is hereby further amended by adding after section 1A the following  
106 new section:-

107         Section 1B. The school committee of each city, town or regional school district shall have  
108 a pupil absence notification program in each of its schools. The program shall be designed to  
109 ensure that each school notifies a parent or guardian of his child's absence if the school has not  
110 received notification of the absence from the parent or guardian within three days of said  
111 absence.

112 Each school committee shall have a policy of notifying the parent or guardian of a student who  
113 has at least 5 days in which he or she has missed 2 or more periods unexcused in a school year or  
114 who has missed 5 or more school days unexcused in a school year, whichever is less. The  
115 notification policy shall require that the school principal or his designee make a reasonable effort  
116 to meet with the parent or guardian of a student who has 5 or more unexcused absences to  
117 develop action steps for student attendance. The action steps shall be developed jointly and  
118 agreed upon by the school principal or his designee, the student, and the student's parent or  
119 guardian, and with input from other relevant school personnel and officials from relevant public  
120 safety, health and human service, housing and nonprofit agencies.

121 SECTION 9. Section 18 of said chapter 76, as so appearing, is hereby further amended by  
122 striking out the first paragraph and inserting in place thereof the following new paragraphs:-

123 No student who has not graduated from high school shall be considered to have permanently left  
124 public school unless an administrator of the school which such student last attended has sent

125 notice within a period of 5 days from the student's tenth consecutive absence to the student and  
126 the parent or guardian of such student in both the primary language of such parent or guardian, to  
127 the extent practicable, and English. The notice shall initially offer at least two dates and times for  
128 an exit interview between the superintendent or his designee and the student and his parent or  
129 guardian to occur prior to the student permanently leaving school, and shall include contact  
130 information for scheduling said exit interview. The notice shall indicate that the parties shall  
131 agree upon a date and time for the exit interview, provided that said interview shall occur within  
132 10 days after the sending of the notice. The time for said exit interview may be extended at the  
133 request of the parent or guardian, provided no extension shall be for longer than 14 days. The  
134 superintendent, or his or her designee, may proceed with any such interview without a parent or  
135 guardian if the superintendent, or his or her designee, makes a good faith effort to include the  
136 parent or guardian. The exit interview shall be for the purpose of discussing the reasons for the  
137 student permanently leaving school and to consider alternative education or other placements.

138 The superintendent or his designee shall convene a team of school personnel, such as the  
139 principal, guidance counselor, teachers, attendance officer and other relevant school staff, to  
140 participate in the exit interview with the student and his parent or guardian. During the exit  
141 interview, the student shall be given information about the detrimental effects of early  
142 withdrawal from school, the benefits of earning a high school diploma and the alternative  
143 education programs and services available to the student.

144 The department of elementary and secondary education shall: (i) publish a model protocol for  
145 conducting exit interviews with students; and (ii) compile and maintain a list of research and  
146 information relative to the consequences of dropping out, the benefits of earning a high school

147 diploma and a list of alternative education resources and programs available to the student, in  
148 addition to those that the district may provide, that schools shall present at the exit interview.

149 SECTION 10. Said chapter 76 is hereby further amended by inserting after section 20 the  
150 following new section:-

151           Section 21. Principals shall ensure that students who are suspended from school for 10 or  
152 fewer consecutive days, whether in or out of school, shall have an opportunity to make academic  
153 progress during the period of their suspension, to make up assignments and earn credits missed  
154 including, but not limited to, homework, quizzes, exams, papers, and projects missed. Principals  
155 shall develop a school-wide education service plan for all students who are expelled or  
156 suspended from school for more than 10 consecutive school days, whether in or out of school.  
157 Principals shall ensure these students have an opportunity to make academic progress during the  
158 period of their suspension or expulsion, to make up assignments and earn credits missed,  
159 including, but not limited to, homework, quizzes, exams, papers, and projects missed. Education  
160 service plans may include, but are not limited to, tutoring, alternative placement, Saturday  
161 school, and online or distance learning. In developing the education service plan, principals may  
162 seek the cooperation or input of relevant health and human service, housing and nonprofit  
163 agencies, and other service providers. Any school or school district that expels a student or  
164 suspends a student for more than 10 consecutive school days shall provide the student and his or  
165 her parent or guardian with a list of alternative educational services. Upon selection of an  
166 alternative educational service by the student and his or her parent or guardian, the school or  
167 school district shall facilitate and verify enrollment in said service. Students exempt from  
168 attending school under section 1 of chapter 76 shall not be subject to this provision.

169 Instructional costs associated with providing alternative educational services pursuant to this  
170 section shall be eligible for reimbursement under section 5A of chapter 71B, subject to  
171 appropriation. Said reimbursements shall be in addition to amounts distributed pursuant to  
172 chapter 70 and shall not be included in the calculation of base aid, as defined in said chapter 70,  
173 for any subsequent fiscal year. Instructional costs eligible for reimbursement shall include only  
174 those costs directly attributable to providing alternative educational services pursuant to this  
175 section, such as salary of educational personnel, salary of related services personnel, costs for  
176 specialized books, materials, or equipment, tuition costs, if the student is receiving services from  
177 other than the local public school, consultant costs if directly attributable to the student's  
178 instructional program, and instructional costs of extended day or year services if such services  
179 are a part of the education service plan. Such costs shall be prorated as appropriate to reflect  
180 group activities or costs for part time services. Instructional costs shall not include transportation  
181 costs, administrative or overhead costs, the costs of adapting classrooms or materials that are  
182 used by more than one student, the costs of fringe benefits of personnel employed by the school  
183 district, nor the costs associated with the development of the education service plan, or service  
184 coordination for the student. Instructional costs associated with an education service plan shall be  
185 reported to and approved by the department, and shall be reimbursed according to the formula  
186 and procedures set forth in section 5A of chapter 71B.

187 SECTION 11. The provisions of this act shall be effective July 1, 2013.