

HOUSE No. 178

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Alice K. Wolf</i>	<i>25th Middlesex</i>
<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>	<input type="checkbox"/> [District] <input type="checkbox"/>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Patricia D. Jehlen</i>	<input type="checkbox"/> [District] <input type="checkbox"/>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Steven A. Tolman</i>	<input type="checkbox"/> [District]

Alice Hanlon Peisch



14th Norfolk

HOUSE No. 178

By Ms. Wolf of Cambridge, a petition (accompanied by bill, House, No. 178) of Alice K. Wolf and others relative to long-term suspensions and expulsions of school students. Education.

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

The Commonwealth of Massachusetts

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
4 “expelled.”

5 (2) A student shall not be excluded from school for a period of more than ten school days
6 for any single infraction or for more than ten school days for multiple infractions in any school
7 year unless the authorized official, in accordance with the procedures set forth in subsection (3)
8 of this section, makes a determination that the student’s presence in school would have a
9 substantial detrimental effect on the general welfare of the school, as defined in subsection (5).
10 Nothing in this section shall be construed to alter the procedures and procedural rights governing
11 exclusion for ten school days or a lesser period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

68 (6) A principal who excludes a student or a superintendent who upholds such a
69 determination, a school committee which acts under section 17 of chapter 76, and a person who
70 presides over an exclusion hearing shall issue a written decision within ten calendar days of any
71 hearing or of a decision upholding a hearing officer's determination, or five calendar days if the
72 student is excluded prior to the hearing decision. A written decision shall demonstrate that the
73 standards required by subsection (5) and other relevant matters have been considered and
74 evaluated. The written decision shall not be only a check-listed format, but shall be a narrative
75 reflecting an individualized analysis, specific to the student, that sets out whether and how the
76 preponderance of the evidence supports the conclusion that the student should be excluded based
77 on the requirements of subsection (5). The decision shall notify the student of alternative
78 education options offered to the student. The decision shall notify the student of any rights to
79 appeal and state the schedule and deadlines for submissions to the identified appellate body.
80 Any discipline determined after consideration of evidence at a hearing shall remain in effect until
81 such time that the superintendent makes a decision on a student's appeal.

82 (7) Pursuant to section 7151 of Title 20 of the United States Code, a student who is
83 determined to have brought a firearm to school, or to have possessed a firearm at school, shall be
84 excluded for one year, provided that the superintendent may modify this exclusion to a lesser
85 period, on an individualized basis, provided such modification is in writing, and is consistent
86 with the requirements of federal law. A student who is determined to have committed any other
87 infraction under sections 37H or 37H ½ or under section 17 of chapter 76, or under any other

88 provision of law or stated policy or regulation or provision of a school or district handbook, shall
89 not be excluded for more than one year.

90 SECTION 2. Chapter 76 of the General Laws is hereby amended by striking out section
91 17, as appearing in the 2008 Official Edition, and inserting in place thereof the following
92 section:-

93 Section 17. A school committee shall not exclude a student from public schools for any
94 period in excess of one year and shall not exclude a student for alleged misconduct without first
95 providing the student and the student's parents or guardian the procedures and hearing in
96 accordance with section 37H ³/₄ of chapter 71.

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

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