

School Discipline Protections  
for Students with  
Mental Health Needs

---

Peter A. Hahn, Esq.  
Federation for Children with Special Needs  
March 2012

---

---

---

---

---

---

---

---

Overview

- Student discipline law
  - General education
  - Special education
- Special education considerations
- Anti-bullying law
- Court connections
- Additional Thoughts

---

---

---

---

---

---

---

---

“37H”: General Education Discipline

- General Laws chapter 71, section 37H
- Requires possible suspension or expulsion if student:
  - Possesses weapon or drug at school or school event
  - Assaults school staff
- Requires school to describe discipline rules in student handbook
  - Scope of code of student conduct is broad
- Right to disciplinary hearing before principal
- Right to appeal to superintendent
- Appeal to Superior Court
- Expulsion may be honored statewide without any further hearing
- No right to alternative education for general education students

---

---

---

---

---

---

---

---

### “37H½”: General Education Discipline

- General Laws chapter 71, section 37H½
- Court-based student discipline
- Suspension if charged with a felony *and* presence a “substantial detrimental effect” at school (SDE)
- Expulsion if plea to or convicted of a felony *and* presence a SDE at school
  - Expulsion may apply statewide with no further hearing
- Right to hearing before principal
- Right to appeal to superintendent
- Appeal to Superior Court
- No right to alternative education for general education students

---

---

---

---

---

---

---

---

### Special Ed: Manifestation Determination

- Manifestation determination: additional procedures for special education students
- Hearing required if removal from school for disciplinary reason is more than 10 days (consecutive or cumulative)
  - Manifestation: conduct has direct and substantial relationship to disability *or* is direct result of failure to implement IEP
- No manifestation
  - Apply regular discipline but must provide educational services for progress towards IEP goals
- Manifestation
  - Continue in current placement
- Special cases: weapons, drugs, serious bodily injury
  - May remove to interim alternative educational setting for 45 days regardless of manifestation

---

---

---

---

---

---

---

---

### Special Education: IAES, FBA, BIP

- Interim Alternative Educational Setting
  - Different program in school or different school
  - Parents and school may agree to placement
  - School may unilaterally place in special circumstances
  - Assessments may be done, including FBA
- Functional Behavioral Assessment
  - Must be done if ‘yes’ to manifestation
  - Should be requested even if ‘no’ to manifestation
- Behavior Intervention Plan
  - Must be implemented if ‘yes’ to manifestation
  - Should be requested even if ‘no’ to manifestation

---

---

---

---

---

---

---

---

### Special Education: Not Yet Identified

- Protections apply if school had knowledge of disability before conduct occurred
  - Knowledge: parent submitted written concern that student may need special education, parent requested evaluation for special education, staff expressed concern to special education director
- If evaluation requested during discipline, evaluation must be expedited and educational services provided (in IAES)

---

---

---

---

---

---

---

---

### Bureau of Special Education Appeals

- Administrative agency that rules on disputes between families and school districts related to special education law
- Conducts mediation and due process hearings
- Dedicated set of procedural rules
- Student usually has right to placement pending appeal ('stay put') but not in discipline context
- Statute of limitations is two years

---

---

---

---

---

---

---

---

### The BSEA Process

- Begins with hearing request stating basic grounds for complaint and relief sought, and other party must answer
- Hearing is normally scheduled 20 or 35 calendar days after opposing party receives hearing request
  - May request expedited status in discipline situations
  - Hearings rarely happen in set time frame and continuances are usually sought and granted
- Conference calls, discovery, prehearing conference, settlement conference
- Hearing and decision
- Appeal to court

---

---

---

---

---

---

---

---

### The Massachusetts Anti-Bullying Law

- Defines and prohibits bullying in school and school-related activities
- Staff must report bullying to a designated administrator
- If bullying has occurred, school must take disciplinary action against perpetrator and notify parents of victim, parents of perpetrator, law enforcement if necessary
- When an special education team believes a child has a disability that affects social skills development or that the child is vulnerable to bullying, harassment or teasing because of the disability, the IEP shall address the skills and proficiencies needed to avoid and respond to bullying, harassment or teasing

---

---

---

---

---

---

---

---

### Harassment Prevention Orders

- Harassment prevention orders
  - May involve anyone
  - Usual basis: 3 or more instances of harassing conduct
  - Other basis: sexual assault
  - Emergency order: up to 10 days, ex parte
  - Permanent: up to 1 year
    - Judge must hear from both parties
  - Typical conditions: stay away, no contact, no abuse
- Restraining orders
  - Must involve family or household member

---

---

---

---

---

---

---

---

### Juvenile Delinquency



Lowell Juvenile Court



Boston Juvenile Court



Dedham Juvenile Court

- Most criminal offenses for children ages 7-16
- Cases heard in Juvenile Court
- Juveniles have the same rights as accused adults (i.e. attorney, jury trial)
- Provide more flexibility in procedure and outcomes
- Similar outcomes as criminal cases (i.e. probation) except ultimate consequences is DYS commitment to 18<sup>th</sup> birthday

---

---

---

---

---

---

---

---

### CHINS (Child In Need of Services)

- School files the CHINS petition
  - Truant or habitual school offender
  - Applies until 16<sup>th</sup> birthday
- Parent filed the CHINS petition
  - Stubborn child or runaway
  - Can extend to 18<sup>th</sup> birthday
- Monitored by probation
- Possible DCF custody




---

---

---

---

---

---

---

---

### Additional Thoughts

- Put (and get) everything in writing
- Independent evaluations may be necessary
- Don't settle for tutoring as IAES
- CHINS not a substitute for special education
- DCF and DMH involvement
- Cost-sharing for educational placements
- Community Based Justice roundtables ("CBJ")
- School resource officers
- Zero tolerance v. recovery high schools
- Hope is not lost – there may be a silver lining

---

---

---

---

---

---

---

---

### Thank you!

Peter A. Hahn, Esq.  
 90 Bridge Street  
 Newton, Massachusetts 02458  
 617-413-3973  
 peter@peterhahnlaw.com



*Attorney Hahn represents clients in a range of legal issues, including special education, student discipline, juvenile, criminal, and DCF matters.*

---

---

---

---

---

---

---

---