

Lisa Morrow  
Children's Law Center of Massachusetts  
September 27, 2011

Good Afternoon, Committee Members. Thank you for this opportunity to testify regarding these two important bills. I join with my colleagues in offering support for both of these bills. However, my testimony will focus on H. 178, given my experience with procedural issues in student disciplinary hearings.

I am a staff attorney at the Children's Law Center of Massachusetts, a non-profit legal aid organization that provides representation to low-income children, primarily in the Essex County area. As an education attorney, I represent students in regular and special education matters, and have advocated for students facing disciplinary action on many occasions.

Both I and my colleagues at CLCM have represented students excluded by school districts where the administrator responsible for the exclusion provided little or no explanation as to why the student should be considered as having a 'substantial detrimental effect' on the student body. This is a determination principals must make before excluding a student under MGL 37H½, which allows a principal to indefinitely exclude a student who has pending felony charges in court.

The Department of Elementary and Secondary Education's Advisory Opinion on Student Discipline has stated that exclusions under 37H1/2 should be reserved for students who have been charged with or convicted of the most serious violent offenses. However, our office has represented students excluded for misconduct such as vandalism, or larceny over \$250 (resulting from a student taking another student's cell phone). A particularly egregious example came from my colleague. Her client brought a spiked bracelet to school, typical of what many "goth" students wear, and was charged with possession of a dangerous weapon. This student had no discipline record, other than being disciplined for wearing his pants too low. At the hearing, when asked what the substantial detriment would be to having him back in school, the superintendent stated that it was her policy to keep any child charged with a felony out of school until the felony complaint was resolved, a common example of zero tolerance. She also added that because they believed he was a gang member, they wouldn't allow him back in school because he might not be safe, despite having no evidence that he was actually involved in a gang.

H. 178 will provide principals and superintendents with a clear framework when making a determination that a student's presence at school will have a substantial detrimental effect on the student body, thus avoiding arbitrary and unjust determinations like the example given above. The administrator will consider whether the preponderance of the evidence indicates the student committed the infraction leading to the discipline, and whether the student's misconduct is likely to happen again. Additionally, administrators will be able to apply this standard for any discipline that may result in an exclusion that exceeds 10 days—not just when excluding a student under 37H½. This will lead to a more uniform procedural approach to student discipline, which protects students' rights and also eases the administrative burden on principals and superintendents.