



M A S S A C H U S E T T S B A R A S S O C I A T I O N

Members of the Committee:

I speak to you today on behalf of the Massachusetts Bar Association. From 2009 to 2011 I was chair of the Juvenile and Child Welfare Section Council. As an attorney, I represent children and families in education matters, including student discipline and special education.

I am here to report that the Massachusetts Bar Association endorses H 177 and H 178. We as an organization feel that these new laws would better ensure that all students receive an appropriate and safe public education, thereby raising the bar for all students.

There are several essential differences between the current state of the law and these bills. The current law gives too much discretion to principals to suspend and expel students. The process is poorly defined, and the law does not offer clear guidance on the standard for exclusion. H 178 changes that by establishing due process provisions, such as proper notice and primary language requirements, a standard of proof with three explicit factors that must be addressed by a principal, a burden of proof of preponderance of the evidence, and procedural timelines. These legal safeguards will make sure that students are no longer unnecessarily denied an education.

School administrators have argued that new standards erode local autonomy. Schools cannot have unfettered discretion to exclude students. H 178 sets an appropriate bar for decisionmakers and will allow the entire community to have greater respect for discipline decisions.

Another argument from schools for maintaining the current regime is that students may seek relief by appealing an adverse decision into court. However, there are a number of practical issues with the current appeal process. Many people cannot afford legal counsel and the number of pro bono attorneys for these cases is limited. Courts are extremely deferential to the decisions of school administrators and rarely overturn a decision. Once the principal's ruling is made, a family has long, potentially expensive road ahead with little chance of success. H 178 holds school administrators more accountable for their exclusion decisions so that families are less likely to need the appeals process.

There is another key difference with the proposed legislation. The current law allows for indefinite exclusion with no alternative educational services. H 178 changes that by imposing a one year cap and a right to alternative education for all students excluded for more than 10 consecutive school days. These substantive changes are essential to reform. Even children who have made poor decisions should not be absolutely denied an education.

Exclusion is a serious decision with serious consequences. These bills force administrators to take the process seriously so that those students who are not a threat to the school may return

promptly and those who are genuinely dangerous are excluded with a proper alternative education.

Both the Massachusetts Bar Association and I wholeheartedly support these bills and request that you pass them into law as soon as possible so that more children get the education they deserve.

Peter A. Hahn, Esq. (September 27, 2011)