

TO: Joint Committee on Education

From: Robert Hughes

Date: September 27, 2011

Testimony in Support of H. 177 and H. 178

My introduction to this issue was unexpected. On March 31, 2010 a Weston police detective knocked on our door. Fourteen days later we received a letter expelling my son -- hand delivered by another Weston police officer--supposedly for giving a marijuana cookie to another student.

Briefly: we received no notice in writing of the charges for eight days. No witness statements, no explanation of any evidence. In fact, it turns out there was no evidence.

There was no expulsion hearing. The Superintendent's appeal hearing did not cure any of these procedural or evidentiary defects. We sued and he was returned to school with his record expunged. The Superintendent appealed.

In short, we had a process-free and evidence-free expulsion for a kid with a pristine disciplinary record. We are now navigating the complications of the college admissions process with this hanging out there.

This legislation (H.178) would remedy most of these issues. There are three provisions of H. 178 that are essential for all children in the Commonwealth and would have improved our situation. The bill...

1. Provides for specific, minimum procedural protections that must be followed for all expulsions.
2. Establishes that expulsions must be supported by a "preponderance of the evidence."

3. Allows for a reasonable extension of time from the scheduled date of a hearing in order to obtain representation.

If you take a step back, there are broader policy issues in play. In the context of no due process standards, no standard of proof, and a state that applies the lowest standard of judicial review to school administrators' disciplinary decisions, one must ask, what have we allowed our schools to become? Weston, like most schools in Mass., does not offer any alternative education after exclusion.

Schools have also been adopting zero tolerance "policies" to avoid the application of discretion to facts in a particular context. Take every instance of a zero tolerance policy as a sure sign that the school has abdicated its decision-making discretion and is therefore unworthy of the deference the legislature and the courts have given to it.

Objections

You will hear many objections to the legislation. However, in the words of the US Supreme Court: "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American Schools."

I urge you to report these important pieces of legislation (H. 177 and H.178) favorably.

Thank you for your consideration.