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ALTERNATIVE EDUCATION IN MASSACHUSETTS: GIVING EVERY STUDENT A CHANCE TO SUCCEED

I. INTRODUCTION

One of the most pressing concerns in the United States today is the increased level of violence in the nation's schools. News reports of students carrying weapons, and threatening or harming other students or teachers, are becoming commonplace.¹ In response, many schools have installed metal detectors to find weapons, conducted random locker searches looking for drugs and weapons, and placed police security within the school.² Both suburban and inner-city schools are concerned about the apparent increase in school violence. Teachers cannot teach and students cannot learn when the fear of violence pervades the classroom.

Schools must deal with violent students. A student cannot remain in a school if his or her behavior will jeopardize others in the school community. However, simply expelling a problem student and leaving that student to his or her own resources is not a feasible alternative. The state should provide alternative education for students who are denied public education because of their violent behavior. This education should be tailored to each student's needs so that he or she is not simply abandoned by the school system, but granted the education he or she will need to succeed.

This Note proposes that the Massachusetts Legislature require alternative education for all suspended and expelled students. Part II of this Note examines the dangerous weapon and felony complaint sections of the Massachusetts Education

¹ See, e.g., *Court Backs Use of Metal Detectors in Search for Weapons at Schools*, PALM BEACH POST, Aug. 23, 1996, at 8B (high school student expelled for carrying a concealed firearm on school grounds); Linda Friedlieb, *School Scans Help, but Guns Hard to Stop, Lester Says*, ARK. DEMOCRAT-GAZETTE, Oct. 11, 1996, at 15A (student shot to death on school bus); Jonathan Saltzman, *School Weapons Hotline Yields No Arsenal*, PROVIDENCE JOURNAL-BULLETIN, Dec. 1, 1995, at 2C (two knives seized from middle school students); Anne Stein, *Guns Search and Seizure Policy; OK'd for Evanston Middle School*, CHI. TRIB., July 19, 1995, at 3 (student shot when loaded gun dropped and accidentally discharged in school lunchroom); and Tracey Tully, *Student Charged with Bringing Weapons to School*, TIMES UNION (Albany), May 22, 1996, at B7 (student charged with weapons possession after allegedly bringing guns on to school property).

² See, e.g., *Court Backs Use of Metal Detectors in Search for Weapons at Schools*, *supra* note 1 (hand-held metal detectors used in random searches for weapons in middle and high schools in Dade County, Florida); Friedlieb, *supra* note 1 (hand-held metal detectors used in conducting scans for weapons in classrooms); Saltzman, *supra* note 1 ("Weapon Watch" telephone hotline set up to report students who bring weapons to school); and Stein, *supra* note 1 (use of metal detectors rejected; administrators permitted to conduct random searches of school property and to search a student's purse, wallet, book bag, and clothing where there are "reasonable grounds" for suspicion that the student violated school weapon policy).

Reform Act. Part III focuses on the Massachusetts Report on Alternative Education which supports mandatory alternative education. Part IV discusses the way courts have applied the Education Reform Act. Part V examines other states' responses to the problem of student violence. Part VI proposes possible changes in Massachusetts law. Finally, this Note concludes that mandating alternative education in Massachusetts will meet the goals of educating all students and ensuring safety in the public schools.

II. MASSACHUSETTS EDUCATION REFORM ACT³

The 1993 Education Reform Act⁴ instituted sweeping reforms in the Massachusetts public education system. These reforms included statutes addressing violence in the schools.

A. *Possession of a Dangerous Weapon or Assault of School Personnel*

Section 37H of the Act amends the procedures by which a principal can expel a student for carrying weapons or drugs in school or for assaulting school personnel.⁵ School administrators must include these procedures in the student handbook.⁶ The student has a right to written notification of the opportunity for a hearing before the principal.⁷ The student may have representation and the opportunity to present evidence and witnesses at this hearing.⁸ The principal reserves the right to suspend, rather than expel, a student who violates rules against violent behavior.⁹ In 1994, the Legislature removed the provision requiring that the principal state in writing his or her reason for choosing the suspension alternative.¹⁰

Section 37H created a significant change in the allocation of disciplinary authority to school officials. School principals, instead of school committees, are now authorized to expel students who bring weapons or drugs into public schools or assault school personnel. A student expelled pursuant to this section does have the right to an appeal before the superintendent of schools.¹¹

B. *Expulsion or Suspension Pursuant to Felony Complaint or Conviction*

The Legislature included section 37H½ in the 1993 Education Reform Act to deal with the continuing public education of students charged with or convicted of a felony. According to this section, the principal may suspend a student

³ MASS. GEN. LAWS ch. 71 (1996).

⁴ See *id.*

⁵ See *id.* § 37H.

⁶ See *id.*

⁷ See *id.*

⁸ See *id.*

⁹ See *id.*

¹⁰ See 1994 Mass. Acts 51.

¹¹ See MASS. GEN. LAWS ch. 71, § 37H(d) (1996); see *infra* notes 12 - 14 and accompanying text.

charged with a felony or a felony delinquency "for a period of time determined appropriate" by the principal if the principal determines that the "student's continued presence in school would have a substantial detrimental effect on the general welfare of the school."¹² Similarly, the principal may expel a student who has been convicted of a felony or felony delinquency on the same grounds.¹³

The student has the right to appeal the principal's determination to the superintendent.¹⁴ At a hearing before the superintendent, the student may present oral and written testimony and has the right to counsel.¹⁵ The superintendent has the authority to recommend an alternative educational program for the student.¹⁶

III. MASSACHUSETTS REPORT ON ALTERNATIVE EDUCATION

The Education Reform Act also established a commission to study the feasibility of instituting educational alternatives "for dropouts and for those students who are chronically disruptive and whose disruption is not due to special needs"¹⁷ The Commission included the Commissioner of the Department of Education, the State Attorney General, the Chairperson of the Board of Education, and the Executive Director of the MassJobs Council.¹⁸ The Commission on Alternative Education, along with the MassJobs Council, issued its Report on Alternative Education in September, 1994.¹⁹

The report stated that the goal for Massachusetts "must be to provide all students with a high quality public education, in a safe, supportive environment that is conducive to learning."²⁰ The state cannot tolerate violent, dangerous or seriously disruptive behavior in the classroom. The report, however, stated that "the current gap in educational services for students who have been excluded from school is also intolerable."²¹ The safety of the larger community is in jeopardy if students who are excluded from school do not receive an alternative education so they can become productive members of society.

The Commission noted the unequal treatment between special needs students and other students. Special needs students are guaranteed the right to receive continued education if they are suspended from school.²² Non-special education students, however, receive alternative education only at the discretion of the school district unless they are committed to the Department of Youth Services or

¹² *Id.* § 37H½(1).

¹³ *See id.* § 37H½(2).

¹⁴ *See id.* § 37H½.

¹⁵ *See id.*

¹⁶ *See id.*

¹⁷ COMMISSION ON ALTERNATIVE EDUCATION AND MASSJOBS COUNCIL, REPORT ON ALTERNATIVE EDUCATION 11 (Sept. 1994).

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *Id.*

²¹ *Id.* at 12.

²² *See id.* at 16.

incarcerated.²³ The report stated that "this unacceptable gap in service must be addressed."²⁴

School districts were advised to develop effective prevention programs such as drug abuse resistance programs, violence prevention and avoidance programs, mediation programs, early intervention, and student support teams to help teachers work with disruptive students.²⁵ These preventative measures were designed to reduce the need to resort to student exclusions.²⁶ "The reasons students are disruptive in class, are suspended or expelled from school, or drop out, are . . . diverse."²⁷ Therefore, public schools must provide a range of educational services based on the needs of individual students.²⁸ The report recommended building on existing models of effective alternative education programs within the state. The report also recommended that school officials join social services and law enforcement agencies in an effort "to reduce the possibility of violent incidents in, around or affecting the schools."²⁹

IV. APPLICATION OF MASSACHUSETTS EDUCATION REFORM

Two Massachusetts cases have addressed the application of the Massachusetts Education Reform Act. In *DiRenzo v. Gerhart*³⁰ the Massachusetts Appeals Court reviewed a student's suspension due to a felony charge. In *Doe v. Superintendent of Schools of Worcester*³¹ the Supreme Judicial Court examined the issue of student expulsion for weapons violations.

A. Felony Charge

In *DiRenzo*,³² the Massachusetts Appeals Court examined the state's new statutory scheme. Section 37H½(1) permits discretionary suspension of a student on the basis of a felony charge if the principal determines that the student's presence in school would have a "substantial detrimental effect on the general welfare of the school."³³ The court noted that tensions existed between the student's right to public education, and the school officials' obligation to provide a safe and effective learning environment under the thus far judicially unconstrued statute.³⁴ The court held that the suspension of John DiRenzo did not comply with the statutory requirements of section 37H½(1) and reversed DiRenzo's

²³ See *id.*

²⁴ *Id.* at 16.

²⁵ See *id.* at 18.

²⁶ See *id.*

²⁷ *Id.* at 19.

²⁸ See *id.* at 8.

²⁹ *Id.* at 24.

³⁰ No. 94-J-602, slip op. (Mass. App. Ct. 1994).

³¹ 653 N.E.2d 1088 (Mass. 1995).

³² No. 94-J-602, slip op.

³³ MASS. GEN. LAWS ch. 71, § 37H½(1) (1996).

³⁴ See *DiRenzo*, No. 94-J-602, slip op. at 1.

suspension.³⁵

The school's handling of the suspension was seriously flawed. The court first noted that the assistant principal imposed DiRenzo's suspension, although the statute required the principal to do so.³⁶ Second, written notification of the suspension dated the same day the suspension began did not constitute written notice "prior to such suspension taking effect" as section 37H½(1) requires.³⁷

The third flaw was the absence of any "charges or reasons" within the notification to explain the basis of the student's suspension.³⁸ The suspension was based solely on the pending indictment for murder.³⁹ The court found this insufficient to meet the demands of section 37H½(1) which requires either determination of "substantial detrimental effect" on the general welfare of the school community or a statement of the charges and reasons for the suspension.⁴⁰ If the legislature had intended a felony complaint or indictment to be sufficient ground for a suspension, it would not have required any further action by the principal.⁴¹

The absence of particular reasons for suspension "violates the constitutional due process mandate that a suspended student must receive 'an explanation of the evidence the authorities have' for their action."⁴² A student cannot present effective testimony on his or her own behalf without knowledge of the concrete charges and reasons for the suspension.⁴³ This would also lead to confusion in judicial review.⁴⁴

B. *Dangerous Weapons*

The Massachusetts Supreme Judicial Court ("SJC") dealt with the new section 37H in *Doe v. Superintendent of Schools of Worcester*.⁴⁵ In compliance with section 37H, the North High School handbook, which was distributed to students, explained the school's weapon policy. The handbook provided that any student found at school or a school-related event "in possession of a dangerous weapon, including, but not limited to, a gun or a knife may be subject to expulsion from the school by the principal regardless of the size of the knife."⁴⁶ Doe, a student at North High School, brought a novelty lipstick knife⁴⁷ to school. Doe

³⁵ See *id.* at 3.

³⁶ See *id.*

³⁷ *Id.*

³⁸ See *id.* at 3-4.

³⁹ See *id.* at 4.

⁴⁰ See *id.* at 5.

⁴¹ See *id.*

⁴² *Id.* (quoting *Goss v. Lopez*, 415 U.S. 565, 581 (1975)).

⁴³ See *id.*

⁴⁴ See *id.* at 5-6.

⁴⁵ 653 N.E.2d 1088 (Mass. 1995).

⁴⁶ *Id.* at 1090.

⁴⁷ The student possessed a lipstick case which opened to reveal a one and one-quarter inch blade. See *id.* at 1095.

was suspended for five days by the assistant principal.⁴⁸ A principal's hearing was then held and Doe was expelled for one year.⁴⁹ Doe appealed to the superintendent, who conducted a second evidentiary hearing.⁵⁰ The superintendent upheld the expulsion.⁵¹

The SJC rejected Doe's claim that the principal and superintendent abused their discretion when they expelled her.⁵² In fact, the principal could not have exercised his discretion and imposed suspension rather than expulsion.⁵³ The court cited section 37H, which required the principal to expel Doe because he thought she might pose a threat to herself or others.⁵⁴

Doe's second argument, a statutory vagueness claim, dealt with the fact that the term "dangerous weapon" is not defined in section 37H.⁵⁵ Doe argued that in the interest of uniformity, the statute should include a definition of "dangerous weapon."⁵⁶ However, the SJC stated that the legislative intent was to leave the determination of what is a "dangerous weapon" to the judgment of the principal.⁵⁷ Because the sole purpose of the lipstick knife was to inflict harm, the SJC concluded that the principal correctly decided that it was a dangerous weapon, and thus the expulsion was justified.⁵⁸

Doe next argued that she had a fundamental right to a public education under the Massachusetts Constitution.⁵⁹ The SJC, however, held that a public education is not a fundamental right under the state constitution.⁶⁰ A student's interest in a public education can be forfeited by violation of school rules.⁶¹ Because the right to a public education is not fundamental, the SJC applied a rational basis test, the lowest level of judicial scrutiny, to Doe's claim that the principal's actions violated her right to substantive due process under the Massachusetts Constitution.⁶²

Applying the rational basis test, the SJC held that Doe's expulsion did not violate her right to substantive due process because "[i]t [was] reasonable and rational for school officials to determine that [the plaintiff] should be expelled as a means of insuring school safety."⁶³ The SJC also held that school officials did not violate Doe's substantive due process rights by failing to provide her with an

⁴⁸ See *id.* at 1091.

⁴⁹ See *id.* at 1091-92.

⁵⁰ See *id.* at 1092.

⁵¹ See *id.*

⁵² See *id.* at 1093.

⁵³ See *id.* at 1094.

⁵⁴ See *id.* at 1093-94.

⁵⁵ See *id.* at 1094.

⁵⁶ See *id.*

⁵⁷ See *id.* at 1094-95.

⁵⁸ See *id.* at 1095.

⁵⁹ See MASS. CONST. part II, c. 5, § 2.

⁶⁰ See *Doe*, 653 N.E.2d at 1095.

⁶¹ See *id.* at 1096.

⁶² See *id.* at 1097.

⁶³ *Id.*

alternative educational program.⁶⁴ Under the rational basis test, the SJC held that the existence of a "less onerous alternative" is irrelevant,⁶⁵ and "the Legislature, not the courts, [should] decide when, if ever, alternative education must be provided to students expelled for disciplinary reasons, and the form such education must take."⁶⁶

The SJC also rejected Doe's argument that her expulsion violated her substantive due process rights under the Fourteenth Amendment to the United States Constitution.⁶⁷ Like the Massachusetts Constitution, the Federal Constitution confers no fundamental right to an education and therefore the rational basis test would apply.⁶⁸ The court found that Doe's expulsion was rationally related to the interest of "protecting other students and staff from potential violence," thus satisfying the rational basis test.⁶⁹ Doe's final argument, that the statute is void for vagueness, was also rejected by the SJC because the statute clearly prohibits students from bringing knives to school and the term "knife" is commonly understood.⁷⁰ The court did, however, preserve the Massachusetts Legislature's power to mandate alternative education.⁷¹

V. OTHER STATES' RESPONSES TO STUDENT VIOLENCE

Massachusetts is not the only state to address student violence. Lawmakers around the country have faced this problem, and have responded in different ways. The resulting statutes in each state are in some measure unique to the circumstances and politics of each particular state, but contain some similarities.

A. *Suspension and Expulsion*

1. Offenses Resulting in Suspension or Expulsion

In Arizona, public schools may expel a student for "continued open defiance of authority, continued disruptive or disorderly behavior, violent behavior which includes use or display of a dangerous instrument or a deadly weapon," and other actions which the school district deems inappropriate.⁷² A Utah statute makes suspension or expulsion of a student mandatory for "any serious violation affecting another student or a staff member . . . including the possession, control, or actual or threatened use of a real, look alike, or pretend weapon" or the sale of a controlled substance.⁷³ Utah public schools may also suspend or expel

⁶⁴ See *id.*

⁶⁵ See *id.*

⁶⁶ *Id.* at 1097.

⁶⁷ See *id.*

⁶⁸ See *id.*

⁶⁹ *Id.*

⁷⁰ See *id.* at 1098.

⁷¹ See *id.* at 1097.

⁷² ARIZ. REV. STAT. ANN. § 15-841(b) (Supp. 1996).

⁷³ UTAH CODE ANN. § 53A-11-904(2)(a)(i) (Supp. 1996).

students for threatening behavior.⁷⁴ Similarly, a Texas student will be expelled for using or possessing a firearm, illegal knife, or club.⁷⁵

Connecticut public schools may suspend⁷⁶ or expel⁷⁷ a student if that student's "conduct endangers persons or property . . . or [his or her] conduct is violative of a publicized policy" of the school board.⁷⁸ Local school boards in Connecticut are required to initiate expulsion proceedings "whenever there is reason to believe that any pupil was in possession of a firearm or deadly weapon" and the student is expelled for one year if the board finds that the student possessed such a weapon.⁷⁹ A student may also be expelled for off-campus offenses involving violence, weapons, or drugs.⁸⁰

A Nevada public school student who injures a school employee, sells a controlled substance or possesses a "dangerous weapon"⁸¹ in school is suspended or expelled from the school.⁸² Even if a Nevada student is accused of a crime, he or she may not be suspended for acts committed off school property until a court determines the student's guilt or innocence.⁸³

A public school principal in Tennessee may suspend a student for "good and sufficient reasons."⁸⁴ Good and sufficient reasons include possession of a knife on school property⁸⁵ and "[o]ff-campus criminal behavior which results in the student being legally charged with a felony and the student's continued presence in school poses a danger to persons or property or disrupts the educational pro-

⁷⁴ A student may be suspended or expelled for "behavior or threatened behavior which poses an immediate and significant threat to the welfare, safety, or morals of other students or school personnel or to the operation of the school." UTAH CODE ANN. § 53A-11-904(1)(c) (Supp. 1996).

⁷⁵ See TEX. EDUC. CODE ANN. § 37.007(a)(1) (1996).

⁷⁶ See CONN. GEN. STAT. § 10-233c(a) (1996).

⁷⁷ See *id.* § 10-233d(a).

⁷⁸ *Id.* § 10-233c(a).

⁷⁹ *Id.* § 10-233d(a).

⁸⁰ See Op. Att'y. Gen. 89-023 (1989).

⁸¹ "'Dangerous weapon' includes, without limitation, a blackjack, slung [sic] shot, billy, sand-club, sandbag, metal knuckles, dirk or dagger, a nunchaku, switchblade knife or trefoil . . . a butterfly knife or any other knife described in NRS 202.350." NEV. REV. STAT. § 392.466(6)(b) (1995). NRS § 202.350 includes in its description of a knife "any knife which is made an integral part of a belt buckle." NEV. REV. STAT. § 202.350(1)(a) (1995).

The term "dangerous knife" was held unconstitutionally vague and ambiguous where a defendant was convicted for carrying a small pocket knife. The pocket knife was not a dagger or stabbing weapon because it had no hand guards that would enable the user to stab without substantial risk to his hand. The knife was not a "switchblade knife" because the sharpened edge of the knife was less than two inches long. See *Bradvice v. State*, 760 P.2d 139 (Nev. 1988).

⁸² See NEV. REV. STAT. § 392.466 (1995).

⁸³ See Op. Att'y Gen. 625 (1969).

⁸⁴ TENN. CODE ANN. § 49-6-3401(a) (1996).

⁸⁵ See *id.* § 49-6-3401(a)(8).

cess."⁸⁶ A knife is defined as "any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument."⁸⁷ In Louisiana, a student may be suspended for carrying firearms, knives or other weapons in school as well as for a number of other infractions, including commission of "any other serious offense."⁸⁸ A student possessing a firearm, a knife with a blade two inches or longer, a dangerous substance, or any other dangerous instrumentality is immediately suspended and the principal must immediately recommend his or her expulsion.⁸⁹

2. Procedural Safeguards

When addressing the suspension or expulsion of a student, one of the key procedural safeguards is determining who has the power to suspend or expel. In Massachusetts, the school principal has this power.⁹⁰ The Arizona legislature has designated the power to suspend a student to the superintendent, principal, or other school officials designated by the school board.⁹¹ In an Arizona public school without a superintendent or principal, a teacher may suspend a student from school.⁹² In Utah, the designation of authority to suspend or expel a student is determined by the length of the suspension or expulsion.⁹³ The local school board may delegate to a principal the power to suspend a student for up to ten days,⁹⁴ and delegate to the superintendent the power to suspend a student for up to one school year.⁹⁵ The school board has the authority to expel a student for a fixed or indefinite period.⁹⁶

Similarly, in Connecticut, the local or regional board of education has the power to expel a student.⁹⁷ The board may authorize the school administration to suspend a student.⁹⁸ The board of trustees of a Nevada public school may authorize the suspension or expulsion of a student.⁹⁹ In Tennessee, the authority to suspend a student is given to the principal, principal-teacher, or assistant principal of the school.¹⁰⁰ A Louisiana public school principal has the power to suspend a student or to initiate an expulsion hearing.¹⁰¹ Upon a principal's recom-

⁸⁶ *Id.* § 49-6-3401(a)(12).

⁸⁷ *Id.* § 39-17-1301(5).

⁸⁸ LA. REV. STAT. ANN. § 17:416(A)(3)(a) (West Supp. 1996).

⁸⁹ *See id.* § 17:416(B)(1)(b).

⁹⁰ *See* MASS. GEN. LAWS ch. 71, § 37H(c) (1996).

⁹¹ *See* ARIZ. REV. STAT. ANN. § 15-843(I) (Supp. 1996).

⁹² *See id.* § 15-843(J).

⁹³ *See* UTAH CODE ANN. § 53A-11-905 (Supp. 1996).

⁹⁴ *See id.* § 53A-11-905(1).

⁹⁵ *See id.* § 53A-11-905(2).

⁹⁶ *See id.* § 53A-11-905(3).

⁹⁷ *See* CONN. GEN. STAT. § 10-233c(a) (1996).

⁹⁸ *See id.*

⁹⁹ *See* NEV. REV. STAT. § 392.467(1) (1995).

¹⁰⁰ *See* TENN. CODE ANN. § 49-6-3401(a) (1996).

¹⁰¹ *See* LA. REV. STAT. ANN. § 17:416(A)(1)(c)(iii)(dd) (West Supp. 1996).

mentation to expel a student, the superintendent shall conduct a hearing and may subsequently expel the student.¹⁰²

Notification to the student and the student's parents or guardians of the suspension or expulsion is a common procedure in Massachusetts¹⁰³ and throughout the country. In Arizona, a notice and hearing procedure is required when a student is suspended for more than ten days.¹⁰⁴ The governing board of a school district must receive notice of the intended expulsion of a student.¹⁰⁵ Utah public schools also require parental notification of student suspensions.¹⁰⁶ In Connecticut, no student can be suspended without an informal hearing by the administration;¹⁰⁷ the board of education conducts formal expulsion hearings.¹⁰⁸ The procedure is similar in Tennessee¹⁰⁹ and Louisiana,¹¹⁰ where a student may not be suspended without notice and an informal hearing.

Like Massachusetts,¹¹¹ several states provide for an appeal of the decision to suspend or expel a student. In Arizona, a school district governing board must prescribe rules for suspension and expulsion which must include procedures for appeal.¹¹² Similarly, in Tennessee, a student may appeal the principal's decision to the board of education, whose action is final.¹¹³ In Louisiana, a principal's decision to expel a student may be appealed to the superintendent of schools, who

¹⁰² See *id.* § 17:416(C)(1).

¹⁰³ See MASS. GEN. LAWS ch. 71, § 37H(c) (1996).

¹⁰⁴ See ARIZ. REV. STAT. ANN. § 15-843(B)(5) (Supp. 1996).

¹⁰⁵ See *id.* § 15-843(F)(1).

¹⁰⁶ .

If a student is suspended, a designated school official shall notify the parent or guardian of the student of the following without delay: (a) that the student has been suspended; (b) the grounds for the suspension; (c) the period of time for which the student is suspended; and (d) the time and place for the parent or guardian to meet with a designated school official to review the suspension.

UTAH CODE ANN. § 53A-11-905 (Supp. 1996).

¹⁰⁷ See CONN. GEN. STAT. § 10-233c(a) (1996). At the hearing the student will be informed of the reason for the suspension and will be given a chance to explain the situation. See *id.*

¹⁰⁸ "Unless an emergency exists, no pupil shall be expelled without a formal hearing." *Id.* § 10-233d(a).

¹⁰⁹ "Except in an emergency, no principal, principal-teacher or assistant principal shall suspend any student until that student has been advised of the nature of the student's misconduct, questioned about it, and allowed to give an explanation." TENN. CODE ANN. § 49-6-3401(c)(1) (1996).

¹¹⁰

Prior to any suspension, the school principal, or his designee, shall advise the pupil in question of the particular misconduct of which he is accused as well as the basis for such accusation, and the pupil shall be given an opportunity at that time to explain his version of the facts to the school principal or his designee.

LA. REV. STAT. ANN. § 17:416(A)(3)(b)(i) (West Supp. 1996).

¹¹¹ See MASS. GEN. LAWS ch. 71, § 37(d) (1996).

¹¹² See ARIZ. REV. STAT. ANN. § 15-843(B)(6) (Supp. 1996).

¹¹³ See TENN. CODE ANN. § 49-6-3401(c)(4)(C) (1996).

then conducts a hearing and renders a decision.¹¹⁴ The superintendent's decision may then be appealed to the school board.¹¹⁵

A Texas student removed from class by a teacher is entitled to a hearing by the principal or principal's designee within three class days of the removal.¹¹⁶ Before a student is expelled, the school board or board's designee must provide him or her with a hearing.¹¹⁷ The student may appeal to the board the board's designee's decision to expel.¹¹⁸ The student may appeal the board's decision to the state district court.¹¹⁹

B. *Students for whom Alternative Education is Available*

Like Massachusetts, many states do not provide mandatory alternative education for all suspended or expelled students. Some states, however, do provide alternative education for all students. Arizona gives the school district discretionary power to assign a student to alternative education.¹²⁰ School districts may also develop programs which will allow suspended or expelled students to perform community service as an alternative to suspension.¹²¹ The Utah Legislature has provided alternatives to suspension or expulsion, which require that schools make good faith efforts to implement remedial discipline plans under which students can remain in school.¹²² Utah also requires that each local school board establish alternatives to suspension.¹²³ Utah explicitly mandates that the student's parent or guardian is responsible for providing an alternative education plan "which will ensure that the student's education continues during the period of suspension or expulsion."¹²⁴ Costs for services not provided by the school become the responsibility of the suspended or expelled student's parent or guardian.¹²⁵

¹¹⁴ See LA. REV. STAT. ANN. § 17:416(A)(3)(c) (West Supp. 1996).

¹¹⁵ See *id.* § 17:416(C)(4).

¹¹⁶ See TEX. EDUC. CODE ANN. § 37.009(a) (1996).

¹¹⁷ See *id.* § 37.009(f).

¹¹⁸ See *id.*

¹¹⁹ See *id.*

¹²⁰ "As an alternative to suspension or expulsion, the school district may reassign any pupil to an alternative education program if good cause exists for expulsion or for a long-term suspension." ARIZ. REV. STAT. ANN. § 15-841(E) (Supp. 1996).

¹²¹ The community service may be done at the school or in the community. See *id.* § 15-841(H).

¹²² See UTAH CODE ANN. § 53A-11-906(1)(a) (Supp. 1996).

¹²³ Alternatives are to include "policies that allow a student to remain in school under an in-school suspension program or under a program allowing the parent or guardian, with the consent of the student's teacher . . . to attend class with the student for a period of time specified by a designated school official." *Id.* § 53A-11-906(1)(b).

¹²⁴ *Id.* § 53A-11-907(1). "The parent or guardian shall work with designated school officials to determine how that responsibility might best be met through private education, an alternative program offered by or through the district, or other alternative which will reasonably meet the educational needs of the student." *Id.* § 53A-11-907(2)(a).

¹²⁵ See *id.* § 53A-11-907(3).

Nevada has a similar statute which provides alternative educational programs for students who are ineligible to attend public school because of suspension or expulsion.¹²⁶ The school district may conduct an investigation to determine whether the student's educational needs can be satisfied without unduly disrupting the program.¹²⁷ Connecticut law requires a mandatory offer of alternative education to any expelled student under sixteen years of age.¹²⁸ An expelled student between the ages of sixteen and eighteen is offered alternative education provided that the student complies with conditions established by the local board of education.¹²⁹ These age limitations do not apply if the student requires special education.¹³⁰ In determining the nature of the alternative education offered, the board of education may consider reports of the past disciplinary problems which led to suspension or expulsion.¹³¹

A Texas student who commits a felony or commits specified acts on school property, including drug use and assault, will be suspended and placed in an alternative education program.¹³² Local school districts in Texas must provide for at least one alternative education program, such as in-school suspension, transfer to a different campus, transfer to a school-community guidance center, or transfer to a community-based alternative school.¹³³ Louisiana requires that any student suspended or expelled from school "shall remain under the supervision of the governing authority of the school system" using alternative education programs.¹³⁴ School systems which cannot economically comply with this provision may apply for a waiver.¹³⁵ Louisiana provides for a variety of alternative education programs with the goal of "increasing the likelihood that students who are unmotivated or unsuccessful in traditional programs or who are disruptive in the traditional school environment remain in school and obtain a high school diploma."¹³⁶

VI. POSSIBLE CHANGES IN MASSACHUSETTS LAW

A. *The Need for Specificity Regarding Weapons in School*

Greater specificity in defining the term "dangerous weapon" would lead to greater uniformity within school systems and within the state as a whole. By

¹²⁶ See NEV. REV. STAT. § 392.4675(2) (1995).

¹²⁷ See *id.* § 392.4675.

¹²⁸ See CONN. GEN. STAT. § 10-233d(d) (1996).

¹²⁹ See *id.*

¹³⁰ See *id.*

¹³¹ See *id.* § 10-233d(c).

¹³² See TEX. EDUC. CODE ANN. § 37.006 (1996).

¹³³ See *id.* § 37.008.

¹³⁴ LA. REV. STAT. ANN. § 17:416.2(A) (West Supp. 1996).

¹³⁵ See *id.* § 17:416.2(B).

¹³⁶ "Alternative programs may include but not be limited to programs that hold students to strict standards of behavior in highly structured and controlled environments, sometimes referred to as 'boot camps'" *Id.* § 17:416.2(C).

more specifically defining "dangerous weapon" the Massachusetts Legislature would leave less discretion to school principals, which would lead to more equal treatment of students throughout the state. This would help assure that only truly dangerous students are removed from the school environment.

States approach the problem of violence in schools differently. Many, like Massachusetts, made bringing violent weapons into school an offense punishable by suspension or expulsion.¹³⁷ The Massachusetts law provides that a student "in possession of a dangerous weapon, including, but not limited to, a gun or a knife . . . may be subject to expulsion. . . ."¹³⁸ Under this definition, the principal has much discretion in determining what constitutes a dangerous weapon. The principal in *Doe* decided that the novelty lipstick knife was a dangerous weapon and suspended the student for one year.¹³⁹ The knife could be dangerous; thus, the student violated the weapons policy by bringing it to school. However, the principal still has too much room for interpretation, which could lead to inconsistencies within the school system and the state. The Report on Alternative Education noted the difference in exclusion rates among districts, suggesting "that no uniform, clear or consistent rationale for use of expulsion or suspension exists."¹⁴⁰

The Nevada Legislature addressed this problem by defining "dangerous weapon" as including, "without limitation, a blackjack, slung [sic] shot, billy, sand-club, sandbag, metal knuckles, explosive substance or device, dirk, dagger, pistol, revolver or other firearm, a nunchaku, switchblade knife or trefoil . . . a butterfly knife or any other knife described in NRS 202.350."¹⁴¹ While not exhaustive, this list provides guidance for determining whether a student possessed a "dangerous weapon," which promotes uniformity throughout the school district and the state.

The Massachusetts statute does not explicitly define "dangerous weapon."¹⁴² The *Doe* court stated that "it appears that the Legislature intended to leave the determination whether a particular object is a dangerous weapon to the sound judgment of the principal."¹⁴³ Thus, the principal, determined that the lipstick constituted a dangerous weapon and expelled the student for one year. Another principal in a similar situation might have decided that the lipstick knife was not a weapon and might have refrained from expelling the student. This potential lack of uniformity is troubling. A more explicit definition of "dangerous

¹³⁷ See MASS. GEN. LAWS ch. 71, § 37H (Supp. 1996). See also ARIZ. REV. STAT. ANN. § 15-841(b) (Supp. 1996); CONN. GEN. STAT. § 10-233d(a) (1996); NEV. REV. STAT. § 392.466 (1995); UTAH CODE ANN. § 53A-11-904(2)(a)(i) (Supp. 1996).

¹³⁸ MASS. GEN. LAWS ch. 71, § 37H (1996).

¹³⁹ See *Doe v. Superintendent of Schools of Worcester*, 653 N.E.2d 1088, 1091-92 (Mass. 1995).

¹⁴⁰ REPORT ON ALTERNATIVE EDUC., *supra* note 17, at 6.

¹⁴¹ NEV. REV. STAT. § 392.466(6)(b) (1995).

¹⁴² See MASS. GEN. LAWS ch. 71, § 37H (1996).

¹⁴³ *Doe*, 653 N.E.2d at 1094-95.

weapon" by the legislature would restrict the degree of personal interpretation by the factfinder and provide for greater uniformity.

B. *Goals of Education*

Education of the country's youth is a major concern for most citizens. Without an educated populace America cannot remain a leading superpower. The Massachusetts Education Reform bill took steps to create a better, safer school environment for all Massachusetts students. However, the possibility of total exclusion of some students from education does not further the goal of educating all of the country's youth. Students who are suspended or expelled for weapons violations or outside criminal activity may be the students who most need the continuing support and incentive to achieve that a public education provides. These students, closed out of the school system, may find themselves with nothing to do but continue their destructive behavior. Society has an interest in ensuring that all students receive an education in order to become productive members of society. The Report on Alternative Education acknowledged this, stating that "[i]f we fail to provide all school-aged children with an adequate education, we will ultimately pay a greater price in increased spending on the welfare, public health, criminal justice and correctional systems."¹⁴⁴ Thus, the report recommended that school systems provide a broad range of educational services based on the needs of students.¹⁴⁵

School safety is also an important goal. In order to learn, students must feel safe. If teachers feel unsafe, students will not receive a proper education. Violent students disrupt every student's opportunity to learn. To achieve school safety, school systems should remove those students who threaten the security of the school environment. School safety and the provision of an education for every child may seem like competing interests, but they need not be if the law is properly drafted. Massachusetts can achieve both goals simultaneously by requiring mandatory alternative education for all suspended or expelled students.

C. *Alternative Education*

1. *Balancing Competing Interests*

State legislatures have tried a variety of approaches to determine how to balance the potentially competing interests of providing public education for all students and maintaining safety in the schools. Massachusetts law provides alternative education for suspended or expelled students at the principal or superintendent's discretion.¹⁴⁶ School districts in Arizona have similar discretion to assign a disruptive student to alternative education.¹⁴⁷

¹⁴⁴ REPORT ON ALTERNATIVE EDUC., *supra* note 17, at 21.

¹⁴⁵ *See id.* at 8.

¹⁴⁶ *See* MASS. GEN. LAWS ch. 71, § 37H½ (1996).

¹⁴⁷ *See* ARIZ. REV. STAT. ANN. § 15-841(E) (Supp. 1996).

The goals of school safety and educating every student are not mutually exclusive. Providing alternative education for suspended or expelled students ensures that all students receive a public education while the schools remain safe. Connecticut¹⁴⁸ and Louisiana¹⁴⁹ have balanced these goals by offering all students alternative education.

2. Mandatory Alternative Education

The Massachusetts Education Reform Act has taken steps to achieve the goals of safety and education for all children. Provisions for suspension and expulsion of students who cannot safely participate in the school environment are necessary for the safety of all members of the school community. Requirements of alternative education for suspended or expelled special education students benefit those students and the rest of the community by ensuring that the students continue to receive an education. The Act does not, however, extend benefits to a broad enough student population.

The Commonwealth of Massachusetts should provide alternative education to all suspended or expelled students, not merely special education students. Like special education students, all students need the continued learning, guidance, and support that public education provides. Without education, young people cannot succeed in today's society. As the Report on Alternative Education noted, those who are "permanently excluded from school prior to obtaining a high school diploma face severely limited job prospects."¹⁵⁰ Students suspended or expelled for bringing a dangerous weapon to school or for being charged with a crime are in a perilous situation. Without an education, they will find themselves without opportunities to advance and become productive citizens. For these reasons, the public school system should support all students, including those who have problems in the normal school environment. Alternative education plans provide this support. Removing the student from the regular classroom satisfies safety concerns, and the student's continuing education ultimately benefits the entire community. Mandatory alternative education could fulfill the goals of educating all students and preserving safety in the schools.

Other states have instituted mandatory alternative education for students excluded from school. Connecticut law requires a school system to offer alternative education to any expelled student under the age of sixteen.¹⁵¹ Similarly, Louisiana requires that suspended or expelled students remain under the supervision of the school in an alternative education program.¹⁵² Unlike Massachusetts students,

¹⁴⁸ Connecticut provides for mandatory alternative education for expelled students under the age of sixteen. A student between the ages of sixteen and eighteen who is expelled is offered alternative education provided the student complies with certain conditions. See CONN. GEN. STAT. § 10-233d(d) (1996).

¹⁴⁹ See LA. REV. STAT. ANN. § 17:416.2(A) (West Supp. 1996).

¹⁵⁰ REPORT ON ALTERNATIVE EDUC., *supra* note 17, at 7.

¹⁵¹ See CONN. GEN. STAT. § 10-233d(d) (1996).

¹⁵² See LA. REV. STAT. ANN. § 17:416.2(A) (West Supp. 1996).

students excluded from school in Connecticut and Louisiana must participate in an alternative education plan. Removing these dangerous students from the classroom promotes school safety. In addition, these students will still receive the education they need to succeed. To meet the needs of school safety as well as the needs of troubled students, the Massachusetts Legislature should require school systems to provide alternative education to every student suspended or expelled from public school. The Supreme Judicial Court stated that it is "for the Legislature, not the courts, to decide when, if ever, alternative education must be provided to students expelled for disciplinary reasons, and the form such education must take."¹⁵³ The Legislature should mandate alternative education for every suspended or expelled student to ensure that all students receive an education.

VII. CONCLUSION

The education of today's youth is of vital concern to society. In order to remain productive and powerful, the nation must ensure that all of its children are educated so they have every opportunity to become productive citizens. Students who are in trouble either outside or within school should be helped, not abandoned.

The Massachusetts Education Reform Act made sweeping changes, but its effects are still too limited. School districts should be consistent in deciding whether to suspend or expel students for weapons violations. In addition, every student suspended or expelled from school should have access to alternative education. The competing goals of school safety and educating every student are both obtainable through alternative education. Students who pose a threat to themselves and others in the school community cannot remain in school. Alternative education removes these students without sacrificing the individual student's education.

Amy E. Mulligan

¹⁵³ *Doe v. Superintendent of Schools of Worcester*, 653 N.E.2d 1088, 1097 (Mass. 1995).