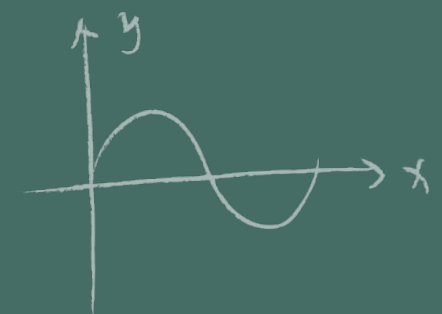




$$\sum_{k=1}^n \frac{1}{f(k) - f(2k)}$$



OVERCOMING OVERDISCIPLINE

Asserting Your School Discipline Rights

$$\{a_n\} = a_n = \frac{1}{\sqrt{n} + \sqrt{n+1}}$$
$$a_n = \sqrt{n+1} - \sqrt{n}$$
$$2) a_1 = \sqrt{2} - \sqrt{1}$$
$$a_2 = \sqrt{3} - \sqrt{2}$$
$$a_3 = \sqrt{4} - \sqrt{3}$$

Julian Washington, Esq.

$$(a+b)^2 = a^2 + 2ab + b^2$$





Staff Attorney



We are an independent state agency that provides free legal services to people with mental health and/or developmental disabilities



Roadmap

- Defining School Discipline
- Types of Behavioral Offenses
- Types of Discipline
- Manifestation Determination Review
- Child Requiring Assistance Petition
- Legal Recourse



$$\sum_{k=1}^n \frac{1}{f(k) - f(2k)}$$





What is School Discipline?

School discipline is your school's response when a student breaks the rules.

This can include a loss of privileges, suspension, expulsion, removal to an alternate setting, or an emergency removal.

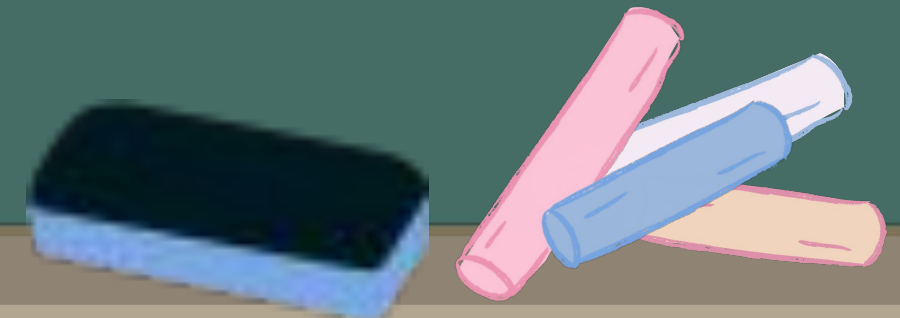
Schools **MUST** follow specific laws that inform you of the discipline, notify you of your rights, and allow your child to continue learning.





Race Ethnicity	Discipline Rate	Total Students Disciplined	Total Students
African American/Black	7.6%	6,792	88,791
American Indian or Alaskan Native	6.1%	134	2,197
Asian	1.1%	725	68,473
Hispanic or Latino	6.2%	14,061	225,328
Multi-race, non-Hispanic or Latino	4.7%	1,919	40,405
Native Hawaiian or Pacific Islander	4.9%	41	830
White	3.1%	15,954	516,178


MA Discipline Rates

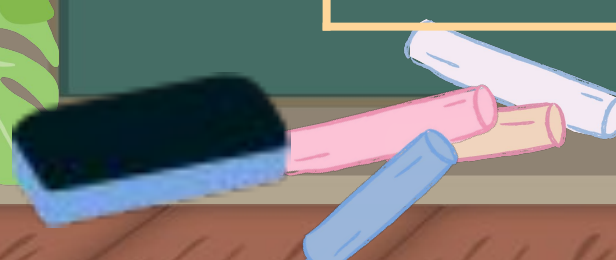




Legal Standard



<u>c. 71 s. 37H</u> 	Possession of a dangerous weapon, controlled substance, and assault on school staff
<u>c. 71 s. 37H1/2</u>	Felony Charges or Conviction
<u>c. 71 s. 37H3/4</u>	Rights for Suspension for non-serious offenses
<u>603 CMR 53</u>	Student Discipline Regulation



Improvements in the Law



1)

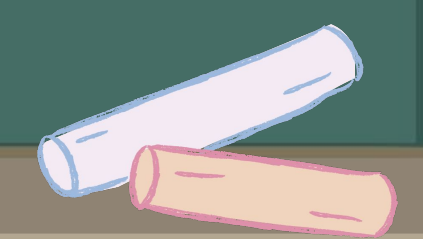


You're entitled to the school's policies that describe discipline standards and procedures. You have a right to copy of it, too!

2)



Students must have the opportunity to make academic progress for any disciplinary action taken.

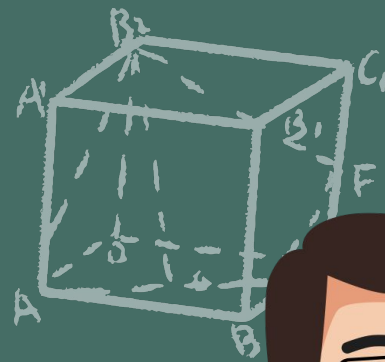




3) Schools must consider and document their efforts to use alternative remedies to exclusion

$$(a+b)^2 = a^2 + 2ab + b^2$$





$$\{a_n\} = a_n = \frac{1}{\sqrt{n} + \sqrt{n+1}}$$
$$a_n = \sqrt{n+1} - \sqrt{n}$$
$$a_1 = \sqrt{2} - \sqrt{1}$$
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$$a_3 = \sqrt{4} - \sqrt{3}$$



You and your child's rights depend on the alleged offense and the type of discipline they receive.

$$M = \left(\frac{x_1 + x_2}{2}, \frac{y_1 + y_2}{2} \right)$$





Types of behavioral offenses

Students' rights in school depend on what the student is accused of doing.

Serious Offense **or** Non-serious Offense

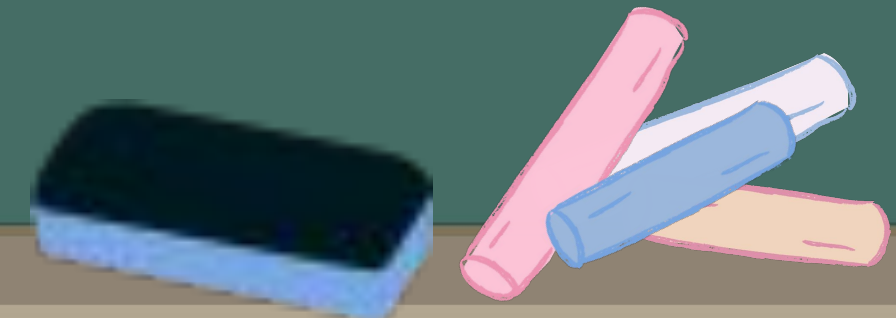




Serious Offense

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$$2) a_1 = \sqrt{2} - \sqrt{1}$$
$$a_2 = \sqrt{3} - \sqrt{2}$$
$$a_3 = \sqrt{4} - \sqrt{3}$$

- Includes:
 - Possession of a Dangerous Weapon
 - Possession of a Controlled Substance
 - Assault on School Staff
 - Felony Charges or Felony Conviction



See Massachusetts General Laws c. 71 s.37H and s.37H1/2

Type of Serious Offense	Written Notice of Discipline in Primary Language	Written Notice of Decision in Primary Language	Right to a Hearing	Right to an Appeal	Right to Educational Services
Possession of a Dangerous Weapon	✓	✓	✓	✓	✓
Possession of a Controlled Substance	✓	✓	✓	✓	✓
Assault on School Staff	✓	✓	✓	✓	✓
Felony Charge or Conviction	✓			✓	✓

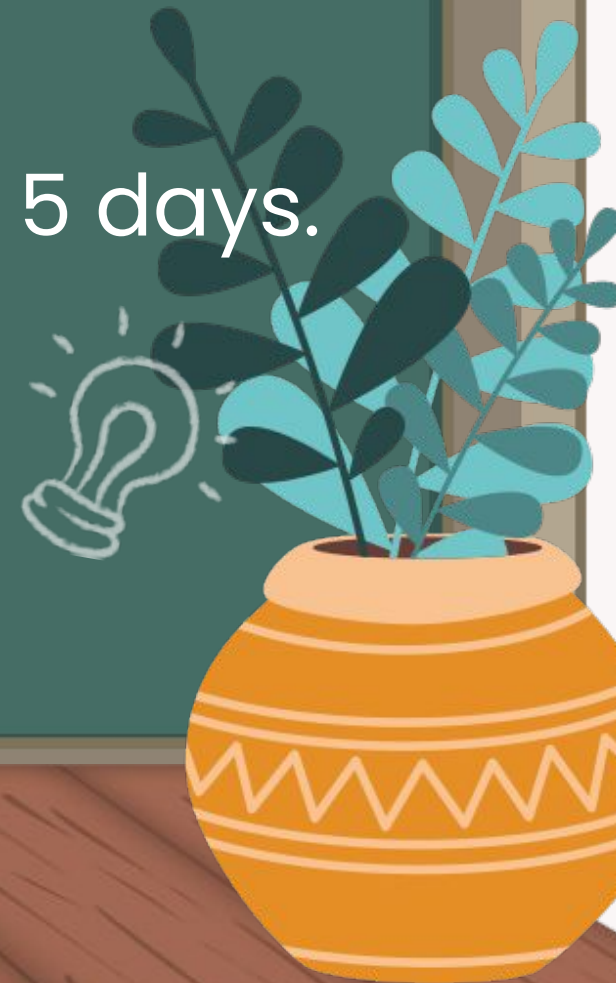




Serious Offenses

- Drugs, weapons, or assault on school staff
 - Student can appeal to the Superintendent within 10 days. Then, the student must have a hearing with the Superintendent who can change the expulsion to a suspension or remove the expulsion.
- Felony Charges
 - Student can appeal an exclusion to the Superintendent within 5 days. They can overturn or alter the decision.

See Massachusetts General Laws c. 71 s.37H(d) and s.37H1/2 (2)





Right to educational services in serious offenses

- Student is entitled to make academic progress during their removal! They can earn credits, make up assignments, tests, papers and other school.
- For long term suspensions and expulsions, parents can choose from at least two educational services options provided by the school district
 - Tutoring, online classes, night school, alternative school placement



Massachusetts General Laws c. 71 s.37H(e) and s.37H1/2 (2)



Type of Discipline for Felony Charge or Conviction

- For felony charges – indefinite suspension
- For a felony conviction – expulsion

See Massachusetts General Laws c. 71 s.37H1/2 (1) and (2)





Type of Discipline for Felony Charge or Conviction

The school must find that “the student’s continued presence in school would have a substantial detrimental effect on the general welfare.”

See Massachusetts General Laws c. 71 s.37H1/2 (1) and (2)



Type of discipline for possession of drugs, weapons, or assault on school staff

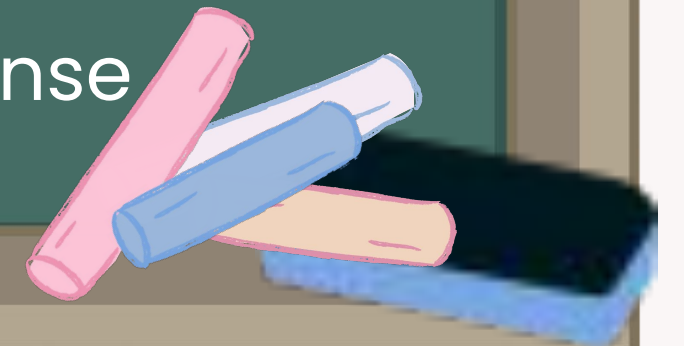
- For the other types of serious offenses, a student may be permanently expelled or suspended for any amount of time



Non Serious Offenses



- Any offense that does not fit into the serious category
 - Examples: destruction of property, classroom disruption, skipping class, school threats, any other violation of the code of conduct
- Potential Discipline
 - Emergency Removal
 - Suspension
- Expulsion cannot be used as a consequence for a non-serious offense



Before suspending a student for a non-serious offense, the school MUST:

- 1) Consider ways to re-engage the student in the learning process *and*
- 2) Document “alternative remedies” i.e. other ways to address the student’s behavior

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Alternative Remedies



Schools must consider and document their efforts to take alternative remedies to exclusion. These can include:

- Written warning
- Written reflection and apology
- Caregiver and student/teacher conference
- Loss of a privilege at school and/or home
- Adjust the student's schedule to avoid certain

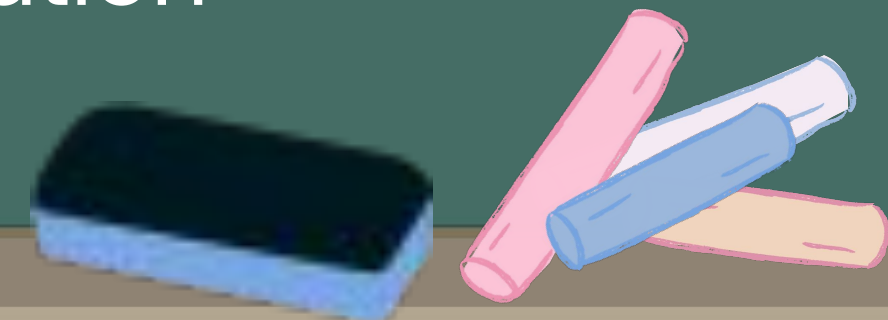
triggers



Alternative Remedies



- Meeting with school counselor/psychologist
- Community service
- Mentorship
- Behavioral contract
- Restorative justice
- Referral to community-based organization



Alternative Remedies



- Fremont High in East Oakland began a Restorative Justice Program to improve high student discipline rates and high dropout rates.
- These programs focus on repairing the harm done when students misbehave.



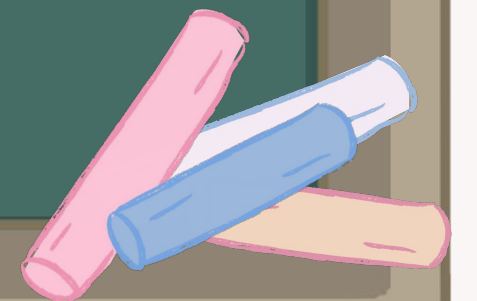
Non Serious Offenses

- Right to notice
- Student and families have the opportunity to meet with the principal before student is excluded
 - Not true for emergency removals



Language Access and Disability Accommodation

- Both the parent and student are entitled to receive all written notices of discipline and all written decisions in their primary language.
- The discipline hearing must be interpreted into the parent and students' primary language.
- Parents/guardians can request a qualified interpreter to attend any meetings or hearings with the school.
- If the parent has a disability and needs an accommodation to participate in the hearing, they have the right to request it.





Types of School Discipline

- Short-term and Long-term Suspensions
- Emergency Removals
- Expulsions

Schools must follow different due process procedures depending on the type of discipline your child receives.



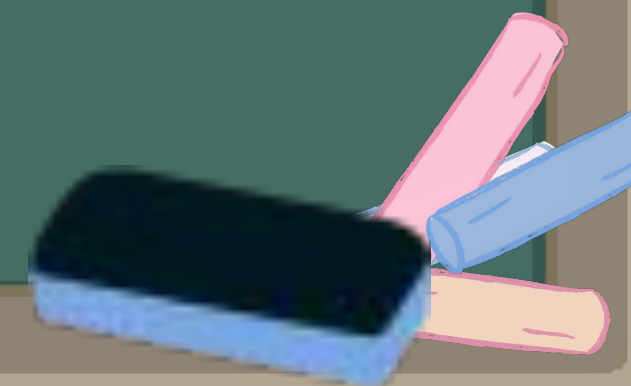
In-School Short-Term Suspensions



What is it?

- A student is removed from their normal classroom for no more than 10 days
- The student remains in the school building
- Can be used as an alternative to exclusionary discipline such as out-of-school suspensions or expulsions

See 603 Code of Massachusetts Regulations 53.10 regarding In-School Suspension



- Student's Rights:

- Before the suspension, the principal must meet with the student, explain the infraction, and give the student a chance to defend him or herself.
- The principal must also tell the student how long the in-school suspension will be.



- Parent's Rights

- The day of the suspension, the principal must give an oral or written notification of the infraction, length of the suspension, and the right to a meeting with the principal.
- If the parent wants a meeting, it should take place as soon as possible.



Out-of-School Short Term Suspension

What is it?

- A student is removed from school for no more than 10 days
- Student's Rights *before* the suspension:
 - Notice of the charges and the reason for suspensions in English and the primary language of the home
 - Right to a suspension hearing

See Massachusetts General Laws c. 71 s.37H3/4(c) and (d)



- Student's Rights after the suspension decision:
 - Updated suspension notice that states the length of the suspension. It also must include the student's opportunity to make-up all schoolwork.
- Parent's Rights:
 - Notice of the charges and the reason for suspensions in English *and* the primary language of the home
 - The school must make reasonable efforts to include the parent/guardian in the hearing, but the parent is not required to attend if the school can document its efforts to do so.

See Massachusetts General Laws c. 71 s.37H3/4(c) and (d)

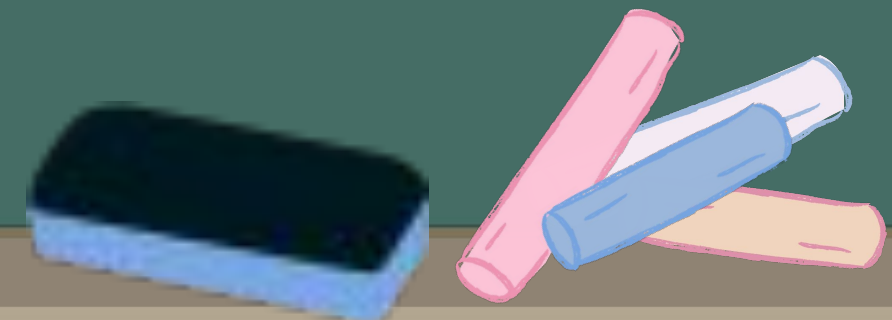




+ Alternative Remedies



$$\sum_{k=1}^n \frac{1}{f(k) - f(2k)}$$



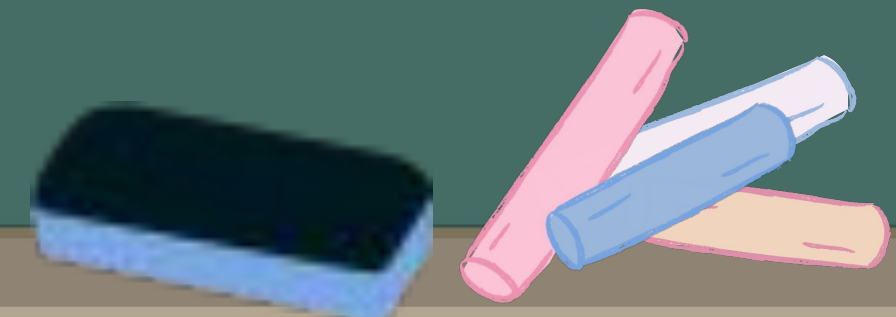
When a school DOES NOT have to use an alternative remedy



1) When an alternative remedy would be “unsuitable or counterproductive”

2) Where the student’s continued presence in school poses a concern about injury or harm

$$\sum_{k=1}^n \frac{1}{f(k) - f(2k)}$$





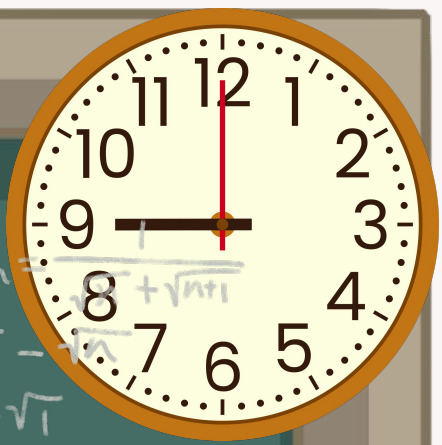
Long Term Suspension

What is it?

- The student is removed from class or school for more than 10 days for a single infraction or cumulatively for multiple infractions in any school year
- No longer than 90 school days
- Cannot last past the current school year if it is not due to a serious offense



Long Term Suspension



$\{a_n\} = a_n = \sqrt{n+1} - \sqrt{n}$
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 $a_3 = \sqrt{4} - \sqrt{3}$

In addition to their rights under a short-term suspension, the parent and student rights are:

- A list of at least 2 different education service options that the school will provide during the suspension
- Additional rights at the suspension hearing:
 - Right to review of student records and any documents the school will use

Long Term Suspension

- Rights Continued
 - Right to bring an attorney
 - Right to bring witnesses and cross-examine school district's witnesses
 - Right to request an audio recording
- The right to appeal to the superintendent and a notice of this right and process



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Emergency Removal

What is it?

- A student is removed from school for no more than two days at a time *before having a suspension hearing*
- The school finds that the student:
 - (1) poses a danger to people or property or (2) is seriously disrupting the school's ability to educate
 - AND there is no way to stop the danger or disruption in school

See 603 Code of Massachusetts Regulations 53.07 regarding Emergency Removal



Emergency Removal

Student's Rights:

- The school must ensure the student can get home safely.
- The principal must decide whether the student will continue to be suspended by the end of the emergency removal.
- A written decision must be issued the following day of this decision.

See 603 Code of Massachusetts Regulations 53.07 regarding Emergency Removal



Emergency Removal

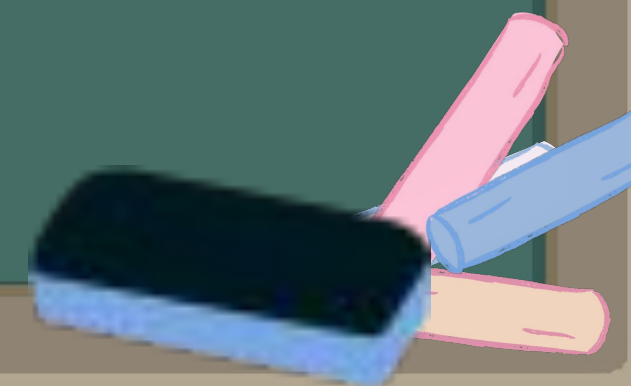
Parent's Rights:

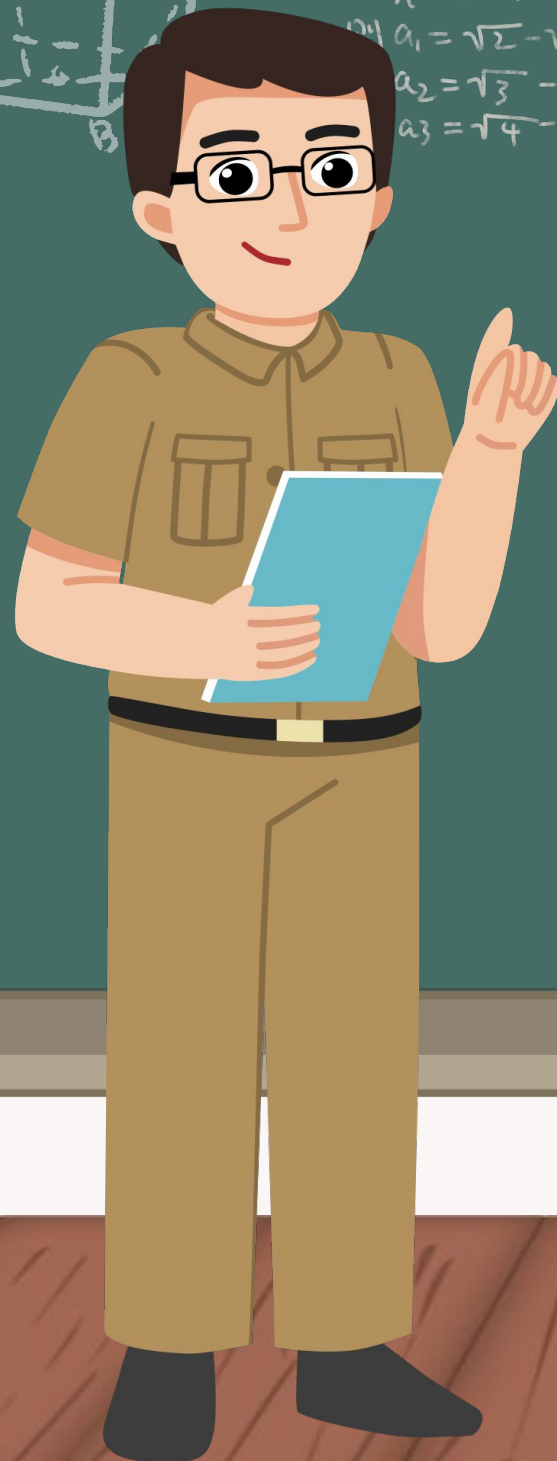
- The school must communicate the reason for the removal ASAP
- The school must provide the family with the opportunity for a hearing before the end of the emergency removal period
- After the hearing, the school must communicate with the parent on whether the student will continue to be suspended after the removal. A written decision must be issued the following day



Informal Discipline

- Anytime a student is removed from their *classroom* for behavioral issues for more than half the school day, it counts as a day of suspension
 - At minimum, they are entitled to in school suspension rights
- Anytime a student is sent home early from *school* for behavioral issues (e.g. school calls and asks parent to pick student up), this counts as a suspension. The family is entitled to:
 - short-term suspension or
 - emergency removal rights





MDR

- If a student with disabilities violates their school's code of conduct, the school can remove the student from school for up to ten days.
- Eligible for students on an IEP, 504 plan, or those with a suspected disability
- A removal from school for more than 10 consecutive or cumulative school days is called a "change of placement."
- The school must hold an MDR within 10 days of deciding to change the student's placement.

20 USC s. 1415 (k)(1)(E)(i)





MDR

$$\{a_n\} = a_n = \frac{1}{\sqrt{n} + \sqrt{n+1}}$$
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- The team is composed of: School district personnel, parent/guardian, and the IEP team
- The team should review:
 - IEP
 - Teacher observations
 - All relevant information in the student's file and any other relevant information provided by the parent





MDR

- The team must answer 2 questions:
 - Is the student's conduct related to their disability?
- or*
- Is the student's conduct the direct result of the school's failure to implement the IEP?





- If the answer to either of those questions is yes, the conduct is a “manifestation of the student’s disability.”
- The school cannot change the student’s placement or discipline them!
- The team must then conduct a Functional Behavioral Assessment and implement or modify a Behavioral Intervention Plan to address the behavior.



- If the student's conduct is a serious offense (involves weapons, drugs, or serious bodily injury), the school *can* remove the student to an Interim Educational Setting.
- They can place the student there for up to 45 days regardless of whether the behavior is determined to be a manifestation of the student's disability.

20 USC s. 1415(k)(1)(G)



MDR

- If the behavior is NOT a manifestation of the student's disability, the student may be disciplined in the same manner and for the same duration as a non-disabled student.
- Student has a right to Free and Appropriate Public Education (FAPE) to access general education and make progress towards meeting the goals set in the IEP



$$\sum_{k=1}^n \frac{1}{f(k) - f(2k)}$$



MDR

- If the team determines that the behavior was NOT a manifestation of their disability,
 - the parent and student are entitled to a written notice of the decision to change placement
 - The notice should outline the appeal process
- The child should receive a functional behavioral assessment or behavioral intervention services and modifications to address the behavior



MDR

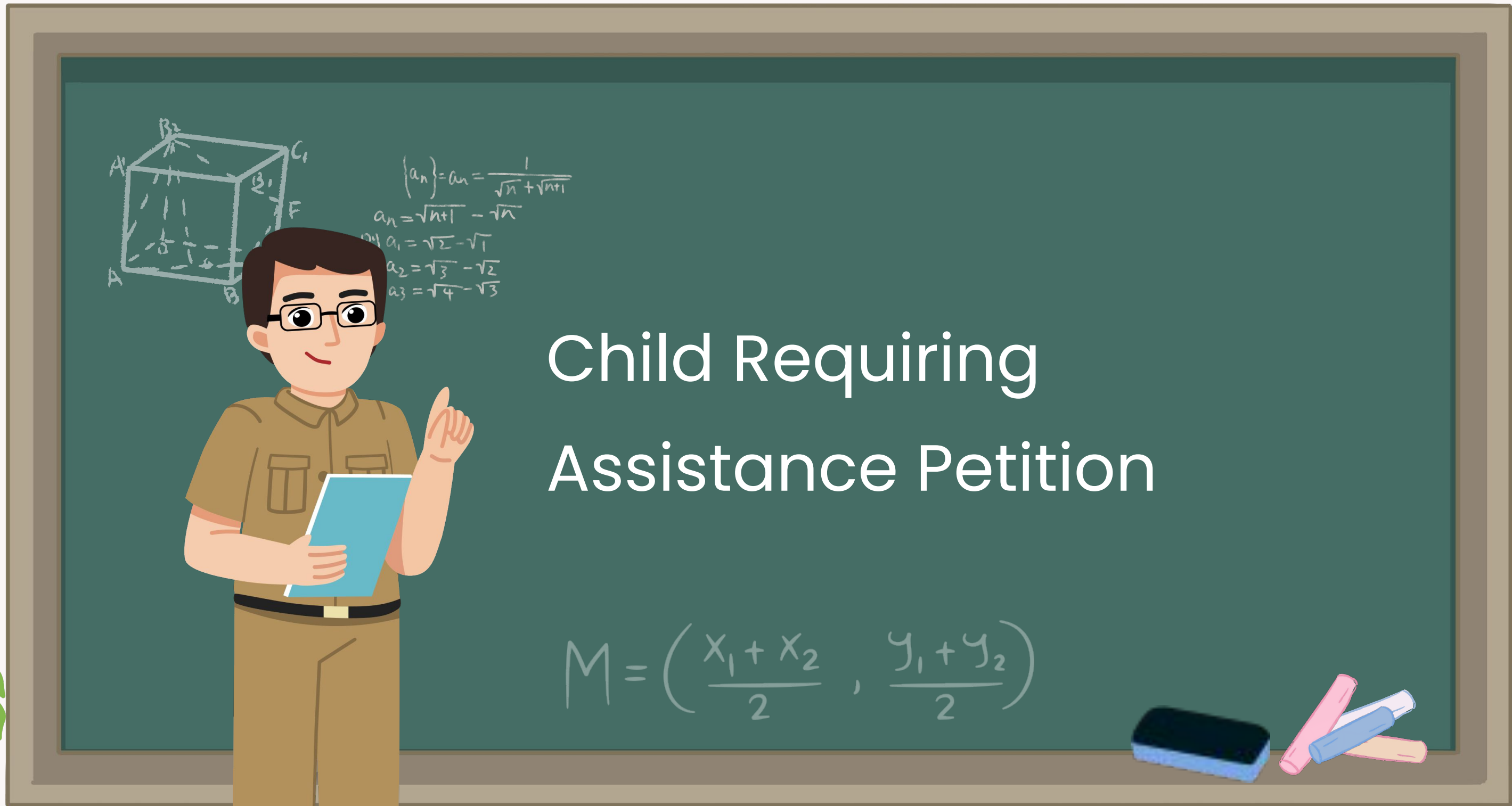
- Right to Appeal
 - A student may appeal the result of an MDR to the Bureau of Special Education Appeals (BSEA)



MDR

- Even if your child has not been identified as a student with a disability, they can still receive a manifestation determination review!
- You'll need to show that:
 - the school had knowledge that the child had a disability before the conduct occurred
 - parent/teacher expressed concern in writing to school that child needs special education services
 - parent requested that their child be evaluated for special education services





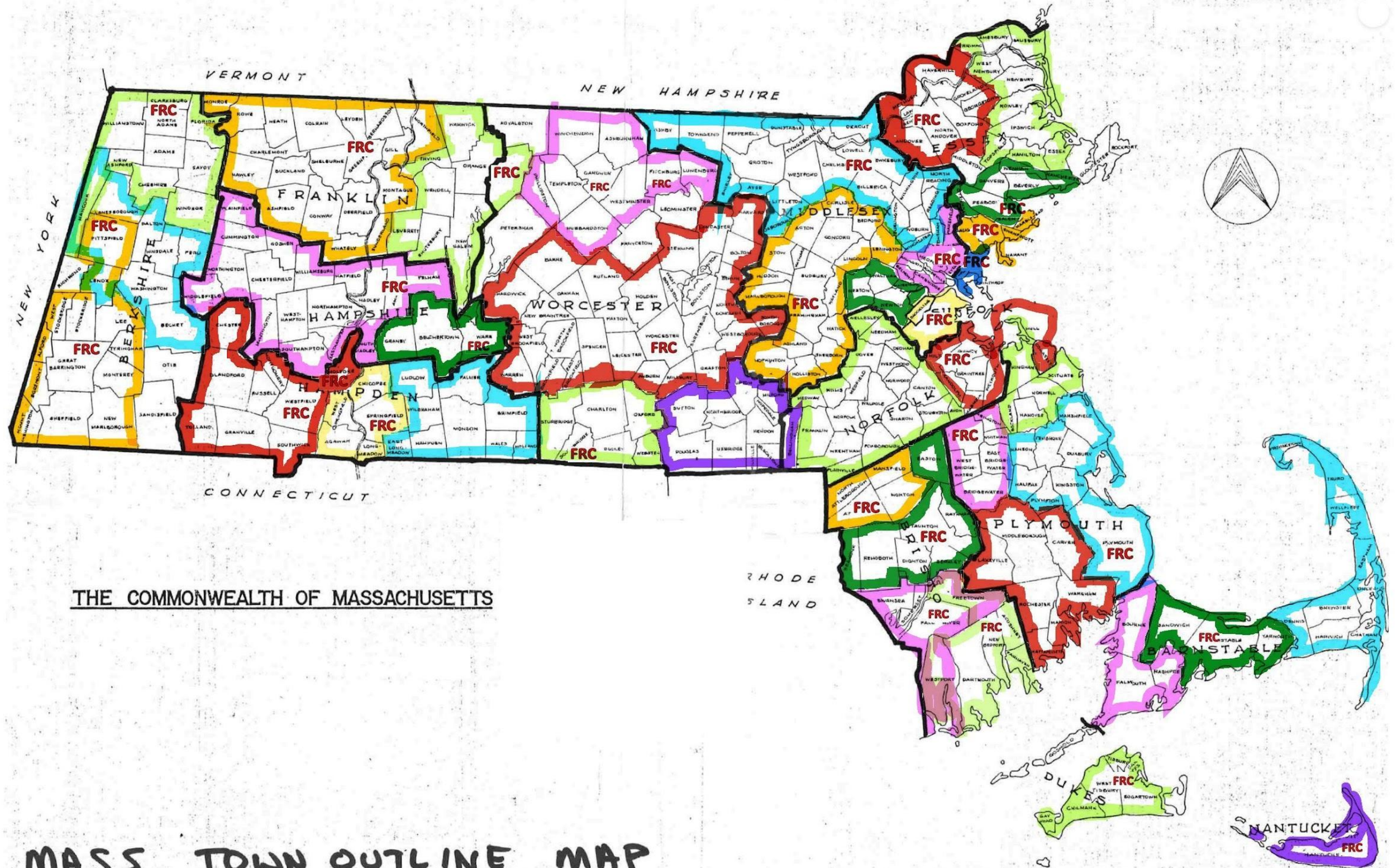
Child Requiring Assistance Petition



Child Requiring Assistance Petition

- A CRA is a civil legal proceeding that a school, parent or guardian can file against a child for being truant or breaking rules at home or school.
- The Juvenile Court does NOT have access to “special” services beyond what is available in the community, and a court order is NOT required to obtain these services.
- In a recent case file review by the OCA, nearly half of CRA filings were identified as needing an IEP or a 504 Plan.





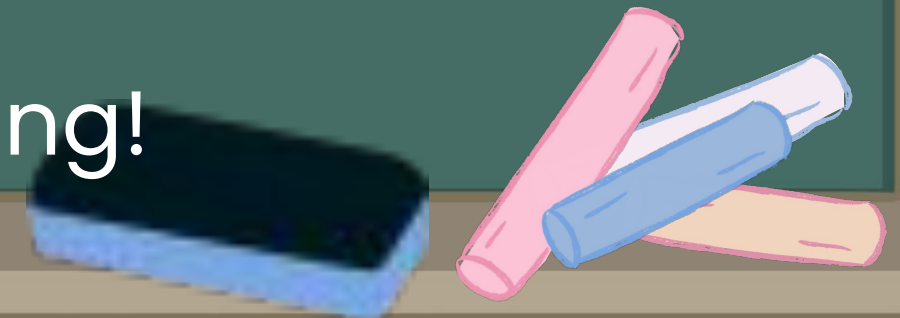
THE COMMONWEALTH OF MASSACHUSETTS

MASS TOWN OUTLINE MAP

What should you do when your school does not follow discipline law?

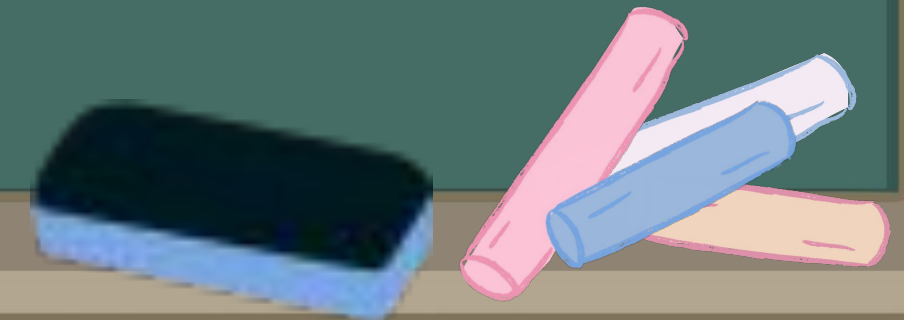


- Build a record
 - Keep a timeline of:
 - What happened regarding your student's discipline
 - What documents you received, and
 - What the response/nonresponse was.
 - Take pictures and keep copies of everything!



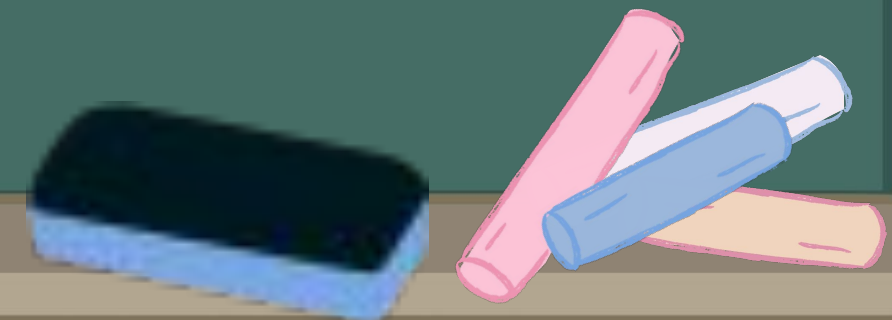
What should you do when your school does not follow discipline law?

- Sue!
 - It is illegal for your school to unlawfully exclude your child. If they violate the law, you may be entitled to compensation. Contact MHLAC, an advocacy group, or an education attorney to explore your legal options.



What should you do when your school does not follow discipline law?

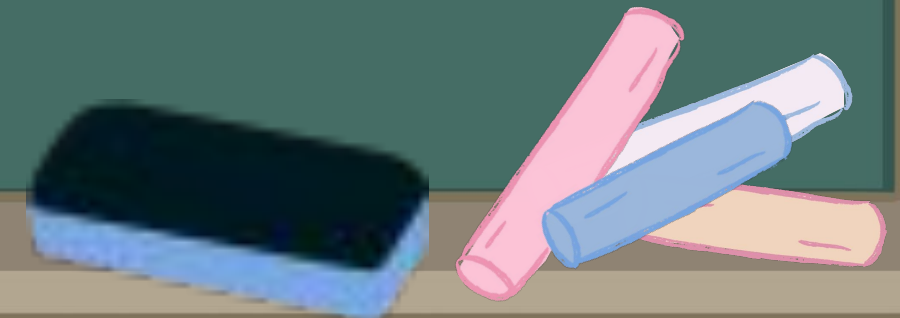
- Contact Advocates
 - Supportive school staff
 - Private attorneys (but will not represent you for free)
 - Appropriate advocacy and community organizations
 - Massachusetts Advocates for Children Free Helpline
 - Text: (617) 874-5354
 - Leave a voicemail: (617) 357-8431



What should you do when your school does not follow discipline law?



- File a complaint
 - If state law violation: File a Department of Elementary and Secondary Education's Problem Resolution System (PRS) complaint



What should you do when your school does not follow discipline law?

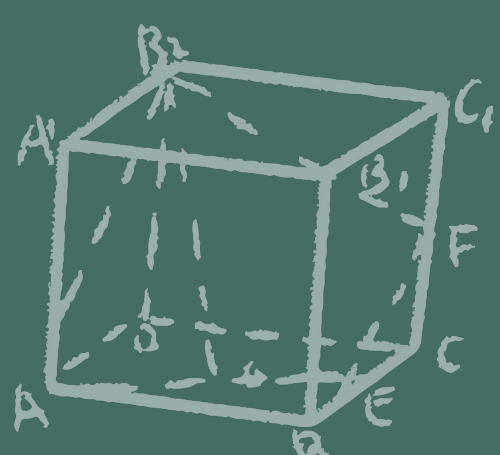
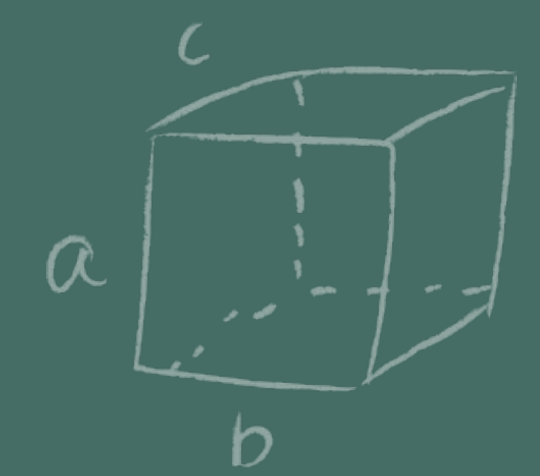
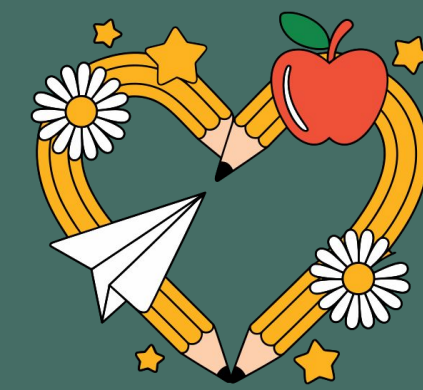
- File an Appeal with the Bureau of Special Education Appeals
 - If you disagree with the decision made in the Manifestation Determination Review, you can request a hearing at the BSEA

- Visit

<https://www.mass.gov/how-to/how-to-request-a-bsea-hearing>

for more information





THANK YOU

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