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### Testimony of Phillip Kassel to the Board of Elementary and Secondary Education regarding proposed regulations implementing c. 222 of the Acts of 2012 January 28, 2014

I am addressing the Board today in my capacity as the Director of the Mental Health Legal Advisors Committee, which is a state agency under the Supreme Judicial Court that provides legal and policy advocacy on a statewide basis to persons with mental health concerns. Our student clients are disproportionately suspended, expelled and arrested in the Commonwealth's schools. My advocacy for low-income students spans the better part of my more than 30 year career, which includes several years of employment with the Boston schools Office of English Language Learners, where I traveled extensively between schools and familiarized myself with the many difficult challenges facing school administrators. I was the co-founder and first coordinator of the Education Law Task Force and have been a contributing member for many years.

There is much to recommend the current draft regulations. For the first time, the specific procedural rights of students facing long-term suspensions are clearly set out in law. And the DESE drafters are to be commended for requiring that teaching in alternative education settings meet curriculum standards pertaining to all students.

I will focus this testimony, however, on one troubling aspect of the proposed regulations. 603 CMR 53.07 will permit "emergency" suspensions in advance of the provision of procedures designed to insure against arbitrariness in these decisions. In other words, a student who is able to demonstrate innocence at hearing will be punished nonetheless. The provision is inconsistent with the plain language of c. 222, which unambiguously requires that procedural protections occur "prior to" the imposition of the sanction.<sup>1</sup> As drafted, it will frustrate legislative intent that school discipline be fairly administered and alternatives to discipline explored fully before it is imposed.

Like many of us in the advocacy community, I fully understand that there are circumstances that arise calling for prompt removal of students from the school building (e.g. a

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<sup>1</sup> C. 222 of the acts of 2012 ("c. 222"), codified at G.L. c. 71, § 37 H ¼ (c).

serious brawl). The exception provision proposed, however, defines “emergency” in a way that will certainly include circumstances that are not emergent, allowing for exclusion before process whenever a disciplinarian concludes that the student’s continued presence will “materially disrupt” school order. This standard is far less stringent than that governing emergency suspension in the Boston schools.<sup>2</sup> It also permits delay in due process for five school days, compared to the BPS standard of no more than one school day.<sup>3</sup>

The regulatory proposal virtually assures that the exception will swallow the rule. Current widespread disciplinary practice in our schools is to discipline first; provide process later. Since process is pointless once a student is sanctioned, the legislature, logically, decreed the reverse order. Compliance would constitute a major cultural shift that will not happen if BESE offers disciplinarians the opportunity to conduct business as usual. Any justification for carving such a broad exemption is clearly diminished by the fact that the due process provisions of c. 222 *do not even apply* to the most serious school offenses.<sup>4</sup>

The broad exception is bad policy. It will make schools less safe and undermine the pedagogical value of the disciplinary process, teaching students that authority may proceed as it may wish even in the face of legally mandated checks. Recent research indicates that safe schools are firm in discipline but also fair.<sup>5</sup> Where procedures designed to insure fairness are circumvented, it is impossible for students to have this perception.

I would support an emergency exception genuinely calculated to pertain only to emergencies. Given the need to change current practice, this would require:

1. Stringent standards governing suspensions similar to the Boston disciplinary code;
2. Limited delays in the provision of due process;
3. Internal controls on use of the emergency exception, such as notice to the district superintendent in the same manner as prior notice of suspensions of younger children, as required by c. 222;
4. Incorporating emergency exceptions into school district reporting and data posting, so that overuse can be identified and addressed.

I urged the Board to keep the rare and exceptional case from driving disciplinary policy and dashing legislative intent. Thank you.

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<sup>2</sup> See Boston Public Schools Code of Conduct at § 8 (emergency suspension only permitted when there is “no alternative” to suspension and providing prior process is “impossible;” the “exact reason for exclusion and the alternative measures taken” must be documented).

<sup>3</sup> *Id.*

<sup>4</sup> C. 222 at § 3; G.L. c. 71, § 37 H ¾ (a) states that the new statute does not apply to school infractions governed by G.L. c. 71, § 37 H (a) and (b) (weapons, controlled substances, assaults on school staff) or § 37 H ½ (felony charges and convictions).

<sup>5</sup> See e.g. Gary Gottfredson et al., *School Climate Predictors of School Disorder: Results from a National Study of Delinquency Prevention in Schools*, 42 *Journal of Research in Crime and Delinquency* 412, 433 (2005) (students rate their schools higher on scales of student delinquency and victimization when they report unfair implementation of arbitrary rules).