

RIGHTS REGARDING PROSECUTION FOR MISCONDUCT AT SCHOOL

Prepared by the Mental Health Legal Advisors Committee
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How do I protect my child from criminal prosecution for conduct at school?

It is important for students involved in prosecutions for misconduct at school to obtain legal counsel. Families who can afford to hire a lawyer should hire one as soon as possible, even before the arraignment.

If a family is found to be indigent and unable to afford counsel, the court should appoint a lawyer. Courts will most likely assess a fee for a court-appointed lawyer, which can be paid off by the time the case ends.¹

Regardless of whether the family or court pays for the child's lawyer, the lawyer represents the child and not the family. Ultimately, the child and his lawyer make the final legal decisions. However, parents can bring up pertinent issues to the child's lawyer.

Encourage the lawyer to gather information on all aspects of the incident for which the child is facing prosecution. The lawyer might request school records, school reports, incident reports, video surveillance, statements, notes, memos of understandings, contracts, 911 calls, broadcasts, computer sheets, and a list of student and staff present at the incident for which the child is facing prosecution.

It may be possible to prove that a child is not responsible for the misconduct because of mental illness. It must be shown that the child's mental state prevented him from making lawful choices or from understanding the wrongfulness of his actions.² It may also be possible to show that a child's status as a minor diminishes his capacity to make lawful decisions.³

¹ Mental Health Legal Advisors Committee, *Just for Youth: Advocating for Youths in the Massachusetts Department of Youth Services* (3rd ed., 2010) at 5.9, <http://www.mhlac.org/Docs/DYSPProject/Justforyouthfinal.pdf>

² Erica Cushna, Esq., *So You Find Yourself Involved in a School Prosecution? The Basics You Must Know*, in *Juvenile Delinquency and Child Welfare Law Conference 2007*, 219 (MCLE 2007).

³ Erica Cushna, Esq., *So You Find Yourself Involved in a School Prosecution? The Basics You Must Know*, in *Juvenile Delinquency and Child Welfare Law Conference 2007*, 220-21 (MCLE 2007).