

**Special Education Law  
Fall, 2006  
Professor Griffin  
Massachusetts School of Law**

**In class exercise - 10/28/06**

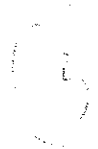
Sam Student is an 8<sup>th</sup> grade student in Sunnybank School District during this, the 2005-2006, school year. Sam has been enrolled in Sunnybank since kindergarten. Sam repeated the 6<sup>th</sup> grade once. Sam had an IEP, from 1st grade through 6th grade. At the end of his second year in the 6<sup>th</sup> grade, Sam's Team met for an annual review meeting. Following this meeting, the district proposed a finding of no eligibility for special education services. Sam's mother received a letter following the Team meeting, explaining her rights and explaining that if she did not appeal the Team's decision within thirty days, Sam would be terminated from special education. Sam's mother did not appeal, and thirty days after the letter was sent, Sam was terminated from special education services. He began middle school (7<sup>th</sup> grade) with no IEP and no Section 504 Plan.

Sam's mother has been concerned about his performance in middle school and his behavior at home, and discussed her concerns with the middle school guidance counselors during both his 7th and 8th grade years. Specifically, they discussed Sam's poor grades, apparent attentional issues, poor attendance, and his sad disposition. Sam's mother also informed the guidance counselor that Sam

require special education. The special education chair did not respond to this e-mail, nor did she contact Sam's mother. The guidance counselor also contacted the school principal by e-mail, expressing concern about Sam, and her opinion that he needed to be evaluated. The school principal did not respond to this e-mail.

Sam's first quarter report card came out the first week in November. He received Fs in all of his major subjects. Comments indicate that Sam is withdrawn, does not participate in class, does not complete homework or class assignments, and is often truant from class. Sam's attendance records indicate that he was absent 15 days, and had received 7 days of out-of-school suspension for various offenses, including insubordination to teachers, truancy, and failure to attend detention.

On November 16, 2005, Sam's guidance counselor was walking in the hallway near the boy's lavatory during third period when she smelled marijuana. As she approached the lavatory, she saw Sam exiting. When he saw her he stuffed his hand into his coat pocket. The guidance counselor walked Sam down to the principal, who asked Sam if he had anything in his pocket. Sam produced a small bag of marijuana. The principal contacted the local police. While waiting for the police to arrive, the principal explained to Sam that drug possession was an expellable offense, and asked if Sam had anything to say. Sam explained that he has a hard time paying attention in school, and that marijuana calms him down.



previously had an IEP. During the fall of his 7th grade year, Sam's guidance counselor suggested that Sam's name be raised at the student support pre-referral team (SST) at the middle school. The SST met for eight weeks concerning Sam between January and March, and made recommendations for teachers to follow. The final recommendation was that "[i]f Sam's attendance and grades do not improve by the end of the seventh grade, with the interventions listed in this plan, Sam will be referred for a special education evaluation."

By the end of the 7th grade, Sam had been absent overall 1/3 of all school days, and had missed 1/2 of the sessions in some subject area classes. He had failing grades in Social Studies, Science, and English, and qualified to repeat 7<sup>th</sup> grade. Because of his age and size, however, the principal determined that Sam should be promoted. No special education evaluation referral was made and no Team meeting or SST meeting was held.

Throughout the beginning of Sam's 8<sup>th</sup> grade year, his mother continued to express concerns about Sam's attendance and performance to his newly assigned guidance counselor. Sam's guidance counselor sent one e-mail to the special education chair at the school about Sam in early September, mentioning that his mother was concerned about Sam's truancy and performance in school, that the guidance counselor agreed with his mother's concerns, and that she thought Sam might

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The following morning, after Sam arrived in school, the principal called Sam into the office, gave him a letter addressed to his mother, and told him that he was expelled from school and could not return. (See Exhibit A.) Sam has not been allowed to return to school since then, despite his mother's repeated calls to the school.

**Today is December 13, and Sam and his mother have come to your law office seeking assistance in getting Sam back into school. Please write a memorandum describing to Sam and his mother any legal options available to them. Please discuss any potential procedural and substantive issues based on state and federal statutes, regulations and case law.**



**EXHIBIT  A**

**SUNNYBANK MIDDLE SCHOOL  
678 North Street  
Sunnybank, Massachusetts**

November 17, 2005

Mrs. Sarah Student  
345 South Street  
Sunnybank, MA

Re: Sam Student

Dear Mrs. Student:

Your son, Sam Student, was found in possession of marijuana in the boy's lavatory today at school. We view this as a very serious offense, and, therefore, we notified the police.

Sam was given an opportunity to speak to me about this offense today in school before he was arrested. He explained that he has a hard time paying attention in school, and that marijuana calms him down. Under Massachusetts General Laws ch. 71, section 37H, Sam can be expelled for this offense. Pursuant to this law, I am expelling Sam from school, effective immediately. You may wish to discuss this matter with Sam's physician, and possibly seek counseling for Sam.

If you have any questions, please call me.

Sincerely,

Pat Principal

cc: Sally Superintendent