

DISCIPLINARY DUE PROCESS FOR STUDENTS

CHANGES EFFECTIVE NOVEMBER 8, 2022

NUTTALL, MACAVOY & JOYCE, P.C.

NOVEMBER 2, 2022

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DISCIPLINARY RESPONSES STATE AND FEDERAL DUE PROCESS REQUIREMENTS



Massachusetts Statutes

- M.G.L. c.71, § 37H
- M.G.L. c.71, § 37H ½
- M.G.L. c.71, § 37H ¾
- M.G.L. c.76, § 21

Massachusetts Regulations

- 603 CMR 53.00

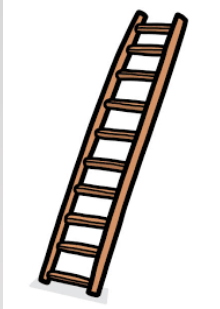
Federal Statutes and Regulations

- The Individuals with Disabilities Education Act (IDEA)
 - 34 CFR §300.530-537
- Section 504 of the Rehabilitation Act of 1973

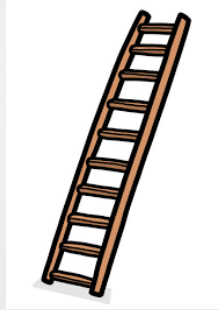
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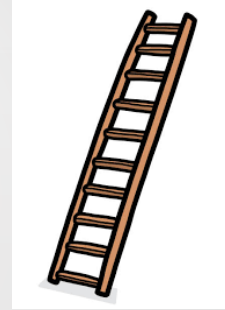
Critical - Choose the Right Ladder



M.G.L. c. 71, § 37H
(statutory offenses)
Informal Hearing
+
Formal Hearing



M.G.L. c. 71, § 37H ½
(statutory offenses)
Informal Hearing
+
Formal Hearing



M.G.L. c. 71, § 37H ¾
Formal Hearing **before** any
suspension
(Unless criteria for emergency
removal is met)

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M.G.L. c.71, § 37H



- A **principal** (cannot be designated) has authority to suspend or permanently expel a student for the following conduct:
 - Possession of a dangerous weapon
 - Principal's determination
 - Possession of a controlled substance (as defined in c.94C)
 - Assault on Staff
 - Principal's determination
- Prior to imposing a long-term suspension or expulsion, principal must conduct formal hearing at which:
 - **student has right to counsel (at private expense);**
 - **right to examine the evidence against him/her;**
 - **and to present evidence in own defense.**

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M.G.L. c. 71, § 37H DUE PROCESS INFORMAL HEARING + FORMAL HEARING

1. **Informal Hearing - Prior to the imposition of the Out-of-School Suspension** –The principal verbally informs the student of the disciplinary offense charged and the basis for the charge; and
 - The principal provides the student with the opportunity to respond to the charges.
 - Do not use emergency removal procedures as set forth in 603 CMR 53.07 for a 37H offense.
2. **Initial Out-of-School Suspension (“OSS”) of up to Ten (10) School Days**
 - Principal issues written decision notifying student of suspension for up to 10 days pending further disciplinary proceedings (a formal hearing).
3. **Principal (cannot be a designee) conducts Formal Hearing before 11th day of suspension**
4. **Principal issues Written Decision after the Formal Hearing**
 - !! Only applies to possession of dangerous weapons, drugs, assaults on staff.

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M.G.L. c.71, § 37H1/2

- **Felony Charges – Suspension**
 - Principal may suspend based on the issuance of felony charges where Principal determines that the student’s continued presence would have a substantial detrimental effect on the general welfare of the school.
 - Principal must provide written notice of charges and basis for decision prior to imposition of long-term suspension and notice of appeal process.
- *Principal cannot delegate authority to a designee under 37H1/2.



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M.G.L. c.71, § 37H1/2

- **Felony Charges – Expulsion**
 - Upon being convicted of a felony or upon an adjudication or admission of guilt in court, a student may be expelled if the Principal determines that the student’s continued presence would have a substantial detrimental effect on the general welfare of the school



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M.G.L. c. 71, § 37H ½ DUE PROCESS INFORMAL HEARING + FORMAL HEARING

1. **Informal Hearing - Prior to the imposition of the Out-of-School Suspension** –The principal verbally informs the student of the disciplinary offense charged and the basis for the charge; and
 - The principal provides the student with the opportunity to respond to the charges.
 - Do not use emergency removal for a 37H ½ offense.
2. **Initial Out-of-School Suspension (“OSS”) of up to Ten (10) School Days**
 - Principal issues written decision notifying student of suspension for up to 10 days pending further disciplinary proceedings (a formal hearing).
3. **Principal (cannot be a designee) conducts Formal Hearing Before 11th day of suspension**
4. **Issues Written Decision After the Formal Hearing**

!! Applies to felony offenses.

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M.G.L. c.71, §37H and 37H1/2 APPEALS

Student may appeal suspension or expulsion pursuant to:

- M.G.L. c. 71, Section 37H to Superintendent within 10 calendar days
 - The expelled student shall have 10 calendar days from the date of the expulsion in which to notify the superintendent of his/her appeal.
- M.G.L. c.71, §37H1/2 to Superintendent w/in 5 calendar days.
 - Superintendent must hold hearing within 3 calendar days of receipt of appeal.
 - Superintendent must issue written decision on appeal within 5 calendar days of hearing.
- **Superintendent's decision is final.**



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M.G.L. c. 71, § 37H ¾



Applies to all offenses that do not
fall under 37H or 37H1/2.

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EMERGENCY REMOVALS

M.G.L. c. 71, § 37H ¾
603 C.M.R. 53.07

- Principal, or designee, may unilaterally remove a student for up to 2 school days when:
 - The student is charged with a disciplinary offense; and
 - The continued presence of the student poses a danger to persons or property, or would substantially materially disrupt the order of the school; and
 - In the principal's (or designee's) judgment, there is no alternative available to alleviate the danger or disruption.
- Principal, or designee, must:
 - Make immediate and reasonable efforts to orally notify the student and the student's parent of the emergency removal and of the reason for the need for emergency removal, and the notice requirements for short-term suspension, including written notice.
 - Make "adequate provisions" for the student's safety and transportation.
 - Conduct a hearing within 2 school days .

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IF IT'S NOT EMERGENCY REMOVAL.....

- If it's **not** Emergency removal, then.....

The principal or designee must **conduct a hearing in accordance with the requirements of 603 CMR 53.00** prior to imposing even one (1) day of in-school or out-of-school suspension.

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DEFINITIONS

M.G.L. c. 71, § 37H ³/₄ ONLY

603 C.M.R. 53.02

- **In-School Suspension:** Removal of a student from regular classroom activities, but not from the school premises, for no more than 10 consecutive school days, or no more than 10 school days cumulatively, for multiple infractions in a school year.
- **Short-Term Suspension:** Removal of a student from the school premises and regular classroom activities for 10 consecutive school days or less.
- **Long-Term Suspension:** Removal of a student from the school premises and regular classroom activities for more than 10 consecutive school days, or more than 10 school days cumulatively for multiple disciplinary offenses in any school year.
- **Expulsion:** Removal of a student from the school premises for more than ninety (90) school days in a school year, indefinitely, or permanently, as permitted under M.G.L. c. 71, §§37H or 37H¹/₂.

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M.G.L. c. 71, § 37H ³/₄ PRIOR TO NOVEMBER 8, 2022

- ~~Any principal, headmaster, superintendent or other person acting as a decision-maker at a student meeting or hearing, when deciding the consequences for the student, **shall exercise discretion**; consider ways to re-engage the student in the learning process; and avoid using expulsion as a consequence until other remedies and consequences have been employed.~~
- The statute has removed the discretion to suspend that it formerly provided to principals or principals' designees.

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NEW LIMITATIONS ON SUSPENSION EFFECTIVE NOVEMBER 8, 2022

Any principal, headmaster, superintendent or person acting as a decision-maker at a student meeting or hearing, when deciding the consequences for the student, **shall**:

- consider ways to re-engage the student in the learning process; and
- **shall not** suspend [not even for one day] or expel a student **until** alternative remedies have been employed and their use and results documented, following and in direct response to a specific incident or incidents....

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NEW LIMITATIONS ON SUSPENSION EXCEPTIONS

- The principal...shall not suspend or expel a student until alternative remedies have been employed..... **unless**:
 1. Specific reasons are **documented** as to why such alternative remedies are unsuitable or counter-productive; or
 2. Where the student's continued presence in school would pose a specific, **documentable** concern about the infliction of serious bodily injury; or
 3. Where the student's continued presence in school would pose a specific, **documentable** concern about other serious harm upon another person while at school.
 - ❖ The limitation applies to both in-school and out-of-school suspension.
 - ❖ The limitation also applies to the emergency removal process



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ALTERNATIVE REMEDIES

- ❖ Alternative remedies may include but are not limited to:
 - Mediation;
 - Conflict Resolution;
 - Restorative Justice;
 - Collaborative Problem Solving;
 - Detention;
 - Exclusion from extra curricular activities;
 - Removal of phone privileges; and
 - Other non-exclusionary sanctions.

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COMPARE EMERGENCY REMOVAL STANDARD

TO

NEW STANDARD

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- Emergency Removal:
 - The continued presence of the student poses a danger to persons or property, or would substantially and materially disrupt the order of the school; and in the principal's judgment, there is no alternative available to alleviate the danger or disruption.
- New Standard for any removal:
 - Where the student's continued presence in school would pose a specific, **documentable** concern about the infliction of serious bodily injury **or** other serious harm upon another person while at school; or
 - Where specific reasons are documented as to why alternative remedies are unsuitable or counter-productive.

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NEW SCHOOL WIDE PLANNING REQUIREMENT



- The principal, headmaster, superintendent or person acting as a decision-maker **shall** also:
 - implement school- or district-wide models to re-engage students in the learning process which shall include but not be limited to:
 1. positive behavioral interventions and supports models and
 2. trauma sensitive learning models
 - provided, however, that school- or district-wide models shall not be considered a direct response to a specific incident.

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PRACTICAL EFFECTS OF THE CHANGES TO M.G.L. c. 71, § 37H 3/4

- No changes to 37H or 37H ½ due process procedures or ability to impose suspensions for statutory offenses.
- For 37H ¾, this is only going to impact 5 disciplinary letters/notifications
 1. In-School Suspension Decision Letter
 2. Short-Term Suspension Decision Letter
 3. Long-Term Suspension Decision Letter
 4. Superintendent's Suspension Decision Letter
 5. Minor changes to Emergency Removal Letter
- For the most part, this is a change in how we document our decisions. It is not necessarily a change in practice.

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QUESTIONS?



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