

New Changes to Laws Regarding Student Discipline

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Historical Perspective

Fourteenth Amendment (Substance)

- A school official's substantive decision in disciplining a student will generally be upheld by the courts unless it is "arbitrary or capricious," thus affording "broad discretion." *Doe v. Superintendent of Schools*, 421 Mass. 117 (1995).

Fourteenth Amendment (Procedures)

- *Goss v. Lopez*, 419 U.S. 565, 581 (1975) – for ten or fewer days of suspension student must be provided with oral or written notice of the charges and an opportunity to respond, providing for informal discussion with the student followed immediately by a decision.
 - "Further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process."

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Expulsion Authority

- Principals are authorized to expel students for offenses governed by MGL c. 71, Sections 37H and 37H ½.
- School Committee is authorized to expel students for all other "misconduct" following "an opportunity to be heard." MGL c. 76, Sections 16, 17.

No Provisions of Services Required for Suspended/Expelled Students, Except for Students with Disabilities. *Board of Education v. School Committee of Quincy*, 415 Mass. 240, 621 N.E. 2d 666 (1993).

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The changes in a nutshell...

- Legal citations:
 - Massachusetts statute: MGL ch. 71, s. 37H, 37H ½, and 37H ¾
 - Massachusetts regulations are 603 CMR 53.00.
- Date effective: July 1, 2014.
- Purpose: The new statute/regulations seek to ensure access to educational opportunity for all students, including those who violate school rules.
- MGL ch. 71, s. 37H and 37H ½ essentially stay the same with the addition of services for excluded students.
- MGL ch. 71, s. 37H ¾ is new and sets forth the major changes for all offenses not covered by 37H and 37H ½.

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Suspension/Expulsion under 37H and 37H½

- MGL ch. 71, s. 37H:
 - possession of a dangerous weapon;
 - possession of a controlled substance;
 - assault on a member of the educational staff
- MGL ch. 71, s. 37H ½:
 - a felony charge or felony delinquency complaint or conviction, or adjudication or admission of guilt with respect to such felony, if a principal determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school.

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Changes to 37H and 37H½

- The provisions for suspending and expelling students under M.G.L. c. 71, sec. 37H or 37H ½ **remain in place, so long as the following occurs:**
 - Any school district that suspends or expels a student under 37H or 37H ½ **shall continue to provide educational services** to the student during the period of suspension or expulsion.
 - If the student moves to another district during the period of suspension or expulsion, the new district of residence shall either:
 - admit the student to the school; or
 - provide educational services to the student in an education service plan.

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What is an Education Service Plan?

- Public Schools must provide educational services for all students who are excluded from school for any offense for more than ten consecutive days.
- The principal shall develop a school-wide education service plan describing the education services that the school district will make available to students who are eligible. Education services must be consistent with the academic standards and curriculum frameworks.
- Educational service plans may include tutoring, alternative placement, Saturday school, and online or distance learning.

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37H $\frac{3}{4}$ in a nutshell...

- For all other conduct (other than 37H and 37I $\frac{1}{2}$), the Statute:
 - requires administrators to consider and implement other consequences prior to imposing a long-term suspension (i.e. progressive discipline);
 - provides both parents and student opportunity for written notice and a hearing prior to any suspension (exception: Emergency Removal and Short-Term In-School Suspension);
 - provides for appeal of long-term suspensions to the Superintendent;
 - imposes a maximum length of ninety days for such suspensions and effectively eliminates expulsion by the school committee.

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What is an Emergency Removal?

- When it is determined that a student's continued presence in school poses a danger to persons or property, ***or materially and substantially disrupts the order of the school,*** and, in the administrator's, judgment there is no alternative available to alleviate the danger or disruption, a student who is charged with a disciplinary offense may be removed temporarily from school *before* receiving written notice and a hearing, to then be provided within two days of the removal.

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Various Levels of Discipline: Definitions and Due Process

- In-school suspension
- Out-of-School suspension
- Short-term suspension
- Long-term suspension
- Expulsion

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In-school suspension

- The 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 ten (10) school days cumulatively for multiple infractions during the school year.

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In-school suspension: Due Process

- The following must occur:
 - **Notice and opportunity to respond.** The administrator will inform the student of the disciplinary offense charged, the basis for the charge, and provide the student an opportunity to respond.
 - **Decision.** If the administrator determines that the student committed the disciplinary offense, the administrator will inform the student of the length of the in-school suspension (no more than 10 days, cumulatively or consecutively, in a school year).
 - **Reasonable Efforts.** The administrator will make reasonable efforts (i.e. two documented attempts to reach the parent) to notify the parent first orally and then in writing of the reasons for concluding that the student committed the infraction and the length of the in-school suspension.
 - **Meeting.** The administrator will invite the parent to a meeting to discuss the student's academic performance and behavior, strategies for student engagement, and possible responses to the behavior.

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Short-term suspension

- The removal of a student from the school premises and regular classroom activities for ten (10) consecutive school days or less.
- Perhaps of most far reaching impact on public schools, the Statute requires that prior to the student's short-term removal from school, the administrator must provide to both student and parent a detailed written notice of the charges and an opportunity for an informal hearing.

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Short-term suspension: Due Process

- **Notice.** An administrator will provide student and parent oral and written notice (offense, basis for the charge, potential consequences, opportunity to have a hearing, date/time of hearing, right to interpreter).
- **Reasonable Efforts.** The administrator will make reasonable efforts to notify the parent of the opportunity to attend the hearing.
- **Hearing.** The administrator will discuss the disciplinary offense, the basis for the charge, and any other pertinent information. The student/parents will have an opportunity to present information, including mitigating facts. The administrator should consider what other remedies and consequences may be appropriate.
- **Decision.** The administrator will provide written notice to the student/parent of the determination, reasons for it, and, if necessary, the type/duration of suspension and the opportunity to make up assignments and such other school work.

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Long-term suspension

- The removal of a student from the school premises and regular classroom activities for more than ten (10) consecutive school days, or for more than ten (10) school days cumulatively for multiple disciplinary offenses in any school year.
- Except for students under § 3711 or 3711½, no student may have a long-term suspension for more than ninety (90) school days in a school year.
- No long-term suspension shall extend beyond the end of the school year in which such suspension is imposed.
- The Statute requires public schools to provide educational services for all students who are excluded from school for any offense for more than ten consecutive days.

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Long-term suspension: Due Process

- For long-term suspension (more than 10 days), the following must occur:
- Notice. The notice will include all of the components for a short-term suspension above, plus the following:
 - opportunity to review the student's record;
 - the right to be represented by counsel;
 - the right to produce testimony and witnesses on his or her behalf;
 - the right to cross-examine witnesses;
 - the right to request that the hearing be recorded by the administrator; and
 - the right to appeal decision to the superintendent.
- Hearing. Same as long-term suspension.



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Long-term suspension: Due Process (continued)

- For long-term suspension (more than 10 days), the following must occur:
- Decision: The administrator will determine whether the student committed the disciplinary offense, and, if so, after considering mitigating circumstances and alternatives to long-term suspension, what remedy or consequence will be imposed, in place of or in addition to a long-term suspension.
- Written Determination. If the administrator decides to suspend the student on a long-term basis, the administrator must send a written determination that includes the following:
 - Details, key facts, etc.;
 - Conclusion reached;
 - Details of the suspension;
 - Notice of the student's opportunity to receive education services to make academic progress during the period of removal from school (if more than 10 cumulative days);
 - Appeal rights.



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Expulsion

- The removal of a student from the school premises, regular classroom activities, and school activities for more than ninety (90) school days, indefinitely, or permanently, as permitted under MGL ch. 71, s. 37H or 37H-1/2.
- Due process was not changed.



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Data Collection

- Districts must track the specific reasons for the discipline (regardless of the duration or consequence).
- Commissioner shall investigate each school district that suspends or expels a *significant* number of students for ten or more *cumulative* days in a school year.
- Also, where appropriate, the Commissioner shall recommend *intermediary steps* prior to the use of suspension or expulsion. The results of the analysis shall be *publicly reported* at the school district level. (emphasis added)

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School Policies and Student Handbooks

- The new Statute and Regulations change the legal landscape of student discipline in Massachusetts.
- Schools officials are encouraged to review the Regulations in their entirety and to work with their school attorneys to update policies and student handbooks to reflect these changes.

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