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# Statutory Change to Student Discipline Law

SCM Webinar

November 1, 2022

# Student Discipline: Legal Rights

- **IDEA (Special Education) and Section 504/ADA Rights**
- **14<sup>th</sup> Amendment Due Process Rights**
- **MA State Laws and Regulations**

# Massachusetts Discipline Laws

**Three statutes govern student discipline. Different due process protections for each:**

- **MGL c. 71, s. 37H** – Possession of Drugs, Possession of Weapons and Assault on School Staff Offenses ONLY
- **MGL c. 71, s. 37H1/2** – Felonies (in or out of school) ONLY
- **MGL c. 71, s. 37H3/4** – All other disciplinary offenses

**All offenses under any statute – Student Rights:**

- Students entitled to make up work during ALL disciplinary removals for any length of time
- Students who are long-term suspended/expelled are entitled to access educational service plan options during long-term suspension/expulsion.

# Due Process: M.G.L. c. 71, s. 37H<sup>3/4</sup>

## All other offenses

- For all conduct other than 37H and 37H<sup>1/2</sup> violations:
  - imposes a maximum length of 90 days or the end of the school year (whichever comes first) for such suspensions;
  - does not allow suspensions to extend beyond the end of the school year;
  - sets forth appropriate due process for schools to follow prior to any suspension and specifically does not allow a student to be excluded from school without appropriate due process (exception: Emergency Removal, capped at 2 days);
  - grades K-3 out-of-school suspensions - requires principal send a copy of any out-of-school suspension decision to the Superintendent and explain the reasons for imposing an out-of-school suspension, whether short-term or long-term, before the suspension takes effect
  - provides for appeal of long-term suspensions to the Superintendent.
- Amended statute does not change any of the above

# Due Process: M.G.L. c. 71, s. 37H<sup>3/4</sup>

## Statutory Change

For all conduct other than 37H and 37H<sup>1/2</sup> violations...

### **Present language of Section 37H<sup>3/4</sup>(b) (no in effect as of 11/08/2022):**

“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 [suspension] as a consequence until other remedies and consequences have been employed.”

# Due Process: M.G.L. c. 71, s. 37H<sup>3/4</sup>

## Statutory Change

For all conduct other than 37H and 37H<sup>1/2</sup> violations...

### **Amended language of Section 37H<sup>3/4</sup>(b) (effective 11/08/2022):**

“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 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, unless specific reasons are documented as to why such alternative remedies are unsuitable or counter-productive, and in cases 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 in school. Alternative remedies may include, but shall not be limited to: (i) mediation; (ii) conflict resolution; (iii) restorative justice; and (iv) collaborative problem solving. 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: (i) positive behavioral interventions and supports models and (ii) trauma sensitive learning models; provided, however, that school- or district-wide models shall not be considered a direct response to a specific incident.”

# Due Process: M.G.L. c. 71, s. 37H<sup>3/4</sup>

## Statutory Change

### What does this mean?

#### **For all conduct other than 37H and 37H<sup>1/2</sup> violations...**

- Removes administrator discretion and relies on documentation of alternatives to suspension (or documentation of their unsuitability)
- Emphasizes ways to re-engage student in learning specifically through school wide models
- Want to ensure that suspensions determinations are thoughtfully considering and documenting the rationale
- Applies to ALL Section 37H<sup>3/4</sup> suspension decisions:
  - In-School Suspension
  - Out-of-School Suspension
  - Short-Term Suspension
  - Long-Term Suspension
  - Suspension Appeals
- Does not appear to impact emergency removal analysis and requirements (product of DESE regulations).

# Due Process: M.G.L. c. 71, s. 37H<sup>3/4</sup>

## Statutory Change

### What does this mean?

For all conduct other than 37H and 37H<sup>1/2</sup> violations...

- **Administrator must consider ways to re-engage the student in the learning process through school or districtwide models** (e.g. positive behavioral interventions and support, trauma-informed learning, etc.)
- **Administrators shall not suspend a student until either:**
  1. Alternative remedies (e.g. mediation, conflict resolution, collaborative problem solving, restorative justice) have both been actually employed and their use and results are documented following and in direct response to a specific incident or incidents; OR,
  2. Specific reasons are documented as to why alternative remedies are unsuitable or counter-productive; OR,
  3. Specific reasons are documented as to why the student's continued presence in school would pose a concern about the infliction of serious bodily injury or other serious harm upon another person while in school.



# Due Process: M.G.L. c. 71, s. 37H<sup>3/4</sup>

## Statutory Change

### Questions to ask?

**For all conduct other than 37H and 37H<sup>1/2</sup> violations...when Administrators are making suspension determinations:**

1. Have alternatives remedies been employed first and have their results been documented in writing?
2. If alternatives have not been used yet, are there specific reasons as to why alternatives remedies are unsuitable or counter-productive and how can I document that?
3. If alternatives have not been used yet, does the students continued presence in school pose a specific concern about the infliction of serious bodily injury or other serious harm upon another person while in school and how can I document that?

# Due Process: M.G.L. c. 71, s. 37H<sup>3/4</sup>

## Statutory Change

### What does this look like in a suspension determination letter?

Prior to determining the consequences for the student, I considered mitigating circumstances presented at the hearing, ways to re-engage the student in the learning process through schoolwide models (e.g. [insert models considered such as PBIS, trauma-informed learning, SEL curriculum, anti-bullying curriculum, etc.]) and considered the following relative to alternative remedies to suspension (*choose ONE of the following, as applicable*):

1. I considered the fact that alternative remedies, specifically [insert what alternatives have been previously tried – e.g. mediation, conflict resolution, restorative justice, collaborative problem solving, etc.] have been employed and documented for student’s prior behavioral incident(s) and the alternative(s) did not curb student’s repeat behavioral misconduct.
2. I considered alternative remedies, specifically [insert what alternatives you considered for this misconduct - e.g. mediation, conflict resolution, restorative justice, collaborative problem solving, etc.], but determined the alternative remedies are unsuitable due to the serious nature of the offense which caused [insert rationale: e.g. substantial disruption to the learning environment; interference with the rights of others to access a safe and supportive school environment; extensive property damage, etc.].
3. I considered alternative remedies, specifically [insert what alternatives you considered for this misconduct - e.g. mediation, conflict resolution, restorative justice, collaborative problem solving, etc.], but determined that that due to the [insert description – e.g. violent; predatory; bullying; harassing; threatening] nature of the offense(s), the student’s continued presence in school would pose a risk of either:
  - a. infliction of serious bodily injury upon another person; and/or,
  - b. other serious harm upon another person, specifically [insert type of serious harm].

# Q&A