

# School Discipline & Chapter 222, An Act Relative to Student Access to Educational Services and Exclusion from School

Vineesha Sow, Esq.

Thomas Mela, Esq.



**CHILDREN'S LAW CENTER  
OF MASSACHUSETTS**

# School Discipline Laws

## Laws governing school discipline:

- 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
- 603 CMR 52.00

## Chapter 222 An Act relative to Student Access to Educational Services and Exclusion from School

- Enacted in 2012 and implemented in 2014, the new legislation had the following objectives (in all public schools including public charter schools :
  - limiting the use of long term suspension;
  - Requiring due process hearings before excluding students
  - requiring schools to attempt alternatives to exclusion; and
  - requiring schools to make education services available to students excluded from the classroom or school for any type of disciplinary offense.

# Right to Education Services to Make Academic Progress

- **ALL excluded students must have the opportunity to make academic progress.**
  - For exclusions of any period of time, students have the right to earn credits, make up assignments, homework, quizzes, exams, papers and projects.
- **For exclusions longer than 10 consecutive days:**
  - Alternative education is available
  - School must create a school-wide education service plan to address needs.
  - For example, home tutoring , alternative placement, Saturday School and/or online learning
  - Schools must provide parents with a list of options (at least 2) and verify which the student selects.
  - Services must be based on academic standards of curriculum frameworks for all students.

# Defining School Discipline

- ***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 disciplinary offenses
- ***Short-Term Suspension***
  - Removal of a student from the school premises and regular classroom activities for 10 consecutive school days or less.
    - ***Early dismissals for misconduct are short-term suspensions and require the same due process procedures.***
- ***Long-Term Suspension***
  - Removal of a student from the school premises and regular classroom activities for more than 10 consecutive school days or for more than 10 school days cumulatively for multiple disciplinary offenses in a school year. No student may be placed on a long-term suspension for more than 90 school days in a school year, (with the exception of students charged with an offense under MGL c. 71 § 37H, § 37H1/2) and such a suspension cannot extend beyond the end of the school year in which the suspension is imposed.
- ***Expulsion***
  - Removal of a student from the school premises, regular classroom activities, and school activities for more than 90 school days, indefinitely or permanently as permitted under MGL c. 71 § 37H, § 37H1/2.

# 37H Offenses

- **A student may be subjected to expulsion in the following three instances:**
  - Possession of a **dangerous weapon** on school premises or at a school sponsored event
  - Possession of **drugs** on school premises or at a school sponsored event
    - drug includes marijuana
  - **Assault on educational staff** on school premises or at a school sponsored event.

# 37H Hearing and Appeal

- **Notice & Hearing**

- Written notice to the student.
- Informs student of hearing before impartial decision maker.
- Right to be heard.
- Right to bring a representative (e.g. an attorney).
- Right to present evidence and witnesses.
- Right to a hearing in the language of the family.
- Right to record the hearing.
- Principal has the discretion to suspend rather than to expel.

- **Appeal: Students have the right to appeal the expulsion to the superintendent of the school district.**

- Must be requested within 10 days from the date of expulsion.
- Right to counsel at appeal hearing.
- Appeal is not limited solely to a factual determination of whether student committed the alleged misconduct.

# 37H ½ Offenses

- Upon the issuance of a criminal or juvenile complaint charging a student with a felony crime, the principal may suspend such student for a period of time determined appropriate .
  - Does not have to be related to school
- Principal may only suspend if s/he determines the student's continued presence in the school will have a ***substantial detrimental effect on the general welfare of the school.***
- *Admission of guilt, adjudication, or conviction with respect to felony charge may result in expulsion if student's presence is determined to have a substantial detrimental effect on general welfare of school.*

# 37H ½ Notice and Appeal

- **Written Notification**

- A student must receive written notification of the charges and the reasons for such suspension prior to suspension taking place.
- A student must receive written notification informing of his or her right to appeal and the process for appealing such suspension.

- **Appeal**

- Student has the right to appeal suspension to the superintendent of the school district.
- Right to appeal within 5 calendar days of notice of suspension
- Hearing must be held within 3 calendar days of request to appeal.
- Student has the right to have counsel present.
- Student has the right to present oral and written testimony.
- Superintendent may overturn or alter the decision including recommending an alternative education program.
- Decision must be rendered within 5 calendar days of the hearing.

# 37H $\frac{3}{4}$ Offenses

- **Any violation of a school's code of conduct and that is not an offense under 37H & 37H  $\frac{1}{2}$ .**
  - Example: fighting with another student
- The number of days a student can be excluded from school under 37H  $\frac{3}{4}$  is no more than 90 school days.
  - This is Cumulative- once 90 school days is reached a principal cannot exclude that student for the rest of the school year for an offense under this statute.
  - An exclusion under this statute cannot continue beyond the end of the school year.

# 37H ¾- Principal

- Principals shall exercise discretion in his or her decision to suspend the student.
  - NO zero tolerance policy.
- Principals shall consider ways to re-engage students in the learning process.
- Principals shall avoid using long –term suspensions until other remedies and consequences have been employed.
  - For example: Mediation, conflict resolution, detention, Saturday school, loss of privileges, restorative justice
- For students in grades K-3, the principal is required to notify the superintendent before any suspension takes effect. Notice shall describe the student's alleged misconduct and reasons for suspending the student out-of-school.

# 37H ¾ Notice – Short-Term Suspension

## Notice of Suspension and Hearing

- Oral and written notice in English and primary language spoken at home to student and parent or guardian shall include
  - notice of the offense and basis for charge;
  - potential consequences, including length of proposed suspension;
  - Student's right to have a hearing with principal to discuss charges, including opportunity to dispute charges and present an explanation;
  - date, time, and location of hearing; and
  - the right of the student and parent to have an interpreter present at hearing if needed to participate.

# 37H ¾ Notice – Long-Term Suspension

## Notice of Suspension and Hearing

In addition to the notice requirements set forth for students facing a short-term suspension, a student facing a long-term suspension must receive a notice setting forth the following,

- student's right to have an opportunity to review the student's record before the hearing and documents upon which the principal may rely in making a determination;
- student's right to a representative, including counsel;
- Student's right to produce witnesses on his or her behalf and to present an explanation of the alleged incident, but the student may not be compelled to do so;
- the right to cross-examine witnesses presented by the school district; and
- the right to request that the hearing be recorded by the principal, and to receive a copy of the audio recording upon student or parent request.
- Right to appeal decision to the superintendent

# 37H ¾ - Principal's Hearing – Short-Term Suspension

- Principal shall discuss the disciplinary offense, the basis for the charge, and any other pertinent information.
- Student must have the opportunity to dispute the charges and explain the circumstances surrounding incident.
- The student also must have an opportunity to present information, including mitigating facts, that the principal should consider in determining whether other remedies and consequences may be appropriate.
- Parent must be present at the meeting and be able to discuss the student's conduct and offer information, including mitigating circumstances unless the school cannot reach the parent after making reasonable efforts.
- If decision to suspend the student, the principal must provide an updated notice reflecting the meeting.

# 37H ¾ - Principal's Hearing – Long -Term Suspension

- In addition to requirements for a hearing to consider a short – term suspension, a hearing to consider a long-term suspension requires the following:

## Student Rights

- Right to have an opportunity to review the student's record before the hearing and documents upon which the principal may rely in making a determination.
- Right to a representative, including counsel.
- Right to produce witnesses on his or her behalf and to present an explanation of the alleged incident, but the student may not be compelled to do so.
- Right to cross-examine witnesses presented by the school district.
- Right to request that the hearing be recorded by the principal, and to receive a copy of the audio recording upon student or parent request.

# 37H ¾ - Principal's Hearing – Long -Term Suspension

## Principal's Role

- Provide the parent an opportunity to discuss the student's conduct and offer information, including mitigating circumstances, that the principal should consider in determining consequences for the student.
- Based on the evidence, the principal shall determine whether the student committed the disciplinary offense, and, if so, after considering mitigating circumstances and alternatives to suspension what remedy or consequence will be imposed in place of or in addition to a long-term suspension.

# 37H ¾ - Principal's Hearing – Long Term Suspension

- **A principal is required to provide written notice of decision.**
  - Identifying the offense, the date on which the hearing took place, and the participants at the hearing.
  - Setting out the key facts and conclusions reached by the principal
  - Identifying the length and effective date of the suspension, as well a date of return to school.
  - Includes notice of the student's opportunity to receive education services to make academic progress during the period of removal from school.
  - Informing the student of the right to appeal the principal's decision to the superintendent and the process for appealing. Notice of the right to appeal must be in English or primary language of the home if other than English.

# 37H ¾ Appeal Hearing

- Student excluded for more than 10 cumulative or consecutive days in any school year can appeal to the superintendent.
- Appeal hearing must be requested within 5 days of notice of exclusion, but an extension up to 7 days shall be granted.
- Appeal hearing must occur within 3 days of request, unless an extension of up to 7 days is granted.
- Superintendent must issue a written decision within 5 days of hearing.
- Superintendent may impose the same or a lesser consequence than the principal but cannot impose a suspension greater than that imposed by the principal.

# 37H ¾ Appeal Hearing

## Student Rights

- Student has the right to present oral and written testimony.
- Student has the right to cross-examine witnesses.
- Student has the right to have counsel present.
- Student has the right to an audio recording of the hearing.

# Emergency Removals

- A principal may remove a student from school temporarily when a student is charged with a disciplinary offense and the continued presence of the student poses a danger to persons or property or materially and substantially disrupts the order of the school and , in the principal's judgement, there is no alternative available to alleviate the danger of disruption.
- Removal cannot exceed two school days following the day of the emergency removal.

# ER Removals –Principal’s Role

- **Principal during the time of the emergency removal must:**
  - Make immediate and reasonable efforts to orally notify the student and the student's parent of the emergency removal and the reason for the need for emergency removal;
  - Provide written notice to the student and parent;
  - Provide the student an opportunity for a hearing with the principal and the parent an opportunity to attend the hearing, before the expiration of the two school days, unless an extension of time for hearing is agreed to by the principal, student, and parent; and
  - Render a decision orally on the same day as the hearing, and in writing no later than the following school day.
  - A principal may not remove a student from school on an emergency basis for a disciplinary offense until adequate provisions have been made for the student's safety and transportation.

# In-School Suspensions (ISS)

- Under 37H 3/4 a principal may use in-school suspension as an alternative to short-term suspension for disciplinary offenses.
- Principal shall inform the student of the offense charged, and the basis for the charge.
- Student afforded the right to dispute the charges and explain circumstances surrounding the alleged incident.
- If principal determines that the student committed the offense, the principal shall inform the student of the length of the ISS, which cannot exceed ten days, cumulatively or consecutively in a school year.
- Reasonable efforts to orally notify the parents must be made (at least two attempts) on the day of the ISS decision.
- Written notice to the student and parent on the day of suspension, providing the reason and length of the ISS and inviting the parent in for a meeting.

# Dispute Resolution Options

- **U.S. Dept. of Education: Office for Civil Rights (OCR)**
  - Enforces civil rights statutes prohibiting discrimination on the basis of race, color, national origin, sex and disability in programs that receive federal funding from the Dept. of Education
- **MA Department of Elementary and Secondary Education (DESE) –Program Quality Assurance Services (PQA)/Problem Resolution System (PRS)**
  - Handles complaints alleging a school/school district is not meeting legal requirements.
  - Anyone, including parents, students, educators, community members, and agency representatives, may contact PQA for assistance.
- **MA Bureau of Special Education Appeals (BSEA)**
  - BSEA conducts mediations and due process hearings to resolve disputes among parents and school districts.

# School Data Collection– 603 CMR 53.14

- Every school district including public charter schools shall collect and annually report data to the Department of Elementary and Secondary Education (DESE) regarding in-school suspensions, short- and long-term suspensions, expulsions, emergency removals, and access to education services.
- Principals shall review the data by selected student populations including race, gender, ethnicity, socioeconomic status, English language learner status, and students with disabilities.
- Principals shall assess the extent of disciplinary action and impact on selected student populations, and determine if necessary or appropriate to modify the disciplinary practices due to over-reliance on selected student populations compared with other students.

# DESE Data Reporting – 603 CMR 53.14

- In the fall of each year, DESE reports student discipline data by district and school, and by selected student populations, including but not limited to race and ethnicity, gender, socioeconomic status, English language learner status, and students with a disabilities.
- Every year DESE must determine the schools with the highest percentage of students expelled or placed on long-term suspension in a school year. After review of the discipline data the Commissioner shall identify schools that need assistance to reduce over-reliance on long-term suspension or expulsion as a consequence for student misconduct.
- DESE shall identify models that such schools may use to incorporate intermediate steps before long-term suspension and expulsion and to foster positive school climate.

# DESE Data Reporting – 603 CMR 53.14

- Through use of statistical analysis, the Commissioner shall identify schools and districts with data that reflect significant disparities in the rate of suspension and expulsion by race and ethnicity, or disability. Such schools and districts shall develop and implement a plan approved by DESE to address such significant disparities.

# Student Handbook – M.G.L. c. 71 §37H

- In each public high school, the **school council** shall review the student handbook each spring to consider changes in disciplinary policy to take effect in September of the following school year, but may consider policy changes at any time. The annual review shall cover all areas of student conduct.
  - School council consists of the school principal and selected parents (M.G.L c. 71 §59C)

# Children's Law Center of Massachusetts

- *Note:* Students with disabilities, and their parents, have additional rights pursuant to state and federal laws, which are not addressed in this document. You may contact CLCM for further information
  - Website: [www.clcm.org](http://www.clcm.org)
  - Intake line: 781 581 -1977