



Massachusetts Department of Elementary and Secondary Education

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Commissioner

MEMORANDUM

To: Members of the Board of Elementary and Secondary Education
From: Mitchell D. Chester, Ed.D., Commissioner
Date: April 23, 2014
Subject: Final Student Discipline Regulations: 603 CMR 53

On January 28, 2014, the Board of Elementary and Secondary Education voted to release the proposed student discipline regulations for public comment. We have revised the regulations based on thoughtful comments from various individuals and organizations. At our April 29th meeting, I will ask the Board to approve the final student discipline regulations.

I. Background

The Board is adopting these regulations under the new Massachusetts student discipline law, *An Act Relative to Student Access to Educational Services and Exclusion from School* (Act)¹. Effective July 1, 2014, the Act will require school districts and charter schools to follow specific procedures for student suspensions and expulsions, and will provide to students who are suspended or expelled the opportunity to make academic progress through educational services provided by their district or charter school.

As we have discussed, the Act is the most comprehensive Massachusetts legislation to address student discipline in 20 years. Its primary objectives are: (1) to prevent the unnecessary exclusion of students from school, especially for those offenses *not* previously addressed in state law,² and (2) where exclusion from the classroom or school is necessary for *any type* of disciplinary

¹ Enacted as Chapter 222 of the Acts of 2012, the Act is sometimes referred to as Chapter 222. See <https://malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter222>.

² In 1994, legislation was enacted amending G.L. c. 71, §37H and adding G.L. c. 37H ½, making clear the authority of school officials to suspend or expel students for the following offenses: (1) possession of a dangerous weapon or a controlled substance, or assault on a member of the educational staff, on school premises or at school-sponsored or school-related events; or (2) a felony charge or felony delinquency complaint or conviction, or adjudication or admission of guilt with respect to such felony, if the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school. *For purposes of the Board discussion, we call these offenses "statutory offenses" because they are enumerated in statutes. All other disciplinary offenses, subject to new G.L. c. 71, §37H ¾, are referred to as "non-statutory offenses" because they are not enumerated.* Neither Chapter 222 nor the proposed regulations change the authority of a principal to suspend or expel a student under G.L. c. 71, §§37H and 37H ½. The new law and regulations (when adopted) will, however, require school districts to make educational services available to such students, as well as to students excluded for other disciplinary offenses under new G.L. c. 71, §37H¾.

misconduct, to require school districts to make education services available so the student has an opportunity to make academic progress while suspended or expelled.

The Act also requires districts to collect and report data to the Department. We will publish and analyze the data and will identify schools that need assistance to reduce the use of long-term suspension or expulsion. At our meeting on April 29th, Rob Curtin, Director of Education Data Services, will present key data elements to the Board.

II. Overview of the Law and Final Regulations

The Act and the regulations focus on eliminating unnecessary disciplinary exclusions for non-statutory offenses,³ while supporting school administrators in maintaining a safe school environment, and ensuring that all students have an opportunity to continue their education when they are excluded from the classroom or school. The regulations carry forward the following legal and policy goals, consistent with the Act:

- To encourage schools to consider alternatives to long-term suspension, both generally and in individual cases;
- To keep schools safe for all students while ensuring fair and effective disciplinary practices that involve parents and students;
- To encourage schools to teach students standards of conduct through positive school climate, skillful teaching, and positive behavioral interventions and supports, rather than over-relying on suspension and expulsion;
- To collect and report school and district data and help schools address high rates of suspension and expulsion as well as large disparities in rates among various student populations;
- To increase student achievement and the high school graduation rate by keeping more students engaged in education;
- Where exclusion from the classroom or school is necessary for *any* type of misconduct, to require schools to make education services available so students have an opportunity to make academic progress while suspended or expelled.

There is a broader context for this work, as we discussed at the January meeting of the Board. Nationally, increasing attention is being paid to the consequences of “zero tolerance” student discipline policies; disparate impact of student discipline on students of color and students with disabilities; and the educational, social, economic, and moral imperative to keep students learning and engaged in school so they graduate college- and career-ready. In January 2014, citing data showing that students of certain racial and ethnic groups tend to be disciplined more frequently and more harshly, the U.S. Department of Education and the U.S. Department of Justice issued a School Discipline Guidance Package, <http://www.ed.gov/news/press-releases/us->

³ Such offenses include student misconduct other than actions involving a dangerous weapon or controlled substance, assault on educational staff, or felony charge, conviction, adjudication or admission of guilt if a principal determines the student’s continued presence is a substantial detriment to the general welfare of the school, as detailed in fn. 2.

departments-education-and-justice-release-school-discipline-guidance-package-, to assist schools in implementing school discipline policies that will comply with federal civil rights laws. School districts around the country and here in the Commonwealth are taking positive steps to reduce the use of suspension and expulsion, particularly for offenses that do not involve threats to school safety.

A summary of the proposed final regulations is enclosed.

III. Overview of Revisions to the Proposed Regulations, Based on Public Comment

The Department received 36 comments from school personnel, students, parents, school district attorneys, attorneys and advocates for students and parents, advocacy organizations, the Massachusetts Teachers Association, the Massachusetts Association of School Committees, Senator Sonia Chang-Diaz (co-chair of the Joint Committee on Education), former Representative Alice Wolf, and other interested parties. Seventeen commenters supported the comments submitted by the Education Law Task Force (ELTF), an advocacy coalition that raised six major areas of concern, and others commented on these same areas. The areas are:

- 1) alternatives to suspension (§§53.05, 53.08 and 53.09);
- 2) parental participation in disciplinary hearings (generally, §§53.06 – 53.10);
- 3) emergency removal (§53.07);
- 4) in-school suspension (§53.10);
- 5) education services and academic progress (§53.13); and
- 6) school discipline data collection, reporting, and publication (§54.14).

We have made revisions to the proposed regulations to address various concerns and suggestions that were raised in the comments. Part A of this section discusses the revisions in these six key areas. Part B discusses revisions that respond to other comments, as well as clarifications of a few provisions that were ambiguous. We also made some technical and formatting changes to the regulations, which are not addressed in this memo.

Copies of all the public comments are available for your review.

A. Revisions to the Regulations in Six Key Areas, Based on the Public Comments

1. Alternatives to Suspension – §53.05 and others

The final regulations strengthen the requirement that principals consider alternatives before imposing a long-term suspension from school. (Long-term suspension is defined as removal for more than ten consecutive school days, or for more than ten school days cumulatively for multiple disciplinary offenses in any school year.) New language in §53.01 states that a purpose of the regulations is to limit the use of long-term suspension as a consequence for student misconduct until other consequences have been considered and tried, as appropriate.

Other revisions also address this issue. The revised §53.08(3)(d), which pertains to the disciplinary hearing, reminds principals of the obligation to consider alternatives in the decision making process. Section 53.05, as revised, refers to examples of positive approaches for addressing student conduct, using evidence-based strategies and programs.

Beyond the regulations, the Department plans to issue guidance on student discipline that will discuss more extensively the use of alternatives to suspension and models of practice for creating a positive school climate.

2. Parental Participation – Generally, §§53.06 – 53.10

We have revised §53.01(2)(b) to make clear that a purpose of the student discipline regulations is to promote parental engagement “in discussion of the student’s misconduct and options for responding to it.” Further, §§53.08(2)(a) and 53.08(3)(c) clarify that a parent must be given the opportunity at a suspension hearing to “discuss the student’s conduct and offer information, including mitigating circumstances that the principal should consider in determining consequences... .”

Beyond the regulations, the Department will address parental participation in more detail in the guidance we will be issuing.

3. Emergency Removal – 603 CMR §53.07

We have narrowed the regulation to limit the use of emergency removal of a student from school, so that this exception is used only in circumstances that pose a danger to people or property. As originally proposed, the regulation would have allowed a principal to remove a student from school for up to five school days without prior oral and written notice or opportunity for a hearing attended by a parent, if the student’s continued presence “poses a danger to persons or property or materially disrupts the order of the school.”

As revised, the regulation would allow emergency removal of a student from school for up to only two full days, and only when “the continued presence of the student is a danger to persons or property and, in the principal’s judgment, there is no alternative available to alleviate the danger.” Within the two days, the principal must provide written notice to the student and parent and convene a hearing. The revised regulation makes clear that the principal must decide on any further suspension or consequence within the two-day time period. Also, the revised regulation requires the principal to notify the superintendent in writing before an emergency removal takes place.

4. In-School Suspension – 603 CMR §53. 10

The final regulation has been revised to clarify that the principal must make reasonable efforts, on the same day as the in-school suspension, to orally notify the parent and convene a

meeting with the parent. The regulation also clarifies the purpose of the meeting. New language further directs the principal to send written notice of the in-school suspension to the parent on the day of the in-school suspension, and to invite the parent to meet with the principal if a meeting has not already taken place.

5. Education Services and Academic Progress – 603 CMR §53.13

We have revised the regulation to make clear that a student has the opportunity “to earn credits, as applicable” while suspended or expelled.

6. School Discipline Data – 603 CMR §53.14

We have revised the regulation to highlight the importance of data analysis in evaluating school discipline practices. Besides changing the heading to *Student Suspension and Expulsion Data Collection and Reporting*, the revised regulation now:

- clarifies district data collection and reporting;
- directs districts to periodically review discipline data to monitor the use of suspension and expulsion, and the impact on selected student populations, and to modify disciplinary practices as necessary or appropriate to address over-reliance on expulsion and suspension, or the impact on selected student populations;
- states that the Department will publish data disaggregated by school and district, and by selected student populations, with safeguards to protect data on individual students;
- makes clear the Department will identify schools with the highest percentage of students expelled or placed on long-term suspension and assist schools and districts that over-rely on suspension or expulsion; and
- requires schools and districts whose discipline data reflect significant disparities by race and ethnicity, or disability, to develop and implement a plan approved by the Department to address such disparities.

B. Other Revisions

Besides the substantive changes outlined above, and some technical and formatting changes, we have revised the regulations to:

- Include a general purpose statement of legal and policy goals - §53.01(2);
- Clarify that 603 CMR 53 applies to public preschool programs - §53.01(3) - and require that a principal notify the superintendent in writing before a preschool student is suspended - §§53.08(2)(d), 53.08(3)(e);
- Include reference to virtual schools and better reflect the meaning of “principal” and “superintendent” in the context of charter and virtual schools - §§53.02(9) and 53.02(12);
- State that a long-term suspension may not extend beyond the end of the school year in which it is imposed - §53.02(7);

- Require that oral and written notice be provided to the student and parent in English and in the primary language of the home if other than English, “or other means of communication where appropriate” - §§53:06(2) and 53:13(4)(a);
- Require that written notices be in plain language - §§53:06(2) and 53:08(3)(d)5);
- Require oral notice to participants before a hearing, if the hearing will be audio recorded - §§53:08(3)(b)5 and 53:09(5); and
- State that a superintendent who hears a student’s appeal in a disciplinary matter may impose the same or lesser consequence than the principal, but may not impose a suspension greater than that imposed by the principal’s decision - §53:09(7).

IV. Next Steps

I recommend that the Board vote this month to adopt the final student discipline regulations, as presented. With the Board’s approval of the regulations, the Department will develop a guidance document, with input from stakeholders, to address in greater detail several of the areas identified in this memo, including but not limited to: alternatives to suspension, positive school climate, parental engagement, and school-wide education service plans.

John Bynoe, Associate Commissioner; Rob Curtin, Director, Education Data Services; and Dianne Curran, Deputy General Counsel, will be available at the Board meeting to answer your questions.

Attachments:

- Summary of Proposed Student Discipline Regulations, 603 CMR 53
- Student Discipline Regulations, 603 CMR 53: Clean Version and Strikethrough Version
- List of Public Comment Contributors
- Summary of Comments and Department Response
- Motion to Adopt Regulations