

RIGHTS OF YOUTH IN MASSACHUSETTS PUBLIC SCHOOLS REGARDING SCHOOL DISCIPLINE

Prepared by the Mental Health Legal Advisors Committee*
January 2017

This pamphlet describes the rights of youth attending public preschool, elementary, and secondary schools and programs in Massachusetts, including charter and virtual schools.

What do I do if my child is acting out in school?

If your child is acting out in school, try to find out why. Seek help from guidance counselors, school social workers, or teachers. If you think your child may be acting out because of an untreated physical, mental, or emotional disability, think about asking the school district for a special education evaluation. It is also helpful to be familiar with the school district's policies on school discipline.

What information must be available to parents and students?

Superintendents must publish a school district's policies on the conduct of students and teachers. These policies must include a discussion of disciplinary proceedings, standards and procedures for suspension and expulsion of students, and procedures for discipline of students with special needs. The district must provide copies of these policies free of charge to anyone who requests them.¹

In addition, school districts must publish and distribute a student handbook outlining policies related to student conduct and discipline. The student handbook describes protections and sanctions for student conduct. It may be available on the school's web site.

For high schools, the district must review and consider changes to the handbook and school discipline policy each spring with the School Councils.² Councils also may initiate reconsideration of their high school handbook and discipline policies at any time.³

What is an out-of-school suspension?

Out-of-school suspension is when a student is removed by school authorities from the school and regular classroom activities. This flier mostly focuses on rights regarding out-of-school, as opposed to in-school, suspension. There are different types of out-of-school suspension:

- ***Short-term suspension*** is removal for ten consecutive days or less.
- ***Long-term suspension*** is removal for more than ten consecutive days or ten school days cumulatively in a school year.

* MHLAC would like to thank Michael Chin for his substantial contribution to the writing of this flier.

What is an in-school suspension?

In-school suspension is removal of a student from regular classroom activities, but not from the school, for no more than ten consecutive school days, or no more than ten school days cumulatively in a school year.

- An in-school suspension is not considered a short-term suspension.
- If a student is placed in an in-school suspension for more than ten days, consecutively or cumulatively during a school year, it's considered a long-term suspension.
- If a student is removed for less than half of the time that school is in session during a particular day, it's not considered an in-school suspension, provided the student is not removed from class in this manner on a recurring basis.

What must a school do when using in-school suspension?

- The school may use in-school suspension instead of an out-of-school suspension.⁴ The school must notify the student of the offense charged and the basis for the charge, and allow the student to dispute the charges and explain the circumstances.⁵
- If the principal determines that the student committed the offense, the principal shall inform the student of the length of the suspension.⁶
- While the principal is not required to inform the parent, orally or in writing, before imposing an in-school suspension,⁷ on the same day as the in-school suspension decision, the principal shall make reasonable efforts to notify the parent orally as soon as possible of the offense, the reasons for concluding that the student committed the offense, and the length of the suspension.⁸
- The school must allow the parent of the student to have a meeting to discuss the student's academic performance and behavior, strategies for student engagement, and possible responses to the behavior.⁹ If no meeting occurs, the school must send written notice to the student and parent.¹⁰
- There is a ten-day limit on in-school suspensions, both consecutively and cumulatively, in a school year.¹¹

What is an expulsion?

- An ***expulsion*** is removal from school, regular classroom activities, and school activities for more than 90 school days, indefinitely or permanently. As discussed below, expulsion is only permitted under M.G.L. c. 71, § 37H or 37H½ (for certain types of serious misconduct listed in those statutes).

What types of *serious* misconduct may result in out-of-school suspension or expulsion?

Various types of serious misconduct may result in out-of-school suspension or expulsion.

- A school may seek to suspend or expel a student found in possession of a **dangerous weapon** (broadly defined)¹² or **controlled substance** on school premises.¹³
- A school may seek to suspend or expel a student who **assaults a school staff member** on school premises or at a school-sponsored or school-related event.¹⁴
- A school may seek to suspend a student with a **felony or felony delinquency charge**.¹⁵ The suspension is indefinite and generally lasts until the criminal process has ended. If the student is convicted of a felony, a principal may move to permanently expel the student.¹⁶ The principal may only suspend or expel if he or she concludes and documents that the student's continued presence in school would have a **substantial detrimental effect** on the general welfare of the school.¹⁷

What types of *less serious* misconduct may result in out-of-school suspension?

- A school may suspend a student for violating provisions of a student code of conduct that provide for suspension as a consequence.

How long may an out-of-school suspension or an expulsion last?

- There is no time limit for an out-of-school suspension or expulsion for the types of *serious misconduct* discussed above.
- A school may not impose an out-of-school suspension for *less serious misconduct* for more than 90 school days in a school year.¹⁸ Suspension must end when the school year ends in June.¹⁹

What must school authorities do before excluding a student for reasons other than *serious* misconduct?

The Massachusetts Department of Elementary and Secondary Education (DESE) has instructed school districts on the harms of exclusion and the benefits of employing alternatives to exclusion:

[R]esearch has shown that suspending students from school for non-violent offenses, and particularly suspending them repeatedly, has limited effectiveness in improving their behavior and performance, and cause the students to fall behind academically. School leaders in Massachusetts and across the U.S. have found that by improving school climate through positive behavioral interventions, supports, and strategies, including restorative practices and conflict resolution, they not only reduce suspensions but also promote greater school safety, discipline, and academic success.²⁰

Before excluding a student, school authorities are explicitly required to:

- exercise discretion in carrying out discipline;
- consider ways to re-engage students in the learning process; and
- avoid using exclusion until other remedies and consequences have been tried.²¹

When the potential consequence is out-of-school suspension, what are some of the possible alternatives?

Alternatives to out-of-school suspension may include but are not limited to:

- mediation,
- conflict resolution,
- restorative justice, and
- positive interventions and supports.²²

Exclusion must be a last resort, used only after alternatives have been tried.²³

DESE is creating a resource bank of school practice and models to improve school climate and reduce student misconduct.²⁴

What are a student's rights regarding a principal's hearing?

- A student subject to discipline for possession of a **dangerous weapon, controlled substance, or assault on a school staff member**, has a right to a principal's hearing.²⁵
- A student subject to discipline for a **felony or felony delinquency charge**, does not have a right under state statute to a principal's hearing but does have the right to appeal the suspension or expulsion to the superintendent.²⁶ Students with short suspensions pursuant to this provision may be entitled to more under federal law. The U.S. Supreme Court has ruled that public schools must provide effective notice and an informal hearing for all suspensions of 10 days or less.²⁷ Public schools must provide "more formal hearings" for longer exclusions from school.²⁸
- A student subject to discipline for **violating the student code of conduct** has a right to a meeting or hearing with the principal prior to the exclusion.²⁹

What are a student's rights regarding notice of the hearing?

A student subject to out-of-school suspension or expulsion for any kind of misconduct must be notified in writing of an opportunity for a hearing.³⁰

When the student is charged with a violation of the student code of conduct resulting in an out-of-school suspension, this notice must be in English and the primary language spoken in the home of the student, or other means of communication where appropriate..³¹

What are a student's rights at a principal's hearing?

- A student subject to discipline for possession of a **dangerous weapon, controlled substance, or assault on a school staff member**, has the right at hearing to bring representation and the opportunity to provide evidence and witnesses to the school principal.³² After hearing the evidence, the principal may decide to suspend or expel the student.³³
- A student subject to discipline for a **felony or felony delinquency charge** does not have the right to a principal's hearing.
- For a student subject to discipline for **violating the student code of conduct**, the school must make efforts to include the parent or guardian in the meeting or hearing.³⁴ However, the meeting may take place without a parent or guardian if the school shows it made reasonable effort to include the parent or guardian.³⁵ Following the meeting, the school must make a written decision, and if imposing a long-term suspension, the school must give written notice to the student about the right of appeal to the superintendent.³⁶ If applicable, the notice must be in English and translated to the primary language spoken at the student's home if other than English, or provided through other means of communication where appropriate.³⁷

What are a student's rights to appeal the principal's decision on discipline?

- A student expelled for possession of a **dangerous weapon, controlled substance, or assault on a school staff member** may appeal to the superintendent within 10 days of the expulsion date.³⁸ A suspension is not appealable in this situation.
- A student expelled once the student has been **adjudicated a delinquent for a felony offense** and the principal believes that the student's continued presence in the school would have a substantial detrimental effect on the general welfare of the school may appeal to the superintendent within 5 days of the expulsion date.³⁹ The expulsion remains effective until the superintendent's hearing takes place.⁴⁰ However, discipline for other violations of the school code of conduct does not take effect until after the principal's meeting.⁴¹
- A student subject to an out-of-school suspension for more than 10 days either consecutively or cumulatively for **violating the student code of conduct** may appeal to the superintendent.⁴² The student must notify the school in writing of the decision to appeal no later than 5 calendar days following the effective date of suspension.⁴³ The student is allowed an extension of 7 additional calendar days if requested.⁴⁴ The superintendent must give a decision on the appeal in writing within 5 calendar days of the hearing.⁴⁵ That decision is the school's final decision.⁴⁶

What are a student's rights at a superintendent's hearing?

- For a superintendent's hearing for expulsion due to possession of a **dangerous weapon, controlled substance, or assault on a school staff member**, the student has the right to bring an attorney.⁴⁷
- For a superintendent's hearing for expulsion due to **an adjudication of delinquency for a felony offense**, the student has the right to bring an attorney and may present oral and written testimony.⁴⁸
- For a superintendent's hearing for long-term out-of-school suspension due to **violation of the student code of conduct**, the student has the right to bring an attorney, may present oral and written testimony, and may cross-examine witnesses.⁴⁹

In all cases, the superintendent may overturn or alter the discipline imposed by the principal.⁵⁰

May a school remove a student without a hearing?

A principal may impose an **emergency removal** in certain circumstances if the student is charged with a disciplinary violation.⁵¹ The principal must determine that:

- **the continued presence of the student poses a danger to people or property, or substantially disrupts the school** – the principal needs to determine if removal is necessary to protect students or staff or property from harm, or to restore or maintain order in the school when it has been significantly disrupted due to the intensity and severity of the student's behavior;

and

- **there is no other alternative to prevent disruption** – the principal needs to consider whether there is another way to address the risks that the student's continued presence poses, without removing him or her from the school.⁵²

If the student has calmed down since the disciplinary incident and the school is operating as it should, the principal may not remove the student on an emergency basis. The principal may use the standard process for violating the code of conduct for any other disciplinary action.⁵³

The removal may not exceed 2 school days following the day of the emergency removal.⁵⁴ The days of removal count as days of suspension for purposes of calculating days of suspension over the school year, as do any additional days that result following a full disciplinary hearing.⁵⁵

The principal must provide oral and written notice to the student and parent immediately of the need for an emergency removal.⁵⁶ The principal may remove the student before providing the written notice, but must make reasonable efforts on the day of the removal to talk to the student and the student's parent to notify each of the removal and the reasons for it.⁵⁷

The student must be given an opportunity for a hearing before the expiration of the emergency removal.⁵⁸ The principal must decide on the same day as the hearing whether the student committed the alleged offense and, if so, what the consequence is.⁵⁹ The principal must also tell the student and the parent of his or her decision on the hearing day and provide them with a written decision on the following school day.⁶⁰

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.⁶¹

What happens after a student is suspended or expelled from school?

Schools are required to ensure that students who have been excluded from school for disciplinary reasons have the opportunity to make **academic progress** during the period of their exclusion.⁶²

The principal is required to inform the student and parent of this opportunity in writing when a suspension or expulsion is imposed.⁶³ Any school that suspends or expels a student for **more than 10 consecutive school days** (whether in school or out of school) must provide the student and the student's parent with a list of **alternative educational services**.⁶⁴

These alternative educational services should be contained in a **school-wide education service plan** that schools must develop.⁶⁵ This plan ensures that excluded students have an opportunity to make academic progress. Education service plans may include services such as tutoring, alternative placement, Saturday school, and online or distance learning.⁶⁶ A school's service plan must include at least two types of education service options.⁶⁷

The student and parent have the right to choose the type of education service from the list of services on the plan.⁶⁸ The choice is ultimately that of the student and parent.⁶⁹ The principal may, however, recommend one option over others based on the school personnel's knowledge of the student's academic needs, learning style, or behaviors, or other factors.⁷⁰

Students who are suspended from school for **10 or fewer consecutive school days** (in or out of school) must be provided an opportunity to make academic progress during the period of suspension, to make up assignments, and earn credits missed.⁷¹

If a student moves to another district during a period of suspension or expulsion, the new district must either admit the student or provide educational services to the student during the period of suspension or expulsion.⁷²

What rights do younger student have regarding suspension?

Prior to any out-of-school suspension taking effect on a student in a public preschool program or in kindergarten through grade three, the school must notify the superintendent in writing.⁷³

What additional rights do special education students have?

Special education students have additional protections during the school discipline process. These are discussed in another MHLAC flier available at <http://www.mhlac.org/Library.htm>.

ENDNOTES

¹ G.L. c. 71, § 37H.

² G.L. c. 71, § 37H. School Councils allow for parent involvement in schools. They must have at least as many parents as school staff as members. G.L. c. 71, § 59C.

³ G.L. c. 71, § 37H.

⁴ 603 CMR 53.10(1).

⁵ 603 CMR 53.10(3).

⁶ 603 CMR 53.10(3).

⁷ Department of Elementary and Secondary Education, Advisory on School Discipline under Chapter 222 of the Acts of 2012 (Feb. 8, 2015) (hereinafter “Advisory”), VI. There are notice requirements after placing the student. *See* Advisory, VI.

⁸ 603 CMR 53.10(4).

⁹ 603 CMR 53.10(4).

¹⁰ 603 CMR 53.10(5).

¹¹ 603 CMR 53.10(3).

¹² School administrators have a great deal of discretion in this regard. *See Doe v. Superintendent of Schools of Worcester*, 421 Mass. 117 (1995) (Exact-o knife blade in a lipstick canister may be deemed a dangerous weapon).

¹³ G.L. c. 71, § 37H.

¹⁴ G.L. c. 71, § 37H.

¹⁵ G.L. c. 71, § 37H1/2(1).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ G.L. c. 71, § 37H3/4(f); 603 CMR 53.02(7).

¹⁹ 603 CMR 53.02(7).

²⁰ Advisory, *supra*, III.

²¹ G. L. c. 71, § 37H3/4(b); 603 CMR 53.05.

²² 603 CMR 53.05.

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- ²³ 603 CMR 53.05.
- ²⁴ Advisory, *supra*, III.
- ²⁵ G.L. c. 71, § 37H.
- ²⁶ G.L. c. 71 §37H1/2(1).
- ²⁷ *Goss v. Lopez*, 419 U.S. 565, 584 (1975). The notice may be oral or written. *Goss*, 419 U.S. at 581.
- ²⁸ *Goss*, 419 U.S. at 581.
- ²⁹ G.L. c. 71, § 37H3/4(c); 603 CMR 53.08(2); 603 CMR 53.08(3).
- ³⁰ G.L. c. 71, § 37H(c); G.L. c. 71, § 37H1/2(1); G.L. c. 71, § 37H3/4(c).
- ³¹ G.L. c. 71, § 37H3/4(c); 603 CMR 53.08(3)(d)(5).
- ³² G.L. c. 71, § 37H(c).
- ³³ G.L. c. 71, § 37H.
- ³⁴ G.L. c. 71, § 37H3/4(c); 603 CMR 53.08.
- ³⁵ *Id.*
- ³⁶ G.L. c. 71, § 37H3/4(c); 603 CMR 53.08(3)(d). The principal's decision in a short-term suspension may be as informal as an update to the written notice that the principal originally provided to the student and parent, provided, at a minimum, that it is consistent with 603 CMR 53.08(2)(b) and (c). Advisory, *supra*, IV.
- ³⁷ G.L. c. 71, § 37H3/4(d); 603 CMR 53.08(3)(d).
- ³⁸ G.L. c. 71, § 37H(d).
- ³⁹ G.L. c. 71, § 37H1/2(2).
- ⁴⁰ G.L. c. 71, § 37H1/2(2).
- ⁴¹ G.L. c. 71, § 37H3/4(c).
- ⁴² G.L. c. 71, § 37H3/4(e); 603 CMR 53.09(1).
- ⁴³ G.L. c. 71, § 37H3/4(e); 603 CMR 53.08 (3) (d) 5.a; 603 CMR 53.09(2).
- ⁴⁴ G.L. c. 71, § 37H3/4(e); 603 CMR 53.08 (3) (d) 5.a.
- ⁴⁵ G.L. c. 71, § 37H3/4(e); 603 CMR 53.09(7).
- ⁴⁶ G.L. c. 71, § 37H3/4(e); 603 CMR 53.09(8).
- ⁴⁷ G.L. c. 71, § 37H(d).
- ⁴⁸ G.L. c. 71, § 37H1/2(2).
- ⁴⁹ G.L. c. 71, § 37H3/4(e); 603 CMR 53.09(6).
- ⁵⁰ G.L. c. 71, § 37H; G.L. c. 71, § 37H1/2; G.L. c. 71, § 37H3/4; 603 CMR 53.09.
- ⁵¹ 603 CMR 53.07. Emergency removal is not provided for in statute, but is allowed by state regulations promulgated pursuant to G.L. c. 71, § 37H3/4.
- ⁵² 603 CMR 53.07(1); Advisory, *supra*, V.
- ⁵³ Advisory, *supra*, V.
- ⁵⁴ 603 CMR 53.07(1).
- ⁵⁵ Advisory, *supra*, V.
- ⁵⁶ 603 CMR 53.07(1)(a),(b).
- ⁵⁷ Advisory, *supra*, V.
- ⁵⁸ 603 CMR 53.07(1)(c).
- ⁵⁹ Advisory, *supra*, V.
- ⁶⁰ Advisory, *supra*, V.
- ⁶¹ 603 CMR 53.07(2).
- ⁶² G.L. c. 71, § 37H; G.L. c. 71, § 37H1/2; G.L. c. 71, § 37H3/4.

⁶³ G.L. c. 76, § 21.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Advisory, *supra*, VII.

⁶⁸ G.L. c.76, § 21.

⁶⁹ Advisory, *supra*, VII.

⁷⁰ Advisory, *supra*, VII.

⁷¹ *Id.*

⁷² G.L. c. 71, § 37H; G.L. c. 71, § 37H1/2.

⁷³ G.L. c. 71, § 37H3/4(d). 603 CMR 53.08(3)(e).