Massachusetts Department of Elementary and Secondary Education

Guidance on Updated Expectations for School and District Leaders Related to Student Discipline per G.L. c. 71, s. 37H ¾ (b), as amended by Chapter 177 of the Acts of 2022,

An Act Addressing Barriers to Care for Mental Health

February 2023

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I. Introduction

Since 2016, the Department of Elementary and Secondary Education (Department/DESE) has partnered with schools and districts across the Commonwealth in the Rethinking Discipline initiative. This initiative has included a professional learning network designed to assist schools and districts with reducing the use of long-term suspension and expulsion for all students and with decreasing disproportionate rates of suspension and expulsion for students with disabilities and students of color.

Massachusetts law has encouraged school officials to be judicious in determining whether suspension is the appropriate consequence for student misconduct, and to adopt evidence-based strategies and programs to strengthen school culture and climate and address behavioral and social-emotional issues that can give rise to student misconduct. Specifically, G.L. c. 71, §37H¾, which relates to suspension of public school students who are *not* charged with a violation of G.L. c. 71, §37H (a) or (b) or with a felony under G.L. c. 71, §37H½,[1] has since 2014 required school officials to exercise discretion when deciding consequences for student misconduct, consider ways to re-engage the student in the learning process, and avoid using long-term suspension as a consequence until alternatives have been tried.

[1] There are important distinctions between G.L. c. 71, §37H, §37H½, and §37H¾. ***A disciplinary offense under G.L. c. 71, § 37H or 37H½*** means one or more of the following alleged or determined disciplinary infractions: 1) possession of a dangerous weapon; 2) possession of a controlled substance; 3) assault on a member of the educational staff; and 4) 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, as provided in G.L. c. 71, § 37H or 37H½. ***G.L. c. 71, §37H¾ applies to other types of disciplinary related issues*** that could lead to suspension, such as bullying, harassment, or not following the school's code of student conduct. **State regulations 603 CMR 53.00 and the 2022 amendment described in this document focus on §37H¾.**

In 2022 the Legislature amended G.L. c. 71, §37H¾, through section 29 of *An Act Addressing Barriers to Care for Mental Health*, Chapter 177 of the Acts of 2022. The amendment, effective November 8, 2022, expands existing provisions related to school discipline practices described in G.L. c. 71, §37H¾ and now requires, before suspension, that school officials consider alternatives to suspension and support disciplinary decisions with written documentation. These expectations are aligned with practices that the Department has encouraged through the Rethinking Discipline Initiative.

With the 2022 amendment to subsection (b), G.L. c. 71, §37H¾ reads as follows:

> (a) This section shall govern the suspension and expulsion of students enrolled in a public school in the commonwealth who are not charged with a violation of subsections (a) or (b) of section 37H or with a felony under section 37H½.
>
> (b) 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.
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> [Paragraphs (c) through (f) are unchanged; find them on the state's website.]

This guidance document provides basic information about the amended law and will be updated later in the year with additional information about technical assistance and professional development opportunities. Questions may be directed to the Office of Student and Family Support via achievement@doe.mass.edu.

II. Research-Based Support for Rethinking Discipline Practices

Research has consistently shown that student outcomes are negatively affected by exclusionary discipline. Suspensions are associated with lower academic achievement for students, even when controlling for student demographics such as race and ethnicity, income, and disability status. Similarly, suspensions have also been linked with higher dropout and arrest rates, lower

rates of college completion, and higher levels of problematic health outcomes, including mental health struggles, suicide, injuries, pregnancy in adolescence, tobacco use, and smoking.

Data collected by the United States Department of Education's Office for Civil Rights suggests that exclusionary discipline is applied inequitably. For example, according to national data,[2] Black boys were suspended and expelled at proportions that were three times greater than their rates of enrollment. In Massachusetts, disproportionately higher rates of suspension occur for a number of groups of students as compared to their peers, for example, for students of color, students with disabilities, and low-income students. In the 2021-22 academic year, for instance, African American/Black students were suspended at rates nearly 2.5 times higher than their white peers, and Hispanic/Latino students were suspended at double the rate of white students. The suspension rate for students with disabilities was more than 1.8 times the rate of all students, and low-income students were suspended at nearly 1.6 times the rate of all students.[3]

Research also shows that consistent implementation of positive behavior strategies decreases out-of-class discipline referrals and improves academic success. Additionally, research suggests providing training in effective practices and in the role of bias and trauma can help school administrators and teachers reduce disciplinary disparities. Meaningfully engaging students, staff, and families to establish shared behavioral expectations, reinforcing positive behavior, and providing supports where needed can decrease exclusionary discipline and improve student engagement, school climate, and student outcomes.

III. Requirements of G.L. c. 71, §37H¾(b), as Amended

As amended, G.L. c. 71, §37H¾(b) now specifies procedures and documentation that are required in disciplinary matters covered by this statute.[4] The principal, head of school, 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 the 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:

[2] Per the 2017-2018 Suspension and Expulsions in Public Schools (PDF) (ed.gov).

[3] Per the State Student Discipline Data Report 2021-22. The student removal rate for all students was 4.2 percent. For African American/Black students, it was 7.6 percent; for Hispanic/Latino students, it was 6.2 percent; and for white students, it was 3.1 percent. For students with disabilities, it was 7.6 percent, and for low-income students, it was 6.7 percent. *NOTE: Where suspension comparison rates are shown above, both suspension and expulsion are included where the term suspended is used.*

[4] This amendment impacts G.L. c. 71, §37H¾, not suspensions or expulsion under G.L. c. 71, §37H or §37H½.

- specific reasons are documented as to why such alternative remedies are unsuitable or counter-productive, or
- 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, head of school, 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.

Please see the Appendix to review changes in the statutory language resulting from the 2022 amendments to G.L. c. 71, §37H¾(b). See Sections V and VI, below, for links to various resources that can support implementation of new legal requirements. Communities with promising practices or suggestions to improve school climate and student outcomes should contact achievement@doe.mass.edu.

IV. Frequently Asked Questions (FAQ) about Student Discipline under G.L. c. 71, §37H¾(b), As Amended

1. To which types of disciplinary offenses does section 37H¾ apply?

*G.L. c. 71, §37H¾ applies to suspensions of public school students who are **not** charged with a violation of G.L. c. 71, §37H (a) or (b) (possession of a dangerous weapon or a controlled substance, or assault on a member of the educational staff) or with a felony or felony delinquency under G.L. c. 71, §37H½. Section 37H¾ applies to other activity that could lead to suspension, such as bullying, harassment, or not following the school's code of student conduct.*

2. Which types of suspensions are covered by section 37H¾?

Consistent with the plain language of the statute as amended, the requirements apply to every out-of-school suspension, short-term or long-term, under § 37H ¾. Before any such suspension, the decision-maker at the student disciplinary meeting or hearing is required to use alternatives to suspension, unless (1) specific reasons are documented that alternatives to suspension are unsuitable or counter-productive, or (2) 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. See additional questions in this FAQ for more details.

3. What does section 37H¾ require schools to do before suspending a student for misconduct?

The decision-maker in any student disciplinary meeting or hearing under section 37H¾:

- *must consider ways to re-engage the student in the learning process, and*
- *shall not suspend the student until alternative remedies such as **mediation**, **conflict resolution**, **restorative justice**, or **collaborative problem-solving strategies** have been employed and their use and results have been documented, following and in direct response to a specific incident or incident, unless either of the two exceptions described in question 2 applies.*

Schools and districts may use alternative remedies beyond the four models that are listed in the statute, and are encouraged to engage stakeholders including students, staff, families, and community partners when deciding which model(s) to implement school- or district-wide. Schools and districts should provide training for staff members to promote the effective use of alternative remedies and should monitor implementation to determine and make improvements as needed.

4. In what circumstances can schools exclude students without employing alternative remedies?

A school or district can decide to exclude a student, without employing alternative remedies, for misconduct described in G.L. c. 71, §§ 37H and 37H½. (See # 1, above.) For disciplinary matters under G.L. c. 71, §37H¾, the decision-maker at the student meeting or hearing may suspend the student without employing alternative remedies in these circumstances:

a. *Specific reasons are documented as to why such alternative remedies are unsuitable or counter-productive, or*
b. *In cases where the student's continued presence in school would pose a specific documentable concern about serious bodily injury or other serious harm upon another person while in school.*

Schools may also remove a student on an emergency basis, without employing alternative remedies, according to the criteria set forth in the Student Discipline regulations at 603 CMR 53.07. Under both G.L. c. 71, §37H ¾ and 603 CMR 53.07, a time-limited "emergency removal" may take place in situations where 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 judgment, there is no alternative available to alleviate the danger or disruption. As set forth in the regulation, schools must follow procedures for student safety, communicate with the student and family, and provide the opportunity for a hearing.

5. Does section 37H¾ require schools and districts to implement models for re-engaging students in the learning process?

Yes. Section 37H¾ requires the principal, head of school, superintendent, or other decision-maker to 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.

District leadership can choose from a range of model(s) for engaging and re-engaging students in the learning process, and can determine the specific model that best fits the unique characteristics of the school community. When selecting a model, districts are encouraged to engage stakeholders with diverse perspectives, including students, staff, families, and community partners. Districts must adequately train staff and monitor implementation to ensure models and strategies produce desired outcomes.

6. **Must schools document the consideration and use of alternative remedies in disciplinary matters under section 37H¾?**

Yes. Except for situations described in the answers to Question 2 and 4, section 37H¾ requires the principal, head of school, superintendent, or other decision-maker in a student disciplinary meeting or hearing to document the consideration, use, and results of alternative remedies.

Documentation must describe:

- *any alternative remedies used in response to a specific incident or incidents,*
- *the results of these efforts, and*
- *for instances when suspension is used, the reasons that alternative remedies would be unsuitable or counter-productive, or the specific concern about serious bodily injury or other serious harm being inflicted upon another person while the student is in school.*

Schools and districts are encouraged to consult with their legal counsel for guidance about the procedural requirements of the statute, the form and content of the required documentation, and for training that results in clear and consistent implementation of the documentation requirements.

V. Professional Development

To support implementation of new requirements introduced by the 2022 amendment to G.L. c. 71, §37H¾, the Department will offer technical assistance, professional development, and additional guidance.

Please see this flyer for details about a new professional development series available this spring 2023 for school and district leaders and staff. This learning series provides introductory information about alternatives to exclusionary practices through four asynchronous mini-modules and two synchronous networking sessions (all approximately one hour each).

The Department will update the DESE's Rethinking Discipline webpage when details are available for subsequent training and professional development opportunities, and will post information in the Commissioner's Weekly Update.

To additionally support student engagement and wellness efforts, the Department is also offering training and professional development related to Rethinking Discipline and Safe and Supportive Schools , Multi-Tiered Systems of Support (MTSS), Students' Sense of Belonging, and Social Emotional Learning and Mental Health and Student Wellness.

VI. Links to Additional Information

Information about broader efforts related to positive discipline practices can be found on DESE's Rethinking Discipline webpage. This information includes the student discipline regulations (2014), an update on the Rethinking Discipline initiative *(download)*, the methodology *(download)* DESE uses to calculate disparity or significant disproportionality in disciplinary suspension or expulsion, an overview of Rethinking Discipline, Significant Disproportionality, and Special Education Indicators 4, 9, and 10, and a sample of additional resources.

APPENDIX: Comparison of current and prior language in G.L. c. 71, §37H¾(b)

To illustrate how changes in the law (due to *An Act Addressing Barriers to Care for Mental Health*) differ from prior expectations (in Chapter 222 of the Acts of 2012), the paragraph below shows text that remains unchanged (shown *in italics*), text removed (shown ~~crossed out~~), and text added (shown **highlighted and in bold**).

(b) 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 ~~exercise discretion;~~ *consider ways to re-engage the student in the learning process; and* ~~avoid using expulsion as a consequence until other remedies and consequences~~ **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.**