

## Education Laws and Regulations

### Questions and Answers

#### Student Discipline Laws and Regulations

#### G.L. c. 71, §37H <sup>3</sup>/<sub>4</sub> and G.L. c. 76, §21

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The Department of Elementary and Secondary Education has published an Advisory on Student Discipline<sup>1</sup> that provides information about the requirements of G.L. c. 71, §37H <sup>3</sup>/<sub>4</sub> and Student Discipline Regulations, 603 CMR 53.00,<sup>2</sup> governing suspension and expulsion, and G.L. c. 76, §21 as it applies to G.L. 71, §§37H, 37H <sup>1</sup>/<sub>2</sub>, and 37H <sup>3</sup>/<sub>4</sub>. The following information answers questions we have received concerning implementation of G.L. c. 71, §37H <sup>3</sup>/<sub>4</sub> and G.L. c. 76, §21 and the Regulations.<sup>3</sup> Readers may find it helpful to review the Advisory on Student Discipline in conjunction with this document.

#### I. **In-School Suspension (§53.10); Short-Term Suspension (§§53.06 and 53.08(1) and (2)) (Applicable to §37H <sup>3</sup>/<sub>4</sub> offenses<sup>4</sup>)**

1. **Q. If a student is separated from class for ten days or less due to misbehavior, but remains in school and is receiving instruction from a licensed teacher within a separate program, is that still considered a suspension?**

**A.** Yes. The definition of in-school suspension (ISS) is "removal of a student from regular classroom activities, but not from the school premises, for no more than ten consecutive school days, or no more than ten school days cumulatively for multiple infractions during the school year." In this example, the student has been suspended in-school, even though the student is receiving instruction consistent with suspension protocols. (See also Section V., which addresses academic progress and school-wide education service plans.)

2. **Q. What is the difference between ISS and short-term suspension in terms of the procedural requirements?**

**A.** The notice and hearing requirements differ, depending on whether the suspension is in-school or out-of-school. For an in-school suspension of ten days or less, the principal<sup>5</sup> is not required to give prior notice to the student's parent (although prior notice is strongly recommended), and is not required to invite the parent to participate in the hearing. An ISS for ten days or less, consecutively or cumulatively, is not considered a short-term suspension.

Short-term suspension (STS) means removal of a student from the school premises and regular classroom activities for ten days or less, cumulatively or consecutively. *Before* the student may be suspended, the principal must notify the student and student's parent orally and in writing about the charge resulting from the misconduct, the right to have a hearing to dispute the charge, the parent's right to participate in the hearing, and such other information as specified in 603 CMR 53.06(2).

In contrast, the principal may place a student in ISS for ten days or less as long as the student is provided the minimum notice and opportunity to be heard that is constitutionally required under the U.S. Supreme Court's decision in *Goss v. Lopez*, 419 U.S. 565 (1975), i.e., the same notice and due process procedures<sup>6</sup> that were required before enactment of [Chapter 222](#). The regulations do not *require* oral and written notice to the parent *before* the ISS takes effect, although the Department recommends prior notice where practicable. The regulations do, however, require the principal to make reasonable efforts to notify the parent orally on the day of the decision to place the student in ISS and to arrange a meeting with the parent on the same day, if possible, to discuss the student, the student's academic performance, and strategies for student engagement. The principal must also provide the student and parent written notice of the ISS that complies with §53.10(5).

3. **Q: Does a student have a right to appeal an ISS or STS to the superintendent under Department regulations?**

**A.** No. The regulations do not require schools to provide students or parents the right to appeal the principal's decision to impose either an ISS or STS to the superintendent. The district may choose to provide the right of appeal in its policies and procedures.

4. **Q. A student has been placed in ISS for a total of ten days since the beginning of the school year. If the student commits another offense and the principal wants to place the student in ISS for two more days, does the principal have to give the student and parent prior oral and written notice of the charges and the opportunity for a hearing?**

**A.** Yes, oral and written notice to the student and the parent is required before placing the student in ISS for more than ten days.

The definition of in-school suspension states, in relevant part:

If a student is placed in in-school suspension for more than ten days, consecutively or cumulatively during a school year, such suspension shall be deemed a long-term suspension for due process, appeal, and reporting purposes.

Since the student will be placed in ISS for more than ten days, it is considered a long-term suspension for purposes of the notice and hearing requirements, as well as appeal and data reporting purposes.

Sections 53.06 and 53.08 of the regulations set out the notice and hearing requirements. Specifically, before placing the student in ISS for two more days, the principal must provide oral and written notice to the student of the charges and an opportunity for a hearing as set forth in §§53.06(2) and 53.08(3) relating to long-term suspension. The principal must also make reasonable efforts to notify the parent orally and in writing of the opportunity to participate in the hearing.

5. **Q. A student has served ten days of STS. If the student commits an offense for which a two-day ISS is possible, does the principal have to follow the procedures for a long-term suspension?**

**A.** Yes; since the result could be that the student is suspended for more than ten cumulative days, the procedures required for long-term suspension (described above) apply.

6. **Q. If a teacher sends a student to the assistant principal's office due to behavior issues and the student returns to class following a discussion with the assistant principal, does that lost class time count as an ISS?**

**A.** For purposes of ISS, the time does not count if it is less than half of the time that the school is in session that day, provided the

student is not removed from class in this manner on a recurring basis.

The Department encourages schools to maintain a record of such referrals to track the extent to which "referral to the office" is used as a classroom management tool, by whom, and with which students. Periodic review of the data may reveal overuse of the response by some educators or impact on particular students or subgroups of students that should be further examined and addressed as appropriate.

**7. Q. Can a principal send a student home from school for misconduct without complying with 603 CMR 53.00 if the student would miss less than half of the school day?**

**A.** No; an involuntarily removal from school is a suspension and must be counted as such. It is not permissible for a principal to remove a student from school involuntarily for misconduct at any point in the school day without complying with 603 CMR 53.00.

**II. Locally Determined Procedures (Applicable to §§37H, 37H ½, and 37H ¾)**

**1. Q. In our school, it has been long-standing policy and practice for the assistant principal to conduct the initial disciplinary hearing with the student and to permit the student to appeal an adverse decision to the principal. Is this practice legal under §37H ¾?**

**A.** The school is providing an additional level of review, which is not required by statute or regulations, but is permissible. The school still must follow the applicable notice and hearing requirements and appeal procedures (see discussion in the following question and answer).

Note that the definition of principal at 603 CMR 53.00 includes "the instructional administrative leader or headmaster of a public school or his or her designee for purposes of school discipline matters..." As an alternative to the process used in this school, the policy could clarify that the assistant principal acts as the principal's designee, conducts the hearing, and renders a decision, and provide the student and parent a right of appeal directly to the superintendent.

**III. Parental Notice and Opportunity to Participate in the Hearing (Applicable to §37H ¾ Offenses)**

**1. Q. A student has committed a §37H ¾ offense that may result in STS. What procedures must the principal follow with respect to providing notice and an opportunity for a hearing?**

**A.** With two exceptions,<sup>2</sup> before removal for a 37H ¾ offense may occur, the principal must make reasonable efforts to orally notify the student's parent, and must provide to the parent and the student written notice of: the charge, the basis of the charge, hearing rights, and the parent's opportunity to participate in the hearing. The notice for the student and parent must comply with §53.06(2), which reads:

The principal shall provide oral and written notice to the student and the parent in English and in the primary language of the home if other than English, or other means of communication where appropriate. The notice shall set forth in plain language:

- a. the disciplinary offense;
- b. the basis for the charge;
- c. the potential consequences, including the potential length of the student's suspension;
- d. the opportunity for the student to have a hearing with the principal concerning the proposed suspension, including the opportunity to dispute the charges and to present the student's explanation of the alleged incident, and for the parent to attend the hearing;
- e. the date, time, and location of the hearing;
- f. the right of the student and the student's parent to interpreter services at the hearing if needed to participate;

To conduct a hearing without the parent present, the principal must document reasonable efforts to include the parent. Section 53.06(3), which is applicable to STS and LTS, sets forth the standard for determining whether the principal has made reasonable efforts to include the parent:

The principal is presumed to have made reasonable efforts if the principal has sent written notice and has documented at least two attempts to contact the parent in the manner specified by the parent for emergency notification.

The Department strongly recommends that schools update the emergency contact information for each student at least annually. This information, which has always been critical for health and other emergency purposes, is now essential for complying expeditiously with notice and hearing procedures in the discipline context.

**2. Q. What is my obligation as a principal with respect to scheduling a hearing on the day or at the time that a parent requests? For example, what if the parent is unable to participate in the hearing on the day and time scheduled but would be willing to attend the next day?**

**A.** In order to provide the parent an opportunity to participate in the hearing, the principal must be willing to consider a reasonable request for a short extension or a different time on the date the principal has proposed. For example, if the parent's work schedule would not allow her to be at the school until 10 a.m., but she could be there at 3 p.m., the principal should consider rescheduling the hearing at that time unless it poses witness availability issues for the school that cannot be resolved. A request for an extension of a day or two would be reasonable in most cases. Depending on the circumstances, the principal could place the student in ISS while awaiting the hearing with the parent and count the time towards the time that the student might be suspended out of school following the hearing.

Nothing in the regulations prohibits a principal and the student and parent from making arrangements or agreements with respect to the hearing or any other aspect of the process that serves their mutual interests.

**3. Q. How should the school handle suspension hearings for students 18 or older?**

**A.** A student 18 years of age or older is considered an adult and entitled to participate in decision making in all aspects of the discipline process, unless the student has been determined by a court to be legally incompetent. The student's parent continues to have the right to receive notice and the opportunity to participate in the disciplinary hearing and appeals.

**IV. Emergency Removal (§53.07) and Removal for Other Safety Concerns (Applicable to §37H ¾ Offenses)**

One of the most important responsibilities of the principal is to take appropriate steps to provide a safe environment in which all students can learn. There may be instances in which, for safety reasons, the principal must take emergency action to remove a student from school for a §37H offense, such as fighting. §53.07 of the Student Discipline Regulations provides authority for such action.

**1. Q. Can a principal immediately remove a student who has committed a 37H ¾ offense if the principal believes it would be dangerous or disruptive for the student to continue in school or class?**

A. Section 53.07 addresses the standard for emergency removal:

Nothing ...shall prevent a principal from removing 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 judgment, there is no alternative available to alleviate the danger or disruption.* The principal shall immediately notify the superintendent in writing of the removal and the reason for it, and describe the danger presented by the student... .

Thus, if the student's continued presence is a danger or causes material and substantial disruption, *and* there is no alternative to address the danger or disruption, the principal has the discretion to remove the student on an emergency basis. In such an emergency, the school is not required to provide *advance* oral and written notice to the student and parent prior to the student's removal from school.

Under §53.07 of the regulations, there are other steps that the principal must take in connection with the emergency removal: 1) notify the superintendent in writing of the removal and the reason for it before the student is sent home; 2) tell the student that he or she is being sent home and the reasons for the removal; 3) confirm that provisions are in place for the student's safety and transportation; 3) immediately make reasonable efforts to reach the parent to notify her or him of the removal and the reasons for it; 4) give written notice to the student and parent that complies with §53.06(2), and offer the opportunity for a hearing within two full school days following the removal, unless the parties agree to an extension; 5) on the day of the hearing, orally inform the student and parent of the decision on the misconduct and future consequences, if any; and 6) issue a written decision on the next day as provided in §53.07(1)(d).

2. **Q. Does the time between the emergency removal and the hearing on the misconduct count as days of suspension?**

A. Yes, the days that a student is removed from school on an emergency basis count as suspension days. The days also count toward determining cumulative days of suspension in the school year. If the student is suspended for additional days following the discipline hearing, the days of out-of-school suspension or, if determined appropriate, in-school suspension, must be documented and counted as days of suspension as well.

3. **Q. If a nurse or school administrator calls a mental health crisis unit or ambulance on behalf of a student who experiences an emotional/mental health crisis (and the school does not consider the behavior to be misconduct), does the "removal" count as a suspension?**

A. If the removal is to secure medical or clinical treatment and is not a disciplinary response, the student's absence from school is not considered a suspension or a removal for disciplinary purposes requiring due process.

V. **Academic Progress and Education Services; School-wide Education Service Plans; G.L. c. 76, §21; §53.13.**  
(Applicable to §§37H, 37H ½, and 37H ¾ offenses)

1. **Q. Are schools required to include non-core academic subjects among the education services provided under the education service plan for students who are expelled or on long-term suspension?**

A. A student who has been expelled or suspended for more than ten consecutive days must be provided an opportunity to receive education services identified in a school-wide education service plan. The education services must allow the student "the opportunity... to make academic progress toward meeting state and local requirements." If non-core academic subjects are included in local requirements, they must be included in the education service plan so the student has the opportunity to make academic progress.

2. **Q. What does a district do if the student refuses to accept the education services offered under the education service plan during the suspension or expulsion?**

A. The school should meet with the student and parent to encourage the student to continue his or her education by accepting the services. Depending on the student's circumstances, resources available on the Department's website that discuss risks of leaving school may be helpful in that discussion: [Student Discipline Resources and Information webpage](#).

Ultimately, if the student fails or refuses to engage, the school should document its efforts. The school has met its legal obligations because it has provided the student an opportunity to make academic progress during the period of exclusion from school. If the student subsequently changes his or her mind and requests education services, the school should provide the opportunity to make academic progress.

3. **Q. If a student is placed in ISS, does the school have to provide a tutor?**

A. Students who are suspended short-term, whether in or out-of-school, must be provided an opportunity to make academic progress during their suspension. As a general rule, a school will fulfill its responsibility if school personnel provide make-up assignments, tests, papers, homework, and other school work to a student who is suspended short-term. If the ISS is more than ten consecutive days, the school would be required to provide education service options, such as tutoring and instructional materials. The interests of the student and the school are served by keeping the student engaged in learning.

4. **Q. Must the school provide transportation services to a suspended or expelled student if the student would not otherwise be able to access the opportunity to make academic progress?**

A. For those students who receive services under the school-wide education service plan, the school must provide transportation services if the student received transportation services before the suspension or expulsion and the student would be unable to access the selected education service(s) without transportation.

5. **Q. If a student is expelled from a charter school, does the charter school have to provide education services to the student?**

A. Yes; the charter school is responsible for having a school-wide education service plan, and for providing education services to any student it expels or suspends for more than ten consecutive days. Similarly, students who are suspended short-term (for ten days or less, cumulatively or consecutively) must have an opportunity to make academic progress during the period of suspension. This means the charter school, as any other public school, must provide an opportunity for the students to make up assignments, tests, papers, and other school work.

6. **Q. Does the requirement to provide education services under a school-wide education service plan apply to educational collaborative programs?**

A. A student who attends an educational collaborative program must be provided an opportunity to make academic progress during any period of suspension or expulsion. Students who are expelled or suspended for more than ten consecutive days must be provided an opportunity to receive education services through the school-wide education service plan. The responsibility for education services

ultimately rests with the student's school district, not the educational collaborative, since the student continues to be enrolled in the district while attending the collaborative program. However, an educational collaborative and the student's sending district may agree to other arrangements as long as the student has an opportunity to make academic progress as provided under 603 CMR 53.00 and other applicable laws and regulations.

7. **Q. G.L. c. 76, §21 states that "[p]rincipals shall develop a school-wide education service plan" that identifies a list of education services available to students expelled or suspended for more than ten consecutive days. Must the plan be done school-by-school or could it be a district-wide education service plan?**

A. Yes, the plan could be a district-wide education service plan as long as it includes a list of education services that will provide the student an opportunity to make academic progress toward meeting state and local requirements, and is based on the academic standards and curriculum frameworks established for all students in the district.

8. **Q. Can a school or district have a list of education service options and limit the options based on the school's understanding of the student's academic needs? For example, can a principal inform the student and parent that the student can choose between only two of three education service options?**

A. G.L. c. 76, §21, which requires school-wide education service plans, states in relevant part:

Any school or school district that expels or suspended a student for more than 10 consecutive days shall provide the student and the parent or guardian of the student with a list of alternative education services. Upon selection of an alternative educational service by the student and the parent or guardian of the student, the school or district shall facilitate and verify enrollment in the service.

Since the statute refers to a "list of alternative educational services" from which the student/parent may choose, as long as the school or district offers at least two education service options that are available on an equitable basis to all students, that will provide them an opportunity to make academic progress and meet other requirements set out in §53.13, it would be permissible to limit the options for educational reasons.

9. **Q. Must a school provide a student with disabilities the opportunity to make academic progress while the student is suspended or expelled?**

A. Yes. A student with disabilities has all the rights that a typical student has under state law and regulations, in addition to the procedural and other rights afforded to students with disabilities under the federal Individuals with Disabilities Education Act (IDEA). This means that if a student with disabilities is suspended for ten days or less,<sup>8</sup> in school or out-of-school, the notice and hearing process outlined in the regulations is applicable. Additionally, the student has the right to make up tests and other assignments, and do such other work as necessary to make academic progress during that period.

If a student with disabilities is suspended for more than ten days, the parties may want to review the following federal and state-issued guidance, respectively, [Questions and Answers on Discipline Procedures](#) and [Guidance for Implementing IDEA 2004: Discipline](#) before determining next steps. School administrators are also encouraged to consult with legal counsel.

10. **Q. The law requires that schools provide a student an opportunity to make academic progress during the time that he or she is suspended or expelled. Career vocational technical education schools and programs provide academic and vocational education. Are these schools required to provide services so that students can make progress in their vocational training as well as academic courses?**

A. No. G.L. c. 76, §21 requires only that schools provide an opportunity to make academic progress during suspension or expulsion. It does not address providing services so that a student can continue progress in a vocational program.

The Department encourages vocational schools and programs to provide vocational support to the extent possible, particularly to those students who are suspended for relatively short periods of time.

Some suspended or expelled students in regional vocational technical schools may opt to withdraw from the school and return to their home district. In such cases, the home district has the obligation to provide the student the opportunity to make academic progress during the period of suspension or expulsion.

11. **Q. In some districts, a student who accumulates a certain number of unexcused absences in the course over a trimester receives reduced course credit. For example, if the student has 7 unexcused absences in a 5-credit course, the student might still earn an A in the class but would only be awarded 4.5 credits. Out-of-school suspensions are considered unexcused absences. A suspended student can make up work/tests, but may still lose partial credit in the course. Does this policy violate the student's "opportunity to earn credits, as applicable" and "make academic progress during the period of his or her removal" under 603 CMR 53.13?**

A. The policy would violate 603 CMR 53.13 if it would prohibit a suspended student who did the required work and earned a passing grade from getting full credit.

12. **Q. My district expelled a student in May 2014. Do we have an obligation to provide education services to him?**

A. No. G.L. c. 76, §21, which requires public schools to provide students who are expelled or suspended an opportunity to make academic progress<sup>9</sup> during the suspension or expulsion, became effective on July 1, 2014. The regulations took effect at the same time and apply only to suspensions and expulsions imposed after that date. Thus, schools are not required to provide education services to students who were suspended or expelled before July 1, 2014, though schools may choose to do so.

## VI. *Miscellaneous*

1. **Q. If a student moves from one district to another during the school year, does the number of days of suspension that the student served in the previous school count for purposes of calculating the number of days of suspension in the new school? In other words, if a student who already was suspended for ten days moves to a new district during the school year and receives a one-day suspension in the new school, would that be considered a long-term suspension?**

A. No. There is no statutory or regulatory basis for including days of suspension from the student's previous school in the count of suspension days in the student's new school in a new district.

2. **Q. A student is suspended for ten days for a §37H violation. If the student is suspended again in the same school year for a §37H ¾ violation, do the ten days count toward the 90-day limit on suspensions in a school year under §37H ¾, or for purposes of determining whether a long-term suspension hearing must be held under §37H ¾?**

**A. No.** The number of days a student is suspended under §37H<sup>10</sup> or §37H ½<sup>11</sup> does not count toward the 90-day limit on suspensions in a school year. Section 37H ¾ (a) addresses only offenses not addressed in §37H or §37H ½. The 90-day time limit under sub-section (f) applies only to days of school lost due to a 37H ¾ offense.

**Note:**

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1 The Advisory on Student Discipline may be found at: [Education Laws and Regulations: Legal Advisories webpage](#) . The Advisory discusses G.L. c. 71, §§37H, 37H ½ , and 37H ¾, as well as G.L. c. 76, §21, which requires schools to provide an opportunity to suspended and expelled students to make academic progress while suspended or expelled. See the Appendix to the Advisory for a brief overview of §§37H, 37H ½, and 37H ¾, and the disciplinary offenses each statute addresses.

2 [The Student Discipline Regulations](#)

3 The Department will supplement this Q and A as necessary to address new issues.

4 A §37H ¾ offense is a disciplinary infraction that is not subject to G.L. c. 71, §§37H or 37H ½. See section IV; also see section II of the Advisory and its Appendix. Section 37H ¾ offenses include misconduct such as cheating, bullying, or fighting. It is important to remember that the notice and hearing provisions of the Student Discipline Regulations apply only if a §37H ¾ offense is at issue.

5 In the regulations and this Q&A, the term "principal" includes the principal's designee for purposes of school disciplinary matters.

6 These requirements are captured in 603 CMR 53.10(3): *The principal shall inform the student of the disciplinary offense charged and the basis for the charge, and provide the student an opportunity to dispute the charges and explain the circumstances...* .

7 The two exceptions are emergency removal of a student from school, which is addressed at 603 CMR 53.07, and ISS, removal of a student from classroom activities, discussed earlier in this Q & A.

8 The IDEA does not require schools to provide special education services to students with disabilities who are suspended for 10 days or less unless the services would be provided to students without disabilities. 34 CFR 300.530(d)(3).

9 Students who are expelled or suspended for more than ten consecutive days have an opportunity to continue their education with education services made available under a school-wide education service plan.

10 §37H offenses include possession of a dangerous weapon or a controlled substance, or assault on educational staff, on school grounds, or at school-sponsored or school-related events or activities.

11 §37H ½ offenses concern felony charges or felony delinquency complaints filed against a student and a principal's determination that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school. See [Advisory on Student Discipline](#) for more information.