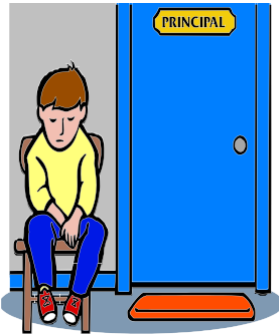


# Reading Public Schools Student Discipline and Due Process

2020-2021 School Year

# Student Discipline

- All students are entitled to due process prior to being excluded from school.
  - *Goss v. Lopez (U.S. Supreme Court, 1975)*
    - The amount of process due is determined by the length of the exclusion contemplated:
      - 10 consecutive school days or less
        - = Short Term Exclusion
      - More than 10 consecutive school days
        - = Long Term Exclusion





# M.G.L. c.71, § 37H

## *Weapons, Drugs and Assault*

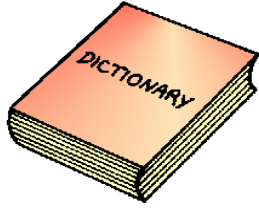


- A Principal has authority to permanently expel a student for the following conduct:
  - Possession of a dangerous weapon
    - Principal's determination
      - **Note: For purposes of the unilateral removal of a student with a disability, "dangerous weapon" is as defined in the U.S. Code.**
  - Possession of a controlled substance (as defined in c.94C)
    - Marijuana = controlled substance
    - Alcohol ≠ controlled substance
  - Assault on Staff
- Prior to imposing a long- term suspension or expulsion, Principal must conduct a **formal hearing** at which:
  - student has right to counsel (at private expense);
  - to examine the evidence against the student;
  - and to present evidence in own defense.
- Student may appeal decision in writing to Superintendent or designee within 10 calendar days.



# M.G.L. c.71, § 37H1/2 Felony Charges

- Felony Charge – Suspension
  - Principal may suspend based on the issuance of felony charges **where Principal determines that the student’s continued presence would have a substantial detrimental effect on the welfare of the school.**
- Felony Charges – Expulsion
  - Upon being convicted of a felony or upon an adjudication or admission of guilt in court, a student may be expelled **if the Principal determines that the student’s continued presence would have a substantial detrimental effect on the welfare of the school**
- Principal must conduct **formal hearing** at which:
  - student has right to counsel (at private expense);
  - to examine the evidence against the student;
  - and to present evidence in own defense.
- Must provide written notice of charges and basis for decision prior to imposition of suspension and notice of appeal process.



# Student Discipline

## Definitions

603 C.M.R. § 53.02

- **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 infractions in a school year.
  - Removal from extracurricular activities or school-sponsored events, or both, shall not count as a removal.
  - If placed in In-School Suspension for more than 10 days, such a suspension shall be considered a long- term suspension.
- **Short-Term Suspension** - Removal of the student from the school premises and regular classroom activities for 10 consecutive school days or less.
- **Long-Term Suspension** - Removal of the student from the school premises and regular classroom activities for more than 10 consecutive school days, or more than 10 school days cumulatively for multiple disciplinary offenses in any school year.
- **Expulsion** - Removal of a student from the school premises for more than ninety (90) school days, indefinitely, or permanently, as permitted under G.L. c. 71, §§37H or 37H½.
- **Written Notice:** Written correspondence sent hand-delivery, certified mail, first-class mail, email to an address provided by the parent for school communications, or any other method of delivery agreed to by the Principal and the parent.



# In-School Suspension

603 C.M.R. § 53.10

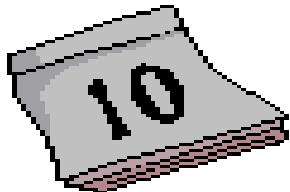
A Principal, or designee, may impose In-School Suspension of 10 school days or less in a school year provided the student has the opportunity to make academic progress during the In-School Suspension.

The Principal must:

- 1) Inform the student of the disciplinary offense charged and provide the student the opportunity to respond.
- 2) If the Principal determines that the student committed the offense, the Principal must inform the student of the length of the In-School Suspension.
- 3) Provide oral notice (on the same day) to the parents of the Principal's determination and the length of the In-School Suspension. The Principal must also make reasonable efforts (at least two telephone calls) to invite the parents to a meeting to discuss the student's academic performance and behavior, strategies for student engagement, and possible responses to the behavior.
- 4) On the day of the In-School Suspension, Principal must deliver written notice to the parents of the basis for and length of the in-school suspension and inviting the parents to meet to discuss the student's behavior if such a meeting has not already occurred.

# Short-Term Disciplinary Exclusions

- For offenses involving: a) possession of a dangerous weapon; b) possession of a controlled substance; c) assault on a member of the educational staff; or d) a felony charge or conviction, the Principal will provide the student with an initial informal hearing.
  - Informal hearing = oral notice of charges and opportunity to respond.
  - Provide written notice of disciplinary action following informal hearing.

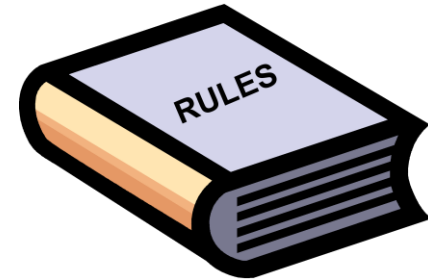


# Short-Term Disciplinary Exclusions

## School Rules Violations

For offenses not involving:

- a) possession of a dangerous weapon;
- b) possession of a controlled substance;
- c) assault on a member of the educational staff; or
- d) a felony charge complaint or conviction:



Student and parents will be given:

- Oral and written notice of the disciplinary offense and the opportunity to participate in a hearing prior to the imposition of an out-of-school suspension.
  - Written Notice must be provided in English and in the primary language of the Student's home; identify the disciplinary offense with which the student has been charged; the basis for the charge; the potential length of the student's suspension; and shall inform the parent and student of the right to interpreter services if necessary to participate in the hearing.





# Emergency Removals

603 C.M.R. 53.07

- Principal may remove a student for up to 2 school days without a prior hearing when:
  - The student is charged with a disciplinary offense; and
  - The continued presence of the student poses a danger to persons or property, or would substantially and materially disrupt the order of the school and, in the principal's judgment, **if there is no alternative available to alleviate the danger or disruption.**
- Principal must:
  - Make immediate and reasonable efforts to orally notify the student and the student's parent of the emergency removal and of the reason for the need for emergency removal, and the notice requirements for short-term suspension, including written notice.
  - Make "adequate provisions" for the student's safety and transportation.
  - Conduct a hearing within 2 school days.

# M.G.L. c. 71, § 37H3/4

## Long-Term Suspension - School Rules Violations

Prior to excluding a student from school for disciplinary reasons for more than 10 school days in a school year or to a permanent expulsion, the Principal, or designee, must conduct a formal hearing

- In addition to the rights afforded in a Short Term Suspension hearing, the student and parents have the following rights:
  - The opportunity to review the student's record and the documents upon which the Principal may rely in making a determination to suspend the student;
  - The right to be represented by counsel or a lay person of the student's choice, at the student's/parent's expense;
  - The right to produce witnesses on his or her behalf and to present the student's explanation of the alleged incident;
  - The right to cross-examine witnesses presented by the school district;
  - The right to request that the hearing be recorded by the Principal, and to receive a copy of the audio recording upon request.



# Academic Progress and Disciplinary Removal

M.G.L. c.76, §21

- M.G.L. c.76, § 21 requires that any student serving a suspension “shall have the opportunity to make up assignments, tests, papers and other school work **as needed to make academic progress**” during his or her period of removal from the classroom or school.
  - The student and parent must be notified of this opportunity when the suspension is imposed.
- M.G.L. c.76, § 21 applies to **all** suspensions and exclusions under §37H, §37H1/2, and §37H3/4.
  - Applies to In-School Suspension, Short-Term Suspension and Long-Term Suspensions.





## Educational Services and Academic Progress 603 C.M.R. 53.13

- Suspension of (10) consecutive school days or less:
  - Must provide student with opportunity to earn credits, make up assignments, tests, papers, and other school work as needed to make academic progress during the period of his or her removal from the classroom or school.
- Suspension of more than ten (10) consecutive school days/Expulsion:
  - Must provide the student with the opportunity to receive educational services that will enable the student to make academic progress towards state and local requirements, including the opportunity to make up assignments and earn credits missed, including but not limited to homework, quizzes, exams, papers and projects missed.

# Student Discipline and Students with Disabilities

- Students with disabilities are entitled to additional protections prior to the imposition of a disciplinary sanction that will remove them from school for more than 10 days in a school year
- Students with Disabilities
  - Students with IEPs
  - Students with 504 plans
  - Any student whom the District had reason to know, prior to the incident giving rise to the disciplinary action, might be eligible for special education.



# Additional Procedural Protections

- “Manifestation Determination” prior to any removal constituting a change in placement.
- Where appropriate, development of a Functional Behavioral Assessment plan or review of existing Behavior Intervention Plan.
- For students with IEPs, provision of services as of the 11<sup>th</sup> cumulative day of removal in a single school year.



# What triggers additional procedural protections?

- For Manifestation Determinations, consideration of any disciplinary sanction that will result in a **disciplinary change in placement**.
- For services, removal for more than 10 cumulative school days in the school year.



# Disciplinary Change in Placement

- Disciplinary action that results in removal for more than 10 consecutive school days.
- A “pattern” of removal totaling more than 10 school days in a given school year.





# Manifestation Determinations

- Was the conduct giving rise to disciplinary action **caused by or directly and substantially related** to the child's disability?
- Was the conduct giving rise to disciplinary action **the direct result of the schools' failure to implement the IEP?**



# If Behavior is **NOT** a Manifestation:

- May impose sanctions applicable to all students.
- Team considers whether it would be appropriate to conduct a functional behavioral assessment
- Must provide special education and related services to students on IEPs as of the 11<sup>th</sup> cumulative day of removal.



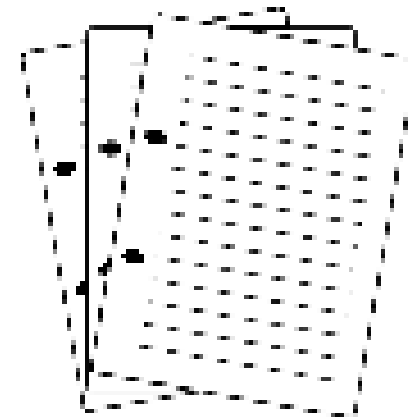
# If Behavior **IS** a Manifestation:

- IEP/504 Team develops a functional behavioral assessment plan
- Child returns to school prior to the 11<sup>th</sup> day, unless the conduct meets criteria for a unilateral removal or the school district obtains either:
  - Parent/guardian consent;
  - A Hearing Officer's order; *or*
  - A temporary restraining order (TRO).



# Functional Behavioral Assessments (FBA)

- FBA required after determining that conduct was a manifestation of the student's disability.
- FBA "where appropriate" where conduct is found not to be a manifestation.



Reading Public Schools

**Thank you for participating in our  
Disciplinary Due Process module**