

**Summary of Changes to Proposed Amendments to the
Student Discipline Regulations 603 CMR 53.00**

April 2014

The Department of Elementary and Secondary Education received 36 comments to the request for public comment from school personnel, Massachusetts Association of School Committees, attorneys who represent school districts, individual attorneys and advocates for students and parents, advocacy organizations, Massachusetts Teachers Association, legislators, students, parents, and other interested parties. Several of the commenters (17) supported comments submitted by the Education Law Task Force (ELTF), which commented on two separate occasions. Others offered comments similar to those made by the ELTF. The ELTF is an advocacy group of parents, students, educators, and advocates, and those who specifically stated their support for the ELTF comments are identified in the list of public comment contributors. This document primarily addresses substantive comments. Comments that are supportive of the regulations are not included unless they are coupled with a substantive comment requiring response.

Key Comments	Department Response to Comments and Recommendation
<p>53:00 Student Discipline Regulations Change title to School Discipline Regulations Source: MA Appleseed Center for Law and Justice (Appleseed)</p>	<p>Recommendation: no change. The title aptly describes the subject matter of the regulations.</p>
<p>53:01 Purpose 1) Clarify that due process requires flexibility and judgment by administrators and require professional development; 2) delete “that is followed by a principal’s determination” and add “if the principal determines;” 3) Make the same change in 53.02(2), 53.02(3) and 53.02(4) for consistency with 37H½; 4) clarify and define “academic progress” so it is meaningful and consistent for all students removed from the regular classroom or school (consistent with 53.13). Source: Center for Law and Education (CLE)</p>	<p>Recommendation:</p> <ol style="list-style-type: none"> 1) No change. The obligation to exercise discretion in considering consequences for misconduct is addressed in 53:05. 53.01 is, however, substantially revised to refer to purposes of the regulations, including limiting the use of long-term suspension as a consequence for student misconduct until other consequences have been considered and tried as appropriate. 2) Include the revision as suggested; 3) Include the revision as suggested; 4) No change; academic progress is adequately addressed in 53.13.

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	The Department will address the issue of administrator judgment and discretion, as well as academic progress, in guidance.
<p>53:01 Purpose</p> <p>The law will impose additional costs and is an unfunded mandate. Add the following language to the end of 53.01(2) b) and c) :“in the most cost effective way”</p> <p>Source: MA Association of School Committees</p>	<p>Recommendation: no change. The language is unnecessary. The regulations allow school committees and schools to consider cost effective ways of meeting requirements.</p>
<p>53:02 Definitions</p> <p>When a student is suspended long-term and removed to a comparable alternative program within the district, the removal should not count as a suspension.</p> <p>Source: John McDonough, Boston Public Schools(BPS)</p>	<p>Recommendation: no change. When a student is involuntarily removed from the school or program to which she or he is regularly assigned following a disciplinary incident, it is a long-term suspension and should be counted as such. Chapter 222 now requires that education services be provided whenever a student is expelled or suspended long-term. That alternative or comparable education services are provided during the period of suspension or expulsion does not change the fact that the student is denied access to his or her regularly assigned classroom or program.</p>
<p>53:02 Definitions</p> <p>Supports use of in-school suspension as alternative to out-of-school suspension. Schools should not be prevented from requiring a long term suspension in an in-school setting.</p> <p>Long-term suspension should not carry over from one school year to the next.</p> <p>Source: CLE</p>	<p>Recommendation: The intent of the regulations is not to prohibit a district or school from imposing a long-term suspension in-school. If a district proposes to do so, however, it must first provide the due process notice and hearing that is afforded to a student facing a long-term suspension. 53:02(6) is revised to make this clear.</p> <p>Recommendation: Revise 53:02(7) to state “No long-term suspension shall extend beyond the end of the school year in which such suspension is imposed.”</p>
<p>53:02 Definitions</p> <p>The term “parent” is defined very broadly and should be clear that it refers to one parent. Otherwise, an unrealistic number of parental notifications would be required.</p> <p>The term “superintendent” should be revised to avoid having Boards of Trustees, which typically include parents and non-</p>	<p>Recommendation: No change. The reference to the singular form of parent is intentional. Notice to one individual who meets the definition of parent is sufficient for purposes of 603 CMR 53.</p> <p>Recommendation: Revise the definition of principal and superintendent to refer to the instructional leader and chief executive officer, respectively, and require the Boards of Trustees</p>

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<p>educators, hear sensitive and confidential disciplinary matters.</p> <p>Source: Murphy, Hesse, Toomey and Lehane (MHTL)</p>	<p>for charter schools and virtual schools to identify the individuals who will serve in these roles for discipline purposes, in the student discipline code.</p>
<p>53:04 Investigation of Disciplinary Incidents</p> <p>Add language that school staff have the authority to conduct student interviews in the course of investigating school misconduct without providing advance notice to parents and an opportunity to be present.</p> <p>Source: Stoneham, Chandler, and Miller (SCM)</p>	<p>Recommendation: no change. The regulation is clear that nothing in the regulations prevents an administrator from conducting an investigation of a school-related incident.</p>
<p>53:04 Investigation of Disciplinary Incidents</p> <p>Supports the provision and requests additional language that expressly states that a school resource officer does not have authority to conduct investigations regarding school disciplinary incidents; clarify that a student’s age matters when questioning students for determining Miranda rights.</p> <p>Source: CLE</p>	<p>Recommendation: no change. The use of student resource officers and discussion of Miranda rights is better addressed in an updated discipline advisory that the Department is planning to issue later this year.</p>
<p>53:05 Alternatives to Suspension under Section 37H ³/₄</p> <p>Examples of alternatives to suspension in 53:05 are not systemic and should make clear that suspension is a last resort –various commenters propose examples of alternatives to suspension that should be referenced; consideration of alternative consequences prior to suspension should be addressed in more detail at 53.08 and 53.09 because the proposed regulations do not provide clear direction to the principal/superintendent and require documentation of his or her consideration of alternatives in deciding consequences.</p> <p>Source: ELTF and others</p>	<p>Recommendation: In 53:01, state that a purpose of 603 CMR 53.00 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, consistent with Section 37H³/₄. Delete last line of 53:05 and replace it with: <i>Alternatives may include the use of evidence-based strategies and programs such as mediation, conflict resolution, restorative justice, and positive behavioral interventions and supports.</i> Other revisions are discussed below in 53:08 and 53:09. The Department will address alternatives to suspension and school climate in detail in guidance.</p>

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<p>Eliminate or clarify word “restitution” because it could be read to mean damages. Source: SCM</p>	<p>Recommendation: The sentence is revised and the word “restitution” does not appear in the revision.</p>
<p>53:06 Notice of Suspension under Section 37H ¾ (and other notices)</p> <p>Require that notice must be provided through “other means of communication” where appropriate: require that written materials be comprehensible to lay persons or accessible to persons who require assistive technology or other accommodations.</p> <p>Source: CLE</p>	<p>Recommendation: Incorporate “or other means of communication where appropriate” in 53.06 Notice of Suspension and Hearing under Section 37H3/4; and in 53.08(3)(c) and 53.13(4)(a); require that notices be in plain language.</p>
<p>53:06 Notice of Suspension under Section 37H ¾ (and other notices)</p> <p>Delete language that allows for “other methods agreed to by the principal and the parent” in providing written notice to the parent because it is burdensome for the principal.</p> <p>Source: Superintendent Daniel Gutekanst, Needham</p>	<p>Recommendation: no change. The regulation does not require the principal to agree to other methods if she or he considers them burdensome. On the other hand, it allows principals to use another method if they reach agreement on an alternative that is less burdensome or more efficient.</p>
<p>53:06 Notice of Suspension under Section 37H ¾ (and other notices)</p> <p>Create a uniform notice that can be used in each case of removal, suspension, exclusion, or hearing and conform the regulatory language governing timing of the notice wherever it appears.</p> <p>Federation for Children with Special Needs (FCSN)</p>	<p>Recommendation: no change. Regulatory language may differ in places because it reflects statutory language or because of the circumstances of the removal from school or the classroom. For example, in emergency removal, reference to immediate notice to the parent is appropriate. In the case of a short-term or long-term suspension, a student cannot be suspended until the principal notifies the parent, orally or in writing. The school committee should provide the notice as quickly as possible if it believes that suspension is warranted.</p>

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<p>53:07 Emergency Removal under Section 37H ³/₄</p> <p>Delete this section because it allows removal without prior notice to parent and opportunity for hearing; the criteria for an emergency removal (<i>the continued presence of the student poses a danger to persons or property, or materially disrupts the order of the school</i>) is too broad because it “swallows the rule”; a hearing within 5 days of removal is too long; if not deleted, tighten criteria for removal; require notice to superintendent and hearing within one day.</p> <p>Source: ELTF</p> <p>Other commenters, including the NAACP, Sen. Sonia Chang-Diaz, and the FCSN, opposed the provision either in general or because of the length of time proposed and the “broad” criteria for removal.</p>	<p>Recommendation: Retain section to provide a means for principal to remove student but limit removal to when the student’s continued presence presents a danger to people or property and there is no alternative to alleviate the danger; reduce the length of an emergency removal from 5 days to 2 days following the removal; require principal to notify superintendent in writing of removal and the reason for it; require notice, opportunity for hearing, and oral hearing decision within 2 days following the removal; require written decision the next day.</p>
<p>53:07 Emergency Removal under Section 37H ³/₄</p> <p>This section is critical for principals to reduce safety risks.</p> <p>Revise 53.07(1)c) to add short-term suspension to the reference to long-term suspension because either consequence may follow an emergency removal.</p> <p>Source: SCM</p>	<p>Recommendation: Insert reference to 603 CMR 53.08 (2) to refer to hearings on short-term suspensions as well as long-term suspensions to recognize that a principal may impose a short-term suspension following an emergency removal.</p>
<p>53:08 Principal’s Hearing under Section 37H³/₄</p> <p>Require that participants at a principal’s hearing and at a superintendent’s hearing (53:09), within a reasonable time before the hearing, be notified that the hearing will be audiotaped.</p> <p>Source: Massachusetts Teachers Association</p>	<p>Recommendation: Include the following language in 53:08: <i>If the student or parent requests an audio recording, the principal shall inform all participants before the hearing that an audio record will be made a copy will be provided the student and parent on request.</i> Likewise in 53:09, add the following: <i>The superintendent shall inform all participants before the hearing that an audio record will be made of the hearing and a copy will be provided to the student and parent upon request.</i></p>
<p>53:08 Principal’s Hearing under Section 37H³/₄</p>	

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<p>(also see discussion of parent engagement below)</p> <p>Require that the principal make an audio recording of the hearing that can be used on appeal to the superintendent; do not require a de novo hearing at the superintendent's level which will require witnesses to testify again; instead require the superintendent to listen to the record of the principal's hearing and only hear additional information as necessary.</p> <p>Source of the above: SCM</p> <p>BPS's comment on 53:09 Superintendent's Hearing is similar. Require the superintendent to review of evidence presented at the principal's hearing and limit the superintendent's hearing to new evidence.</p>	<p>Recommendation: no change. The hearing before the principal should provide due process and enable the principal to obtain all the information needed to make a fair and informed decision on the charge, particularly because some students will not appeal a decision to the superintendent.</p> <p>An appeal to the superintendent is only available to those students who are suspended long-term, potentially up to 90 school days. Under these circumstances, it is important for the superintendent to directly observe and assess witness behavior to make credibility determinations.</p>
<p>53:08 Principal's Hearing under Section 37H¾</p> <p>Commenters proposed that language be inserted in 53:08 and 53:09 (Superintendent's hearing on appeal) requiring discussion of alternative consequences at the hearing; also requiring that the principal extensively document in the principal's decision considerations of consequences other than suspension, alternative consequences previously employed and the results, as well as those considered and discussed at the hearing and why they were rejected.</p> <p>Source: BPS Code of Conduct Advisory Council</p>	<p>Recommendation: strengthen 53:08 in the following ways: 1) make clear that the principal shall provide the parent an opportunity to discuss the student's conduct and offer information, including mitigating circumstances, that the principal should consider in determining consequences for the student (53:08(2) (a) and 53:08(3) (c)); reiterate at 53:08(3)(d) that the principal must consider mitigating circumstances and alternatives to suspension before deciding the remedy or consequence for misconduct. The suggested additional documentation requirements are not necessary or appropriate.</p>
<p>53:08 Principal's Hearing under Section 37H¾</p> <p>Enhance language to protect the rights of potential witnesses and their families; do not require cross-examination of an elementary age student.</p> <p>Source: BPS</p>	<p>Recommendation: no change. The issues identified by BPS must be resolved at the local level by the principal and superintendent after weighing the due process rights of the student and health and safety of the individuals, and may involve consideration of criminal or delinquency matters.</p>
<p>53:09 Superintendent's Hearing. One commenter proposed that the superintendent not be able to impose a harsher</p>	<p>Recommendation: Include the recommended language in 53:09(7)</p>

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<p>consequence on appeal from the principal’s decision.</p> <p>Source: CLE</p> <p>Also see 53:08 above</p>	
<p>53:10 In-School Suspension</p> <p>The ELTF and others commented that a parent should have the opportunity to participate at the meeting in which the principal decides to impose an in-school suspension.</p>	<p>Recommendation: The Department recommends that the section continue to provide a means of keeping a student in school with continued access to education services while addressing student misconduct, such as conduct that may be disruptive to the class or school. However, the Department recommends that the section be strengthened to require that on the same day of the suspension, the principal make reasonable efforts to notify the parent orally of the suspension and the reasons for it; and to invite the parent to a meeting, on the same day if possible, to discuss the student’s academic performance and behavior, strategies for student engagement, and possible responses to the behavior. Under the final regulations, an in-school suspension that exceeds 10 school days, cumulatively or consecutively, shall be considered a long-term suspension for due-process, appeal, and reporting purposes.</p>
<p>53:13 Education Services and Academic Progress</p> <p>The following language should be added to this section to make clear that suspended or expelled students have the opportunity to “earn credits missed including but not limited to, homework... “</p> <p>Source: ELTF</p>	<p>Recommendation: The Department recommends that “earn credits, as applicable” be inserted in 53:13(1) so it reads in relevant part: <i>Any student who is serving an in-school suspension, short-term suspension, or long-term suspension shall have the opportunity to <u>earn credits missed, as applicable</u>...</i>” The Department notes that the concept of credits is not applicable until high school.</p>
<p>53:14 Reporting of School Discipline Data</p> <p>Several commenters expressed frustration that the proposed regulations failed to address publication and analysis of discipline data by the Department in disaggregated form; and detail on the assistance the Department would provide to districts found to have significant numbers of suspensions and expulsions. Commenters also urged that data be published by November of each year.</p>	<p>Recommendation: the Department does not recommend adoption of regulations proposed by Appleseed/ELTF because they contain a level of administrative detail that is in appropriate to include in regulation</p> <p>The Department has significantly revised 53:14, however, in a manner that is responsive both to the statute and the commenters’ concerns. The revised 53:14 highlights the importance of data reporting and analysis. The recommended changes:</p>

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<p>Appleseed submitted 5 pages of data regulations on behalf of the ELTF.</p> <p>Source: Appleseed, the ELTF, and others</p>	<ul style="list-style-type: none"> • clarify district data collection and reporting; • direct 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; • state that the Department will publish data disaggregated by school and district, and by selected student populations, with safeguards to protect data on individual students; • make 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 • require 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. <p>The Department will provide further guidance to districts on data reporting and related issues.</p>
<p>Parent Engagement</p> <p>The ELTF, the FCSN, and others commented on the need to strengthen parent engagement throughout the regulations.</p>	<p>Recommendation: In 53.01, strengthen purpose of 603 CMR 53.00 to reflect that principals should engage in discussions with parents about student behavior and responses to it; in 53:08 governing principal hearings, require that parent have an opportunity to discuss the student and offer information to be considered in determining consequences for student misconduct. In 53.09, revise language so that the superintendent makes good faith efforts to find a day and time for hearing that is convenient to both parties.</p>

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<p>Parental Engagement</p> <p>A commenter recommended that the regulations require districts to establish a protocol for reaching parents and to annually update the protocol; allow for the use of texting as a way to notify parents; and attempts to reach parents on nights and weekends.</p> <p>Source: Former Rep. Alice Wolf</p>	<p>Recommendation: no change. The protocol for reaching parents is already required by Section 8 of the Act, (effective July 1, 2014), which requires school committees to implement a pupil absence notification system to notify parents of certain absences from school. In order to have such a system, districts must have and maintain current parent contact information. In fact, schools and districts already have parental notification protocols for student health and other reasons.</p> <p>With respect to texting, the final regulations allow for texting as a method of communication that the school and a parent may agree to use.</p> <p>The Department will address parent engagement further in the planned guidance, which will be developed with input from parents, school personnel, and other interested parties.</p>