*****Massachusetts Department of***

***Elementary and Secondary Education***

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| Jeffrey C. Riley*Commissioner* |  |

# MEMORANDUM

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| **To:** | Members of the Board of Elementary and Secondary Education |
| **From:**  | Jeffrey C. Riley, Commissioner |
| **Date:**  | September 14, 2023 |
| **Subject:** | Technical Amendment to Student Discipline Regulations, 603 CMR 53.05 |

On June 27, 2023, the Board of Elementary and Secondary Education (Board) voted to solicit public comment on a proposed technical amendment to the Student Discipline Regulations, 603 CMR 53.00. The proposed amendment conforms the regulatory language in 603 CMR 53.05, Alternatives to Suspension under M.G.L. c. 71, § 37H¾, to the updated statutory language in M.G.L. c. 71, § 37H¾(b), as amended by [Acts of 2022, c. 177, § 29](https://malegislature.gov/Laws/SessionLaws/Acts/2022/Chapter177). The updated statute specifies procedures and documentation that are required before public school students are suspended for disciplinary matters covered by M.G.L. c. 71, § 37H¾.

Based on the public comment, the Department of Elementary and Secondary Education (Department) has made three minor changes to the proposed technical amendment. Your materials include a summary of the public comment and the Department’s responses. All comments are available upon request. I recommend that the Board vote to adopt the technical amendment as presented.

**Background**

As amended in 2022, M.G.L. c. 71, § 37H¾(b) specifies the procedures required before suspending a student from school for misconduct covered by § 37H¾.[[1]](#footnote-2) The statute requires that 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:
	+ 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.

The statute specifies that “alternative remedies” may include but shall not be limited to:
(i) mediation; (ii) conflict resolution; (iii) restorative justice; and (iv) collaborative problem solving.

The technical amendment to 603 CMR 53.05 conforms the language of the regulation to the updated statutory language regarding procedures for considering alternatives to suspension. The Department has already posted information about the new statutory provisions on our [Rethinking Discipline](https://www.doe.mass.edu/sfs/discipline/default.html) website. The Department will continue to support schools and districts in adopting 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.

**Overview of Comments and Action Recommended**

The public comment period closed on August 11, 2023. In total, the Department received eight comments, which were submitted by advocacy organizations, law offices, and a state representative. All comments were supportive and several suggested additional wording. Please see the enclosed summary. Based on the comments, we made three minor adjustments to clarify the amendment with wording drawn from the statute.

Along with the summary of comments and the Department’s responses, your materials include the amendment showing the proposed changes as presented in June 2023 and the final proposed changes following public comment.

I recommend that the Board vote to adopt the technical amendment to 603 CMR 53.05 as presented. Associate Commissioner Rachelle Engler Bennett and Legal Counsel Josh Varon will be at the Board meeting to respond to questions.

**Enclosures:**

* Summary of Public Comments Received and Department Response
* Technical Amendment to Student Discipline Regulations, 603 CMR 53.05, showing final proposed changes following public comment
* Motion
1. 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. [↑](#footnote-ref-2)