*****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:** | June 21, 2023 |
| **Subject:** | Proposed Technical Amendment to Student Discipline Regulations, 603 CMR 53.05 |

At the meeting of the Board of Elementary and Secondary Education (Board) on June 27, 2023, I will ask the Board to vote to solicit public comment on a proposed technical amendment to the Student Discipline Regulations, 603 CMR 53.00. The proposed amendment would conform 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. Details are provided below.

With the Board’s approval, the Department of Elementary and Secondary Education (Department) will solicit public comment on the proposed amendment in accordance with the Administrative Procedure Act. After reviewing the comments and making any adjustments as needed, I expect to bring the proposed amendment back to the Board for final action in September 2023.

**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-1) 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 proposed technical amendment to 603 CMR 53.05 would provide clarity by conforming 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.

The proposed amendment to 603 CMR 53.05 is attached, along with a motion to solicit public comment. Associate Commissioner Rachelle Engler Bennett and Legal Counsel Josh Varon will be at the Board meeting on June 27 to answer your questions.

Enclosures:

* Proposed Technical Amendment to 603 CMR 53.05 to Conform to M.G.L. 71, § 37H¾(b), as Amended by St. 2022, c. 177, § 29
* 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-1)