

## **NOTICE OF STUDENT HANDBOOK REVISION PROCESS**

This is notification that Fairhaven High School is in the process of revising the provisions in its Student Handbook which discuss student discipline procedures at pp. 27-33. This process will include submission to the School Council, the Department of Elementary and Secondary Education, and the School Committee. While the revision process takes place, students and parents should refer to the following pages of this Notice for information regarding due process rights and requirements.

## Highlights of Massachusetts Student Discipline Statutes and Regulations as of July 1, 2014<sup>1</sup>

G.L. Chapter 71, §37H	G.L. Chapter 71, §37H ½	G.L. Chapter 71, §37H ¾
<p><b>Offenses:</b></p> <p>On school premises or at school-sponsored events or activities:</p> <ul style="list-style-type: none"> <li>• Possession of a dangerous weapon</li> <li>• Possession of a controlled substance</li> <li>• Assault on a member of the educational staff</li> </ul>	<p><b>Offenses:</b></p> <ol style="list-style-type: none"> <li>1. A felony charge or felony delinquency complaint against a student.</li> <li>2. Conviction, adjudication, or admission of guilt with respect to such felony.</li> </ol>	<p><b>Offenses:</b></p> <p>Any offense that is not addressed in §37H or §37H ½.</p>
<p><b>Consequence:</b></p> <ul style="list-style-type: none"> <li>• Exclusion for amount of time up to expulsion;</li> <li>• Principal may suspend and not expel as he or she deems appropriate</li> </ul>	<p><b>Consequence:</b></p> <ol style="list-style-type: none"> <li>1. Felony charge or felony delinquency complaint: suspension for a period of time deemed appropriate by principal <i>if</i> the principal determines the student’s continued presence would have a substantial detriment on the general welfare of the school.</li> <li>2. Felony or felony delinquency conviction or adjudication or admission of guilt with respect to such felony: removal for a period of time up to expulsion (i.e. permanent exclusion) <i>if</i> the principal determines that the student’s continued presence would have a substantial detriment on the general welfare of the school.</li> </ol>	<p><b>Consequence:</b></p> <ul style="list-style-type: none"> <li>• Avoid suspending a student from school long-term (i.e. more than 10 days) until other remedies and consequences have been considered; consider ways to re-engage the student in learning.</li> <li>• Consequences other than suspension may draw from evidence-based strategies and programs such as mediation, conflict resolution, restorative justice, and behavioral interventions and supports.</li> <li>• No student may be suspended for more than 90 school days in a school year.</li> </ul>
<p><b>Due Process:</b></p> <ul style="list-style-type: none"> <li>• Prior notice to student of charge and written notice of right to hearing prior to expulsion or suspension for more than 10 days;</li> <li>• Right to representation at hearing; and to present evidence and witnesses at hearing.</li> </ul>	<p><b>Due Process (for either suspension or expulsion):</b></p> <ul style="list-style-type: none"> <li>• Written notice of the charges and of the reasons before the suspension takes effect;</li> <li>• Principal may determine the appropriate amount of time for suspension;</li> <li>• Written notice of the right to appeal to the superintendent;</li> <li>• Suspension remains in effect pending appeal to the superintendent.</li> </ul>	<p><b>Due Process:</b></p> <ul style="list-style-type: none"> <li>• Except for in-school suspension and emergency removals, prior oral and written notice of the charge to the student, and to the student’s parent, and the opportunity for a meeting/hearing with the principal before suspension takes effect. Consult 603 CMR 53:08 for details on notices, which vary for long- and short-term suspensions.</li> </ul>

<sup>1</sup> This chart is a basic overview of requirements found in state statutes and the Department’s Student Discipline Regulations, 603 CMR 53 (Regulations), as approved by the Board of Elementary and Secondary Education on April 29, 2014. The Regulations, as well as amended §37H and new §37H ¾ of chapter 71, and new §21 of G.L. c. 76, are effective July 1, 2014. School administrators should become familiar with the state statutes and Regulations before responding to student misconduct on or after July 1, 2014. It is also advisable to consult with local counsel on questions involving specific incidents of student misconduct.

		<ul style="list-style-type: none"> <li>• Consult 603 CMR 53:07 for emergency removal process and 603 CMR 53:10 for in-school suspension process</li> <li>• Explicit requirement to translate notice of the charges and the reasons in primary language of the home if other than English, or other means of communication where appropriate.</li> <li>• Principal must make and document reasonable efforts to include the parent in meeting/hearing with the student.</li> <li>• Principal must audiotape the hearing if requested by the parent and all those attending the hearing must be informed of the taping.</li> <li>• Following hearing, principal must provide a written decision; and if a long-term suspension imposed, must inform student and parent in writing of the right to appeal to the superintendent and the process to be followed; translate notice of appeal rights in primary language of the home, or other means of communication where appropriate.</li> <li>• Before any out-of-school suspension of a student in preschool or grades K – 3, principal must notify superintendent in writing of the alleged misconduct and the reasons for suspending the student out-of-school.</li> </ul>
<p><b>Appeal from Principal’s Decision:</b></p> <ul style="list-style-type: none"> <li>• Right to appeal <b>expulsion</b> decision to superintendent</li> <li>• Timeline for requesting appeal: ten days from date of expulsion</li> <li>• Right to counsel at hearing</li> <li>• Superintendent can make factual determinations as well as determine consequence.</li> </ul>	<p><b>Appeal from Principal’s Decision to Suspend or to Expel:</b></p> <ul style="list-style-type: none"> <li>• Timeline for requesting appeal: no later than 5 calendar days following the effective date of the suspension/expulsion</li> <li>• Superintendent must hold hearing within 3 calendar days of receipt of request and issue a decision within 5 calendar days.</li> <li>• Superintendent may overturn or alter the decision.</li> </ul>	<p><b>Appeal from Principal’s Decision:</b></p> <ul style="list-style-type: none"> <li>• Timeline for requesting appeal: written request not later than 5 calendar days following effective date of suspension; parent can request extension for up to 7 calendar days, which must be granted.</li> <li>• The superintendent must hold hearing within 3 calendar days of the parent’s request for a hearing. The student or parent may request up to 7 additional</li> </ul>

	<p><b>A student may appeal a suspension decision and the subsequent expulsion decision (following the conviction, adjudication or admission of guilt) regarding the same offense.</b></p>	<p>calendar days. If so, the superintendent must allow the extension. The superintendent may have the hearing without the parent if the superintendent has made a good faith effort to include the parent.</p> <ul style="list-style-type: none"> <li>• The student has the right to present oral and written testimony, to cross examine witnesses, and to counsel at his or her expense at the hearing.</li> <li>• The superintendent must audiotape the hearing and notify hearing participants that the hearing will be taped.</li> <li>• The superintendent determines the facts and consequences, if any, but cannot impose a consequence greater than the principal decided. A written decision is due within 5 calendar days of the hearing.</li> </ul>
<p><b>Provision of Education Services:</b></p> <p>Provide every student an opportunity to make <i>academic progress</i> during the period of suspension (whether in-school or out-of-school) or expulsion, to make up assignments, and earn credits missed. A district that suspends or expels a student for <i>more than 10 consecutive days</i> must provide the student and the parent with <b>a list</b> of alternative educational services.</p> <p><b>See G.L. c. 76, §21 and 603 CMR 53.13 for details, including required notice.</b></p>	<p><b>Provision of Education Services:</b></p> <p><b>Same</b></p>	<p><b>Provision of Education Services:</b></p> <p><b>Same</b></p>
<p><b>Discipline Collection and Reporting:</b></p> <ul style="list-style-type: none"> <li>• Collect and report to the Department data concerning the types and lengths of removals, suspensions, and expulsions, and access to education services.</li> <li>• Periodically review discipline data by selected student populations; determine extent of disciplinary removals and the impact on such populations; adjust practice as appropriate.</li> </ul>	<p><b>Discipline Collection and Reporting:</b></p> <p><b>Same</b></p>	<p><b>Discipline Collection and Reporting:</b></p> <p><b>Same</b></p>

<ul style="list-style-type: none"><li>• Department will provide assistance to school(s) if Commissioner identifies school(s) in district that have the highest percentage of suspensions or expulsions in Massachusetts for more than 10 cumulative days in a school year.</li><li>• Create a plan to address disparities if Commissioner determines that school or district discipline data reflect significant disparities by race and ethnicity, or disabilities.</li></ul> <p><b>See 603 CMR 53.14 for details.</b></p>		
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## DETAILS OF PROCEDURES UNDER §37H 3/4

### 1. Notice of Suspension

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;
- (g) if the student may be placed on long-term suspension following the hearing with the principal:
  - 1. the rights set forth in 603 CMR 53.08 (3)(b); and
  - 2. the right to appeal the principal's decision to the superintendent.

The principal shall make reasonable efforts to notify the parent orally of the opportunity to attend the hearing. To conduct a hearing without the parent present, the principal must be able to document 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.

Written notice to the parent may be made by hand delivery, first-class mail, certified mail, email to an address provided by the parent for school communications, or any other method of delivery agreed to by the principal and parent

## **2. Principal Hearing - Short-term Suspension (10 Days or Fewer in School Year)**

(a) The purpose of the hearing with the principal is to hear and consider information regarding the alleged incident for which the student may be suspended, provide the student an opportunity to dispute the charges and explain the circumstances surrounding the alleged incident, determine if the student committed the disciplinary offense, and if so, the consequences for the infraction. At a minimum, the principal shall discuss the disciplinary offense, the basis for the charge, and any other pertinent information. The student also shall have an opportunity to present information, including mitigating facts, that the principal should consider in determining whether other remedies and consequences may be appropriate as set forth in 603 CMR 53.05. The principal shall provide the parent, if present, 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.

(b) Based on the available information, including mitigating circumstances, the principal shall determine whether the student committed the disciplinary offense, and, if so, what remedy or consequence will be imposed.

(c) The principal shall notify the student and parent of the determination and the reasons for it, and, if the student is suspended, the type and duration of suspension and the opportunity to make up assignments and such other school work as needed to make academic progress during the period of removal, as provided in 603 CMR 53.13(1). The determination shall be in writing and may be in the form of an update to the original written notice.

(d) If the student is in a preschool program or in grades K through 3, the principal shall send a copy of the written determination to the superintendent and explain the reasons for imposing an out-of-school suspension, before the short-term suspension takes effect.

## **3. Principal Hearing - Long-term Suspension (10 Days or More in School Year, Up to 90 Days)**

(a) The purpose of the hearing is the same as the purpose of a short-term suspension hearing.

(b) At a minimum, in addition to the rights afforded a student in a short-term suspension hearing, the student shall have the following rights:

1. In advance of the hearing, 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 or not;
2. the right to be represented by counsel or a lay person of the student's choice, at the student's/parent's expense;
3. the right to produce witnesses on his or her behalf and to present the student's explanation of the alleged incident, but the student may not be compelled to do so; and

4. the right to cross-examine witnesses presented by the school district; and
5. the right to request that the hearing be recorded by the principal, and to receive a copy of the audio recording provided to the student or parent upon request. 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 and a copy will be provided to the student and parent upon request.

(c) The principal shall provide the parent, if present, 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.

(d) Based on the evidence, the principal shall determine whether the student committed the disciplinary offense, and, if so, after considering mitigating circumstances and alternatives to suspension as set forth in 603 CMR 53.05, what remedy or consequence will be imposed, in place of or in addition to a long-term suspension. The principal shall send the written determination to the student and parent by hand-delivery, certified mail, first-class mail, email to an address provided by the parent for school communications, or other method of delivery agreed to by the principal and the parent. If the principal decides to suspend the student, the written determination shall:

1. Identify the disciplinary offense, the date on which the hearing took place, and the participants at the hearing;
2. Set out the key facts and conclusions reached by the principal;
3. Identify the length and effective date of the suspension, as well as a date of return to school;
4. Include notice of the student's opportunity to receive education services to make academic progress during the period of removal from school as provided in 603 CMR 53.13(4)(a);
5. Inform the student of the right to appeal the principal's decision to the superintendent or designee, but only if the principal has imposed a long-term suspension. Notice of the right of appeal shall be in English and the primary language of the home if other than English, or other means of communication where appropriate, and shall include the following information stated in plain language:
  1. the process for appealing the decision, including that the student or parent must file a written notice of appeal with the superintendent within five calendar days of the effective date of the long-term suspension; provided that within the five calendar days, the student or parent may request and receive from the superintendent an extension of time for filing the written notice for up to seven additional calendar days; and that
  2. the long-term suspension will remain in effect unless and until the superintendent decides to reverse the principal's determination on appeal.

(e) If the student is in a public preschool program or in grades K through 3, the principal shall send a copy of the written determination to the superintendent and explain the reasons for imposing an out-of-school suspension, whether short-term or long-term, before the suspension takes effect.

#### **4. Appeal of Long-term Suspension**

(1) A student who is placed on long-term suspension following a hearing with the principal shall have the right to appeal the principal's decision to the superintendent.

(2) The student or parent shall file a notice of appeal with the superintendent within the time period set forth 603 CMR 53.08 (3) (d) 5.a. If the appeal is not timely filed, the superintendent may deny the appeal, or may allow the appeal in his or her discretion, for good cause.

(3) The superintendent shall hold the hearing within three school days of the student's request, unless the student or parent requests an extension of up to seven additional calendar days, in which case the superintendent shall grant the extension.

(4) The superintendent shall make a good faith effort to include the parent in the hearing. The superintendent shall be presumed to have made a good faith effort if he or she has made efforts to find a day and time for the hearing that would allow the parent and superintendent to participate. The superintendent shall send written notice to the parent of the date, time, and location of the hearing.

(5) The superintendent shall conduct a hearing to determine whether the student committed the disciplinary offense of which the student is accused, and if so, what the consequence shall be. The superintendent shall arrange for an audio recording of the hearing, a copy of which shall be provided to the student or parent upon request. 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.

(6) The student shall have all the rights afforded the student at the principal's hearing for long-term suspension under 603 CMR 53.08(3)(b).

(7) The superintendent shall issue a written decision within five calendar days of the hearing which meets the requirements of 603 CMR 53.08(3)(d)1. through 4. If the superintendent determines that the student committed the disciplinary offense, the superintendent may impose the same or a lesser consequence than the principal, but shall not impose a suspension greater than that imposed by the principal's decision.

(8) The decision of the superintendent shall be the final decision of the school district, charter school, or virtual school, with regard to the suspension.

#### **5. Emergency Removals**

Nothing in 603 CMR 53.00 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 temporary removal shall not exceed two school days following the day of the emergency removal, during which time the principal shall:

(a) Make immediate and reasonable efforts to orally notify the student and the student's parent of the emergency removal, the reason for the need for emergency removal, and the other matters set forth in 603 CMR 53.06(2);

(b) Provide written notice to the student and parent as provided in 603 CMR 53.06(2);

(c) Provide the student an opportunity for a hearing with the principal that complies with 603 CMR 53.08(2) or (3), as applicable, and the parent an opportunity to attend the hearing, before the expiration of the two (2) school days, unless an extension of time for hearing is otherwise agreed to by the principal, student, and parent.

(d) Render a decision orally on the same day as the hearing, and in writing no later than the following school day, which meets the requirements of 603 CMR 53.08(2)(c) and (d) or (3)(c) and (d), as applicable.

(2) A principal may not remove a student from school on an emergency basis for a disciplinary offense until adequate provisions have been made for the student's safety and transportation.