

## LEGAL POLICIES

### **Due Process**

The Code of Conduct of the Worcester Public Schools is administered within the framework of the United States Constitution and federal and state laws and regulations with regard to due process for students. The Code of Conduct is intended to be administered for disciplinary infractions that occur on school grounds or at school-sponsored events (on and off school grounds) OR for disciplinary infractions that occur off school grounds but substantially disrupt the educational environment or create a hostile environment at school.

The Worcester Public Schools adheres to the Student Discipline Laws and Regulations as set forth in MGL c. 71 §§37H, 37 H<sup>1/2</sup> and 37 H<sup>3/4</sup> and 603 CMR 53.00 et seq.

### **Section I**

#### **IN-SCHOOL SUSPENSION DUE PROCESS PROCEDURES:**

A student may be removed from regular classroom activities, but not from the school premises, for up to ten (10) consecutive school days or up to ten (10) school days cumulatively for multiple infractions during the school year. Students who are placed in in-school suspension shall have the opportunity to earn credits, make up assignments, tests, papers, and other school work as needed to make academic progress during the in-school suspension.

A student who is unable to consistently adhere to acceptable classroom standards in a particular class may be removed from the class permanently and assigned to a different class at the discretion of the principal and/or his/her designee.

#### **Notice of In-School Suspension:**

The principal or his/her designee shall inform the student of the disciplinary offense charged and the basis for the charge, and provide the student with an opportunity to dispute the charges and explain the circumstances surrounding the alleged incident. If the principal or his/her designee determines that the student committed the disciplinary offense, the principal or his/her designee shall inform the student of the length of the student's in-school suspension, which shall not exceed ten (10) days, cumulatively or consecutively, in a school year.

On the same day as the in-school suspension decision, the principal or his/her designee shall make reasonable efforts to notify the parent/guardian orally of the disciplinary offense, the reasons for concluding that the student committed the infraction, and the length of the in-school suspension.

On the day of the suspension, the principal or his/her designee shall send written notice (by hand-delivery, certified mail, first class mail or email) to the student and parent/guardian including the reason and the length of the in-school suspension, and inviting the parent/guardian to a meeting if the meeting has not already occurred. The notice shall be in English and the primary language of the home if another language is identified in the home language survey, or by other means, as appropriate.

#### **Parent/Guardian Meeting:**

The principal or his/her designee shall also invite the parent/guardian to a meeting to discuss the student's academic performance and behavior, strategies for student engagement, and possible responses to the behavior. Such meeting shall be scheduled on the day of the suspension if possible, and if not, as soon thereafter as possible. If the principal or his/her designee is unable to reach the parent/guardian after making and documenting at least two (2) attempts to do so, such attempts shall constitute reasonable efforts for purposes of orally informing the parent/guardian of the in-school suspension.

**No Right to Appeal:**

The decision of the principal or his/her designee is the final decision for in-school suspensions not exceeding ten (10) days, consecutively or cumulatively during a school year.

**Section II**

**OUT-OF-SCHOOL SUSPENSION DUE PROCESS PROCEDURES FOR OFFENSES UNDER MGL c. 71 §37H <sup>3</sup>/<sub>4</sub>:**

**Due Process Procedures for Out-of-School Suspensions:**

There are two types of out-of-school suspensions, short-term suspensions and long-term suspensions. The principal or his/her designee shall determine the extent of the rights to be afforded the student at a disciplinary hearing based on the anticipated consequences for the disciplinary offense. If the consequence may be long-term suspension from school, the principal or his/her designee shall afford the student, additional rights as described below, in addition to those rights afforded to students who may face a short-term suspension from school. All students facing out-of-school suspension shall have the right to oral and written notice, as described below.

**Notice for any Out-of-School Suspension:**

Prior to suspending a student, the principal or his/her designee will provide the student and the parent/guardian oral and written notice of the possible suspension, an opportunity for the student to have a hearing and the opportunity of the parent/guardian(s) to participate in the hearing. The notice will be in English and in the primary language of the home if other than English as identified in the home language survey, or by other means of communication where appropriate. The notice will 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 or his/her designee 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/guardian to attend the hearing;
- (e) the date, time, and location of the hearing;
- (f) the right of the student and the student's parent/guardian 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 or his/her designee shall make reasonable efforts to notify the parent/guardian orally of the opportunity to attend the hearing. Prior to conducting a hearing without the parent/guardian present, the principal or his/her designee will document reasonable efforts to include the parent/guardian. The principal or his/her designee is presumed to have made reasonable efforts if the principal or his/her designee has sent written notice and has documented at least two (2) attempts to contact the parent/guardian in the manner specified by the parent/guardian for emergency notification.

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

**Emergency Removal of Student:**

Under certain emergency circumstances, it may not be practical for the principal or his/her designee to provide prior oral and written notice before removing a student from school. The principal or his/her designee may remove 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 or his/her designee's judgment, there is no alternative available to alleviate the danger or disruption. The principal or his/her designee will immediately notify the superintendent in writing of the removal and the reason for it, and describe the danger presented by the student. The temporary removal shall not exceed two (2) 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/guardian of the emergency removal, the reason for the need for emergency removal, the disciplinary offense, the basis for the charge, the potential consequences, including potential length of suspension, the opportunity for a hearing including the date/time/location of the hearing, the right to interpreter services, and other rights permitted for students who may be placed on long-term suspension as set forth in 603 CMR 53.08(3)(b);
- (b) Provide written notice to the student and parent/guardian, including the information described in 603 CMR 53.06(2);
- (c) Provide the student an opportunity for a hearing with the principal or his/her designee that complies with 603 CMR 53.08(2) or 53.08(3), as applicable, and the parent/guardian 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/guardian.
- (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 53.08(2)(d) or 603 CMR 53.08(3)(c) and 53.08(3)(d), as applicable.

A principal will 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.

**SHORT-TERM SUSPENSION PROCEDURES UNDER MGL c. 71 §37H <sup>3</sup>/<sub>4</sub>:**

A short-term suspension is the removal of a student from the school premises and regular classroom activities for ten (10) consecutive school days or less. Any student facing a potential short-term suspension is entitled to a hearing with the principal or his/her designee with the following process:

**Principal Hearing - Short-term Suspension:**

- (a) The purpose of the hearing with the principal or his/her designee 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 or his/her designee 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 or his/her designee should consider in determining whether other remedies and consequences may be appropriate as alternatives to suspension. The principal or his/her designee shall provide the parent/guardian, 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 or his/her designee shall determine whether the student committed the disciplinary offense, and, if so, what remedy or consequence will be imposed.
- (c) The principal or his/her designee shall notify the student and parent/guardian 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 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, before the short-term suspension takes effect.

**No Right to Appeal:**

The decision of the principal or his/her designee is the final decision for short-term out-of-school suspensions not exceeding ten (10) days, consecutively or cumulatively during a school year.

**LONG-TERM SUSPENSION PROCEDURES UNDER MGL c. 71 §37H <sup>3</sup>/<sub>4</sub>:**

A long-term suspension is the removal of a student from the school premises and regular classroom activities for more than ten (10) consecutive school days, or for more than ten (10) school days cumulatively for multiple disciplinary offenses in any school year. Except for students who are charged with a disciplinary offense set forth in MGL c. 71, §37H, or in MGL c. 71 §37H<sup>1</sup>/<sub>2</sub>, no student may be placed on long-term suspension for one or more disciplinary offenses for more than ninety (90) school days in a school year beginning with the first day that the student is removed from school. No long-term suspension shall extend beyond the end of the

school year in which such suspension is imposed. Any student facing a potential long-term suspension is entitled to a hearing with the principal or his/her designee with the following process:

**Principal Hearing - Long-term Suspension:**

- (a) The purpose of the hearing with the principal or his/her designee 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 or his/her designee 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 or his/her designee should consider in determining whether other remedies and consequences may be appropriate as alternatives to suspension. The principal or his/her designee shall provide the parent/guardian, 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) In addition to the rights afforded a student in a short-term suspension hearing, the student shall have the following additional 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/guardian'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;
  4. the right to cross-examine witnesses presented by the school district;
  5. the right to request that the hearing be recorded by the principal or his/her designee, and to receive a copy of the audio record upon request. If the student or parent/guardian requests an audio record, the principal or his/her designee 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/guardian upon request.
- (c) The principal or his/her designee shall provide the parent/guardian, 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 or his/her designee shall determine whether the student committed the disciplinary offense, and, if so, after considering mitigating circumstances and alternatives to suspension, what remedy or consequence will be imposed, in place of or in addition to a long-term suspension. The principal or his/her designee shall send the written determination to the student and parent/guardian by hand-delivery, certified mail, first-class mail, email to an address provided by the parent/guardian for school communications, or any other method of delivery agreed to by the principal or his/her designee and the parent/guardian. If the principal or his/her designee 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 or his/her designee;
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 educational services to make academic progress during the period of removal from school;
5. inform the student of the right to appeal the principal's or his/her designee's decision to the superintendent or designee, but only if the principal or his/her designee 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 as determined by the home language survey, or other means of communication where appropriate, and shall include the following information stated in plain language:
  - a. The process for appealing the decision, including that the student or parent/guardian must file a written notice of appeal with the superintendent within five (5) calendar days of the effective date of the long-term suspension; provided that within the five (5) calendar days, the student or parent/guardian may request and receive from the superintendent an extension of time for filing the written notice for up to seven (7) additional calendar days; and that the long-term suspension will remain in effect unless and until the superintendent decides to reverse the principal's determination on appeal.
  - b. If the student is in a public preschool program or in grades K through 3, the principal or his/her designee shall send a copy of the written determination to the superintendent and explain the reasons for imposing an out-of-school suspension, before the suspension takes effect.

**Superintendent's Appeal Hearing:**

- (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 or his/her designee.
- (2) The student or parent/guardian shall file a notice of appeal with the superintendent within five (5) calendar days of the effective date of the long-term suspension; provided that within the five (5) calendar days, the student or parent/guardian may request and receive from the superintendent an extension of time for filing the written notice for up to seven (7) additional calendar days. 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 or his/her designee shall hold the hearing within three (3) school days of the student's request, unless the student or parent/guardian requests an extension of up to seven (7) 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/guardian 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/guardian and superintendent to participate. The superintendent shall send written notice to the parent/guardian 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/guardian 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/guardian upon request.
- (6) The student shall have all the rights afforded the student at the principal's hearing for long-term suspension.
- (7) The superintendent shall issue a written decision within five (5) calendar days of the hearing which meets the requirements of 603 CMR 53.08(3)(c)1 through 5. 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, with regard to the suspension.

A parent/guardian conference (re-entry meeting) with the principal or his/her designee is strongly encouraged before students who are suspended return to school. This conference will be used to promote the engagement of the parents/guardians in discussions of the student's misconduct and to assist the student in re-engaging with the school community.

### **Section III**

#### **LONG-TERM SUSPENSION/EXPULSION FOR SPECIAL CIRCUMSTANCES**

##### **UNDER MGL c. 71 §37H:**

The long-term suspension or expulsion of a student from school will be in accordance with MGL c. 71 §37H. The grounds for long-term suspension or expulsion include but are not limited to the following:

- a. Any student who is found on school premises or at school-sponsored or school-related events, including athletic games, in possession of a dangerous weapon, including, but not limited to, a gun, a knife, or their facsimile, or anything used in the commission of assault and battery; or a controlled substance as defined in Chapter 94 C, including, but not limited to, marijuana, cocaine, and heroin, may be subject to long-term suspension or expulsion from the school by the principal or his/her designee.
- b. Any student who assaults a principal, assistant principal, teacher, teacher's aide, or other educational staff on school premises or at school-sponsored or school-related events, including athletic games, may be subject to long-term suspension or expulsion from the school or school district by the principal or his/her designee.
- c. Due process for a student who is subject to an expulsion or a long-term suspension as a result of possessing drugs/weapons or assaulting school staff includes:
  1. A student shall receive written notice before the expulsion or a long-term suspension takes place and written notice of the right to appeal.
  2. The student shall be given an opportunity for a hearing and the opportunity to present witnesses and evidence. The student may have an attorney at their own expense.
  3. Following the hearing, the principal or his/her designee may, in his/her discretion, decide to suspend rather than expel the student.

4. The student may appeal an expulsion (suspension of more than 90 school days) to the superintendent provided the appeal is requested in writing, within ten (10) calendar days following the long-term suspension or expulsion.
5. At the appeal hearing, the student may be represented by an attorney and may present oral and written testimony.
6. The subject matter of the appeal shall not be limited solely to a factual determination of whether the student has violated any provisions of MGL c. 71 §37H.
7. The superintendent's decision is final.
8. Any student who is suspended or expelled for more than ten (10) consecutive days shall have the opportunity to receive education services and make academic progress toward meeting state and local requirements, through the school-wide education service plan.

**PROCEDURES FOR STUDENTS WITH FELONY COMPLAINT OR CONVICTION UNDER MGL c. 71 §37H<sup>1/2</sup>:**

In accordance with MGL c. 71 §37H<sup>1/2</sup>, principals have the authority to suspend students charged with a felony and expel or issue a long-term suspension to students convicted or adjudicated of committing a felony if the principal has determined that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school.

Due process for a student who is subject to suspension as a result of a felony charge includes:

1. The student shall receive written notice before the suspension takes effect and written notice of the right to appeal.
2. The student shall be given an opportunity to respond to the charges before the suspension takes effect.
3. The student may appeal the suspension to the superintendent, provided the appeal is requested in writing within five (5) calendar days following the suspension.
4. The superintendent must hold the appeal hearing within three (3) calendar days of the request.
5. At the appeal hearing the student may be represented by an attorney. The student has the right to present oral or written testimony on his/her behalf.
6. The superintendent must render a decision within five (5) calendar days.
7. The superintendent's decision is final.
8. Any student who is suspended or expelled pursuant to this section shall have the opportunity to earn credits, as applicable, make up assignments, tests, papers and other school work as needed to make academic progress during the period of his/her removal.
9. Any student who is suspended or expelled for more than ten (10) consecutive days shall have the opportunity to receive educational services and make academic progress toward meeting state and local requirements, through the school-wide education service plan.

Due process for a student who is subject to an expulsion or a long-term suspension as a result of a felony conviction includes:

1. A student shall receive written notice before the expulsion or a long-term suspension takes place and written notice of the right to appeal.
2. The student shall be given an opportunity to respond to the charges.



3. The student may appeal the expulsion or long-term suspension to the superintendent provided the appeal is requested in writing, within five (5) calendar days following the expulsion.
4. The superintendent must hold the appeal hearing within three (3) calendar days of the request.
5. At the appeal hearing the student may be represented by an attorney and may present oral and written testimony.
6. The superintendent must render a decision within five (5) calendar days.
7. The superintendent's decision is final.
8. Any student who is suspended or expelled for more than ten (10) consecutive days shall have the opportunity to receive educational services and make academic progress toward meeting state and local requirements, through the school-wide education service plan.

#### **Section IV**

#### **EDUCATIONAL SERVICES AND ACADEMIC PROGRESS UNDER MGL c. 71 §§37H, 37H<sup>1/2</sup> AND 37H<sup>3/4</sup>:**

Any student who is serving an in-school suspension, short-term suspension, long-term suspension, or expulsion shall have the opportunity to earn credits, as applicable, 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. The principal or his/her designee shall inform the student and parent/guardian of this opportunity in writing when such suspension or expulsion is imposed.

Any student who is expelled or suspended from school for more than ten (10) consecutive days, whether in school or out of school, shall have an opportunity to receive educational services and make academic progress toward meeting state and local requirements, through the school-wide education service plan.