




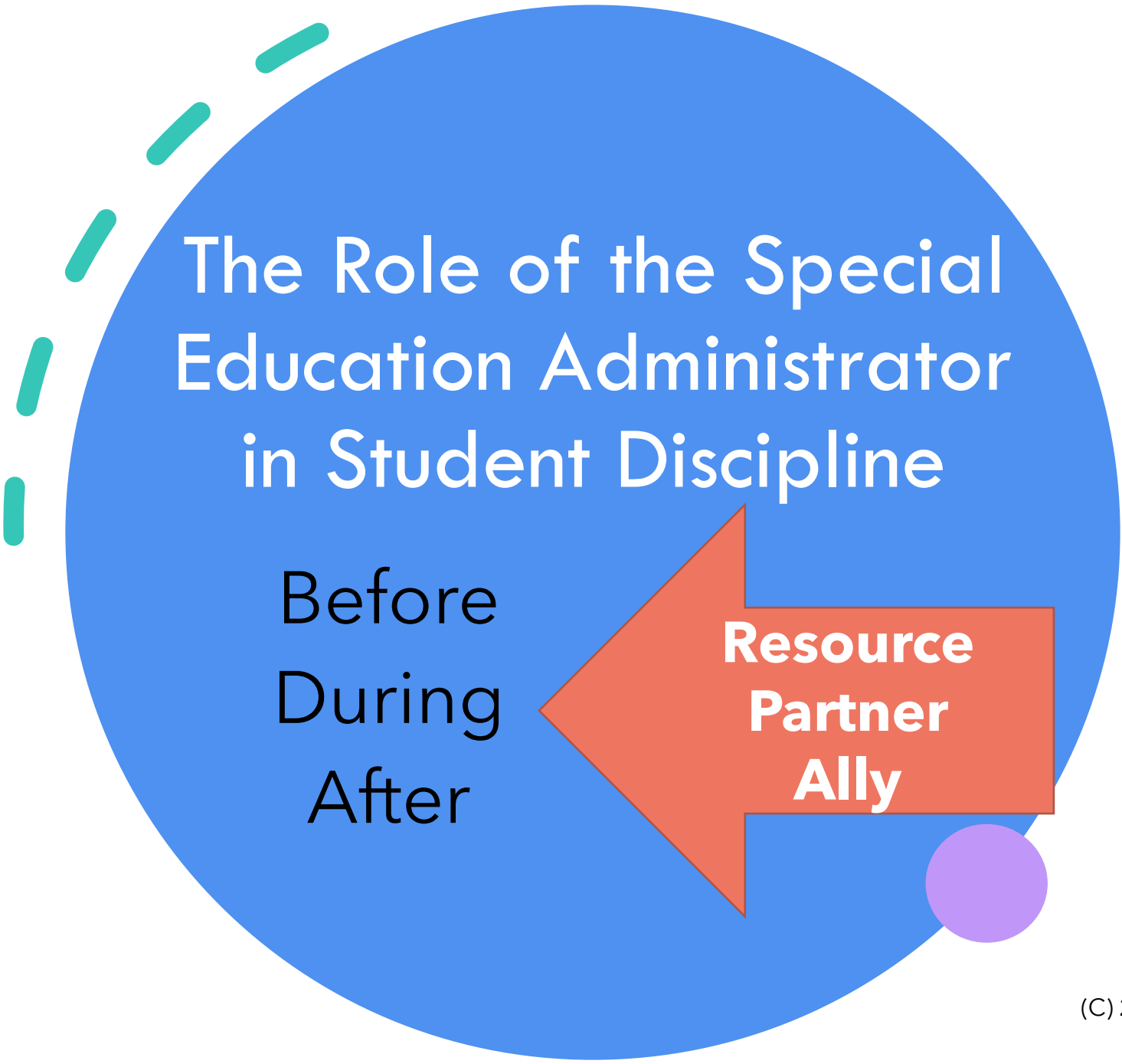
# MANAGING STUDENT DISCIPLINE ISSUES

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Accountability  
breeds response-  
ability.

Steven Covey



# The Role of the Special Education Administrator in Student Discipline

Before  
During  
After

**Resource  
Partner  
Ally**



# Part I: Before Suspending a Student from School

# Before Notifying Parents of a Suspension Hearing Ask These Questions:

1

What is the conduct for which the student may be suspended?

2

Which law applies?

3

How many days has the student been suspended this academic year?

4

Does the student have an IEP or a 504 plan?

5

Is the student being evaluated or is there a suspected disability?

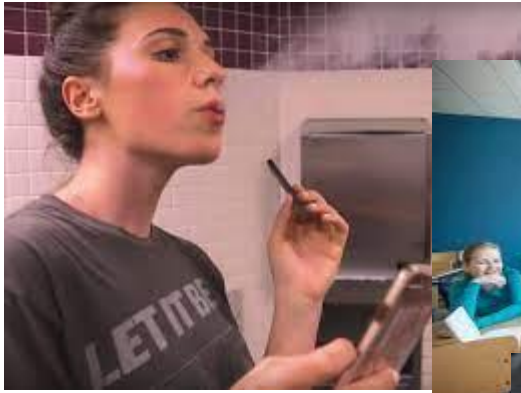
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Is the student in grades K-3?

7

Does the alleged conduct trigger other school policies?

# What is the conduct for which the student might be suspended?



# Which law applies?

M.G.L. c. 71, §37H: Possession of a dangerous weapon or controlled substance or assault on school staff

M.G.L. c. 71, §37H ½: Felony charge or conviction

M.G.L. c. 71, §37H ¾: Everything else

# Why does applying the right law matter?

Different notice requirements

Different standards for suspension

Different principal's hearing requirements

Different written determination letter

Different maximum number of days

Different appeal periods



# How many days has the student been suspended this academic year?



**10 is the magic number!**



**10 days cumulatively = MDR (for students with disabilities)**



**10 days cumulatively = long term suspension**



# Does the student have an IEP or a 504 plan?

Additional  
due process  
protections  
required

Manifestation determination prior to any removal constituting a change in placement.

Where appropriate, development of an FBA or review of existing BIP.

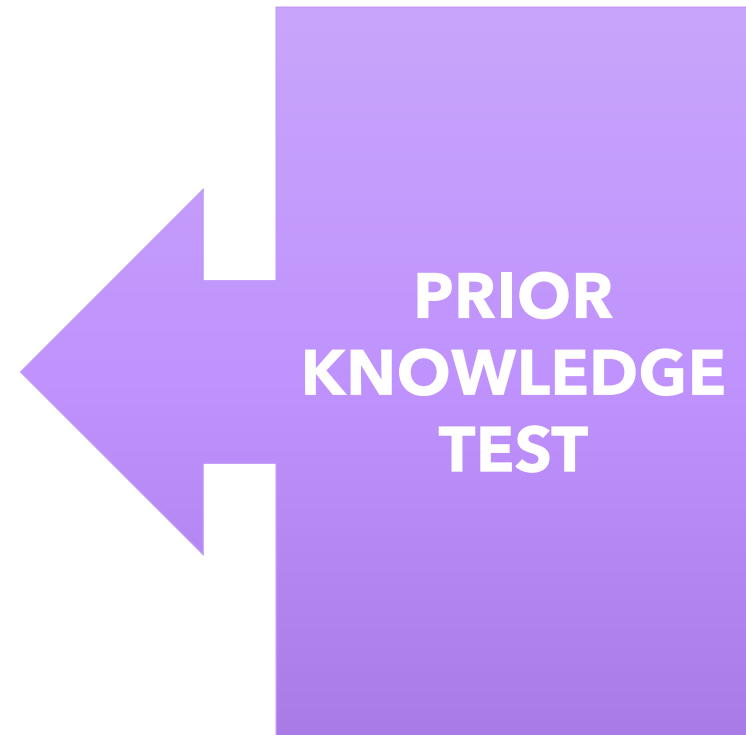
Provision of FAPE as of the 11<sup>th</sup> day of removal.

# Is the student being evaluated or is there a suspected disability?

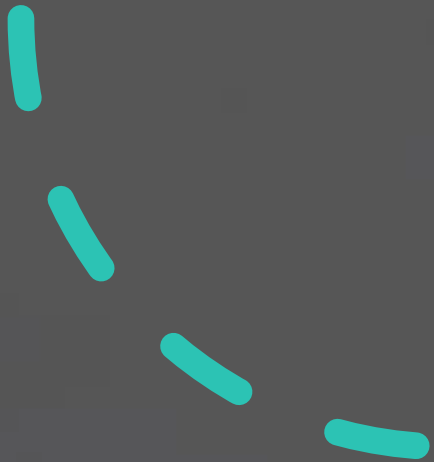
Has the parent expressed concern that the student may be in need of special education in writing to supervisory personnel, administrative personnel, or to the teacher?

Has the parent previously requested an evaluation that has not yet been completed?

Has a staff person expressed specific concerns about a pattern of behavior directly to the special education department?



# TWO TRACKS?



# Who is on the MD team and what information should the team consider?

## Who is on the MD team?

- Building administrator(s)\*  
\*Generally, not the disciplinary decision-maker.
- “Relevant” IEP/504 team members.

## What does the MD team consider?

- Evaluation and diagnostic results
- Observational details
- Student’s IEP or 504 plan
- Information provided by the parents/student

## What questions does the MD ask and answer?

- Was the conduct giving rise to disciplinary action caused by or directly and substantially related to the child’s disability?
- Was the conduct giving rise to the disciplinary action the direct result of the school’s failure to implement the IEP?

# How do you conduct a MD when the disability is unclear or not yet identified?

Cannot require an evaluation/risk assessment as condition to student's return to school.

Scour previous evaluations, IEPs, and progress reports for descriptions of student's behavior.

Invite school staff who are most familiar with the student to attend meeting and look to them for insight into student's behavior.

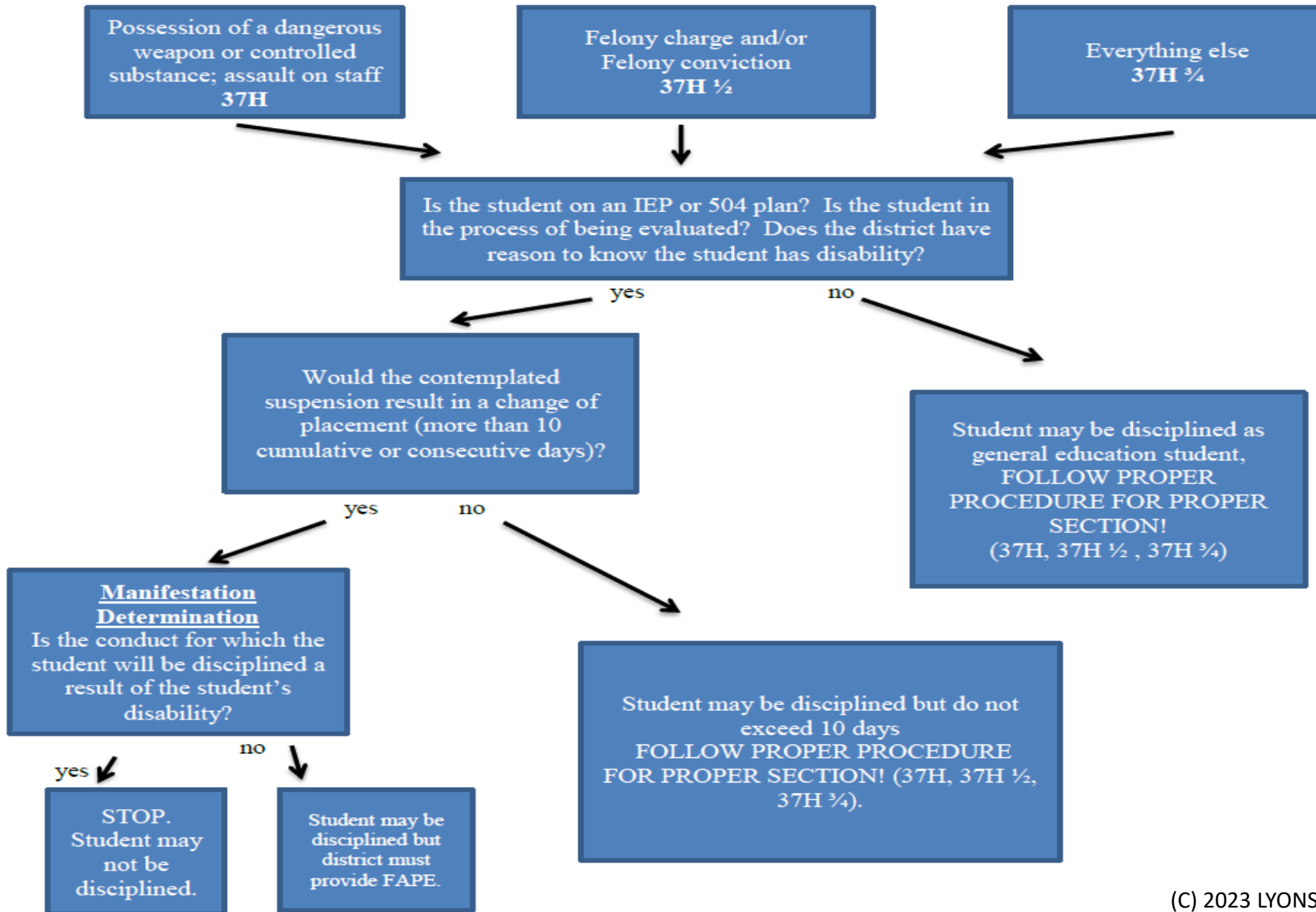
Even if presentation appears to be changing, establish what the team knows about the student to date based on existing data.

Inconclusive finding = no suspension.

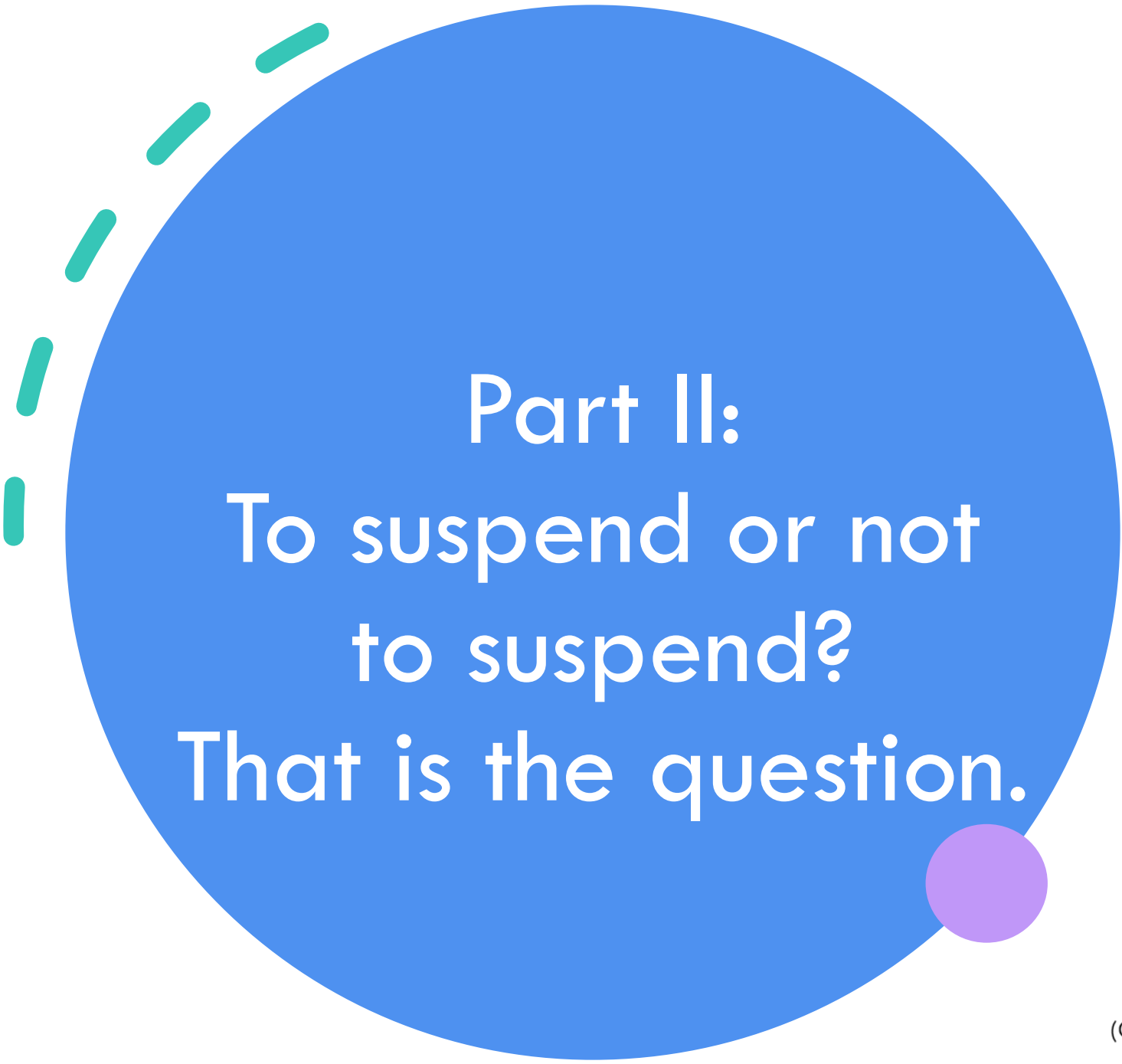


*“Let’s just do a 45  
day.”*  
Or not.

# STUDENT DISCIPLINE







Part II:  
To suspend or not  
to suspend?  
That is the question.

# M.G. L. c. 71, §37H

- **Hearing Notice Requirements:**
  - Short-term suspension - Oral notice of the offense and opportunity to respond; notification of suspension in writing.
  - Long term suspension hearing - Written notice of student's right to have representation (at private expense), opportunity to present evidence and witnesses at hearing.
- **Standard to apply at Principal's Hearing:**
  - Whether student committed alleged disciplinary offense
- **Written Determination:**
  - Decision with respect to expulsion/suspension, right to appeal determination to Superintendent (10 days from the date of the determination to appeal), right to educational services during period of suspension, right to counsel at Superintendent's hearing (at private expense).

# M.G. L. c. 71, §37H ½

- **Hearing?**
  - Statute does not require principal's hearing for long term suspension (but advisable).
- **Written Notice:**
  - Notice of charges and reason for suspension prior to suspension taking effect.
  - Right to appeal to Superintendent within 5 days following effective date of suspension.
  - Right to legal counsel (at private expense) at Supt's hearing, right to oral and written testimony at Supt's hearing. Right to receive educational services during period of suspension/expulsion.
- **Standard:**
  - Whether student's continued presence in school would have a substantial detrimental effect on the general welfare of the school – and specifically why.

M.G. L. c. 71,  
§37H <sup>3</sup>/<sub>4</sub>

Notice of  
Hearing  
Required

## **Oral and Written Notice of Hearing required **PRIOR** to any suspension:**

*General Notice Requirements:*

- Notice of the charges and the opportunity to meet with the principal or designee to discuss charges and reasons for the suspension.
- Purpose of the principal's hearing is to hear and consider information, provide student an opportunity to dispute charges and explain circumstances, determine if the student committed the offense, and if so, the consequences for the infraction.

## 37H3/4 – Notice of Short-Term Suspension Hearing

- **Written notice:**
  - Notice of the disciplinary offense
  - The basis for the charge
  - The potential consequences
  - The opportunity for a principal's hearing concerning the proposed suspension, including the opportunity to dispute the charges and to present the student's explanation of the alleged incident
  - The opportunity for the parent to attend the hearing
  - The date, time, and location of the hearing
  - The right to interpreter services

# 37H3/4 – Notice of Long-Term Suspension Hearing

## WRITTEN NOTICE:


- Notice of the disciplinary offense
- The basis for the charge
- The potential consequences
- The opportunity for a principal's suspension hearing, including the opportunity to dispute the charges and present the student's explanation of the alleged incident
- The opportunity for the parent to attend the hearing
- The date, time, and location of the hearing
- The right to interpreter services

## PLUS:

- Opportunity to review student's record and documents upon which the principal may rely
- The right to be represented by counsel (at private expense)
- The right to produce witnesses
- The right to present an explanation (but student may not be compelled to do so)
- The right to cross-examine witnesses
- The right to request that the hearing be recorded, and to receive a copy

M.G. L. c. 71,  
§37H <sup>3</sup>/<sub>4</sub>  
Emergency  
Removal

Permissible when 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.



**Two days maximum.**


# Mass. General Law c. 71, §37H <sup>3</sup>/<sub>4</sub>

## Steps for **Emergency Removal**

Make immediate and reasonable efforts to orally notify the student and the student's parent of the emergency removal.



Provide written notice of principal's hearing – in accordance with requirements - that will occur within two days of the removal.



Conduct Principal's Hearing in accordance with short/long term requirements



Issue written notice of consequence, after considering alternative remedies.





## What's new with §37H3/4?

Due process requirements have not changed, BUT principals/assistant principals/superintendents may not suspend a student unless the school has first:

- used **alternative remedies**; and
- **documented** the use of alternative remedies and the results of the alternative remedies employed.

## Revised §37H3/4(b)

Any principal, headmaster, 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 or expel a 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, and 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.**

# §37H3/4(b) - Alternative Remedies


- Alternative remedies may include but shall not be limited to: (i) mediation; (ii) conflict resolution; (iii) restorative justice; and (iv) collaborative problem solving.
- The principal, headmaster, superintendent or person acting as a decision-maker shall also implement school- or district-wide models to re-engage students in the learning process which shall include but not be limited to: (i) positive behavioral interventions and supports models and (ii) trauma sensitive learning models.
- School- or district-wide models shall not be considered a direct response to a specific incident.





# Alternative remedies = Alternative Consequences in Lieu of Suspension

The following “alternative remedies” are contained in the statute:

- Mediation
  - Conflict resolution
  - Restorative justice
  - Collaborative problem solving
- 

Others potential alternative remedies could be:

- Parent meeting
- Detention
- Reflection Assignment
- Counseling
- Restitution
- Skills coaching
- Saturday school
- Issuing a warning
- Education specific to conduct
- Making an apology
- Referral to IEP/504 team
- Etc.

# Where/how should alternative remedies be documented?

- Schools are advised to record alternative remedies imposed for any disciplinary conduct in a central location wherever such information is typically recorded such as Aspen, etc.
- Record ALL conduct even if it is not conduct for which a Student would be typically suspended.
- Record ALL consequences such as parent conference, loss of privilege, meeting with guidance counselor, referral to IEP team to address behavior through team process.
- Record ALL results such as “parent conference occurred on 11/2,” “loss of parking privilege for two weeks,” “student benched for one game,” “student met with guidance counselor on 11/3 and discussed better choices student could have made,” etc.

# Two Exceptions to Alternative Remedy Rule

Schools may suspend without first using alternative remedies if:

1. Alternative remedies are unsuitable or counter-productive; or
2. 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.

# When might alternative remedies be unsuitable or counter-productive?

- When prior alternative remedies have not been effective.
- When a student refuses to engage in alternative remedies.
- When a student's conduct infringes on the civil rights of students or staff.
  - Example: Student engages in conduct that is discriminatory, retaliatory or harasses another student on the basis of race, religion, sex, gender identity, disability, national origin, or other protected class.
- When a student's conduct creates a hostile environment for students or staff.
- When a student's conduct impedes the school's mission statement.
- Other articulable reasons.

## What is a documentable concern?

“Documentable” does not mean that the concern has already been documented by someone else.



It means one that you can articulate and document the concern.

Requires the principal/assistant principal to make a judgment.

No formal assessment or evaluation is required.



# Pre 11/8/22 Requirements for Letter of Determination Pursuant - 603 CMR 53.08(3)(d)

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.

# Post 11/8/22 Determination Letter Requires Additional Language:

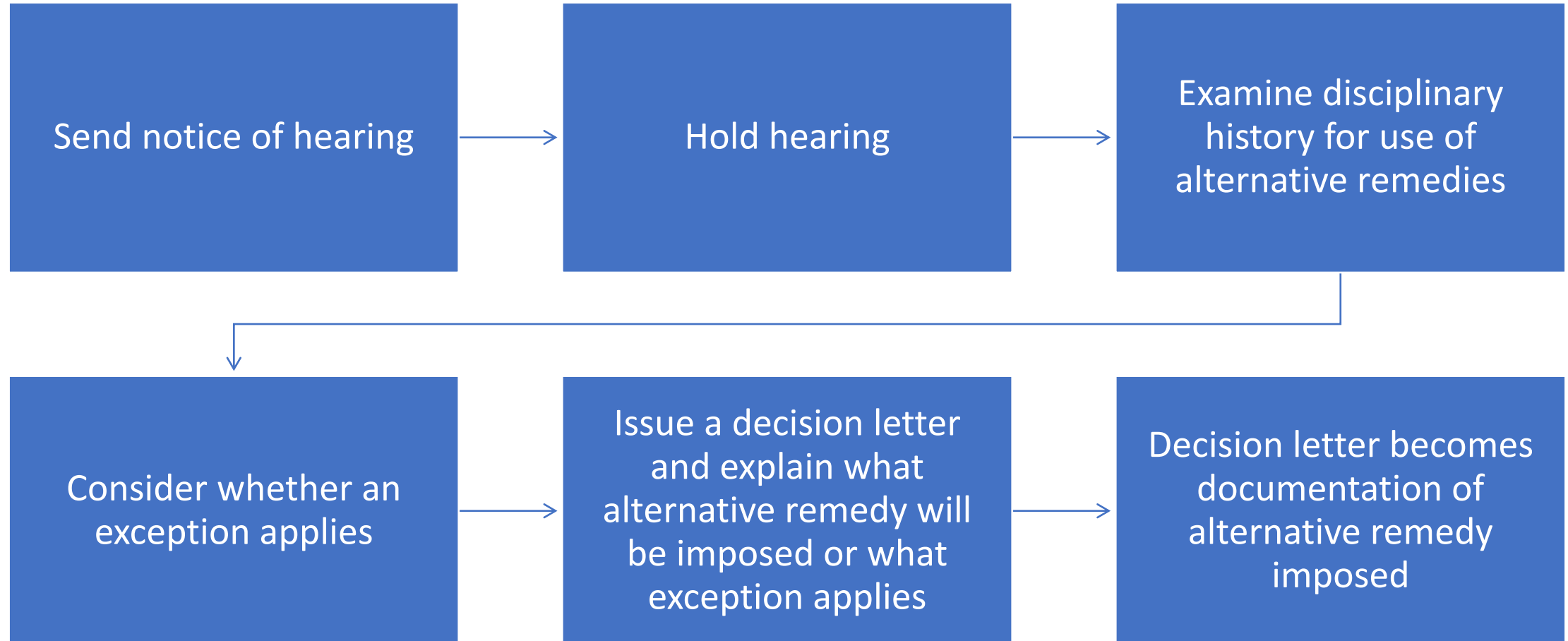
- When principal/assistant principal imposes an ***alternative remedy*** in lieu of suspension.

➔ This letter should state Nos. 1 & 2, then explain that suspension will not be issued “because I am required to impose an alternative remedy in lieu of suspension. Accordingly, the consequence will be ...”

- When a principal/assistant principal imposes ***suspension under an exception***.

➔ This letter should include all of the above information AND should explain between Nos. 3 & 4 why an exception(s) applies.

# Use due process to document alternative remedies



# M.G.L. c. 71, §§ 37H and 37H ½ Have Not Changed

**Alternative remedies requirement does not apply.**

## Section 37H:

- Possession of a dangerous weapon;
- Possession of a controlled substance; and
- Assault of school staff.

## Section 37H1/2:

- Felony charge or conviction



# Hypotheticals





# Thank you!

This presentation, including the materials and presenter's comments, is not intended to be legal advice. If you need legal advice, please contact an attorney.

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