

Regular Meeting: April 24, 2017

**SPECIAL MEETING OF THE FALL RIVER SCHOOL COMMITTEE**

**Monday, April 24, 2017**

**5:00 PM**

**Morton Middle School  
1135 North Main Street  
Fall River, MA 02720**

**MEETING MINUTES**

Vice Chair Costa called the meeting to order. A roll call for attendance showed at 5:00 p.m.:

Mr. Andrade: Present	Mr. Martins: Present
Mr. Coogan: Present	Mrs. Panchley: Present
Mr. Costa: Present	Mayor Correia: Absent
Dr. Costar: Present	

Also present were Attorney Assad and Superintendent Malone.

Mr. Costa read the Open Meeting Law.

A salute to the flag followed.

**Workshop on Student Conduct**

Mr. Costa announced that Attorney Michael Joyce would be conducting a workshop on student conduct. The topics would consist of student rights, student discipline, M. G. L. Chapter 222, and the regulations on restraints.

The Committee members stepped off stage for Attorney Joyce's presentation.

Attorney Joyce introduced himself as the legal representation for the Fall River School Committee and Fall River Public Schools on all student-related matters such as special education, harassment, bullying, and physical restraint. He informed them that there would be an opportunity for questions at the end of the presentation. He would also answer questions that come up during the presentation.

He started by saying that there have been significant changes in the last couple of years surrounding student discipline in Massachusetts.

*Disciplinary Responses to Threats and Dangerous Behaviors State and Federal Due Process Requirements*

- Massachusetts Statutes
  - M.G.L. c.71, § 37H
  - M.G.L. c.71, § 37H1/2
  - M.G.L. c.71, § 37H3/4
  - M.G.L. c.76, §21
- Massachusetts Regulations
  - 603 CMR 53.00 (applies to 37H3/4 offenses)

Attorney Joyce stated that it's important when talking about student discipline to understand the backdrop.

*School Exclusions: Basic Constitutional Due Process Rights*

- There is a constitutional right to due process before a student can be deprived of even one school day
- *Goss v. Lopez*. There was a Vietnam War protest at a school and 75 kids were suspended for five days with no hearing.
- The 14<sup>th</sup> Amendment states that no deprivation of life, liberty or property without due process of law. The Supreme Court saw there was (1) a property in education created through compulsory attendance laws and (2) there was a liberty interest in one's reputation for being suspended.
- Before administrators take away even one day of suspension, they have to give verbal notice of what the student was charged with and give the student the opportunity to respond. For example, if a student is found with illegal contraband in school, an administrator needs to verbally acknowledge to the student what was found and ask the student how they respond to that. Once the student responds, the school then has the right to suspend the student under the constitution from 1-10 days. Without that process, it would be unconstitutional to suspend.
- Massachusetts State Legislature has given much greater rights to individuals when it comes to discipline

*M.G.L. c.71, § 37H*

- This law has been on the books since the early 1990s. This remains unaffected by the new laws.
- A principal has authority to suspend or permanently expel a student for the following conduct:
  - Possession of a dangerous weapon (Principal's determination on what a dangerous weapon is)
  - Possession of a controlled substance on school grounds or a school-sponsored event
  - Assault on staff
    - Assault doesn't just mean "assault and battery." Assault is also a "swing and a miss." Assault is a threat with the intention and ability to carry out the threat.

Dr. Costar asked what grade levels this law applied to. Attorney Joyce said that it definitely applied to high school students. It also applied to elementary and middle school students if it was in the student handbooks. If a school is considering expulsion for an elementary school student, they have to look at a number of things because that's an extraordinary measure for a student that age.

- If an administrator wants to suspend beyond 10 days, they have to provide written notice of rights and have to set up a long-term suspension
  - A student has a right to counsel, a right to a defense, a right to examine the evidence against him/her, and the right to present evidence
  - The principal may make a decision to suspend beyond 10 days or to expel the student permanently
  - Students may appeal decision in writing to the Superintendent within 10 calendar days
  - The Superintendent reviews the principal's decision to determine whether it's arbitrary and capricious

*M.G.L. c.71, §37H1/2*

- Felony offenses. The felony offense has to be issued against a student. It doesn't have to happen at a school or a school-sponsored event. There was a case in another state where a student allegedly murdered someone. This happened on a Friday. The kid went back to school on Monday. The question administrators need to ask is, would the student's continued presence have a substantial detrimental effect on the welfare of the school. Generally, a crime involving violence and drugs, a principal is pretty safe in saying that might have a substantial detrimental effect on a school.

- Example of felony offenses:
  - Assault and battery with a dangerous weapon
  - Possession of a Class B substance (i. e., cocaine)
  - Armed robbery
  - Rape
- The student remains suspended as long as the felony is pending
- If an assault and battery with a dangerous weapon charge gets reduced to just assault and battery, the student can come back because it is no longer a felony.
- If a student gets convicted or adjudicated delinquent or if there is a continuence without a finding, a school can move to expulsion. There will need to be another formal hearing. The student is entitled to due process on this issue.
- Felony offenses are the only permissible expellable offenses in schools in Massachusetts. Schools cannot expel for any other reason.
- Under 37H1/2, the appeal process is made within five calendar days to the Superintendent

*M.G.L. c.76, §17*

- There is still a statute on the books that states that a School Committee shall not permanently exclude a pupil from the public schools for alleged misconduct without first giving him and his parent or guardian an opportunity to be heard. This has effectively been nullified because under 37H and 37H1/2 says that the Superintendent's decision is final.

Mr. Martins asked if this would be considered double jeopardy since it was the police department's job to prosecute. Attorney Joyce said that the state legislature would not view this as double jeopardy because there's a criminal process that has a much higher standard which is beyond a reasonable doubt. Schools have a much lower standard which is preponderant to the evidence. The student's presence must have a detrimental impact on the general welfare of the schools as determined by the principal. The principal needs to be able to articulate the reason.

*M.G.L. c.71, §37H3/4*

- Applies to any offense that does not fall under 37H or 37H1/2
- This gives students and parents more rights than they have had in the past. The goal was to try to limit the number of suspensions. They wanted to engage students and parents. They wanted schools to consider alternatives to suspension.

*Definitions M.G.L. c.71, §37H3/4*

- In-School Suspension: Removal of a student from regular classroom activities, but not from the school premises, for no more than 10 consecutive school days, or no more than 10 school days cumulatively, for multiple infractions in a school year.
- Short-Term Suspension: Removal of a student from the school premises and regular classroom activities for 10 consecutive school days or less.
- Long-Term Suspension: Removal of a student from the school premises and regular classroom activities for more than 10 consecutive school days, or more than 10 school days cumulatively for multiple disciplinary offenses in any school year. If a student is suspended for two days in September, two in November, three in January, and four in March, that student gets long-term suspension rights.
- Expulsion: Removal of a student from school premises for more than ninety (90) school days in a school year, indefinitely, or permanently, as permitted under M.G.L. c.71 §§37H or 37H1/2.

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*In-School Suspension*

- Principal must:
  - Inform the student of the disciplinary offense and provide an opportunity to respond
  - Provide oral notice (on the same day) to the parents of the principal's determination and the length of the in-school suspension
  - Make reasonable efforts (at least two telephone calls) to invite the parents to a meeting to discuss the student's academic performance and behavior, strategies for student engagement, and possible responses to the behavior. Administrators just need to invite parents to come but can't require it.
  - On the day of the in-school suspension, principal must deliver written notice to the parents of the basis for and length of the in-school suspension and invite the parents to meet to discuss the student's behavior if such a meeting has not already occurred

Dr. Costar asked if a student can get sent to in-school suspension if he insults the teacher. Attorney Joyce said that, if it's less than half the day, it does not count as in-school suspension unless there's a pattern. If a student exhibits negative behavior at 9:00am, they can send the student to in-school suspension but they have to provide oral notice.

*Out-of-School Suspension: Due Process*

- Principal may not impose an out-of-school suspension as a consequence for a disciplinary offense without first providing the student and the parent:
  - Oral and written notice; and
  - The opportunity to be heard
- The school cannot suspend a student for even one day without providing written notice to the student and the parents
- Notice must include:
  - Identification of the alleged disciplinary violation;
  - The basis for the charge; the potential length of the student's suspension;
  - The opportunity for the student to be heard and the parent to participate;
  - Date, time, and location of the hearing;
  - Notice of right to have translation services if needed
  - No right to counsel

Mr. Coogan asked if administrators could suspend two students who get into a fight for three days if the fight took place on a Monday. Attorney Joyce said that those students could not be suspended the next day because the school would have to first provide written notice to the parents and the students and would then have to schedule a hearing. Mr. Coogan asked if they still had to provide written notice if the administrator calls the parents to notify them about the fight and the parents consent to the suspension. Attorney Joyce said that principals cannot make disciplinary decisions until they have provided written notice of due process rights. He noted that they could in-school suspend the students the next day. He understood that having both students in the same room could be a problem but administrators can make accommodations to have the students in separate rooms. If the principal calls the parents to say that the students are suspended, he has already predetermined a hearing so they are impartial because they've already stated that the student was suspended. They've made a decision without written notice and the opportunity to be heard. They're not able to make an out-of-school suspension decision the day of the incident.

Dr. Costar asked if a principal could suspend a student if (1) they have a video recording of the fight, (2) there were witnesses, and (3) the students admitted to the fight. Attorney Joyce answered that you generally can't.

If the parents decide not to come in, you can do a hearing without them but they need to be provided written notice. If you call the parent and they know that their child was in the wrong, the parent can waive their right to due process. However, an attorney will still need to draft that and principals may not be able to get a hold of an attorney on short notice. The parents would still need to be provided written notice so they would know what they're waiving. Dr. Costar said that principals used to be able to have a hearing without a parent being there but now it seems like the parent has to be there. Attorney Joyce said that, under 37H and 37H1/2, *Goss v. Lopez* applies to short-term suspensions; for all other offenses, it does not. Dr. Costar asked if principals could conduct a Skype hearing. Attorney Joyce said that they would still have to provide parents notice of their rights and they need to be able to exercise those rights. Attorney Joyce said that, if the parents are requesting a Skype hearing, it's fine; however, there are form letters that have to be used and the school would need to alter the form letter in order to acknowledge the parent's request. Superintendent Malone asked if the intent of the policy was to reduce suspension rates. Attorney Joyce confirmed that that was the intent. He said that there were three major ways that they did this: (1) they made it harder to suspend. They intentionally tried to create a bureaucratic process that makes it more time consuming, (2) they made it a more robust right of the Superintendent, and (3) they hit schools in the pocketbook in terms of education services.

#### *Out-of-School Suspension – Due Process*

- If the student is potentially subject to long-term suspension, notice must also include:
  - Notice of opportunity to review records;
  - Right to be represented by counsel;
  - Right to produce witnesses and to present an explanation of the incident;
  - Right to cross-examine witnesses presented by the district; and
  - The right to request that the hearing be audio recorded by the Principal. If a parent requests that a long-term suspension hearing be audio recorded, the school has the obligation to record it. Attorney Joyce advised that they record the hearing anyway. The school needs to follow due process because, if they don't and the parent challenges them, the student is allowed back in the school no matter how detrimental it is to the welfare of the school.

#### *Long-Term Suspension Alternatives*

- Office detentions
- Detentions
- Taking away extracurricular activities

#### *Principal's Hearings*

- Short-Term Suspension Hearing
  - Principal must provide the student and parents (if present) with the opportunity to dispute the charges and to present information, including mitigating facts, for the Principal to consider in determining whether other remedies and consequences other than suspension may be appropriate. The principal needs to have an open mind and hear the parents out.
  - Make the disciplinary determination in writing. It must include:
    - The reason for the determination;
    - The type and duration of suspension; and
    - Notice of the opportunity to make up assignments and such other school work as needed to make academic progress during the period of removal. The days of students getting zeros because they've been suspended are gone.
  - If the student is in Grades K-3, the principal must, before the Short-Term Suspension takes effect:

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- Send the copy of the written determination to the Superintendent and
- Explain the reasons for imposing an out-of-school suspension

*Principal's Written Decision: Long-Term Suspension*

- If the Principal decides to impose a Long-Term Suspension, the written notice of the determination must:
  - Identify the offense, the date of the hearing, and the participants at the hearing;
  - Set out the key facts and conclusions reached by the principal;
  - Identify the length and effective date of the suspension, as well as the date of return to school;
  - Include notice of the opportunity to receive education services during the period of exclusion;
  - Inform student of the right to appeal and the process for making such an appeal; and
  - Include notice that the suspension will remain in effect unless reversed on appeal

*Disciplinary Limitations*

- Except for students who are charged with 37H or 37H1/2 offense, no student may be placed on Long-Term Suspension for one or more disciplinary offenses for more than ninety (90) days in a school year beginning with the first day that the student is removed from school.
  - For example, something happens in October and a school administrator decides to suspend a student for 90 days. If, when a student comes back to school, they do something else, the school cannot suspend them again. This requires administrators to be judicious. The only way Attorney Joyce would support suspending a student for 90 days is if it takes the student to the end of the school year. Administrators want to have the ability to suspend again if a major incident were to occur. For the incident that took place in October, he would recommend suspending for 45 days instead of 90.
- No Long-Term Suspension may extend beyond the end of the school year.

Mr. Coogan asked if you could put a student in an alternative program. Attorney Joyce said that administrators can assign students to different general education program.

*Appeals to the Superintendent*

- Appeal right for long-term suspensions, more than 10 days
- Superintendent is doing the Principal's hearing over again

*Emergency Removal*

- Principal may unilaterally remove a student for up to two school days when:
  - The student is charged with a disciplinary offense; and
  - The continued presence of the student poses a danger to persons or property, or would substantially materially disrupt the order of the school; and
  - There is no alternative available to alleviate the danger or disruption
  - If the student is not deescalating, the school can emergency remove the student
- Principal must:
  - Make immediate and reasonable efforts to orally notify the student and the student's parent of the emergency removal and of the reason for the need for emergency removal, and the notice requirements for short-term suspension, including written notice. If they're going to be put up for long-term suspension, the administrator would need to do an emergency removal and a long-term suspension notice. The reason is because they're going to conduct the hearing in

two days not counting the day of removal. These do not count as days of suspension. They are considered days of removal.

#### *Calculating Days of Suspension*

- Question: If a student moves from one district to another during the school year, do the days of suspension from the previous school district count?
  - Answer: No, they do not.
- Questions: Do the days of suspension for a 37H offense or a 37H1/2 offense count toward the 90-day limit on suspension?
  - Answer: No, they do not.

Dr. Costar asked if a student could enroll in a Fall River School if she had been expelled from another school district and was a resident of Fall River. Attorney Joyce said that Fall River would have the option to admit the student or honor the exclusion. As a resident of Fall River, the educational responsibility may be with the system. The school could also get the information from the other school district and conduct its own hearing.

#### *Education Services and Disciplinary Removal*

- Any student serving a suspension must be provided with the opportunity to make up assignments, tests, papers, and other schoolwork as needed to make academic progress and to acquire credits toward graduation during the period of removal from the classroom or school
- As a school system, kids who are suspended who aren't getting education doesn't help the school system overall

#### *Academic Progress and Education Services*

- Suspension of 10 consecutive school days or less
  - Must provide student with opportunity to earn credits, make up assignments, tests, papers, and other school work
- Suspension of more than 10 consecutive school days
  - Must provide the student with the opportunity to receive educational services

#### *Education Service Plans*

- Districts must develop an Education Services Plan describing:
  - The educational services that will be made available to students who are excluded from school for more than 10 consecutive days
    - Examples: direct tutorial programs, night school, alternative school, collaborative school programs, online learning
    - "Educational services shall be based on, and be provided in manner consistent with, the academic standards and curriculum frameworks established for all students under G.L. c.69, §§1D and 1F."

#### *Alternative Education Services*

- Question: Are schools required to include non-core academic subjects among the education services for students suspended for more than 10 consecutive days?
  - Answer: If non-core academic subjects are included in local requirements, they must be included in the education service plan
- Question: What if the student refuses to accept the education services?

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- Answer: The school should meet with the student and parent to encourage the student to accept the services. Ultimately, if a student refuses to engage, the school should document its efforts.

Dr. Costar asked what the ramifications were for special need students in regard to the 10 days. Attorney Joyce said that it was a different counting system. They cannot suspend a student who is on an IEP for more than 10 consecutive days or 10 cumulative days if it constitutes a pattern of removal unless they have done a manifestation determination. They would need to convene the IEP team, consider the relevant information, and the IEP team has to consider two questions: (1) was the behavior a direct result of failure to implement the IEP or (2) was the behavior that brings about a Long-Term Suspension caused by or directly and substantially related to a student's disability. If it was a direct result, that student returns to his/her placement the next day. Administrators cannot suspend beyond the 10 days. If it's not determined to be a manifestation of the disability, they can suspend that student as they could any other student; however, they have to consider what services would be necessary to allow the student to return to his/her IEP goals during the period of exclusion. Prior to 10 days, they can suspend a special needs student just like any other student.

Dr. Costar asked under what conditions a regular ed elementary school student could be emergency removed and placed in a day school. Attorney Joyce said, in order to mandate without parental consent that a student be removed to an emergency placement for evaluative purposes, they would have to file for a hearing with the BSEA. The principal can place a student in an interim unilateral alternative setting in discreet circumstances such as possession of a dangerous weapon, serious bodily injury to staff or students, possession or solicitation of illegal narcotics. If it fits in those examples without going to hearing, a principal can do a unilateral placement. They usually try to seek to work collaboratively with the parents.

Superintendent Malone asked Attorney Joyce if he could confirm that there were only one or two systems that have those types of placements. Attorney Joyce said that Fall River, Worcester, and Boston have therapeutic programs that have the capability of doing an extended evaluation.

*The Massachusetts Bullying Prevention Act: Definitions*

- Bullying is defined as:
  - The repeated use by one or more students or by a member of a school staff including, but not limited to, an educator, administrator, school nurse, cafeteria worker, custodian, bus driver, athletic coach, advisor to an extracurricular activity or paraprofessional of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at a victim that:
    - Causes physical or emotional harm to the victim or damage to the victim's property;
    - Places the victim in reasonable fear of harm to himself or of damage to his property;
    - Creates a hostile environment at school for the victim;
    - Infringes on the rights of the victim at school, or
    - Materially and substantially disrupts the education process or the orderly operation of a school

Attorney Joyce pointed out that the last three items on that list were highlighted because, if the conduct happens outside of school or a non-school sponsored event, only those three apply. Students have significantly higher free speech rights outside of schools.

*Cyber-bullying*

- Bullying through the use of technology or any electronic communication, including any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system, including but not limited to, electronic mail, internet communication, instant messages, or facsimile communications.

*Discriminatory Harassment*

“Harassment” is unwelcome conduct, whether verbal or physical, that is based on: race, color, national origin, sex, gender identity, sexual orientation, religion, or disability, that creates a hostile school environment. In order for it to be considered harassment, it needs to be a protected class.

*Hostile Environment*

- A hostile environment is created when
  - The harassing conduct is sufficiently:
    - Severe,
    - Pervasive, or
    - Persistent
  - Such that it denies or limits the ability of an individual to participate in, or benefit from, the services, activities or privileges provided by the school.

Mr. Coogan gave an example of a student who sends another student threatening Facebook messages that says that he’s going to go after him at the mall on Saturday. That student gets called into the principal’s office but claims that he didn’t say this on school grounds, he didn’t use a device owned by the school, and he’s not going to do anything to the other student at school. Mr. Coogan asked if this was acceptable. Attorney Joyce would advise that the principal sit down and talk with the victim to find out how this is impacting him at school. If the victim is afraid of the kid and it’s affecting him at school, then it’s a problem. He gave an example of two middle school students who dated then broke up but remained on good terms. However, the boy’s friend was texting nasty things about this girl to the ex-boyfriend who forwarded the texts to the girl just to show her what his friend was saying about her. Some of the stuff was pretty graphic and his client wanted to take action. He brought the girl in asked if this was impacting her at school. She said that it wasn’t. He asked her if she felt nervous when she saw the kid. She said that she didn’t but she wanted it to stop. The school did not have a nexus in this case. If the child in Mr. Coogan’s scenario is afraid to walk down the hall at school, it does give the school a nexus to do something. Mr. Coogan asked if law enforcement could be informed. Attorney Joyce said that, if a crime is being committed, the school has an obligation to notify law enforcement. Under the bullying law, the school system would need to complete an investigation and, if substantiated, they need to notify the victim. Discipline is considered a corrective measure. Depending on the level of bullying, they may need to progressively go up. The point is to eliminate the harassment or bullying from occurring. There’s no mandated discipline as a response. Discipline and isolation is not the solution. They have to think about safety plans and educating these students so that they don’t do it again.

Dr. Costar asked, in terms of harassment, what was considered severe. Attorney Joyce said, under discriminatory harassment, it’s an objective-subjective test - a reasonable person of the same age, grade, and gender under similar circumstances. He gave an example of a student patting another student on the back and calling him “pal.” The other student found that offensive. However, that is not considered harassment. It did not rise to the level of severe, persistent, or pervasive. Dr. Costar asked if a situation like that could be solved informally. Attorney Joyce said that schools have to be very reticent to adopt a policy in order to do this informally.

*First Amendment – Free Speech Considerations*

- “Harassment, however, to be prohibited by the statutes within OCR’s jurisdiction, must include something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive.”
- “Under OCR’s standard, the conduct must also be considered sufficiently serious to deny or limit a student’s ability to participate in or benefit from the educational program. Thus, OCR’s standards require that the conduct be evaluated from the perspective of a reasonable person in the alleged victim’s position, considering all the circumstances, including the alleged victim’s age.”
- To constitute “harassment” the conduct must include something beyond the mere expression of views, words, symbols, or thoughts that someone finds offensive.
- School district can take action only if the speech (1) causes, or is reasonably likely to cause, a material substantial disruption; or (2) interferes with the rights of others at school.
- The student may express his views, “If he does so without materially and substantially interfering with the requirements of appropriate discipline in the operation of the school and without colliding with the rights of others.”
- The issue typically only arises when the conduct is based solely on verbal conduct, such as racial discussions in classrooms. It’s permissible even if some people find the content offensive. If they’re targeted at an individual, that may turn into something that is harassment.

*Physical Restraint of Students*

- Significant changes to restraint regulations took effect on January 1, 2016
  - Explicit policy goal is to eliminate physical restraint in school
  - This is not just a special education law

*New Title and Content Reflect Policy Shift*

- Old Title: “Physical Restraint”
- New Title: “Prevention of Physical Restraint and Requirements if Used.”
  - This emphasizes that they are really trying to prevent physical restraints

*Staff Rights/Responsibilities Remain*

- Right to use reasonable force to protect oneself, a student, or others from assault or imminent, serious, physical harm
- Right to report a crime
- Mandated reporting responsibilities
- Right of law enforcement/school security/judicial authorities to exercise responsibilities such as detaining student alleged to have committed a crime or posing a security risk

*Basic Requirements for Administration of Restraint Unchanged*

- Administered only by trained personnel
- Must use minimum amount of force necessary in the safest manner possible
- Have an adult non-participatory witness when possible

*Chemical and Mechanical Restraint*

- Chemical restraint, mechanical restraint, and seclusions are prohibited
  - This does not include vehicle restraints or orthopedic devices that are prescribed
- Only physical restraint is permitted

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- Prone restraint - lying face down with pressure being applied to the body – is only permitted in very limited circumstances and can only be done with prior written approval from principals, physicians, licensed mental health worker, and consent from parent and can only be performed by in-depth trained staff. This should only take place after all remedial measures have taken place.

Mr. Coogan asked if this could be used if a fight breaks out between students. Attorney Joyce said that prone restraint could not be used in that situation.

#### *Time Out*

- “A behavioral support strategy in which a student temporarily separates from the learning activity or classroom, either by choice or by direction from staff, for the purpose of calming”

#### *Inclusionary Time-Out*

- Student is removed from positive reinforcement or full participation in classroom activities while remaining in the classroom
  - Included practices used by teachers as part of their classroom behavior support tools, such as “planned ignoring,” asking students to put their heads down, or placing a student in a different location within the classroom (not including “walled off” time-out rooms)

#### *Exclusionary Time-Out*

- Separation of the student from the rest of the class either through complete visual separation or from actual physical separation
- To be used only when students are displaying behaviors which present, or potentially present, an unsafe or overly disruptive situation in the classroom
- Cannot be used as a method of punishment for non-compliance or for incidents of misbehavior that are no longer occurring
- Exclusionary time-out must cease as soon as the student is calmed

#### *Exclusionary Time-Out Requirements*

- Exclusionary time-out space must be clean, safe, sanitary and appropriate for the purpose of calming
- Door to exclusionary time out space cannot be locked
- During exclusionary time out:
  - The student must be continuously observed by a staff member
  - Staff must be with the student or immediately available to the student at all times
- Exclusionary time-out must be approved by the Principal if it exceeds 30 minutes
- Exclusionary time-out must cease as soon as the student is calmed

#### *Seclusion*

- Involuntary confinement of student alone in a room or area from which the student is physically prevented from leaving
- Illegal and not allowed

#### *Physical Restraint – Definition*

- Direct physical contact that prevents or significantly restricts a student’s freedom of movement
- Does not include:
  - Brief physical contact to promote student safety

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- Providing physical guidance or prompting when teaching a skill; redirecting attention; or providing comfort; or
- A physical escort

#### *A Physical Escort is Not a Restraint*

- New definition:
  - Physical escort:
    - “Shall mean a temporary touching or holding, without the use of force, of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is agitated to walk to a safe location.”
    - “An escort to time-out is considered restraint only if physical force is required to move the student against his/her will”

#### *Brief Physical Contact and Physical Guidance Are Not Restraints*

- Does not include
  - Brief physical contact to promote student safety:
    - Brief physical contact refers to “measures taken by school personnel consisting of physical contact with a student for a short period of time solely to prevent an imminent harm to a student, for example, physically redirecting a student about to wander on to a busy road, grabbing a student who is about to fall, breaking up a fight between students”
    - Providing physical guidance or prompting when teaching a skill; redirecting attention; or providing comfort

#### *Emergency Procedure of Last Resort*

- Physical restraint is an emergency procedure of last resort, and is prohibited except when:
  - The student’s behavior poses a threat of assault or imminent, serious, physical harm to self and/or others; and
  - The student is not responsive to verbal directives or other lawful and less intrusive behavior interventions, or such interventions are deemed to be inappropriate under the circumstances
- “The use of restraint as a last resort means that other methods of de-escalation or behavior support have been unsuccessful, or would be inappropriate, and the student presents an imminent danger to self or others”

#### *Physical Restraint*

- May not be used:
  - As punishment/discipline; or
  - In response to property destruction, disruption of school order, refusal to comply with rules/directions, or verbal threats unless harm standard is also met; or
  - When medically contraindicated; or
  - As a standard response for any student

#### *Duration of Restraint*

- Must terminate:
  - As soon as student is no longer an immediate danger to himself or others, or
  - If the student is observed to be in severe distress, such as having difficulty breathing, or sustained or prolonged coughing or crying;

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- If student is restrained beyond 20 minutes, staff must obtain approval of Principal

#### Reporting Requirements

- Old Requirements
  - Any restraint that lasts more than 5 minutes; and
  - Any restraint that results in injury
- 1/1/16 : Must report ALL restraints

#### *Reporting to DESE*

- Restraints resulting in injury:
  - Must be reported to DESE within 3 working days; and
  - The District must also send the DESE a copy of the records of physical restraints maintained by the principal for the 30-day period prior to the date of the reported restraint
- The District must also report all physical restraints (whether there is an injury or not) to DESE in annual report in manner/form directed by DESE

#### *Waivers of Reporting Requirements*

- Old Requirements
  - Parents can agree to waive reporting requirements in individual circumstances, although not for extended restraint or restraint resulting in serious injury
- 1/1/16: No individual waivers
- A parent can never withhold consent to restrain

#### *In-Depth Staff Training*

- At the beginning of each school year, the principal must identify program staff to serve as resources regarding physical restraint
- DESE “recommends” that such training be competency-based and be at least 16 hours in length with refresher training occurring annually thereafter
- Only in-depth trained staff can administer a floor or prone restraint
- The training must include:
  - Appropriate procedures for preventing the use of physical restraint, including de-escalation and alternatives

#### *Two Documents*

- Every principal has to do a monthly review of physical restraints within their building to identify any patterns
- Individual reviews. If a student is restrained multiple times during one week, they have to assemble a team and do an individual review with certain discreet requirements to meet that need.

Dr. Costar asked if in-depth trained staff are the only ones allowed to do prone restraints. Attorney Joyce would generally advise against prone restraints but a prone restraint can be done if there is a process that includes documentation beforehand. The principal, parents, medical doctor, and psychologist or licensed mental health worker would all need to consent to it. It was really designed for high, severe placements.

Mr. Costa thanked Attorney Joyce for his presentation. He asked the Committee members if they had any questions for Attorney Joyce. Mr. Coogan asked, in regard to student safety, if a vice principal places a student who has a history of violence in a classroom and the student gets into a fight and the teacher gets hurt,

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if the vice principal was liable. Attorney Joyce said that the liability there would be a very high standard. The discretionary decision to send a student back into class would have to be grossly negligent in order to expense any liability. If a student is being discriminated against based on race or sexual preference and the school knowingly puts a student back in that situation, that would be a liability.

Mr. Coogan asked if a vice principal was liable if a principal hires him to take care of missing students and he isn't able to get to all the missing students or if one student gets injured. Attorney Joyce clarified that his expertise was not in labor employment law. He only does student-related work. Mr. Coogan asked if an administrator does not give the student and parents written notice but suspends the student under the emergency removal plan, would he be held liable for that. Attorney Joyce said, under M.G.L. c. 76, §17, school administrators can be sued for wrongfully imposing disciplinary due process.

Mr. Martins asked if a student can be transferred to another school if he is constantly disruptive. Attorney Joyce said that it is within the discretion of the school to assign students to schools. There is no proverbial right to a neighborhood school unless they did a transfer based on a protected class. Mr. Martins pointed out that transferring the student just transfers the problem. If the student is disruptive at the second school, he asked if the student can be excluded from the building and given an online arrangement or individualized tutoring. Attorney Joyce said that that would be considered suspension. Administrators can't exclude a student from school without following the suspension process. For a student who is assigned with special needs, they have to provide the services in the new placement. There have been many cases where parents refuse to send kids to school. In this case, the school can engage in an agreement for how to provide services to that student but they can't exclude kids from going to school unless it's an out-of-school suspension. Mr. Martins doesn't understand why a school can't exclude a student from coming onto school grounds if they are still providing educational services to students. He compared it to a homeschool type of set up. Attorney Joyce said, according to the Massachusetts Legislature, it is considered a long-term suspension. Removal from both the classroom and the school premises will kick in the long-term suspensions rights. Mr. Martins said that there are a couple of schools in Massachusetts that are online schools and asked why students couldn't enroll in that. Attorney Joyce said that online services can be offered to students who are on long-term suspension but the students would need to elect to enroll themselves in the specific online programs Mr. Martins is referring to. The District is not authorized to enroll students in those programs. They would no longer be responsible for students who enroll in that program. It would be equivalent to students enrolling in a charter school. Just like with a charter school, the money for that student is going to travel with them.

Mr. Costa asked members of the audience if they had any questions. No one came forward. Dr. Costar thanked Attorney Joyce for his presentation. He stated that there had been a lot of substantial changes since he has been out of the school system. He thinks the changes have made teachers a little gun-shy in implementing disciplinary responses as quickly, particularly with elementary school students. For elementary school students, they respond well to choices and consequences. A rule is set and, if the student violates the rule, there is a consequence and the teacher implements the consequence immediately. However, now, the consequence doesn't come immediately because the regulations encourage the response not come immediately, which makes it less effective for the child, a more difficult learning environment for other children, and sends a message to the school and students in that class that that behavior is acceptable. He hears from parents that their kids are being bullied, harassed, or threatened and they want the other child removed or suspended but the principal has to deal with regulations where they have to slow the process down. Sometimes they have to be creative and move the child who is doing the bullying or the victim to another classroom. Dr. Costar asked if charter schools have to abide by the same regulations. He said that parents sent their kids to charter schools because they feel that it is safer. They use disciplinary tactics that public schools don't use, such as making students wear a shirt with a different color and no one at the school is allowed to speak to that student for the

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rest of the day. It's not an exclusion because the student is still allowed to go to school. He said that it seems like charter schools have more freedom on coming up with discipline tactics. Attorney Joyce said that charter schools still need to abide by the same regulations. However, if a charter school decides to long-term suspend a student, the student usually decides to withdraw and come back to public school. If they suspend the student, they have to pay for the educational services. For parents who want the student who is bullying their child removed from the school or classroom, they don't understand that the child who is doing the bullying may have a disability that the school can't disclose. There are also restrictions based on the IEP process. He encouraged that the principal make the best decision that is reasonably calculated. Principals have broad freedom to enact other corrective or remedial measures such as detention, taking away extracurricular activities, or progressive discipline.

Superintendent Malone agreed with Dr. Costar that the laws on this have changed dramatically. It's always good for the School Committee and school administration to be updated and know about the changes. Internally, they will continue to update the Committee on changes. They have the paperwork on file for all that was discussed this evening. He, along with FREA President Rebecca Cusick, led a task force on the student discipline code. They tried to call out some alternatives and create other consequences for students. They're continuing to work with Resiliency in looking at programs and, down the road, the long-term capital plan may include using Wiley as administrative space and using the middle floor at Resiliency to create more opportunities for other types of alternative education. There are a lot of kids experiencing trauma and other issues and administrators have to have options available to appropriately assign kids and work with them to help with behavior and performance simultaneously.

**MOTION: Mr. Martins-Mr. Andrade: To adjourn.**

No discussion

**Six were in favor**

**None were opposed**

**One was absent** (Mayor Correia)

**Motion passed** (6:59 PM)

Respectfully submitted,



Administrative Assistant

*ADA Coordinator: Gary P. Howayeck, Esq.- 508.324.2650*

Please note: A videotape/DVD of this meeting is on file in the School Committee Office and is available for review by contacting the Administrative Assistant for the School Committee Services