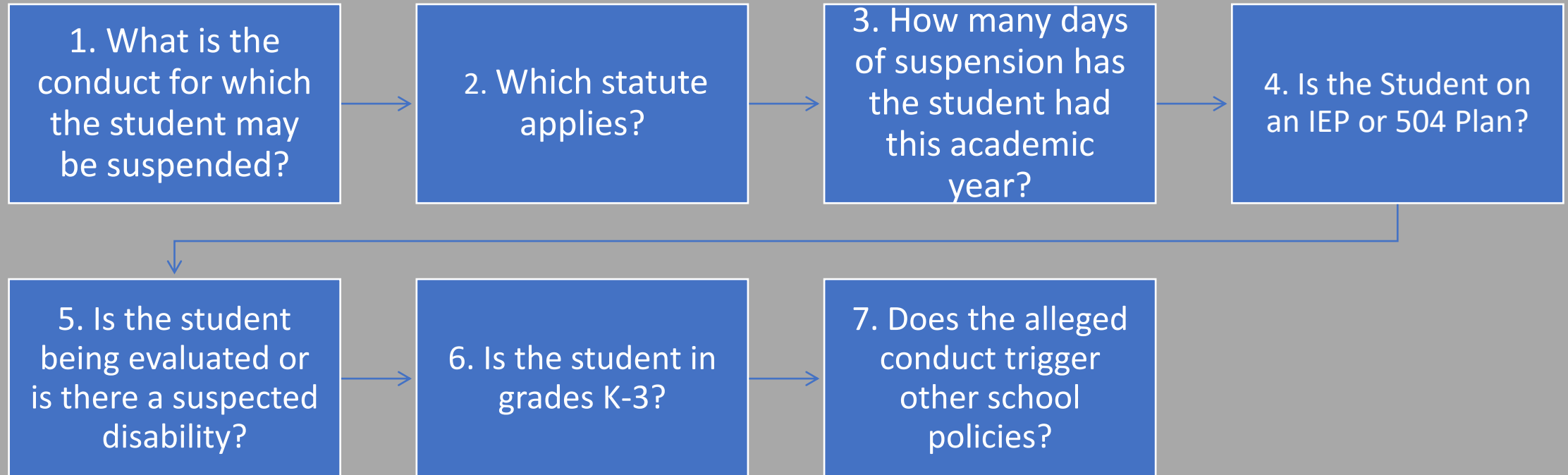


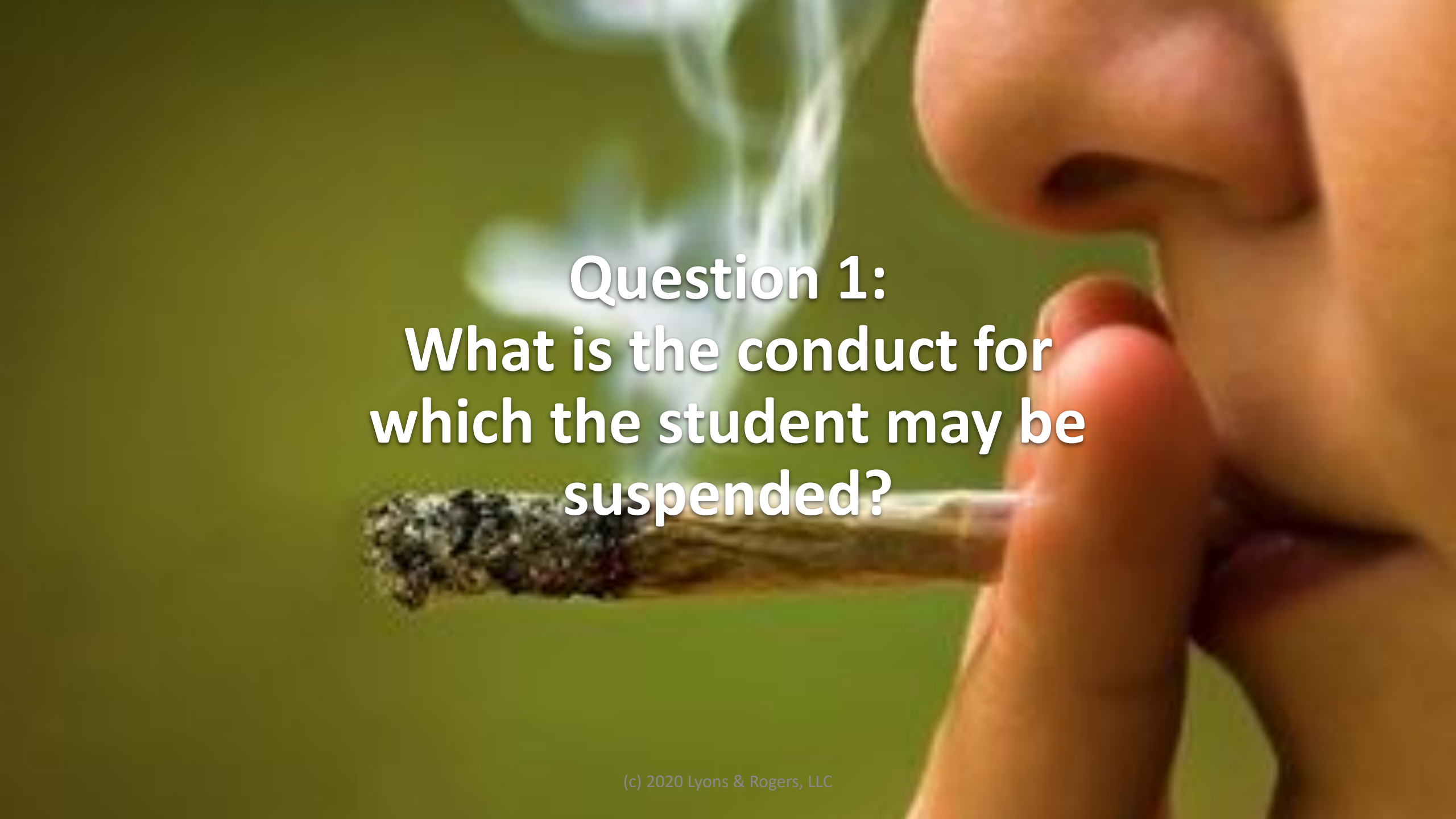


# Student Discipline Dilemmas: 7 Essential Questions to Ask Catherine L. Lyons, Esq. Lyons & Rogers, LLC

# 7 Must-Ask Questions *PRIOR* to Suspension



[603 CMR 53.00: Student Discipline - Education Laws and Regulations \(mass.edu\)](https://www.mass.gov/info-details/603-cmr-53.00-student-discipline-education-laws-and-regulations)



**Question 1:**  
**What is the conduct for  
which the student may be  
suspended?**

## Question 2: Which statute applies?

Possession of a dangerous weapon or controlled substance or assault on school staff = 37H

Felony charge or conviction = 37H  $\frac{1}{2}$

Everything else = 37H  $\frac{3}{4}$

# Choosing the correct statute is important because:

Different notice requirements

Different standards for suspension

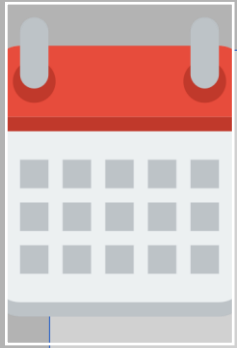
Different principal's hearing requirements

Different written determination letter

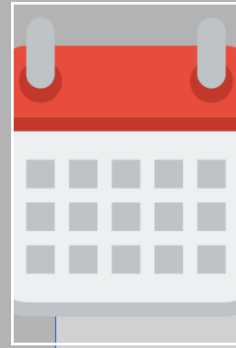
Different maximum number of days

Different appeal periods

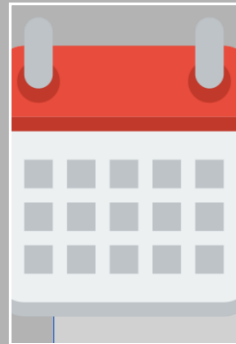
# Question 3: How many days of suspension has the student had this academic year?



**10** is the magic number!

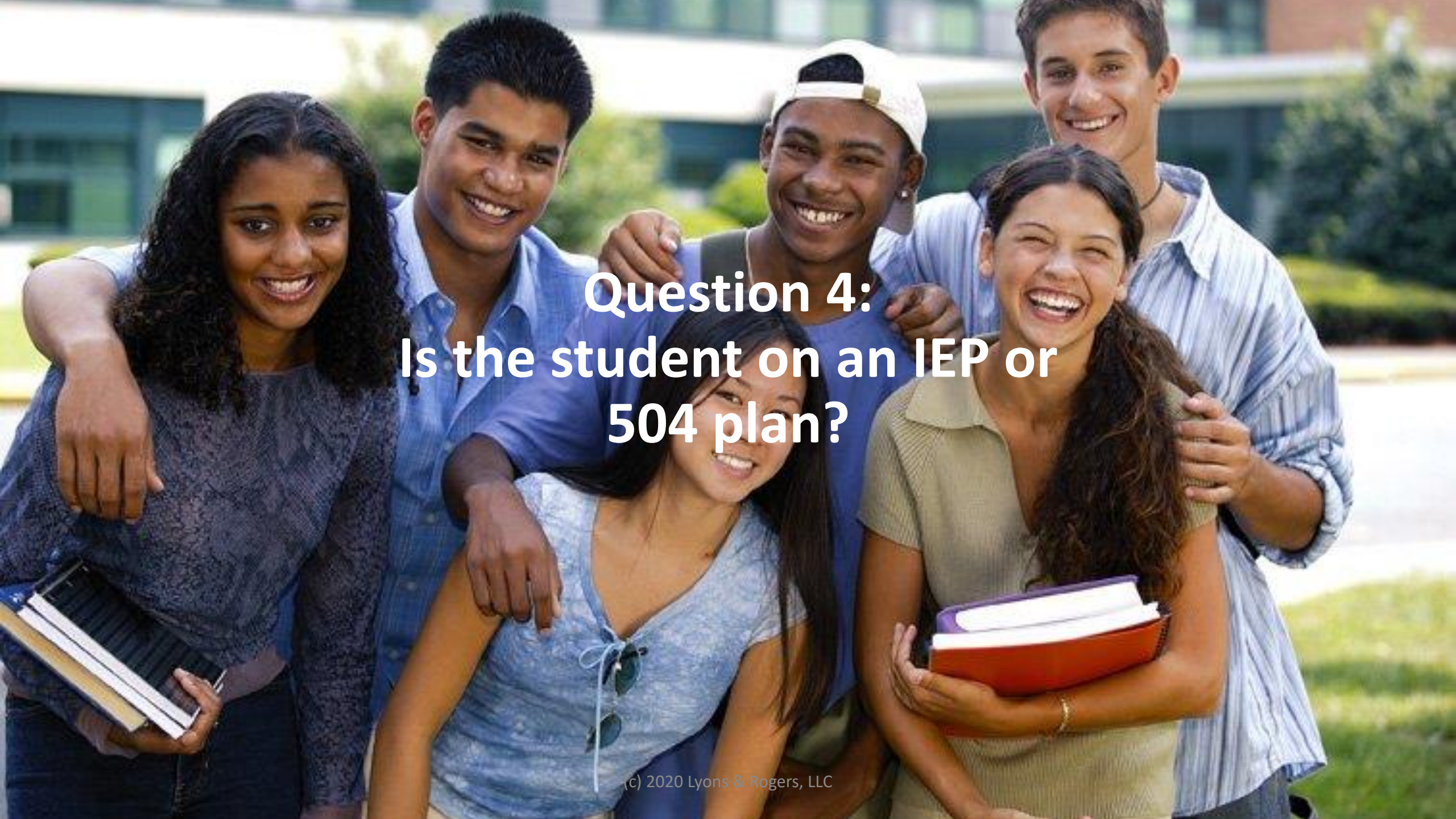


**10** days cumulatively =  
MDR (for students with disabilities)



**10** days cumulatively =  
long term suspension





**Question 4:**  
**Is the student on an IEP or**  
**504 plan?**

# Additional Procedural Protections for Students with Disabilities

Manifestation determination prior to any removal constituting a change of 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.



A close-up photograph of two young women. The woman on the left has dark, curly hair and is looking slightly to the left. The woman on the right has dark hair and is looking slightly to the right. They are both wearing casual clothing. The background is blurred green foliage.

**Question 5:**  
**Is the student being evaluated or is  
there a suspected disability?**

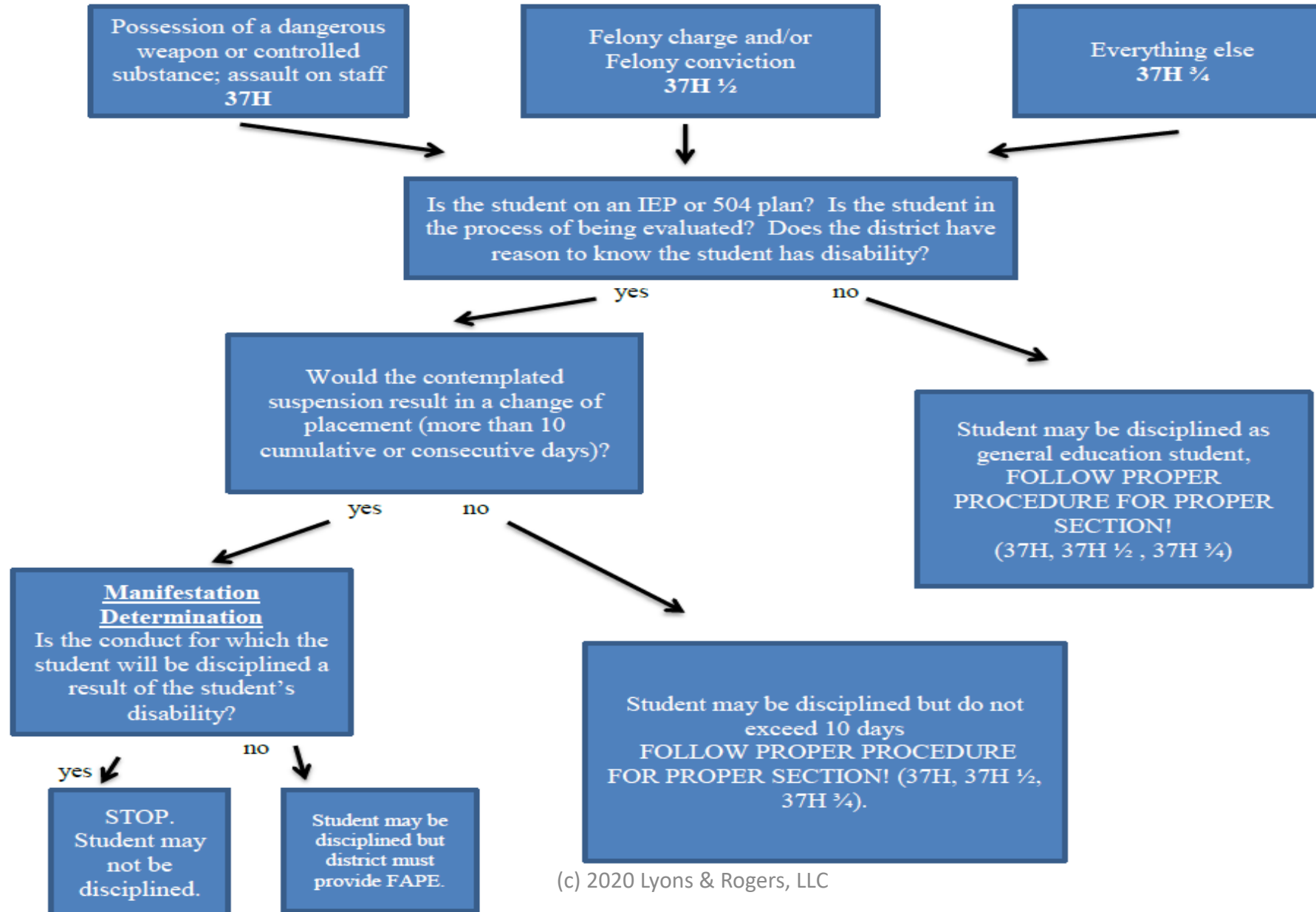
# Prior Knowledge Test

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?

## STUDENT DISCIPLINE



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

MD team consists of building administrator(s) and “relevant” IEP/504 team members.

Consider all relevant information in a student’s file, including

Evaluation and diagnostic results

Observational data

Student’s IEP/504 plan

Information provided by the parents/student



# Manifestation Determination

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?

# Conducting a MD when the disability is not clear or not yet identified

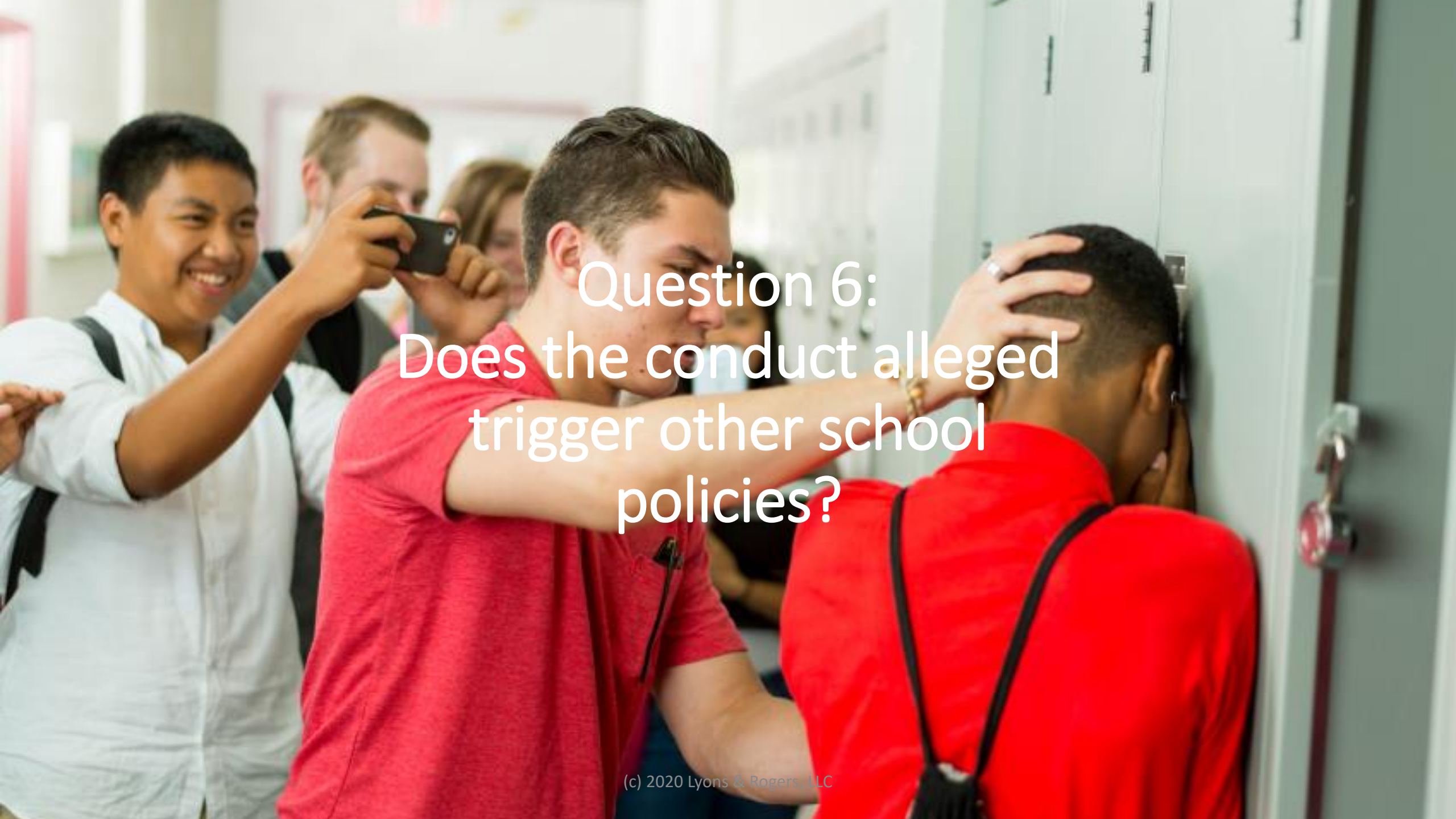
Cannot require an evaluation/risk assessment as condition to student's return to school.

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

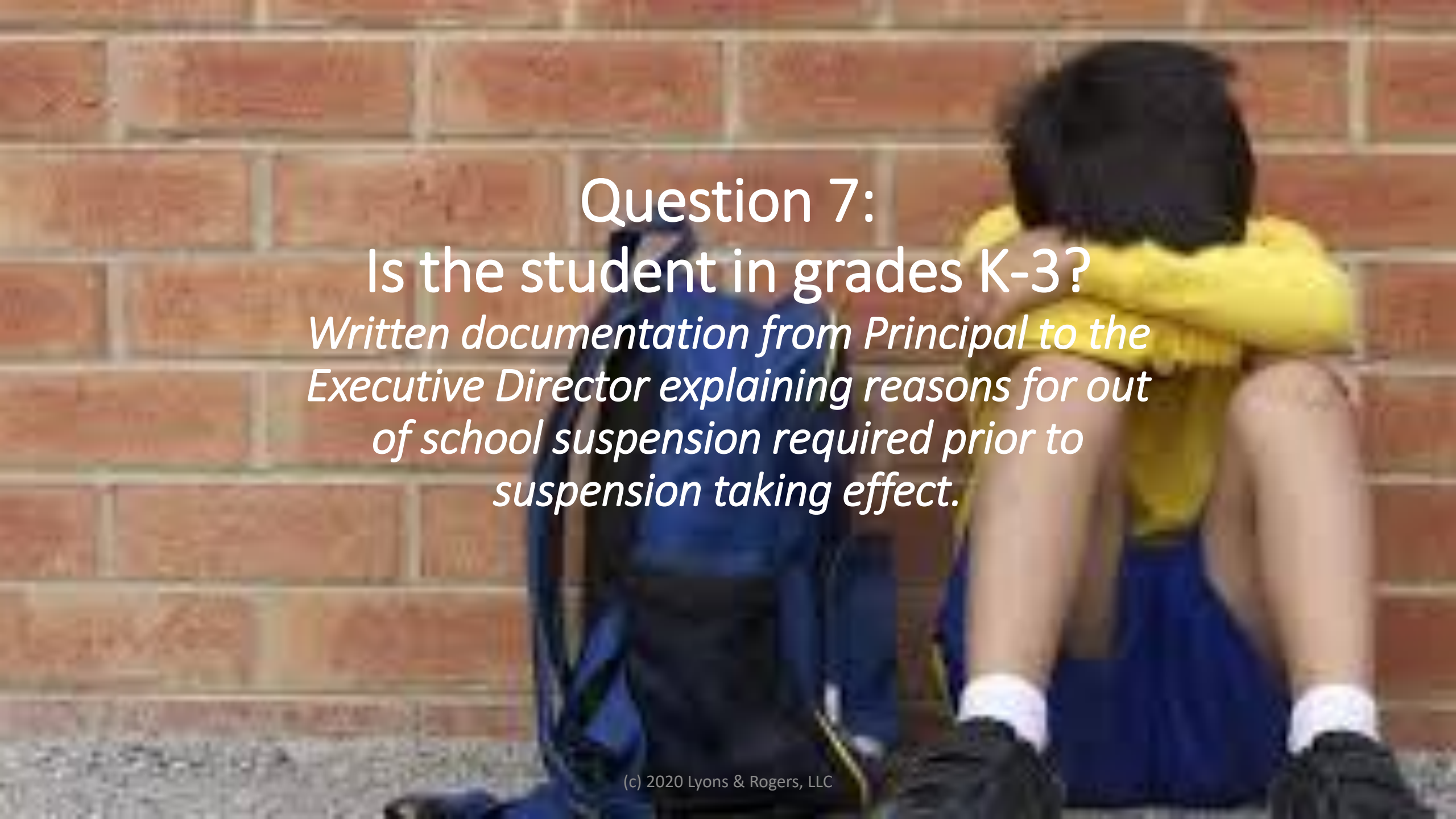
Invite school staff who are most familiar with the student to attend meeting and look to them for insight into student's behavior.

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.



Question 6:  
Does the conduct alleged  
trigger other school  
policies?



Question 7:  
Is the student in grades K-3?  
*Written documentation from Principal to the  
Executive Director explaining reasons for out  
of school suspension required prior to  
suspension taking effect.*





The information in this presentation, including the materials and presenters' comments, is not intended to be legal advice. If you need legal advice, please contact your school district's legal counsel.

# Mass. General Law chapter 71, §37H

- **Notice Requirements:** Short-term suspension - oral notice of the offense and opportunity to respond; notified 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 super's hearing (at private expense).

# Mass. General Law c. 71, §37H ½

- Statute does not require principal's hearing for long term suspension (but advisable)
- **Written 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 super's hearing, right to oral and written testimony at super's hearing. Right to received 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.

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

- **Oral and written notice required prior to any suspension:** notice of the charges and the opportunity to meet with the principal or designee to discuss charges and reasons for the suspension and/or exclusion. 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.
- **Written notice of short term suspension:** 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, and for the parent to attend the hearing, the date, time, and location of the hearing; the right to interpreter services
- **Written notice of long term suspension:** short term rights and the right to appeal the principal's decision to the superintendent.



# Mass. General Law c. 71, §37H $\frac{3}{4}$

- **Principal's Hearing (for short term suspension):**
  - **Standard:** determine if the student committed the disciplinary offense, and if so, the consequences imposed.
  - **Determination Letter:** the determination and reasons for it. 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. K-3: Super notified in writing before suspension takes effect.

# Mass. General Law c. 71, §37H $\frac{3}{4}$

- **Principal's Hearing (for long term suspension):**
  - **Standard:** same as short term but with additional rights (opportunity to review the student's record and the documents upon which the principal may rely, the right to be represented by counsel (at private expense), the right to produce witnesses, present an explanation (but the student may not be compelled to do so), the right to cross-examine witnesses, the right to request that the hearing be recorded by the principal, and to receive a copy upon request.
  - **Determination Letter:** Identify disciplinary offense, hearing date, and participants. Set out the key facts and conclusions reached, length and effective date of the suspension, return date. Include notice of opportunity to receive education services to make academic progress. Inform the student of the right to appeal the decision to the superintendent, but only for a long-term suspension. Notice of right to appeal shall be in primary language of the home and shall include the process for appealing the decision (must file a written notice of appeal within five calendar days of the effective date of the long-term suspension, and that long-term suspension will remain in effect unless and until the superintendent decides to reverse the principal's decision.