

**NORTH ROSE-WOLCOTT  
CENTRAL SCHOOL DISTRICT**

**CODE OF CONDUCT**

## TABLE OF CONTENTS

- I. Policies and Regulations Referenced in This Document
  - II. Introduction
  - III. Definitions
  - IV. Student Rights and Responsibilities
  - V. Essential Partners
  - VI. Student Dress Code
  - VII. Prohibited Student Conduct
  - VIII. Reporting Violations
  - IX. Disciplinary Procedures and Penalties
  - X. Alternative Instruction
  - XI. Discipline of Students with Disabilities
  - XII. Student Searches and Interrogations
  - XIII. Visitors to Schools
  - XIV. Public Conduct on School Property
  - XV. Publication, Distribution and Review
- Annotations

## POLICIES AND REGULATIONS REFERENCED IN THIS DOCUMENT:

### POLICIES:

#### COMMUNITY RELATIONS (Section 3000):

##### PARTICIPATION BY THE PUBLIC

1.1	Visitors to the School	3210
1.2	Code of Conduct on School Property	3214
1.3	Community Use of School Facilities	3270

##### PUBLIC ORDER ON SCHOOL PROPERTY

4.1	Maintenance of Public Order on School Property	3410
4.2	Unlawful Possession of a Weapon upon School Grounds	3411

#### NON-INSTRUCTIONAL/BUSINESS OPERATIONS

1.1	SCHOOL SAFETY PLANS	5633
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#### STUDENTS (Section 7000)

##### ATTENDANCE

1.1	Attendance	7110
1.1.1	Elementary Attendance Areas	7111
1.1.2	Attendance for Occupational Education	7112

##### STUDENT CONDUCT

3.1	School Conduct and Discipline	7310
3.1.1	Loss or Destruction of District Property	7311
3.1.2	Student Dress Code	7312
3.1.3	Suspension of Students	7313R
3.1.4	Student Use of Computerized Information Resources	7314
3.2	Alcohol, Drugs and Other Substances	7320
3.3	Searches and Interrogations	7330
3.3.1	Questioning of Students by School Officials	7331
3.4	Bus Rules and Regulations	7340
3.5	Corporal Punishment	7350
3.6	Weapons in School	7360
3.6.1	Gun-Free Schools	7361

##### STUDENT ACTIVITIES

4.1	Extracurricular Activities	7410
4.2	Sports and the Athletic Program	7420
4.2.1	Student Athletic Code of Conduct	7421

##### SPECIAL EDUCATION

6.1	Special Education: District Plan	
6.1.5	Discipline of Students with Disabilities	7615
6.6	Parent Involvement	7660

**REGULATIONS:**

COMMUNITY RELATIONS

Development Guidelines for Codes of Conduct on School Property 3214R

NON-INSTRUCTIONAL/BUSINESS OPERATIONS

Guidelines for School Safety Plans 5633

STUDENTS

1. Guidelines for Student Suspensions 7313

2. Superintendent's Hearing

7000R.1

3. Community Relations "Development Guidelines  
for Code of Conduct on School Property" 3214

## I. INTRODUCTION<sup>1</sup>

The Board of Education (“Board”) is committed to providing a safe and orderly school environment where students may receive and district personnel may deliver quality educational services without disruption or interference. Responsible behavior by students, teachers, other district personnel, and parents and other visitors is essential to achieving this goal.

The district has a long-standing set of expectations for conduct on school property and at school functions. These expectations are based on the principles of civility, mutual respect, citizenship, character, tolerance, honesty, and integrity.

The Board recognizes the need to clearly define these expectations for acceptable conduct on school property, identify the possible consequences of unacceptable conduct, and to ensure that discipline when necessary is administered promptly and fairly. To this end, the Board adopts this Code of Conduct (“code”).

Unless otherwise indicated, this code applies to all students, school personnel, parents, and other visitors when on school property or attending a school function.

## II. DEFINITIONS

For purposes of this code, the following definitions apply.

“Disruptive student” means a student under the age of 21 who is substantially disruptive of the educational process or substantially interferes with the teacher’s authority over the classroom.<sup>2</sup>

“Parent” means the biological, adoptive or foster parent, guardian or person in parental relation to a student.<sup>3</sup>

“School property” means in or within any building, structure, athletic playing field, playground, parking lot or land contained within the real property boundary line of a public elementary or secondary school, or in or on a school bus, as defined in Vehicle and Traffic Law 142.<sup>4</sup>

“School function” means any school-sponsored extracurricular event or activity.<sup>5</sup>

“Violent student”<sup>6</sup> means a student under the age of 21 who:

1. Commits an act of violence upon a school employee.
2. Commits, while on school property or at a school function, an act of violence upon another student or any other person lawfully on school property or at the school function.
3. Possesses, while on school property or at a school function, a weapon.
4. Displays, while on school property or at a school function, what appears to be a weapon.
5. Threatens, while on school property or at a school function, to use a weapon.
6. Knowingly and intentionally damages or destroys the personal property of any school employee or any person lawfully on school property or at a school function.
7. Knowingly and intentionally damages or destroys school district property.

“Weapon” means a firearm as defined in 18 USC §921 for purposes of the Gun Free Schools Act. It also means any other gun, pistol, revolver, shotgun, rifle, machine gun, air gun, paintball gun, air rifle, disguised gun, knife, dagger, dirk, razor, stiletto, switchblade knife, gravity knife, brass knuckles, sling shot, metal knuckle knife, box cutters, cane sword, electronic dart gun, Kung Fu star, electronic stun gun, pepper spray or other noxious spray, gas canisters, ammunition, explosive or incendiary bomb, or other device, instrument, material or substance that can cause serious physical injury or death when used as a weapon.<sup>7</sup>

### **III. STUDENT RIGHTS AND RESPONSIBILITIES<sup>8</sup>**

#### **A. STUDENT RIGHTS**

The district is committed to safeguarding the rights given to all students under state and federal law. In addition to those rights, all district students have the right to:

1. A safe, healthy, orderly and civil school environment.
2. Take part in all district activities on an equal basis regardless of age, race, religion, color, national origin, sex or disability.
3. Present their version of the relevant events to school personnel authorized to impose a disciplinary penalty as in connection with the imposition of the penalty, and
4. Access school rules and, when necessary, receive an explanation of those rules from school personnel.

#### **B. STUDENT RESPONSIBILITIES**

All district students have the responsibility to:

1. Contribute to maintaining a safe and orderly school environment that is conducive to learning and to show respect to other persons and to property.
2. Be familiar with and abide by all district policies, rules and regulations dealing with student conduct.
3. Attend school every day unless they are legally excused and be in class, on time, and prepared to learn.
4. React to direction given by teachers, administrators and other school personnel in a respectful, positive manner.
5. Work to develop mechanisms to control their anger.
6. Seek help in solving problems that might lead to discipline.
7. Dress appropriately for school and school functions.
8. Accept responsibility for their actions.
9. Conduct themselves as representatives of the district when participating in or attending school-sponsored extracurricular events and to hold themselves to the highest standards of conduct, demeanor, and sportsmanship.

#### IV. **ESSENTIAL PARTNERS<sup>9</sup>**

##### A. PARENTS

All parents are expected to:

1. Recognize that the education of their child(ren) is a joint responsibility of the parents and the school community.
2. Send their children to school ready to participate and learn.
3. Ensure their children attend school regularly and on time.
4. Ensure absences are excused.
5. Insist their children be dressed and groomed in a manner consistent with the student dress code.
6. Help their children understand that in a democratic society appropriate rules are required to maintain a safe, orderly environment.
7. Know school rules and help their children understand them.
8. Convey to their children a supportive attitude toward education and the district.
9. Build good relationships with teachers, other parents and their children's friends.
10. Help their children deal effectively with peer pressure.
11. Inform school officials of changes in the home situation that may affect student conduct or performance.

##### B. TEACHERS

All district teachers are expected to:

1. Maintain a climate of mutual respect and dignity, which will strengthen students' self-concept and promote confidence to learn.
2. Know school policies and rules, and enforce them in a fair and consistent manner.
3. Communicate to students and parents:
  - a. Expectations for all students
  - b. Classroom discipline plan.
4. Communicate regularly with students, parents and other teachers concerning growth and achievement.

##### C. SCHOOL COUNSELORS

1. Assist students in coping with peer pressure and emerging personal, social and emotional problems.
2. Initiate teacher/student/counselor conferences and parent/teacher/student/counselor conferences, as necessary, as a way to resolve problems.

D. PRINCIPALS

1. Promote a safe, orderly and stimulating school environment, supporting active teaching and learning.
2. Ensure that students and staff have the opportunity to communicate regularly with the principal and approach the principal for redress of grievances.
3. Be responsible for enforcing the code of conduct and ensuring that all cases are resolved promptly and fairly.

E. SUPERINTENDENT

1. Promote a safe, orderly and stimulating school environment, supporting active teaching and learning.
2. Review with district administrators the policies of the Board of Education and state and federal laws relating to school operations and management.
3. Inform the Board of Education about educational trends relating to student discipline.
4. Work to create instructional programs that minimize problems of misconduct and are sensitive to student and teacher needs.
5. Work with district administrators in enforcing the code of conduct and ensuring that all cases are resolved promptly and fairly.

F. BOARD OF EDUCATION

1. Collaborate with student, teacher, administrator, and parent organizations, school safety personnel and other school personnel to develop a code of conduct that clearly defines expectations for the conduct of students, district personnel and visitors on school property and at school functions.
2. Adopt and review at least once every year the district's code of conduct to evaluate the code's effectiveness and the fairness and consistency of its implementation.

## V. **STUDENT DRESS CODE**<sup>10</sup>

All students are expected to give proper attention to personal cleanliness and to dress appropriately for school and school functions. Students and their parents have the primary responsibility for acceptable student dress and appearance. Teachers and all other district personnel should exemplify and reinforce acceptable student dress and help students develop an understanding of appropriate appearance in the school setting.

A student's dress, grooming and appearance, including jewelry, make-up, and nails, shall:

1. Be safe, appropriate and not disrupt or interfere with the educational process.
2. Recognize that extremely brief garments such as tube tops, net tops, halter tops, bare midriff, plunging necklines (front and/or back) and see-through garments or lewd clothing are not appropriate.
3. Ensure that underwear is completely covered with outer clothing.
4. Include footwear at all times. Footwear that is a safety hazard will not be allowed.
5. Not include the wearing of hats or sunglasses in the classroom except for a medical or religious purpose. Exceptions by administrators/teachers may be made.
6. Not include items that are vulgar, obscene, libelous, or denigrate others on account of race, color, religion, ancestry, national origin, sex, or disability.
7. Not promote and/or endorse the use of alcohol, tobacco, or illegal drugs and/or encourage other illegal or violent activities.

Each Building Principal shall be responsible for informing all students and their parents of the student dress code at the beginning of the school year and any revisions to the dress code made during the school year.

Students who violate the student dress code shall be required to modify their appearance by covering or removing the offending item, and if necessary or practical replacing it with an acceptable item. Any student who refuses to do so shall be subject to discipline, up to and including in-school suspension for the day. Any student who repeatedly fails to comply with the dress code shall be subject to further discipline, up to and including out-of-school suspension.

## **VI. PROHIBITED STUDENT CONDUCT**

The Board of Education expects students to conduct themselves in an appropriate and civil manner, with proper regard for the rights and welfare of other students, district personnel and other members of the school community, and for the care of school facilities and equipment.

The best discipline is self-imposed, and students must learn to assume and accept responsibility for their own behavior, as well as the consequences of their misbehavior. District personnel who interact with students are expected to use disciplinary action only when necessary and to place emphasis on the students' ability to grow in self-discipline.

The Board recognizes the need to make its expectations for student conduct while on school property or engaged in a school function specific and clear. The rules of conduct listed below are intended to do that and focus on safety and respect for the rights and property of others. Students who will not accept responsibility for their own behavior and who violate these school rules will be required to accept the penalties for their conduct.

Students may be subject to disciplinary action, up to and including suspension from school, when they:

- A. Engage in conduct that is disorderly. Examples of disorderly conduct include:
  1. Running in hallways.
  2. Making unreasonable noise.
  3. Using language or gestures that are profane, lewd, vulgar or abusive, including ethnic slurs.
  4. Obstructing vehicular or pedestrian traffic.
  5. Engaging in any willful act which disrupts the normal operation of the school community.
  6. Trespassing. Students are not permitted in any school building, other than the one they regularly attend, without permission from the administrator in charge of the building.
- B. Engage in conduct that is insubordinate. Examples of insubordinate conduct include:
  1. Failing to comply with the lawful directions of teachers, school administrators or other school employees in charge of students or otherwise demonstrating disrespect.
  2. Lateness for, missing or leaving school or class without permission.
  3. Skipping detention.
- C. Engage in conduct that is disruptive. Examples of disruptive conduct include:
  1. Failing to comply with the lawful directions of teachers, school administrators or other school personnel in charge of students.

2. Being late for, missing or leaving class without permission.
  3. Being unprepared for class.
- D. Engage in conduct that is violent. Examples of violent conduct include:
1. Committing an act of violence (such as hitting, kicking, punching, pushing and scratching) upon a teacher, administrator or other school employee.
  2. Committing an act of violence (such as hitting, kicking, punching, pushing and scratching) upon another student or any other person lawfully on school property.
  3. Possessing a weapon. Authorized law enforcement officials are the only persons permitted to have a weapon in their possession while on school property or at a school function.
  4. Displaying what appears to be a weapon (e.g. toy guns or facsimile of weapon).
  5. Threatening to use a weapon.
  6. Intentionally damaging or destroying the personal property of a teacher, administrator, other district employee or any person lawfully on school property, including graffiti or arson.
  7. Intentionally damaging or destroying school district property.
  8. Threats, harassment or coercion of any student, Teacher or school employee.
  9. Threatening to use or actually using potentially dangerous items, which are pointed such as scissors, pens, art or Science tools.
- E. Engage in any conduct that endangers the safety, morals, health, or welfare of others. Examples of such conduct include:
1. Lying to school personnel.
  2. Stealing the property of other students, school personnel or any other person lawfully on school property or attending a school function.
  3. Acts of sexual harassment as defined in the district's sexual harassment policy.
  4. Selling, using or possessing obscene material.
  5. Possessing, consuming, selling, distributing or exchanging cigarettes, cigars, pipes or using chewing or smokeless tobacco and related paraphernalia.
  6. Possessing, consuming, selling, distributing, or exchanging alcoholic beverages or illegal substances, or being under the influence of either. "Illegal substances" include inhalants, marijuana, cocaine, LSD, PCP, amphetamines, heroin, steroids, look-alike drugs, and any substances commonly referred to as "designer drugs."
  7. Inappropriately using or sharing prescription and over-the-counter drugs.

- F. Engage in misconduct while on a school bus. It is crucial for students to behave appropriately while riding on district buses, to ensure their safety and that of other passengers and to avoid distracting the bus driver. Students are required to conduct themselves on the bus in a manner consistent with established standards for classroom behavior. Excessive noise, pushing, shoving and fighting will not be tolerated. Students waiting for buses when not on school property are expected to conduct themselves in accordance with the district's code of conduct.
- G. Engage in any form of academic misconduct. Examples of academic misconduct include:
1. Plagiarism.
  2. Cheating.
  3. Computer hacking or violation of District Computer Usage Policy.

## **VII. REPORTING VIOLATIONS OF THE CODE OF CONDUCT**

Any student observing a student possessing a weapon, alcohol or illegal substance on school property or at a school function shall report this information immediately to a teacher, the Building Principal or the Superintendent. Any weapons, alcohol, or illegal substances found shall be confiscated immediately, followed by notification to the parent of the student involved and the appropriate disciplinary action taken, up to and including permanent suspension and referral for prosecution.

The Building Principal must notify the appropriate local law enforcement agency of those code violations that constitute a crime and substantially affect the order or security of a school<sup>11</sup> as soon as practical, but in no event later than the close of business the day the Principal learns of the violation. The notification to the student, parent or legal guardian may be made by telephone, followed by a letter mailed within 24 hours after the telephone call is made. The notification must identify the student(s) and explain the conduct that violated the code of conduct and constituted a crime.

## **VIII. DISCIPLINARY PROCEDURES AND PENALTIES**

Discipline is most effective when it deals directly with the problem at the time and place it occurs, and in a way that students view as fair and impartial. School personnel who interact with students are expected to use disciplinary action only when necessary and to place emphasis on the students' ability to grow in self-discipline.

Disciplinary action, when necessary, will be firm, fair and consistent so as to be the most effective in changing student behavior. In determining the appropriate disciplinary action, school personnel authorized to impose disciplinary penalties will consider the following:

1. The student's age.
2. The nature of the offense and the circumstances which led to the offense.
3. The student's prior disciplinary record.
4. The effectiveness of other forms of discipline.
5. Information from parents, teachers and/or others, as appropriate.
6. Other extenuating circumstances.

As a general rule, discipline will be progressive. This means that a student's first violation will usually merit a lighter penalty than subsequent violations.

If the conduct of a student is related to a disability or suspected disability, the student shall be referred to the Committee on Special Education and discipline, if warranted, shall be administered consistent with the separate requirements of this code of conduct for disciplining students with a disability. A student identified as having a disability shall not be disciplined for behavior related to his/her disability.

### **A. PENALTIES**

Students who are found to have violated the district's code of conduct may be subject to the following penalties, either alone or in combination with one another. The school personnel identified after each penalty are authorized to impose the penalty, consistent with the student's right to due process.

1. Verbal warning – Any Member of the District Staff
2. Written warning – Bus Driver, Teachers, Principal, Superintendent
3. Written notification to parent – Bus Driver, Teacher, Principal, Superintendent
4. Detention – Teachers, Principal, Superintendent
5. Suspension from transportation – Principal, Superintendent
6. Suspension from athletic participation – Principal or designee, Superintendent and Athletic Director (See also Athletic Extracurricular Code of Ethics).

7. Suspension from social or extracurricular activities – Principal or designee, Superintendent and Athletic Director (See also Athletic Extracurricular Code of Ethics).
8. Suspension from other privileges – Principal, Superintendent
9. In-school suspension – Principal, Superintendent
10. Removal from classroom by teacher – Teachers, Principal, Superintendent
11. Short-term (five days or less) suspension from school – Principal, Superintendent, Board of Education
12. Long-term (more than five days) suspension from school  
Superintendent, Board of Education
13. Permanent suspension from school – Superintendent, Board of Education  
\* Assistant Principals may be acting Principals in the absence of the Principal

## B. PROCEDURES

The amount of due process a student is entitled to before a penalty is imposed will depend on the type of penalty being imposed. In all cases, regardless of the penalty imposed, the school personnel authorized to impose the penalty must let the student know what misconduct the student is alleged to have committed, and must investigate the facts surrounding the alleged misconduct. All students will have an opportunity to present their version of the facts to the school personnel imposing the disciplinary penalty in connection with the imposition of the penalty.

Students who are to be given penalties other than a verbal warning, written warning, written notification to their parents or detention are entitled to additional rights before the penalty is imposed. These additional rights are explained below.

### 1. Detention

Teachers, principals and the superintendent may use after-school detention as a penalty for student misconduct in situations where removal from the classroom or suspension would be inappropriate

### 2. Suspension from transportation

If a student does not conduct himself/herself properly on a bus, the bus driver is expected to bring such misconduct to the Building Principal's attention. Students who become a serious disciplinary problem may have their riding privileges suspended by the Building Principal or the Superintendent. In such cases, the student's parent will become responsible for seeing that his or her child gets to and from school safely. Should the suspension from transportation

amount to a suspension from attendance, the district will make appropriate arrangements to provide for the student's education.

A student subjected to a suspension from transportation is not entitled to a full hearing pursuant to Education Law §3214. However, the student and the student's parent will be provided with a reasonable opportunity for an informal conference with the Building Principal to discuss the conduct and the penalty involved.

### **3. Suspension from athletic participation, extracurricular activities and other privileges.**

A student subjected to a suspension from athletic participation, extra-curricular activities or other privileges is not entitled to a full hearing pursuant to Education Law §3214. However, the student and student's parent will be provided with a reasonable opportunity for an informal conference with the district official imposing the suspension to discuss the conduct and the penalty involved.

### **4. In-school Suspension**

The Board recognizes that the school must balance the need of students to attend school and the need for order in the classroom to establish an environment conducive to learning. As such, the Board authorizes Building Principals and the Superintendents to place students who would otherwise be suspended from school as the result of a code of conduct violation in "in-school suspension." "In-school suspension" is the temporary removal of students from the classroom and their placement in another area of the school building designated for such a suspension where students will receive alternative educational programs appropriate to individual student needs.

A student subjected to an in-school suspension is not entitled to a full hearing pursuant to Education Law §3214. However, the student and the student's parent will be provided with a reasonable opportunity for an informal conference with the district official imposing the in-school suspension to discuss the conduct and the penalty involved.

### **5. Teacher Removal of Disruptive Students**

A disruptive student is a student who is substantially disruptive of the educational process or substantially interferes with the teacher's authority over the classroom.

A disruptive student can affect a teacher's ability to teach and can make it difficult for other students in the classroom to learn. In many instances the classroom teacher can control disruptive student behavior by using good management techniques. Occasionally, however, it may be necessary for a

teacher to remove a disruptive student from the classroom to ensure that the other students continue to learn.

A classroom teacher may remove a student from class for up to two<sup>12</sup> days if the teacher determines that the student is disruptive. The removal from class applies to the class of the removing teacher only.

If the student does not pose a danger or ongoing threat of disruption to the academic process, the teacher must provide the student, before the student is removed, with an explanation for why he or she is being removed. The student must also be given the opportunity to present his or her version of the relevant events. Only after this informal discussion may a teacher remove a student from class.

If the student does pose a danger or ongoing threat of disruption, the teacher may order the student to be removed immediately. The teacher must, however, explain to the student why he or she was removed from the classroom and give the student a chance to present his or her version of the relevant events within one full school day<sup>13</sup>.

The teacher must complete a district-established referral form and meet with the Principal as soon as possible, but no later than the end of the school day, to explain the circumstances of the removal and to present the referral forms. If the principal is not available by the end of the same school day, the teacher must leave the form with the secretary and meet with the principal prior to the beginning of classes on the next school day.

Within the school day after the student's removal, the Principal or another district administrator designated by the Principal must notify the student's parent, in writing, that the student has been removed from the class and why. The notice must also inform the parent that he or she has the right, upon request, to meet informally with the Principal or the principal's designee and the teacher to discuss the reasons for the removal and behavior modification(s) to remedy the cause for the removal. The written notice must be provided by personal delivery, express mail delivery, or some other means that is reasonably calculated to assure receipt of the notice by the day after the student's removal at the last known address for the parent. Where possible, notice should also be provided by telephone if the school has been provided with a telephone number(s) for the purpose of contacting parents.

If at the informal meeting the student denies the charges, the Principal or the principal's designee and the teacher must explain why the student was removed and give the student and the student's parents a chance to present the student's version of the relevant events. The informal meeting must be held within two school days of the student's removal. The timing of the informal

meeting may be extended by mutual agreement of the parent, teacher, and principal<sup>14</sup>.

The Principal or the principal's designee may overturn the removal of the student from class if the Principal finds any one of the following:

1. The charges against the student are not supported by substantial evidence.
2. The student's removal is otherwise in violation of law.
3. The conduct warrants suspension from school pursuant to Education Law §3214 and a suspension will be imposed.

The Principal or his/her designee must make a determination as to whether to overturn the removal before the close of business on the day after the day of the informal hearing. No student removed from the classroom by the classroom teacher will be permitted to return to the classroom until the Principal makes a final determination, or the period of removal expires, whichever is less. At the teacher's discretion, he or she may rescind the removal prior to the expiration of the full period of removal.

Any disruptive student removed from the classroom by the classroom teacher shall be offered continued educational programming by the teacher until the student is permitted to return to the classroom.

Each teacher must keep a complete log (on a district provided form) for all cases of removal of students from his/her class. The Principal must keep a log of all removals of students from class. Removal of a student with a disability may, under certain circumstances, constitute a change in the student's placement<sup>15</sup>. Accordingly, no teacher may remove a student with a disability from his or her class until he or she has verified that the removal will not violate the student's rights under state or federal law or regulation.

Nothing in this section of the code of conduct abridges the customary right or responsibility of a principal to suspend a student. Further, nothing in this code abridges the customary right and responsibility of a teacher to manage student behavior in the classroom. Short-term, time-honored classroom management techniques such as "time out" in an elementary classroom or in an administrator's office or sending students briefly into the hallway<sup>16</sup> are not considered removals from class. The removal process should not become a substitute for good classroom management.

## **6. Suspension from School**

Suspension from school is a severe penalty, which may be imposed only upon students who are insubordinate, disorderly, violent or disruptive, or whose conduct otherwise endangers the safety, morals, health or welfare of others.

The Board retains its authority to suspend students, but places primary responsibility for the suspension of students with the Superintendent and the Building Principals<sup>17</sup>.

Any staff member may recommend to the Superintendent or the Principal that a student be suspended. All staff members must immediately report and refer a violent student to the Principal or the Superintendent for a violation of the code of conduct. All recommendations and referrals shall be made in writing unless the conditions underlying the recommendation or referral warrant immediate attention. In such cases a written report is to be prepared as soon as possible by the staff member recommending the suspension.

The Superintendent or Principal, upon receiving a recommendation or referral for suspension or when processing a case for suspension, shall gather the facts relevant to the matter and record them for subsequent presentation, if necessary.

#### **a. Short Term (five days or less) Suspension from School**

When the Superintendent or Principal (referred to as the “suspending authority”) proposes to suspend a student charged with misconduct for five days or less pursuant to Education Law §3214(3), the suspending authority must immediately notify the student orally. If the student denies the misconduct, the suspending authority must provide an explanation of the basis for the proposed suspension. The suspending authority must also notify the student’s parents in writing that the student may be suspended from the school. The written notice must be provided by personal delivery, express mail delivery, or some other means that is reasonably calculated to assure receipt of the notice within 24 hours of the decision to propose suspension at the last known address for the parents. Where possible, notice should also be provided by telephone if the school has been provided with a telephone number(s) for the purpose of contacting the parents.

The notice shall provide a description of the charges against the student and the incident for which suspension is proposed and shall inform the parent of the right to request an immediate informal conference with the Principal. Both the notice and informal conference shall be in the dominant language or mode of communication used by the parents. At the conference, the parents shall be permitted to ask questions of complaining witnesses under such procedures as the Principal may establish.

The notice and opportunity for an informal conference shall take place before the student is suspended unless the student’s presence in school poses a continuing danger to persons or property or an ongoing threat of disruption to the academic process. If the student’s presence does pose such a danger or threat

of distraction, the notice and opportunity for an informal conference shall take place as soon after the suspension as is reasonably practicable.

After the conference, the Principal shall promptly advise the parents in writing of his or her decision. The Principal shall advise the parents that if they are not satisfied with the decision and wish to pursue the matter, they must file a written appeal to the Board of Education with the District Clerk within 10 business days of the date of the decision, unless they can show extraordinary circumstances precluding them from doing so. Only final decisions of the Board may be appealed to the Commissioner of Education within 30 days of the decision<sup>18</sup>.

#### **b. Long Term (more than 5 days) Suspension from School**

When the Superintendent or Building Principal determines that a suspension for more than five days may be warranted, he or she shall give reasonable notice to the student and the student's parents of their right to a fair hearing. At the hearing the student shall have the right to be represented by counsel, the right to question witnesses against him or her and the right to present witnesses and other evidence on his or her behalf.

The Superintendent shall personally hear and determine the proceeding or may, in his or her decision, designate a hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in conjunction with the proceeding before him or her. A record of the hearing shall be maintained, but no stenographic transcript shall be required. A tape recording shall be deemed a satisfactory record. The hearing officer shall make findings of fact and recommendations as to the appropriate measure of discipline to the Superintendent. The report of the hearing officer shall be advisory only, and the Superintendent may accept all or any part thereof.

An appeal of the decision of the Superintendent may be made to the Board that will make its decision based solely upon the record before it. All appeals to the Board must be in writing and submitted to the District Clerk within 10 business days of the date of the Superintendent's decision, unless the parents can show that extraordinary circumstances precluded them from doing so. The Board may adopt in whole or in part the decision of the Superintendent. Final decisions of the Board may be appealed to the Commissioner of Education within 30 days of the decision.

#### **c. Permanent Suspension**

Permanent suspension is reserved for extraordinary circumstances such as where a student's conduct poses a life-threatening danger to the safety and well-being of other students, school personnel or any other person lawfully on school property or attending a school function.

## C. MINIMUM PERIODS OF SUSPENSION

### **1. Students who bring a weapon to school**

Any student other than a student with a disability, found guilty of bringing a weapon<sup>19</sup> onto school property will be subjected to suspension from school for at least one calendar year. Before being suspended, the student will have an opportunity for a hearing pursuant to Education Law §3214. The Superintendent has the authority to modify the one-year suspension on a case-by-case basis. In deciding whether to modify the penalty, the Superintendent may consider the following:

1. The student's age.
2. The student's grade in school.
3. The student's prior disciplinary record.
4. The Superintendent's belief that other forms of discipline may be more effective.
5. Input from parents, teachers and/or others.
6. Other extenuating circumstances.

The Superintendent is required to refer the following students to the County Attorney<sup>20</sup> for a juvenile delinquency proceeding before the Family Court.

1. Any student under the age of 16 who is found to have brought a weapon to school, or
2. Any student 14 or 15 years old who qualifies for juvenile offender status under the Criminal Procedure Law<sup>21</sup>.

The Superintendent is required to refer students over the age of 16 or any student 14 or 15 years old who qualifies for juvenile offender status to the appropriate law enforcement authorities. A student 14 or 15 years old who possesses a firearm, machine-gun or loaded firearm (as defined in § 265.00 of the Penal Law) on school grounds (as defined in §220.00 (14) of the Penal Law) qualifies for juvenile offender status under §1.20 of the Criminal Procedure Law.

A student with a disability may be suspended only in accordance with the requirements of state and federal law.

### **2. Students who commit violent acts other than bringing a weapon to school**

Any student, other than a student with a disability, who is found to have committed a violent act, other than bringing a weapon onto school property, shall be subject to suspension from school for at least one day. If the proposed penalty exceeds a five-day suspension, the student and the student's parent will be given the same notice and opportunity for a hearing given to all students subject to a long-term suspension. The Principal or his designee has the authority to modify the minimum one-day suspension on a case-by-case basis.

In deciding whether to modify the penalty, the Principal or his designee may consider the same factors considered in modifying a one-year suspension for possessing a weapon.

**3. Students who are repeatedly substantially disruptive of the educational process or repeatedly substantially interferes with the teacher's authority over the classroom.**

Any student, other than a student with a disability, who engages in conduct which results in the student being removed from the classroom by teacher(s) on four or more occasions during a semester, will be suspended from school for at least one day. If the proposed penalty is the minimum one-day suspension, the student and the student's parent will be given the same notice and opportunity for a hearing given to all students subject to a short-term suspension. If the proposed penalty exceeds a five-day suspension, the student and the student's parent will be given the same notice and opportunity for a hearing given to all students subject to a long-term suspension. The Principal or his designee has the authority to modify the minimum one-day suspension on a case-by-case basis. In deciding whether to modify the penalty, the Principal or his designee may consider the same factors considered in modifying a one-year suspension for possessing a weapon.

## **IX. ALTERNATIVE INSTRUCTION<sup>22</sup>**

When a student of any age is removed from a class by a teacher or a student of compulsory attendance age is suspended from school pursuant to Education Law §3214, the district will take immediate steps to provide alternative means of instruction for the student.

## **X. DISCIPLINE OF STUDENTS WITH DISABILITIES<sup>23</sup>**

The Board of Education recognizes that it may be necessary to suspend, remove or otherwise discipline students with disabilities to address disruptive or problem behavior. The Board also recognizes that students with disabilities enjoy certain procedural protections whenever school authorities intend to impose discipline upon them. The Board is committed to ensuring that the procedures followed for suspending, removing or otherwise disciplining students with disabilities are consistent with the procedural safeguards required by applicable laws and regulations.

This code of conduct affords students with disabilities subject to disciplinary action no greater or lesser rights than those expressly afforded by applicable federal and state law and regulations.

### **A. Authorized Suspensions or Removals of Students with Disabilities**

1. For purposes of this section of the code of conduct, the following definitions apply.

A “suspension” means a suspension pursuant to Education Law §3214.

A “removal” means a removal for disciplinary reasons from the student’s current educational placement other than a suspension and change in placement to an interim alternative educational setting (IAES) ordered by an impartial hearing officer because the student poses a risk of harm to himself/herself or others.

An “IAES” means a temporary educational placement for a period of up to 45 days, other than the student’s current placement at the time the behavior precipitating the IAES placement occurred, that enables the student to continue to progress in the general curriculum, although in another setting, to continue to receive those services and modifications, including those described on the student’s current individualized education program (IEP), that will enable the student to meet the goals set out in such IEP, and include services and modifications to address the behavior which precipitated the IAES placement that are designed to prevent the behavior from recurring.

2. School personnel may order the suspension or removal of a student with a disability from his or her current educational placement as follows:

- a. The Board, the District (BOCES) Superintendent of Schools or a Building Principal delegated the authority to suspend students may order the placement of a student with a disability into an IAES, another setting or suspension for a period not to exceed five consecutive school days and not to

exceed the amount of time a non-disabled student would be subject to suspension for the same behavior.

b. The Superintendent may order the placement of a student with a disability into an IAES, another setting or suspension for up to 10 consecutive school days, inclusive of any period in which the student has been suspended or removed under subparagraph (a) above for the same behavior, if the Superintendent determines that the student has engaged in behavior that warrants a suspension and the suspension or removal does not exceed the amount of time non-disabled students would be subject to suspension for the same behavior.

c. The Superintendent may order additional suspensions of not more than 10 consecutive school days in the same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement.

d. The Superintendent may order the placement of a student with a disability in an IAES to be determined by the Committee on Special Education (CSE), for the same amount of time that a student without a disability would be subject to discipline, but not more than 45 days, if the student carries or possesses a weapon to school or to a school function, or the student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.

(1) "Controlled substance" means a drug or other substance identified in certain provisions of the federal Controlled Substances Act specified in both federal and state law and regulations applicable to this policy.

(2) "Illegal drugs" means a controlled substance except for those legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act of any other federal law.

3. Subject to specified conditions required by both federal and state law and regulations, an impartial hearing officer may order the placement of a student with a disability in an IAES setting for up to 45 days at a time, if maintaining the student in his or her current educational placement poses a risk of harm to the student or others.

## **B. Change of Placement Rule**

1. A disciplinary change in placement means a suspension or removal from a student's current educational placement that is either:

- a. for more than 10 consecutive school days; or
- b. for a period of 10 consecutive school days or less if the student is subjected to a series of suspensions or removals that

constitute a pattern because they cumulate to more than 10 school days in a school year and because of such factors as the length of each suspension or removal, the total amount of time the student is removed and the proximity of the suspensions or removals to one another.

2. School personnel may not suspend or remove a student with disabilities if imposition of the suspension or removal would result in a disciplinary change in placement based on a pattern of suspension or removal.

However, the district may impose a suspension or removal, which would otherwise result in a disciplinary change in placement, based on a pattern of suspensions or removals if the CSE has determined that the behavior was not a manifestation of the student's disability, or the student is placed in an IAES for behavior involving weapons, illegal drugs or controlled substances.

### **C. Special Rules Regarding the Suspension or Removal of Students with Disabilities**

1. The district's Committee on Special Education shall:

a. Conduct functional behavioral assessments to determine why a student engages in a particular behavior, and develop or review behavioral intervention plans whenever the district is first suspending or removing a student with a disability for more than 10 school days in a school year or imposing a suspension or removal that constitutes a disciplinary change in placement, including a change in placement to an IAES for misconduct involving weapons, illegal drugs or controlled substances.

If subsequently, a student with a disability who has a behavioral intervention plan and who has been suspended or removed from his or her current educational placement for more than 10 school days in a school year is subjected to a suspension or removal that does not constitute a disciplinary change in placement, the members of the CSE shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

If one or more members of the CSE believe that modifications are needed, the school district shall convene a meeting of the CSE to modify such plan and its implementation, to the extent the committee determines necessary.

b. conduct a manifestation determination review of the relationship between the student's disability and the behavior subject to disciplinary action whenever a decision is made to place a student in an IAES either for misconduct involving weapons, illegal drugs or controlled substances or because maintaining the student in his current educational setting poses a risk of

harm to the student or others; or a decision is made to impose a suspension that constitutes a disciplinary change in placement.

2. The parents of a student who is facing disciplinary action, but who has not been determined to be eligible for services under IDEA and Article 89 at the time of misconduct, shall have the right to invoke applicable procedural safeguards set forth in federal and state law and regulations if, in accordance with federal and state statutory and regulatory criteria, the school district is deemed to have had knowledge that their child was a student with a disability before the behavior precipitating disciplinary action occurred. If the district is deemed to have had such knowledge, the student will be considered a student presumed to have a disability for discipline purposes.

a. The Superintendent, Building Principal or other school official imposing a suspension or removal shall be responsible for determining whether the student is a student presumed to have a disability.

b. A student will not be considered a student presumed to have a disability for discipline purposes if, upon receipt of information supporting a claim that the district had knowledge the student was a student with a disability, the district either:

(1) conducted an individual evaluation and determined that the student is not a student with a disability, or

(2) determined that an evaluation was not necessary and provided notice to the parents of such determination, in the manner required by applicable law and regulations.

If there is no basis for knowledge that the student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as any other non-disabled student who engaged in comparable behaviors.

However, if a request for an individual evaluation is made while such non-disabled student is subjected to a disciplinary removal, an expedited evaluation shall be conducted and completed in the manner prescribed by applicable federal and state law and regulations. Until the expedited evaluation is completed, the non-disabled student who is not a student presumed to have a disability for discipline purposes shall remain in the educational placement determined by the district, which can include suspension.

3. The district shall provide parents with notice of disciplinary removal no later than the date on which a decision is made to change the placement of a student with a disability to an IAES for either misconduct involving weapons, illegal drugs or controlled substances or because maintaining the student in his/her current educational setting poses a risk of harm to the student or others;

or a decision is made to impose a suspension or removal that constitutes a disciplinary change in placement.

The procedural safeguards notice prescribed by the Commissioner of Education shall accompany the notice of disciplinary removal.

4. The parents of a student with disabilities subject to a suspension of five consecutive school days or less shall be provided with the same opportunity for an informal conference available to parents of non-disabled students under the Education Law.

5. Superintendent hearings on disciplinary charges against students with disabilities subject to a suspension of more than five school days shall be bifurcated into a guilt phase and a penalty phase in accordance with the procedures set forth in the Regulations of the Commissioner of Education incorporated into this policy.

6. The removal of a student with disabilities other than a suspension or placement in an IAES shall be conducted in accordance with the due process procedures applicable to such removals of non-disabled students, except that school personnel may not impose such removal for more than 10 consecutive days or for a period that would result in a disciplinary change in placement, unless the CSE has determined that the behavior is not a manifestation of the student's disability.

7. During any period of suspension or removal, including placement in an IAES, students with disabilities shall be provided services as required by the Regulations of the Commissioner of Education incorporated into this policy.

#### **D. Expedited Due Process Hearings**

1. An expedited due process hearing shall be conducted in the manner specified by the Regulations of the Commissioner of Education incorporated into this policy, if:

a. The district requests such a hearing to obtain an order of an impartial hearing officer placing a student with a disability in an IAES where school personnel maintain that it is dangerous for the student to be in his or her current educational placement, or during the pendency of due process hearings where school personnel maintain that it is dangerous for the student to be in his or her current educational placement during such proceedings.

b. The parent requests such a hearing from a determination that the student's behavior was not a manifestation of the student's disability, or relating to any decision regarding placement, including but not limited to any decision to place the student in an IAES.

(1) During the pendency of an expedited due process hearing or appeal regarding the placement of a student in an IAES for behavior involving weapons, illegal drugs or controlled substances, or on grounds of dangerousness, or regarding a determination that the behavior is not a manifestation of the student's disability for a student who has been placed in an IAES, the student shall remain in the IAES pending the decision of the impartial

hearing officer or until expiration of the IAES placement, whichever occurs first, unless the parents and the district agree otherwise.

(2) If school personnel propose to change the student's placement after expiration of an IAES placement, during the pendency of any proceeding to challenge the proposed change in placement, the student shall remain in the placement prior to removal to the IAES, except where the student is again placed in an IAES.

2. An expedited due process hearing shall be completed within 15 business days of receipt of the request for a hearing. Although the impartial hearing officer may grant specific extensions of such time period, he or she must mail a written decision to the district and the parents within five business days after the last hearing date, and in no event later than 45 calendar days after receipt of the request for a hearing, without exceptions or extensions.

#### **E. Referral to Law Enforcement and Judicial Authorities**

In accordance with the provisions of IDEA and its implementing regulations:

1. The district may report a crime committed by a child with a disability to appropriate authorities, and such action will not constitute a change of the student's placement.

2. The Superintendent shall ensure that copies of the special education and disciplinary records of a student with disabilities are transmitted for consideration to the appropriate authorities to whom a crime is reported

## **XI. STUDENT SEARCHES AND INTERROGATIONS**

The Board of Education is committed to ensuring an atmosphere on school property and at school functions that is safe and orderly. To achieve this kind of environment, any school official authorized to impose a disciplinary penalty on a student may question a student about an alleged violation of law or the district code of conduct. Students are not entitled to any sort of “Miranda”-type warning before being questioned by school officials, nor are school officials required to contact a student’s parent before questioning the student.

In addition, the Board authorizes *the superintendent, building principals, assistant principals, school nurse, district security officials* to conduct searches of students and their belongings if the authorized school official has reasonable suspicion to believe that the search will result in evidence that the student violated the law or the district code of conduct.

Before searching a student or the student’s belongings, the authorized school official should attempt to get the student to admit that he or she possesses physical evidence that they violated the law or the district code, or get the student to voluntarily consent to the search. Searches will be limited to the extent necessary to locate the evidence sought.

Whenever practicable, searches will be conducted in the privacy of administrative offices and students will be present when their possessions are being searched.

### **A. Student Lockers, Desks and Other School Storage Places<sup>24</sup>**

Students have no reasonable expectation of privacy with respect to these places and school officials retain complete control over them. This means that student lockers, desks and other school storage places may be subject to search at any time by school officials, without prior notice to students and without their consent.

### **B. Strip Searches**

School officials are not authorized to conduct a strip search of a student. In any case in which school officials believe a student may possess contraband that cannot be detected or secured without a strip search, authorized school officials should contact either the student’s parents and/or law enforcement officials, as appropriate, to have the student removed from the school.

### **C. Documentation of Searches**

The *building principal or designee* shall be responsible for promptly recording the following information about each search:

1. Name, age and grade of student searched.
2. Reasons for the search.
3. Name of any informant(s).
4. Purpose of search (that is, what item(s) were being sought).
5. Type and scope of search.
6. Person conducting search and his or her title and position.
7. Witnesses, if any, to the search.
8. Time and location of search.
9. Results of search (that is, what item(s) were found).
10. Disposition of items found.
11. Time, manner and results of parental notification if applicable.

The *building principal* shall be responsible for the custody, control and disposition of any illegal or dangerous item taken from a student. The *building principal* shall retain control of the items, unless the items are turned over to the police. The *building principal* shall be responsible for personally delivering dangerous or illegal items to police authorities.

#### **D. Police Involvement in Searches and Interrogations of Students When School Officials Should Investigate First:**

If a crime is committed by a student on school premises, before calling the police, school officials should conduct their investigation for the purposes of (a) apprehending the perpetrator, (b) securing any contraband; and (c) obtaining any evidence which might be lost due to delay.

School officials should not necessarily wait until after they have completed their investigation to call the police if (i) there is or it is suspected that there is a serious, imminent or immediate threat to safety posed by a weapon, bomb, or other dangerous instruments which school officials cannot quickly and safely secure, (ii) there have been serious injuries, (iii) there has been an arson or an other serious property crime which may require technical expertise to secure the crime scene and investigate; or (iv) there is an immediate threat to the public order which school officials cannot safely control.

Rationale: School officials have the responsibility to maintain the safety of the school environment. Because of this responsibly, the courts and commissioner have generally allowed school officials greater latitude than the police to conduct searches and to question students about suspected criminal offenses. The evidence obtained by school officials can generally be used in a criminal trial against a student defendant even if the evidence the school officials have obtained would have been excluded at trial if it had been obtained by police through the same means. It thus makes more sense for school officials to investigate most cases first before calling in the police. The exceptions to this

general principle involve situations where it would either not be safe or productive of useful evidence if school officials were to delay calling the police.

### **When Police have been called:**

When the police have been called by school officials to investigate a crime on school premises, school officials should yield to police on the conduct of the investigation. The investigation should be conducted in a manner that minimizes the disruption of the school environment. It is not necessary for a school official to be present when police interview a student of any age. School officials should follow the lead of the police on this issue, keeping in mind that the goal is to facilitate the most effective police investigation. School officials and police should agree on a plan for anxious or angry parents when contacted by telephone or when they arrive at school during questioning.

### **Students Under Sixteen Years of Age.**

School officials and police should cooperate in making diligent efforts to notify the parents of students under sixteen years of age who are going to be interviewed by the police as victims or witnesses. The parents do not have to be present at the questioning of victims or witnesses, and the questioning of victims and witnesses should not necessarily be delayed until the parents have been notified or are present. Police questioning of students they regard as potential respondents/defendants should not be done without notifying the parents and allowing them to be present. This should be done by the police, not school officials.

### **Students Sixteen Years of Age or Older.**

It is not necessary for the parents to be contacted or to be present before the interview begins. Police and school officials should cooperate to determine when and how parents would be contacted.

Rationale: Section 724 of the Family Court Act and Section 140.27 of the Criminal Procedure Law require police to notify parents when they are taking a juvenile or juvenile offender into custody for questioning. Failure to do so, or failure to discontinue questioning, can result in exclusion at trial of the evidence obtained from the interview. Evidence obtained from witnesses over sixteen years of age will generally not be excluded at trial for the lack of parents having been notified or present at the questioning. There is no parental notice requirement for children over sixteen. It is a courtesy, but not a requirement to notify parents of victims and witnesses prior to interviewing them. The decision to refrain from or proceed with questioning a potential defendant over sixteen years of age without parental notice or consent should be left to the police.

### **When Police Are Investigating an Off-Campus Crime:**

If the police ask to interview a student concerning a crime committed off school premises, when a delay in questioning the student could result in the destruction

of property, physical injury, destruction of evidence, or flight of the suspect, school officials should yield to police leadership on the conduct of the investigation, subject to the notice procedures described in section 2 above.

### **When the Police Take a Student into Custody:**

If police take a student into custody for a crime committed either on or off school premises, school officials should immediately notify the parents.

### **When School Officials Should Report a Crime:**

School officials should report to the police all student crimes in the following categories which are committed on school premises (a) any illegal possession or use of a weapon; (b) any illegal possession or sale of a narcotic or other illegal drug or substance, (c) any crime resulting in a physical injury, (d) any bomb threat, (e) any nonconsensual sexual contact, (f) any other felony. School officials may report to police misdemeanors and lesser offenses, but may refrain from doing so when, in their discretion, the health, safety and welfare of others in the school environment may be adequately protected by school discipline of the offender and the victim does not want the police called. However, when the victim wants the police called in, school officials should allow them to make the call.

Rationale: The criminal justice system is the only adequate response to the most serious threats to public safety and order. Crimes involving weapons, bombs, drugs, serious physical assaults, and other felonies including arson, major property destruction or grand larceny, and serious sexual assaults, should be reported and prosecuted. School officials should have the discretion to treat less serious misdemeanors and offenses as internal school discipline matters when, in their judgement, doing so would be more likely to have a positive effect on the offender's development into a good school citizen. Any citizen, however, may report a crime, and a victim in particular should be permitted to report the crime he or she has suffered.

### **When a School Official Should Sign the Complaint:**

A school official should sign the complaint whenever there has been a crime against school property, or a crime not necessarily involving an individual victim, such as a bomb threat or drug possession, or a crime against public order with reluctant or fearful victims, such as a gang fight. When there is an individual victim, such as the victim of an assault, theft or a sexual crime, the individual victim generally should sign the complaint, although school officials should be willing to sign a complaint when there is a reluctant victim in any situation in which school officials have thought it serious enough to call the police. In any situation in which school officials would not have called the police on their own initiative, but the victim has either insisted on calling the police or has called the

police him/herself, school officials should not feel obliged to sign a complaint if the victim will not.

## **XII. VISITORS TO THE SCHOOLS**

The Board encourages parents and other district citizens to visit the district's schools and classrooms to observe the work of students, teachers and other staff. Since schools are a place of work and learning, however, certain limits must be set for such visits. The Building Principal is responsible for all persons in the building and on the grounds. For these reasons, the following rules apply to visitors to the schools:

1. Anyone who is not a regular staff member or student of the school will be considered a "visitor."
2. All visitors to the school must report to the office of the Principal upon arrival at the school. There they will be required to sign the visitor's register and will be issued a visitor's identification badge, which must be worn at all times while in the school or on school grounds. The visitor must sign out prior to leaving the building.
3. Visitors attending school functions that are open to the public, such as parent-teacher organization meetings or public gatherings, are not required to register.
4. Parents or citizens who wish to observe a classroom while school is in session are required to arrange such visits in advance with the classroom teacher(s), so that class disruption is kept to a minimum.
5. Teachers are expected not to take class time to discuss individual matters with visitors.
6. Any unauthorized person on school property will be reported to the Principal. Unauthorized persons will be asked to leave. The police may be called if the situation warrants.
7. All visitors are expected to abide by the rules for public conduct on school property contained in this code of conduct.

### **XIII. PUBLIC CONDUCT ON SCHOOL PROPERTY**

The district is committed to providing an orderly, respectful environment that is conducive to learning. To create and maintain this kind of an environment, it is necessary to regulate public conduct on school property and at school functions.

The restrictions on public conduct on school property and at school functions contained in this code are not intended to limit freedom of speech or peaceful assembly. The district recognizes that free inquiry and free expression are indispensable to the objectives of the district. The purpose of this code is to maintain public order and prevent abuse of the rights of others.

#### **A. Prohibited Conduct**

No person, either alone or with others, shall:

1. Intentionally injure any person or threaten to do so.
2. Intentionally damage or remove district property.
3. Disrupt the orderly conduct of classes, school programs or other school activities.
4. Distribute or wear materials on school ground or at school functions that are obscene, advocate illegal action, appear libelous, obstruct the rights of others, or are disruptive to the school program.
5. Intimidate, harass, or discriminate against any person on the basis of race, color, nationality, religion, age, sex, or disability.
6. Enter any portion of the school premises without authorization or remain in any building or facility after it is normally closed.
7. Obstruct the free movement of any person in any place to which this code applies.
8. Violate the traffic laws, parking regulations or other restrictions on vehicles.
9. Possess, consume, sell, distribute or exchange alcoholic beverages, controlled substances, or be under the influence of either on school property or at a school function.
10. Possess or use of firearms or other weapons.
11. Loiter on or about school property.
12. Gamble on school property or at school functions.
13. Refuse to comply with any lawful order of identifiable school district officials performing their duties.
14. Willfully incite others to commit any of the acts prohibited by this code.
15. Violate any federal or state statute, local ordinance or Board policy while on school property or while at a school function.

## **B. Penalties**

Persons who violate this code shall be subject to the following penalties:

1. Visitors. Their authorization, if any, to remain on school grounds or at the school function shall be withdrawn and they shall be directed to leave the premises. If they refuse to leave, they shall be subject to ejection. Law enforcement officers may be contacted.
2. Students. They shall be subject to immediate ejection and to disciplinary action as the facts may warrant, including any of the penalties listed in the "Penalties" section of this code of conduct, in accordance with the due process of law requirements.
3. Tenured faculty members. They shall be subject to immediate ejection and to disciplinary action as the facts may warrant in accordance with Education Law §3020-a or any other legal rights that they may have.
4. Staff members in the classified service of the civil service entitled to the protection of Civil Service Law §75. They shall be subject to immediate ejection and to disciplinary action as the facts may warrant in accordance with Civil Service Law §75 or any other legal rights that they may have.
5. Staff members other than those described in subdivisions 4 and 5. They shall be subject to immediate ejection and to warning, reprimand, suspension or dismissal as the facts may warrant in accordance with any legal rights they may have.

## **C. Enforcement**

The Superintendent shall be responsible for enforcing the conduct required by this code. The Superintendent may designate the other district staff who is authorized to take action consistent with the code.

When the Superintendent or his/her designee sees an individual engaged in prohibited conduct, which in his or her judgment does not pose any immediate threat of injury to persons or property, the designated school official shall tell the individual that the conduct is prohibited and attempt to persuade the individual to stop. The school official shall also warn the individual of the consequences for failing to stop. If the person refuses to stop engaging in the prohibited conduct, or if the person's conduct poses an immediate threat of injury to persons or property, the designated school official shall have the individual removed immediately from school property or the school function. If necessary, local law enforcement authorities will be contacted to assist in removing the person.

The district shall initiate disciplinary action against any student or staff member, as appropriate, with the "Penalties" section above. In addition, the

district reserves its right to pursue civil or criminal legal action against any person violating the code.

#### **XIV. DISSEMINATION AND REVIEW**

##### **A. Dissemination of Code of Conduct**

The Board will work to ensure that the community is aware of this code of conduct by:

1. Providing copies of a summary of the code to all students at a general assembly held at the beginning of each school year.
2. Mailing a summary of the code of conduct written in plain language to all parents of district students before the beginning of the school year and making this summary available later upon request (District's Back to School Newsletter).
3. Providing all current teachers and other staff members with a copy of the code and a copy of any amendments to the code as soon as practicable after adoption.
4. Providing all new employees with a copy of the current code of conduct when they are first hired.
5. Making copies of the code available for review by students, parents and other community members.

On an annual basis, the code of conduct will be publicized and explained to all students and distributed, in writing, to parents and guardians of students. A copy of the code will be filed in each school building, where it will be available for review by any individual.

The Board will provide an information program for all district staff members to ensure the effective implementation of the code of conduct. The Superintendent may solicit the recommendations of the district staff, particularly teachers and administrators, regarding in-service programs pertaining to the management and discipline of students.

The Board of Education will review this code of conduct every year and update it as necessary. In conducting the review, the Board will consider how effective the code's provisions have been and whether the code has been applied fairly and consistently.

Before making any revisions to the code, the Board will hold at least one public hearing at which school personnel, parents, students and any other interested party may participate.

The code of conduct and any amendments to it will be filed with the Commissioner of Education no later than 30 days after adoption.

## ANNOTATIONS

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<sup>1</sup> The district's code of conduct should begin with a clear statement as to the purpose of the code and the district's commitment to establishing, maintaining, and when necessary restoring, a safe and orderly school environment.

<sup>2</sup> This definition of "disruptive student" is taken from Education Law §3214(2-a)(b).

<sup>3</sup> This sample code of conduct defines "parent" broadly to include guardians. This broadened definition has been used to avoid having to say parent/guardian throughout the entire document.

<sup>4</sup> This definition of "school property" is taken from Education Law §2801(1).

<sup>5</sup> This definition of "school activity" is taken from Education Law §2801(1)

<sup>6</sup> This definition of "violent student" is taken from Education Law §3214(2-a)(a). The definition has been modified slightly in that statutory definition does not use the term "weapon." Instead, the statute at one point refers to "a gun, knife, explosive or incendiary bomb, or other dangerous instrument capable of causing physical injury or death," and at another it refers to "any instrument that appears capable of causing physical injury or death." Given the breadth of statutory language and the definition of weapon that is used in the sample code of conduct, we have simplified the definition of violent student used in the code of conduct by simply using the term "weapon."

<sup>7</sup> This definition of "weapon" is much broader than the definition used in the federal Gun-Free Schools Act of 1995. The term is broadly defined to keep all types of objects that can cause serious injury or death out of schools, and thereby enhance school safety. The school board has discretion as to how it defines "weapon" in the code of conduct. The board should be aware, however, that the federal and state law mandate that students who possess a weapon as defined in federal law (18 USC § 921) be suspended from school for a minimum of one calendar year. The SAVE legislation also requires that the district's code of conduct provide for a minimum period of suspension for all acts that would qualify a student to be defined as a violent student (§2801(2)(m)). Given the statute's definition of "violent students" any student who possesses, displays or threatens to use weapons on school property (see footnote 8 above) would be a violent student and therefore subject to the minimum period of suspension.

<sup>8</sup> While Education Law §2801 does not require that a district's code of conduct contain a bill of rights and responsibilities of students, the draft Commissioner's regulations do include this requirement. Specifically, the draft regulations state that the code of conduct must contain " ... (o) a bill of rights and responsibilities of students which focus upon positive student behavior, and which shall be publicized and explained to all students on an annual basis; and (p) guidelines and programs for in-service education programs for all district staff members to ensure effective implementation of school policy on school conduct and discipline" (8 NYCRR 100.2(l)(2)(ii)(o) and (p)).

These additional regulatory components to the code of conduct are not new, but are contained in current Commissioner's regulations which all school districts have been subject to

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for a number of years and will continue to be subject to until they adopt their new code of conduct.

<sup>9</sup> The SAVE legislation requires a district's code of conduct to contain provisions regarding acceptable conduct on school property, the range of penalties that may be imposed for code violations, "and the roles of the teachers, administrators, other school personnel, the board of education and parents (§2801(2)(a)). This section of the sample code of conduct sets forth certain specific roles for parents, teachers, guidance counselors, principals, the superintendent and the board of education *related to maintaining safe, orderly schools*. The lists obviously do not contain all that is expected of these groups. School districts should work closely with these critical groups to define the expected roles.

<sup>10</sup> The SAVE legislation requires that the code of conduct is to govern the conduct of students, teachers and other school personnel, and visitors (Education Law §2801(2)) and requires that the code contain provisions regarding dress while on school property (§2801(2)(a)). This sample code contains a dress code that is limited to students only. It does not apply to district personnel or visitors.

School officials should be aware that the Public Employment Relations Board has held that a dress code is a mandatory subject of bargaining, and may not be imposed upon unionized district personnel unilaterally (*State of New York (Dept of Taxation and Finance)*, 30 PERB ¶13028 (1997)).

In developing a student dress code, district officials should note that generally, school officials may not prescribe students' dress while they attend school in cases where fashion or taste is the sole criterion. However, dress code may be adopted (and indeed the SAVE legislation requires that one be adopted) where there are legitimate educational concerns (*Appeal of Pintka*, 33 EDR 228 (1993)).

According to decisions of the courts and the Commissioner, however, a dress code may be vague, subjective or overly broad (*Appeal of Parsons*, 32 EDR 672 (1993)). The dress code, like all other parts of the district's code of conduct, should be developed in collaboration with teachers, administrators, other school service professionals, students and parents to ensure that it reflects "current community standards" on "proper decorum and deportment" (*Appeal of Parsons; Appeal of Phillips*, 38 EDR 297 (1998)). School districts may regulate students' dress when such rules relate to a specific educational purpose such as teaching students socially appropriate behavior, or health, safety, or full participation in school activities, such as in science laboratories and physical education classes. However, clothing worn to make a religious or political statement cannot be banned, unless it is disruptive of the educational process, lewd or offensive (*Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969)).

Thus, for example, the Commissioner has ruled that the wearing of hats cannot be prohibited in school hallways unless the display is vulgar and indecent, imposes a health risk, is disruptive or implicates other compelling educational concerns. Hats may be banned in the classroom for the same reasons, and also if they are considered disrespectful and improper under community standards (*Appeal of Pintka*). The Commissioner has also held that an unwritten policy prohibiting the wearing of vests and outerwear by students does not violate student First Amendment rights where there is no evidence that the student's vest was protected as symbolic speech of either political or religious expression (*Appeal of Mangaroo*, 33 EDR 286 (1993)).

<sup>11</sup> The SAVE legislation requires that the code of conduct contain provisions setting forth the procedures by which local law enforcement agencies will be notified of code violations that constitute a crime (§2801 (2)(h)). The law does not state that law enforcement must be notified of *all* code violations that constitute a crime. It could be argued, however, that since this section of the law does not state that school districts have the authority to set forth "the circumstances

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under” which law enforcement will be notified as well as the procedures (as does §2801(2)(l) dealing with notification to parents) districts are required to notify local law enforcement authorities of all violations that constitute a crime.

Some level of discretion may be required to avoid involving law enforcement unnecessarily in school disciplinary matters and creating a police state environment in schools. Therefore, the sample code of conduct has been drafted to require that Principals notify local law enforcement authorities of only those code violations that substantially affect the order or security of a school and constitute a crime. Thus, a principal would not have to report the theft of a few dollars or the intentional destruction of an inexpensive piece of district equipment.

School boards should give careful thought to this provision of their district’s code and consult with their school attorney.

<sup>12</sup> The SAVE legislation and draft regulations do not prescribe a period for which a disruptive student may be removed from the classroom by a teacher, but instead state that the period is to be prescribed by the district’s code of conduct. The sample states that a teacher may remove a student from his classroom for no more than two days per incident. The Board may adopt any number it chooses. However, the Board should be aware that if the number of days is more than five, the district would be required to hold a Superintendent’s hearing (see *Appeal of Trombly*, 26 EDR 214 (1986)). For this reason, it is recommended that the number adopted by the Board be five or less.

<sup>13</sup> The SAVE legislation and draft regulations establish timelines for certain notice and informal hearing requirement related to a teacher’s removal of a student from class. These timelines are measured in 24-, 48- and 72-hour periods, rather than one, two or three days. This sample code of conduct adopts a practical interpretation of these periods to acknowledge the practical difficulties schools would face to schedule and hold informal hearings on weekends, holidays or during school vacations.

Because there is no case law from the Commissioner of Education or the courts yet interpreting this section of the law or authorizing this practical approach to applying the statutory timelines, school districts should consult with their school attorney before adopting this approach.

<sup>14</sup> Nothing prevents parties from *voluntarily* agreeing to alter timelines. The agreement, however, must be completely voluntary. Again, school districts should consult with their school attorney before adopting a similar provision in their code of conduct.

<sup>15</sup> Under federal law, removing a student with a disability from the classroom for even part of a day can constitute a removal for the entire day. Subjecting a student with a disability to a series of suspensions or removals that create a pattern because they cumulate to more than 10 school days in a school year can constitute a change in placement. School districts are required to afford students with a disability certain procedural protections before there is a change in placement, and failure to do so can subject districts to significant liability.

Because of this potential for liability and because there is no way for a teacher to know in advance if his or her decision to remove a student with a disability from class would result in a change of placement, the sample code of conduct requires a teacher to verify with the Principal or the chairperson of the CSE before removing a disabled student.

Developing procedures to balance the rights of a disabled student who disrupt the classroom against a teacher’s need to maintain order in the classroom requires a thorough understanding of the state and federal law governing the discipline of student with disabilities. As such, school districts must consult with their school attorney to develop such procedures.

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<sup>16</sup> Neither the SAVE legislation nor the draft regulations defines “removal.” This sample code of conduct has been developed to preserve the time-honored classroom management technique whereby a teacher temporarily directs a student to leave the classroom without invoking the due process requirements of the SAVE legislation.

Although the Commissioner has ruled on several occasions that a student may not be removed from a classroom without complying with the suspension provisions of Education Law §3214 (see, for example, *Appeal of Ackert*, 30 EDR. 31 (1990), these cases have all involved something other than a temporary removal from the classroom for less than one period. For example, in *Application of a Child Suspected of Having a Handicapping Condition*, 31 EDR 42 (1991), a teacher removed a student from his classes for the remainder of the day and sent the child to the library. In *Appeal of Trombly*, 26 EDR 214 (1986), a principal removed a student from a class for the last five days of a semester. *Matter of Boylan*, 24 EDR 421 (1985), involved a student who was removed from a class for approximately two months. In *Matter of Malpica*, 20 EDR 365 (1981), a student received two hours of after-school instruction in lieu of her regular classes from which she was suspended for more than five days. Finally, in *Matter of Caulfield*, 18 Educ. EDR 574 (1979), a student was removed from four out of her five classes for several months.

School districts should seek the advice of their school attorney in crafting the exact language of this provision to ensure it complies with the Commissioner’s decisions on Education Law §3214.

<sup>17</sup> The SAVE legislation gives building principals the authority to suspend students for five days or less (§3214 (3)(a)). The prior law allowed principals this authority only if the Board of Education had adopted a bylaw delegating this authority. Principals are also authorized under the SAVE legislation to suspend a student for a period of more than five days (§3214 (3)(c)(1)). However, no student may actually be suspended for a period of longer than five days unless and until the student is given notice and an opportunity for a hearing before the Superintendent or a hearing officer designated by the Superintendent.

<sup>18</sup> The sample code of conduct provides a specific process for parents to appeal suspension decisions for five days or less to the Board in response to the decision in *Appeal of Amara S*, Decision No. 14, 182 (July 30, 1999). In that case the Commissioner held that he would not dismiss an appeal of a suspension decision for five days or less based upon the parents’ failure to appeal the decision first to the Board unless the Board had a policy specifically requiring the parents to appeal such a decision to the Board. The Commissioner stated, however, that a school district may impose, by a properly adopted policy or regulation, appeal requirements that are reasonable and consistent with the right of complainants under the Education Law to have disputes ultimately reviewed by the Commissioner.

Requiring complainants to appeal to the Board before allowing an appeal to the Commissioner is beneficial to the district in that it affords the Board the opportunity to either approve or disapprove of the decisions of the district’s administrators before those decisions are reviewed by an outsider, thereby giving the Board greater control over district operations.

The sample code sets the timeframe for submitting appeals to the Board as ten business days, absent a showing of extraordinary circumstances. Because there is no specific guidance from the Commissioner as to what is a reasonable timeframe, school districts are urged to consult with the school attorney before adopting this provision.

While the Board has discretion in setting the timeframe in which appeals to the Board are to be filed, the 30-day timeframe provided for in the regulation for filing appeals to the Commissioner is fixed by State regulation (8 NYCRR §275.16) and therefore cannot be altered by Board policy.

The sample code also provides for a similar process for parents to appeal suspension decisions of more than five days. It is not necessary that the code contain this appeal requirement because the Education Law §3214(3)(c) explicitly requires that appeals of suspensions for more than five days be filed with the Board before being filed with the Commissioner. The same code includes this process, with the same ten business day timeframe for filing an appeal as required for appeals of suspensions of five days or less, to make the process for filing appeals uniform and therefore easier for administrators to apply.

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<sup>19</sup> The federal Gun-Free Schools Act of 1994 (20 USC §8921) requires all states that receive funds under the Elementary and Secondary Education Act of 1965 to have a law that requires school districts to suspend students who bring weapons to school for a minimum of one calendar year. §3214(3)(d) of the Education Law has been amended to comply with the federal law.

The federal law defines “weapon” somewhat narrowly. Only the following are included in the definition:

1. Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of any explosive.
2. The frame or receiver of any weapon described above.
3. Any destructive device, which is defined as any explosive, incendiary, or poison gas, such as a bomb, grenade, rocket having a propellant charge of more than four ounces, a missile having an explosive or incendiary charge of more than one-quarter ounce, a mine, or other similar device.
4. Any weapon which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has a barrel with a bore of more than one-half inch in diameter.
5. Any combination of parts either designed or intended for use in converting any device into any destructive device described in item 3 or 4 above, and from which a destructive device may be readily assembled (18 USC §914).

The U.S. Department of Education, the federal agency responsible for overseeing the implementation of the Gun-Free Schools Act, has stated that local school districts may decide to broaden their definition to include other weapons as well.

The sample code of conduct has been drafted to take advantage of this authority retained by local school boards and includes many items commonly thought of as weapons which are not included in the federal law definition. Specifically, the code prohibits students from possessing a gun, pistol, revolver, shotgun, rifle, machine gun, disguised gun, dagger, dirk, razor, stiletto, switchblade knife, gravity knife, metal knuckle knife, box cutters, cane sword, electronic dart gun, Kung Fu star, electronic stun gun, pepper spray or other noxious spray, explosive or incendiary bomb, or other dangerous instrument that can cause physical injury or death. Many of the items in list of weapons come from Penal Law § 265.00. The goal of this broad prohibition and the significant consequence attached to bringing any weapon to school is to stress to students that no weapon of any kind is to be brought to school. All school districts should carefully evaluate this “zero tolerance” approach to weapons possession and consult with their school attorney before adopting it.

School boards that do decide to adopt a broader definition of weapon in their code of conduct should be aware that students who possess a weapon as defined in federal law *must* be subjected to the minimum one calendar year suspension in order to comply with state and federal law. Any student who possesses a weapon other than a weapon as defined in federal law *may* be subjected to a minimum one calendar year suspension.

<sup>20</sup> The Education Law requires the Superintendent to refer students under the age of 16 and selected other younger students to a “presentment agency” for a juvenile delinquency proceeding. In most, but not all, counties the “presentment agency” is the County Attorney. The district should verify the title of the local presentment agency with its school attorney.

<sup>21</sup> The following 14 and 15 year old students qualify for juvenile offender status under Criminal Procedure Law 1.20(42): to be added.

<sup>22</sup> Under the law, the district must provide alternative education to those students of compulsory attendance age who are suspended (Education Law §3214(3)(e) and to all students who are removed from class by a teacher (§3214(3-a)). The Board should be aware that the district *may*, but is not required to, provide alternative education to students over the compulsory education age. As drafted, the sample code

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of conduct provides that suspended students over the compulsory education age, who evidence a sincere desire to complete their high school education, will be provided with alternative education.

School officials are reminded that under Education Law §3214 (3)(e) districts are required to take immediate steps to provide the required alternative instruction. “Immediately” does not mean instantaneously, but it does mean that the district should act promptly, with due regard for the nature and circumstances of the particular case. One court has held invalid a policy that stated that the district would not provide alternative instruction for students suspended for five days or less (*Turner v. Kowalski*, 49 A.D.2d 943 (2<sup>nd</sup> Dept 1975)). In another case, the Commissioner admonished a district for having a policy that stated that the district would not provide alternative instruction if the period of suspension were less than three days (*Appeal of Bridges*, 34 EDR 232 (1994)).

The Commissioner of Education has also repeatedly held that placing a student in a study hall does not suffice as alternative instruction for students under the compulsory attendance age (see for example, *Child Suspected of Having a Handicapping Condition*, 31 EDR 42 (1991); *Appeal of Ackert*, EDR 31 (1990); *Matter of Malpica*, 20 EDR 365 (19\_\_)).

<sup>23</sup> This portion of the sample code of conduct applies only to students with disabilities under IDEA and Article 89. It does not necessarily apply to students who qualify as disabled only under Section 504 of the Rehabilitation Act. School districts should consult with their school attorney to ensure compliance with Section 504.

<sup>24</sup> The New York State Court of Appeals has held that although students may have exclusive use of a locker as far as other students are concerned, they do not have such exclusivity over the locker as against the school authorities (*People v. Overton*, 20 N.Y.2d 360 (1969)). The Board should make certain to include in the district’s code of conduct a provision that states that lockers, desks and other such storage spaces remain the exclusive property of the school, and that students have no expectation of privacy with respect to these areas. It was significant to the court’s decision in the *Overton* case that students had been told that they had exclusive possession of their lockers only in relation to other students.