

**Goshen Central School District**  
**Code of Conduct**

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## DISTRICT CODE OF CONDUCT

### I. INTRODUCTION

The Goshen School District is committed to maintaining high standards of education for students in the schools. Because the district believes that order and discipline are essential to being educated effectively, the District is also committed to creating and maintaining high behavioral standards and expectations. An orderly educational environment requires that everyone in the school community play a role in contributing to an effective environment. It also requires the development and implementation of a code of discipline that clearly defines individual responsibilities, describes unacceptable behavior, and provides for appropriate disciplinary options and responses.

The District believes the order and discipline must be a shared responsibility between school, home and community. This Code of Conduct was developed in collaboration with student, teacher, administrator and parent organizations, school safety personnel and other board approved school personnel. Finally, it is our belief that, to be effective, such a code must:

- identify, recognize and emphasize acceptable behavior.
- identify, recognize and prevent unacceptable behavior;
- promote self discipline;
- consider the welfare of the individual as well as that of the school community as a whole;
- promote a close working relationship between parents/guardians and the school staff;
- distinguish between minor and serious offenses, as well as between first time and repeated offenses;
- provide disciplinary responses that are appropriate to the misbehavior;
- outline procedures to ensure that it is administered in a way that is fair, firm reasonable, and consistent;
- encourage a high regard for every person's right to reasonable hearing procedures and due process when accused of misconduct
- comply with the provisions of federal, state and local laws, as well as the guidelines and directives of the New York State Department of Education and the Board of Regents

A school's primary concern in establishing a code of discipline is to enable our young people to become responsible, respectful and caring citizens within the school and community settings. The Board of Education is responsible for ensuring that essential regulations are established and adequate discipline is maintained in the operation of the schools to effectively promote safety, as well as

the social and educational growth of the students. Administrative regulations are developed and enforced by the school administration and the staff.

The parent/guardian is expected to assume primary responsibility for his or her child. The parent/guardian may be called upon to actively cooperate with the school in providing the necessary structure to promote his or her child's social and emotional growth. To this end, a high degree of parent-school communication will be fostered by the school.

Disciplinary measures available to the administration of each school building include conferences, detention, in-school suspension, out-of-school suspensions and administrative hearings with the designated hearing officer. Administrative hearings can result in out-of-school suspensions of more than five days and, in particularly serious cases, a student may be permanently suspended from school.

## II. DEFINITIONS

For the purposes of this Code, the following definitions apply:

**Disruptive Student** - an elementary or secondary 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.

**Parent** - the parent, guardian or person in parental relation to a student.

**Removal** - the act of a teacher in discontinuing the presence of the student in his/her classroom.

**School Property** - 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 §142 of the New York State Vehicle and Traffic Law.

**School Function** - any school sponsored extra-curricular, co-curricular or other event or activity.

**Principal** - a building administrator. This definition for the purposes of the code of conduct will include assistant principals where appropriate.

**Suspension** - the act of a building principal (or acting building principal), Superintendent of Schools, District Superintendent or Board of Education in discontinuing the presence of a student from his/her regular classes.

**Violent Student** - a student under the age of 21 whom:

- commits an act of violence upon a school employee,  
or  
attempts to do so.
- 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, or attempts to do so.
- possesses, while on school property or at a school function, a weapon.
- displays, while on school property or at a school function, what appears to be a weapon.
- threatens, while on school property or at a school function, to use a weapon.

- 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.
- knowingly and intentionally damages or destroys school district property.

**Weapon** - a firearm as defined in the Gun-Free Schools Act (18 USC § 921) [any firearm, including a starter gun, which will or is designed to be or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of such firearm; any firearm muffler or silencer; or any destructive device], as well as any other gun, BB gun, pistol, revolver, shotgun, rifle, machine gun, disguised gun, dagger, dirk, razor, stiletto, switchblade knife, gravity knife, brass knuckles, sling shot, metal knuckle knife, box cutter, cane sword, electric dart gun, Kung Fu star, electric stun gun, pepper spray or other noxious spray, explosive or incendiary bomb, or other device, instrument, material or substance that can cause physical injury or death when used to cause physical injury or death.

### **III. STUDENT RIGHTS AND RESPONSIBILITIES<sup>10</sup>**

#### **A. Students 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, sexual orientation, or disability.
3. Present their version of relative events to school personnel authorized to impose a disciplinary penalty as in connection with the imposition of the penalty.
4. Access school rules and, when necessary, receive an explanation of those rules from school personnel.
5. Ask questions when they do not understand.

#### **B. Student's 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. Work to the best of their ability in all academic and extracurricular pursuits and strive toward their highest level of achievement possible.
5. React to directions given by teachers, administrators and other school personnel in a respectful, positive manner.
6. Work to develop mechanisms to control their anger.
7. Ask questions when they do not understand.
8. Seek help in solving problems that might lead to discipline.
9. Dress appropriately for school and school functions.
10. Accept responsibility for their actions.
11. 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>11</sup>**

### **A. Parents**

All parents are expected to:

1. Take joint responsibility with the school community for the education of their children.
2. Send their children to the school ready to participate and to learn.
3. Ensure that their children attend school regularly and on time.
4. Ensure that any absences are excused.
5. Insist that 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.
12. Provide a place for study and ensure that homework assignments are completed.

### **B. Teachers**

All district teachers in the district are expected to:

1. Maintain a climate of mutual respect, fairness, and dignity that will strengthen students' self-concept and promote confidence to learn.
2. Be prepared to teach.
3. Demonstrate interest teaching and concern for student achievement.
4. Know school policies and rules, and enforce them in a fair and consistent manner.
5. Communicate to students and their parents:
  - a. Course objectives and requirements
  - b. Making/grading procedures
  - c. Assignment deadlines
  - d. Expectations for students
  - e. Classroom discipline plan.
6. Respond positively to questions from students.

7. Communicate regularly with students, parents and other teachers concerning growth and achievement.

### **C. Guidance Counselors**

All guidance counselors are expected to:

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.
3. Regularly review with students their educational progress and career plans.
4. Provide information to assist students with career planning.
5. Encourage students to benefit from the curriculum and extracurricular programs.
6. Assist in orientation of new students.

### **D. Building Administrators**

All building administrators are expected to:

1. Promote a safe, orderly and stimulating school environment supporting active teaching and learning.
2. Ensure that students, staff and administrators have the ability to communicate regularly with each other.
3. Ensure that students, staff and parents have the opportunity to approach administrators for redress of grievances.
4. Evaluate on a regular basis all instructional programs.
5. Support the development of and participation in appropriate extracurricular activities.
6. Be responsible for enforcing the code of conduct and ensuring that all cases are resolved promptly and fairly.

### **E. Superintendent**

The superintendent is expected to:

1. Promote a safe, orderly and stimulating school environment, supporting active teaching and learning.
2. Ensure that students, staff and administrators have the ability to communicate regularly with each other.
3. Ensure that students, staff and administrators have the opportunity to approach administrators for redress of grievances.
4. Evaluate on a regular basis all instructional programs.

5. Support the development of and participation in appropriate extracurricular activities.
6. Be responsible for enforcing the code of conduct and ensuring that all cases are resolved promptly and fairly.

**F. Board of Education**

The Board is expected to:

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 the expectations for the conduct of students, district personnel and visitors to school property and at school functions.
2. Adopt and review annually the district's code of conduct to evaluate the code's effectiveness and fairness and consistency of its implementation.

## V. STUDENT DRESS CODE<sup>12</sup>

The responsibility for the dress and appearance of students shall rest with the individual students and parents. They have the right to determine how the student will dress, provided that such attire does not interfere with the operation of the school or infringe upon the general health, safety and welfare of district students or employees. The administration is authorized to take action in instances where individual dress does not meet these stated requirements.

A student's dress, grooming and appearance, including hair style/color, jewelry, makeup and nails shall:

1. Be safe, appropriate, and not disrupt or interfere with the educational process.
2. Include footwear at all times. Footwear that is a safety hazard will not be allowed.
3. Not include items that are vulgar, obscene, libelous, or denigrate other because of race, color, religion, ancestry, national origin, sex, sexual orientation or disability.
4. Not promote and/or endorse the use of alcohol, tobacco or illegal drugs, and/or encourage other illegal or violent activities.

Wearing of hats will be in accordance with the student's building level code of conduct.

Each building principal shall be responsible for informing all students and their parents of the 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 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 is committed to maintaining a school district, which provides students and staff with productive, satisfying, and wholesome learning environments. Essentially, this means that the relationships are such that students can learn and teachers can teach.

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 student's ability to grow in self-discipline.

The Board is committed to protecting First Amendment freedoms within the school system; however, lawlessness in any form will not be tolerated. The district will not permit students to engage in any conduct intended to destroy personal or school property, disrupt or interfere with teaching, research, service, administrative or disciplinary functions, or any district-sponsored or approved activity.

The Board recognizes the need to make expectations for student conduct while on school property or engaged in a school function specific and clear. The rules of conduct. The student code of conduct and discipline shall be uniformly enforced and distributed annually to the students, parent/guardian and staff of the district. The rules of conduct listed below are intended to 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 penalties for their conduct.

These rules govern the conduct of all district students on district property, and also on any other premises or property (including buses) under the control of the district and used in its teaching programs and activities, or in its administrative, cultural, recreational, athletic, and other programs and activities. Any student is in violation of these rules who:

- A. Engages in conduct which is:
  1. Disorderly, e.g.
    - a. Fighting or engaging in violent behavior;
    - b. Threatening another with bodily harm;
    - c. Intimidating students or school personnel (e.g. bullying)
    - d. Making unreasonable noise;
    - e. Using language or gestures that might be profane, lewd, vulgar, or threatening, including racial or ethnic remarks which are improper.
    - f. Obstructing vehicular or pedestrian traffic, or

- g. Creating a hazardous or physically offensive condition by any act which serves no legitimate purpose;
  - h. Vandalism or any destruction of real and/or personal property (including graffiti or arson),
  - i. Theft;
  - j. Tardiness;
  - k. Missing or leaving without permission;
  - l. Truancy (chronic cases of truancy shall necessitate a Person in Need of Supervision-PINS-petition);
  - m. Possession/use/sale/distribution/exchanging or being under the influence of drugs or alcohol; inappropriately using or sharing prescription or over-the-counter drugs.
  - n. Possession of weapons or fireworks;
  - o. Possession/use/sale/distribution of tobacco or tobacco products;
  - p. Gambling;
  - q. Hazing;
  - r. Behavior or dress that disrupts the educational process;
  - s. Willfully damages or removes district property;
2. Insubordinate, e.g. failing to comply with the lawful directions of teachers, school administrators or other school employees in charge of the student, or missing or leaving school without permission;
3. Academic Misconduct, e.g.:
- a. Plagiarism, and/or
  - b. Cheating; or
- B. Engages in trespassing
- A student is not permitted in any school building, other than the one that he/she regularly attends, without permission from the administrator in charge of the building.
- C. Willfully injures any person or threatens to do so;
- D. Disrupts the orderly conduct of classes, school programs or other school activities;
- E. Distributes or wears materials on school grounds which appear obscene, which advocate illegal action, discriminate against race, color, creed, nationality, religion, appear libelous, disruptive to the school program or obstruct the rights of others;

- F. Intimidates, harasses, or discriminates against any person on the basis of race, creed, ethnic origin, religion, sex, age, or disability;
- G. Obstructs the free movement of any person in any place to which these rules apply;
- H. Violates the traffic laws; parking regulations or restrictions on vehicles;
- I. Possesses or uses firearm or other weapon. "Weapon" means 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;
- J. Loiters on or about building or grounds;
- K. Willfully incites others to commit any acts herein prohibited, and/or
- L. Violates any federal or state statute, local ordinance, or Board policy.

### **Computer and Internet Use**

The following prohibited use of district-owned computer drives, network facilities and Internet links may give rise to disciplinary action against users of such equipment and/or facilities:

1. E-mail originating from the school premises or received at the school premises that a student user creates that:
  - is lewd, vulgar, obscene, indecent or inappropriate for student recipients of certain ages;
  - conveys an imminent threat of violence, including sexual violence, to a specific individual or individuals;
  - constitutes a state and/or federal crime;
  - is the cause of or a substantial contributing factor to a substantial interference with the orderly functioning of the school(s);
  - attributes the text of e-mail to school officials or that the text is school endorsed, unless there is such official endorsement or consent from school officials;

2. Internet use that circumvents access restrictions placed upon the districts computer systems by the Board of Education or its administrative designee(s).
3. Computer and/or Internet use that is not school related or is unauthorized.
4. Permitting the use of a student's computer access code by any other person and such student shall assume responsibility for occurrences in violation of this code of conduct that occurs under the student's access code number.

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

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

The building administrator 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 as soon as practical, but in no event later than the close of business the day the administrator learns of the violation. 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 for violations of the student code of conduct shall be dependent upon the nature of the violation and shall be progressive. This means that as a general rule, a student's first violation shall normally merit a lighter penalty than subsequent violations. Disciplinary penalties may be imposed either alone or in combination.

The Board of Education expects school personnel who interact with students to use disciplinary action only when necessary and to place emphasis on the student's ability to grow in self-discipline. Staff members are expected to take into consideration all relevant factors in determining the appropriate penalty. 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.

In addition, if a criminal offense has been committed, such as pulling a false fire alarm, vandalism, or use and possession of weapons, or drugs, the police shall be notified and the district will cooperate with the authorities as to the filing and prosecution of criminal charges against the student as deemed necessary.

### **Due Process**

The Board recognizes a student's rights to a superintendent's hearing before a suspension from attendance in excess of five days and the right to an appeal of such a suspension to the Board pursuant to Education Law §3214(3).

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 is related to a 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 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 that penalty, consistent with the student's right to due process.

1. **Verbal warning** - any member of the district staff
2. **Written warning** - bus driver, hall and lunch monitors, teachers, building administrators, superintendent
3. **Written notification to parent** - bus driver, hall and lunch monitors, teachers, building administrators, superintendent
4. **Detention** - teachers, building administrator, Superintendent
5. **Suspension from transportation** - building administrators, superintendent
6. **Suspension from athletic participation** - building administrator, athletic director, superintendent
7. **Suspension from social or extracurricular activities** - building administrator, superintendent
8. **Suspension of other privileges** - administrator, superintendent
9. **In-School suspension** - administrator, superintendent
10. **Removal from classroom by teacher** - teachers, administrator, superintendent
11. **Short-term (five days or less) suspension from school** - administrator, superintendent, board of education
12. **Long-term (more than five days) suspension from school** - administrator, superintendent, board of education
13. **Permanent suspension from school** - superintendent, board of education

## 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. Detention will be imposed as a penalty only after the student's parent has been notified to confirm that there is no parental objection to the penalty and the student has appropriate transportation home following detention.

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.

Should the suspension from transportation amount to 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 penalty involved.

3. **Suspension from athletic participation, extra curricular activities and other privileges**

A student subjected to a suspension from athletic participation, extra-curricular activities or other privileges are not entitled to a full hearing pursuant 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 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 superintendent 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 substantially equivalent, alternative education. The in-school suspension teacher will be a certified teacher.

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>14</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>15</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 one 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 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 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.

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.

If at the normal meeting the student denies the charges, the principal or the principal's designee 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>16</sup>

The principal or his or 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 and activities until he or she 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. Removal of a student with a disability may, under certain circumstances, constitute a change in the student's placement.<sup>17</sup> Accordingly, no teacher may remove a student with a disability from his or her class until he or she has verified with the principal or the chairperson of the Committee on Special Education 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>18</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>19</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 basis for the proposed suspension. The suspending authority must also notify the student's parents in writing that the student may be suspended from 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 disruption, 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>20</sup>

**b. Long term (more than five 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 hi or her behalf.

The superintendent shall personally hear and determine the proceeding or may, in his or her discretion, 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>21</sup> onto school property will be subject 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>22</sup> (or the county presentment agency if not the county attorney) 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>23</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 section 220.00 (14) of the Penal Law) qualifies for juvenile offender status under section 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 five days. If the proposed penalty is the minimum 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 short-term suspension. If the proposed penalty exceeds the minimum 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 superintendent has the authority to modify the minimum five-day suspension on a case-by-case basis. In deciding whether to modify the penalty, the superintendent 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, or three or more occasions during a trimester, will be suspended from school for at least five days. If the proposed penalty is the minimum five-day suspension, the student and the student's parent will be given the same notice and opportunity for hearing given to all students subject to a short-term suspension. If the proposed penalty exceeds the minimum 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 superintendent has the authority to modify the minimum five-day suspension on a case-by-case basis. In deciding whether to modify the penalty, the superintendent may consider the same factors considered in modifying a one-year suspension for possessing a weapon.

## **IX. ALTERNATIVE INSTRUCTION<sup>24</sup>**

When a student of any age is removed from 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. In addition, alternative instruction will be made available to any student over the compulsory attendance age who presents a sincere desire to complete his/her high school education.

## **X. DISCIPLINE OF STUDENTS WITH DISABILITIES<sup>25</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) “Weapon” means the same as “dangerous weapon” under 18 U.S.C. §930(g)(w) which includes “a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except...[for] a pocket knife with a blade of less than 2½ inches in length.”

(2) “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.

- (3) “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 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 or 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 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 or 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 SUSPENSION OF STUDENTS WITH DISABILITIES**

In the event that a student has a known disability or when school officials can be deemed to know in accordance with law, that a student has a disability, the district will first proceed to conduct a §3214 disciplinary proceeding for any suspension of more than five days. The §3214 disciplinary proceeding will be held in two parts, first to determine the student's guilt or innocence on the charges and the second to determine the penalty.

If guilt is determined, before a penalty may be imposed, the following rules shall apply:

### **Section 504/Title II ADA Disability**

Before discipline may be meted out for a student with a disability or suspected disability founded solely under §504 of the Rehabilitation Act of 1973 (hereinafter §504)/Title II of the Americans with Disabilities Act (hereinafter "ADA") the §504 multi-disciplinary committee (hereinafter the "§504 Committee") must make a determination of whether the conduct underlying the charge(s) was a manifestation of the disability.

1. If a nexus is found between the disability and the conduct underlying the charges, the §3214 proceeding must be discontinued and the matter placed under the jurisdiction of the §504 Committee for any further consideration. The §504 Committee must register a referral and bring about an evaluation of a student with a suspected disability or, if the student is already eligible under §504, it must consider possible program modification and disposition on a non-disciplinary basis.
2. If no nexus is found, yet a disability is indicated or has been identified, discipline may be imposed upon remand to the §3214 Hearing Officer. Students whose sole disabilities are founded under §504 and for whom no nexus is found shall be disciplined in the same manner as their non-disabled peers.

Any penalty imposed may not be based on past behavior for which a nexus determination was not made.

The school district must continue to provide a free and appropriate public education to students who have been suspended from school as required by the regulations implementing §504 (34 CFR §104 et. Seq.) until the end of the school year in which the student reaches the age of 21.

## **IDEA Disability**

Before discipline may be meted out for a student classified or deemed to be known as having a disability under the Individuals with Disabilities Education Act (hereinafter "IDEA") [a student with an educational disability], the Committee on Special Education (hereinafter the "CSE") must make a determination of whether the conduct underlying the charges was a manifestation of the disability:

1. If a nexus is found between the disability and the conduct, the §3214 proceeding must be discontinued (except for weapons, drugs, dangerous behavior) and the matter placed under the jurisdiction of the CSE for any further consideration. The CSE must register a referral and bring about an evaluation in the case of a student who may be deemed to be known as having a disability or, if the student is already classified under IDEA, it must consider possible program modification and disposition on a non-disciplinary basis.
2. If no nexus is found, yet nonetheless a disability is indicated or has been identified, discipline may be imposed upon remand to the §3214 Hearing Officer. The relevant disciplinary procedures applicable to children without disabilities may be applied in the same manner in which they would be applied to children without disabilities, as long as the child continues to receive a free appropriate public education during any term of suspension.
3. Where no nexus is found and no suspended disability is determined to exist, the matter shall be remanded to the §3214 Hearing Officer for a determination of penalty.

Any penalty imposed may not be based on past behavior for which a nexus determination was not made.

The school district must continue to provide a free appropriate public education to students who have been suspended from school.

## **Suspension Beyond Ten (10) School Days**

A student with a disability or suspected disability founded solely under §504/Title II of the ADA may not be suspended for more than 10 school days unless the §504 Committee has conducted a nexus determination and found the behavior underlying the disciplinary charges wee not a manifestation of the student's disability.

A student classified and deemed to be known as having an educational disability under IDEA may not be suspended for more than 10 days unless:

1. The CSE has made a determination that a student's misconduct was not related to the student's disability;
2. The school district obtains a court order authorizing the suspension;
3. The disciplinary charges involve the carrying of a weapon to school or to a school function or the knowing possession, use or sale of illegal drugs at school or a school function;
4. The parent or student 18 years of age or older gives their consent in writing.

In determining a disciplinary outcome, a §3214 Hearing Officer and/or decision making authority may not consider incidents in the past anecdotal record of a student with a disability under §504/Title II ADA and/or IDEA, or suspected of being a disability unless there has been a negative manifestation determination regarding such incident(s) by the §504 Team or CSE, respectively.

### **Suspensions for Misconduct Involving Weapons and/or Drugs**

A student classified or deemed to be known as having an educational disability under IDEA may be suspended and placed in an interim alternative educational setting for up to forty-five (45) days (or less if similar discipline for a non-disabled student would be less) if the student carries a weapon to school or a school function, or knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school or a school function.

1. In accordance with the law the term "weapon" means "a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length."
2. In accordance with law, the term "illegal drugs" means controlled substances but not those possessed or used under the supervision of a licensed health care professional or other permitted authority under the Federal Controlled Substances Act or under any provision of federal law. Controlled substances are drugs and other substances identified under schedules set forth in applicable federal law provisions.

Before a student is suspended and placed in an interim alternative educational setting for up to 45 days for behavior involving weapons and/or drugs, the CSE must conduct a manifestation determination and a functional behavioral assessment, as well as implement a behavioral

intervention plan that addresses the behavior underlying the disciplinary proceeding or review any such pre-existing plan for modification, if necessary.

1. Placement in an interim alternate educational setting as a result of conduct involving weapons and/or drugs is not contingent upon a CSE determination that the misconduct is not related to the student's disability.
2. It is up to the CSE to determine what would constitute an interim alternative educational setting that would meet the requirements of the student's IEP and enable the student to participate in the general curriculum (although in another setting).

The exception allowed for the suspension/removal of students with educational disabilities for up to 45 days for conduct involving weapons and/or drugs does not apply to students whose disabilities are founded solely upon §504/Title II ADA.

Such an interim alternative educational setting shall be deemed the student's "stay put" placement during the pendency of any due process proceedings contesting the interim alternative educational setting for the duration of the interim placement.

### **Dangerous Students**

To continue the suspension of a student classified or deemed to be known as having an educational disability under IDEA for more than 10 school days, the school district may initiate a hearing before a special education impartial hearing officer who can order the placement of the student in an interim alternative setting for up to 45 days.

1. The CSE must conduct a nexus determination within 10 school days of the initial disciplinary action. Placement in an interim alternative educational setting as a result of dangerous behavior is not contingent upon a CSE determination that the misconduct is not related to the student's disability.
2. It is up to the CSE to determine what would constitute an interim alternative educational setting.
3. The hearing officer may grant such if maintaining the student in the current placement is substantially likely to result in injury to the student and/or others, and the school district has made reasonable efforts to minimize the risk of harm in the current placement. The hearing officer must also consider the appropriateness of the student's current placement and whether the interim alternate educational setting meets all the requirements of the student's IEP, including continued participation in the general curriculum (although in another setting) with an appropriate behavioral component.

Such an interim alternative educational setting shall be deemed the student's "stay put" placement during the pendency of any due process proceedings contesting the interim alternative educational setting for the duration of the interim placement.

### **Declassified Students**

In accordance with law, the CSE must conduct a manifestation determination in the case of a student with an educational disability who has been declassified if the disciplinary matter involves behavior problems.

### **Disciplinary Measures**

The following shall constitute appropriate disciplinary measures authorized by this Student Code of Conduct:

1. Warnings (oral or written).
2. Detention.
3. In-school suspension.
4. Suspension from school for up to five (5) school days.
5. Suspension from school in excess of five (5) days.
6. Suspension from school for at least one (1) year for possession of a weapon pursuant to the Gun-Free Schools Act of 1994 (subject to the right of the Superintendent to modify such penalty) or, in the case of a student with a disability whose possession of a weapon is determined not to be related to his/her disability, placement in an interim alternative educational setting for a period of up to forty-five (45) days.
7. Placement in an interim alternative educational setting for a period of up to forty-five (45) days, in the case of a student with a disability whose knowing possession or use of illegal drugs, or sale or solicitation of the sale of a controlled substance at a school or school function is determined not to be related to his/her disability.
8. Permanent suspension.

### **Infractions with Penalty References**

1. Disturbances which disrupt instruction (1,2,3,4)
2. Repeatedly disruptive and/or substantially interferes with the teacher's authority in class, giving rise to removal on four or more occasions per semester (4,5)
3. Abusive language and/or indecent gestures directed at staff, students or visitors on school grounds or at school functions (1,2,3,4)
4. Carelessness in failing to follow school rules and staff directions (1,2)

5. Dress or grooming which is inappropriate as described in this code (1,2)
6. Possession or dissemination of obscene materials (1,2,3,4)
7. Smoking or other tobacco products use on campus or at school functions (1,2,4)
8. Cheating in any academic, extra-curricular activity (1,2,3,4,5)
9. Abusive and/or indecent language and or gestures directed at school employees or students on school grounds or at school functions which provoke a fight (2,3,4)
10. Willful failure to obey the reasonable directives of school staff (insubordination), including directives not to engage in conduct otherwise referenced as an infraction in this code and for failing to notify a parent of assignment to detention (1,2,3,4,5)
11. Fighting between students where no dangerous instruments are involved and no person is injured in the altercation (2,3,4)
12. Fighting between students where harm is caused to one or more of the combatants (3,4,5,8)
13. A fight involving the use or threatened use of a dangerous or deadly weapon (4,5,6,8)
14. Any violent act against a teacher or other staff member, as described in this code (5,8)
15. Any violent act against another student or person in the schools or at a school function, as described in this code (5,8)
16. Possession of dangerous or deadly weapons on school property (6,8)
17. Possession of illegal drugs, dangerous drugs, counterfeit drugs, or alcohol, or a substance which the individual believes or represents to be such drugs or alcohol, at a school or school functions (4,5,7,8)
18. Use of illegal drugs, dangerous drugs, counterfeit drugs, or alcohol, or a substance which the individual believes or represents to be such drugs or alcohol, at a school or while attending school functions (4,5,7,8)

19. Sale or other distribution of illegal drugs, alcohol or counterfeit drugs, or a substance which the individual believes or represents to be such drugs or alcohol, at a school or while at school functions (5,7,8)
20. Possession of fireworks on school property or at school functions (4,5)
21. Use of fireworks on school property or at school functions (4,5, 6, 8)
22. Commission of conduct which constitutes a misdemeanor while on school property or at a school function (4,5)
23. Commission of conduct which constitutes a felony while on school property or at a school function (4,5, 8)
24. Gambling (3,4)
25. Hazing (4,5)
26. Lewd behavior (3,4,5)
27. Extortion (4,5,8)
28. Plagiarism (3,4)
29. Arson (4,5,8)
30. Intentional destruction of school property (3,4,5,8)
31. Theft of school property
32. Mental or physical condition which endangers the health, safety, and/or welfare of the student or others
33. Use or possession of beepers, cellular phones, lighters, light or laser pointers, laptops or other electronic devices during the school day. Use or possession of a Discman during any time except study hall or lunch. (Confiscation, 2,3)
34. Violation of computer use policy (1,2,3,4,5, suspension of computer privileges)
35. Class, study hall, homeroom, teacher detention, administrative detention cuts (2,3)
36. Eating or drinking outside of lunch periods or where prohibited (1,2)

37. Driving recklessly, speeding failing to follow school crossing guard's directives on school grounds (suspension of driving privileges, 3,4)
38. Activation of a false alarm, bomb threat or other disaster alarm (5,6,7)
39. Forgery or fraud (3,4,5)
40. Harassment (sexual, racial, etc>0 (2,3,4,5,6,7)
41. Intimidation or coercion (3,4,5,6,7)
42. Leaving campus without authorization (3,4)
43. Parking in unauthorized areas (1,2,3)
44. Public displays of affection beyond hand holding (1,2,3)
45. Tardiness to class/school) (1,2 lunch detention)
46. Unauthorized absence from school (1,2,3)
47. Theft of personal property (2,3,4,5)
48. Trespassing while suspended from school (4,5)

**THE REPEATING OF AN INFRACTION MAY LEAD TO THE IMPOSITION OF THE NEXT MEASURE OF DISCIPLINE.**

**CHRONIC REPEATING OF INFRACTIONS MAY LEAD TO LONG-TERM SUSPENSION OR PERMANENT SUSPENSION (EXPULSION).**

## **XII. CORPORAL PUNISHMENT<sup>26</sup>**

Corporal punishment is any act of physical force upon a student for the purpose of punishing that student. Corporal punishment of any student by any district employee is strictly forbidden.

However, in situations where alternative procedures and methods that do not involve the use of physical force cannot reasonably be used, reasonable physical force may be used to:

1. Protect oneself, another student, teacher or any person from physical injury.
2. Protect the property of the school or others.
3. Restrain or remove a student whose behavior interferes with the orderly exercise and performance of school district functions, posers and duties, if that student has refused to refrain from further disruptive acts.

The district will file all complaints about the use of corporal punishment with the Commissioner of Education in accordance with Commissioner's regulations.

### **XIII. STUDENT SEARCHES AND INTERVIEWS**

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. However, school officials will tell all students why they are being questioned.

In addition, the Board authorizes (title(s) of school district official(s) authorized to conduct searches [e.g., the Superintendent, building 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. An authorized school official may conduct a search of a student's belongings that is minimally intrusive, such as touching the outside of a book bag, without reasonable suspicion, so long as the school official has a legitimate reason for the very limited search.

An authorized school official may search a student or the student's belongings based upon information received from a reliable informant. Individuals, other than the district employees, will be considered reliable informants if they have previously supplied information that was accurate and verified, they make an admission against their own interest, they provide the same information that is received independently from other sources, or they appear to be credible and the information they are communicating relates to an immediate threat to safety. district employees will be considered reliable informants unless they are known to have previously supplied information that they knew was not accurate.

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>27</sup>**

The rules in this code of conduct regarding searches of students and their belongings do not apply to student lockers, desks and other school storage places. 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.

Student cars on school district parking lots are subject to searches.

**B. Documentation of Searches**

The list title(s) 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.

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

**C. Police Involvement in Searches and Interviews of Students**

District officials are committed to cooperating with police officials and other law enforcement authorities to maintain a safe school environment. Police officials, however, have limited authority to interview or search students in schools or at school functions, or to use school facilities in connection with police work. Police officials may enter school property or a school function to question or search a student or to conduct a formal investigation involving students only if they have:

1. A search or an arrest warrant.
2. Probable cause to believe a crime has been committed on school property or at a school function, or
3. Have been invited by school officials.

Before police officials are permitted to question or search any student, the (administrative title) shall first try to notify the student's parent to give the parent the opportunity to be present during the police questioning or search, the parent shall be informed of the questioning or search, in writing, by the (same title) as soon thereafter as possible. The (same title) will also be present during any police questioning or search of a student on school property or at a school function.

Students who are questioned by police officials on school property or at a school function will be afforded the same rights they have outside the school. This means:

1. They must be informed of their legal rights.
2. They may remain silent if they so desire.
3. They may request the presence of an attorney.

#### **D. Child Protective Services Investigations**

Consistent with the district's commitment to keep students safe from harm and the obligation of school officials to report to child protective services when they have reasonable cause to suspect that a student has been abused or maltreated, the district will cooperate with local child protective services workers who wish to conduct interviews of students on school property relating to allegations of suspected child abuse, and/or neglect, or custody investigations.

All requests by child protective services to interview a student on school property shall be made directly to (administrative title). The (same title) shall set the time and place of the interview. The (same title) shall decide if it is necessary and appropriate for a school official to be present during the interview, depending on the age of the student being interviewed and the nature of the allegations. If the nature of the allegations is such that it may be necessary for the student to remove any of his or her clothing in order for the child protective services worker to verify the allegations, the school nurse or other district medical personnel must be present during that portion of the interview. No student may be required to remove his or her clothing in front of a child protective services worker or school district official of the opposite sex.

A child protective services worker may not remove a student from school property without a court order, unless the worker reasonably believes that the student would be subject to danger of abuse, the worker may remove the student without a court order and without the parent's consent.

#### **XIV. 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 return the identification badge to the Principal's office before 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.

## **XV. 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 grounds 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, sexual orientation 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 school function.
10. Possess or use firearms or other weapons including air guns, pistols, rifles, shotguns, ammunition, explosives, box cutters, knives, gas canisters, pepper spray or other noxious spray in or on school property or at a school function, except in the case of law enforcement officers or except as specifically authorized by the school district
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.
16. Use tobacco or tobacco products.

**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.
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 are 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. 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 rights to pursue a civil or criminal legal action against any person violating the code.

## **XVI. 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.
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 sponsor an in-service education 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.

The Board may appoint an advisory committee to assist in reviewing the code and the district's response to code of conduct violations. The committee will be made up of representatives of student, teacher, administrator, and parent organizations, school safety personnel and other school personnel.<sup>29</sup>

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

- 1 This sample code of conduct has been drafted to meet the requirements of the Project SAVE legislation (Education Law §2801) and section 100.2(1) of the draft Commissioner’s regulations.

It is important to note that this is only a sample. There are a number of different ways to structure the required code of conduct. Further, the specific content of the district’s final code must be determined at the local level.

The Board of Education has the exclusive authority to adopt and amend the code of conduct. However, the law requires that the code be developed in collaboration with student, teacher, administrator, and parent organizations, school safety personnel and other school personnel [§2801(2)].

When the word “must” or “will” is used in this code of conduct, it means that the action described is mandatory and that the designated actor is required to act.

This sample annotated code of conduct does not constitute the rendering of legal advice and is not a substitute for competent legal advice. Districts are urged to work closely with their school attorneys in developing their own code of conduct.

- 2 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, orderly school environment.
- 3 The definition of “disruptive student” is taken from Education Law §3214(2-a)(b).
- 4 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 this entire document.
- 5 This definition of “school property” is taken from Education Law §2801.
- 6 This definition of “school activity” is taken from Education Law §2801(1).
- 7 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 word “weapon”.

- 9 The 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 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 would be a violent student and therefore subject to the minimum period of suspension.
- 10 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 effective school policy on school conduct and discipline”. (8 NYCRR 100.2(1)(2)(ii)(o) and (p).
- 11 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 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.
- 12 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)]. The 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 that 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 ¶ 3028 (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, a dress code may be adopted (and indeed the SAVE legislation requires that one be adopted) where there are legitimate educational concerns (*Appeals of Pintka*, 33 EDR 228 (1993)).

According to decisions of the courts and the Commissioner, however, a dress code may not 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 professional, 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 (1963)].

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 reason, 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)].

- 13 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 of conduct 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 law does not state that school districts have the authority to set forth "the circumstances under" which law enforcement will be notified as well as the procedures (as does section 2801(2)(1) 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 discipline 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 school district equipment.

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

- 14 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 the 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.
- 15 The SAVE legislation and draft regulations establish timelines for certain notice and informal hearing requirements 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.

- 16 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.
- 17 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 CSE before removing a disabled student.

Developing procedures to balance the rights of a disabled student who disrupts 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 students with disabilities. As such, school districts must consult with their school attorney to develop such procedures.

- 18 Neither the SAVE legislation nor the draft regulations define "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 EDR31 (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 Mallpica*, 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 drafting the exact language of this provision to ensure it complies with the commissioner's decisions on Education Law §3214.

- 19 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.

- 20 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 complaints 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 time frame 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 time frame, school districts are urged to consult with the school attorney before adopting this provision.

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

The sample code also provides for a similar process for parent 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 days time frame 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.

- 21 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. Section 3214(3)(d) of the Education Law has been amended to comply with the new 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 any 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 a 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.

This 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 the 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 not 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.

- 22 The Education Law requires the superintendent to refer students under the age of 16 and selected other youngsters 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 the school attorney.
- 23 The following 14 and 15 year old students qualify for juvenile offender status under Criminal Procedure Law 1.20(42): to be added.
- 24 Under the law, the district must provide alternate 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 of conduct provides that suspended students over the compulsory education age, who evidence a sincere desire to finish their high school education, will be provided with alternate education.

School officials are reminded that under Education Law §3214(3)(e) districts are required to take immediate steps to provide the alternate 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 alternate instruction for students suspended five days or less (Turner vs. Kowalsky, 49 A.D.2d 943 (2nd Dept. 1975)). In another case, the Commissioner admonished a district for having a policy that stated that the district would not provide alternate instruction if the period of suspension was 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 example, *Child Suspected of Having a Handicapping Condition*, 31 EDR 42 (1991), *Appeal of Ackert*, 30 EDR 31 (1990), *Matter of Mallpica*, 20 EDR 365 (1981)).

- 25 This portion of the sample code of conduct applies only to students with disabilities under IDEA and Article 89. It does not necessarily apply 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 §504.
- 26 This section of the sample code of conduct recites the Commissioner's regulations governing the use of reasonable physical force by school district personnel against students [8NYCRR §§ 19.5(a)-(c); 100.2(1)(3)(i)]. Neither the SAVE legislation nor the draft regulations require that this provision be included in the code of conduct. It is included in this sample code because of its relevancy to the issue of maintaining or restoring school safety.

27 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.