NEW YORK STATE BAR ASSOCIATION
TASK FORCE
ON THE SCHOOL TO PRISON PIPELINE[1]
FINAL REPORT

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Task Force on the School to Prison Pipeline

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I. Executive Summary

A. Task Force Mission

Sharon Gerstman, Esq., during her term as President of the New York State Bar Foundation, established the Task Force on the School to Prison Pipeline. The Task Force was charged with the following mission:

> The mission of this Task Force was to compile information concerning current practices in schools regarding discipline, examine current law regarding school discipline, appropriate disciplinary sanctions, and institution of restorative justice alternatives including youth courts, and create a "best practices" for school districts regarding discipline and restorative justice.

B. Brief Synopsis of N.Y. Education Law § 3214 and the School to Prison Pipeline

New York Education Law Section 3214 sets forth the procedures that school districts may use when disciplining students for various code of conduct violations. Education Law Section 3214 also provides procedures for disciplining special education students, including but not limited to those students with an individualized education plan ("IEP"), or plan in accordance with Section 504 of the Rehabilitation Act ("504 Plan"). Currently, the only statutory form of discipline that may be issued against a student is out of school suspension. As explained in greater detail *infra*, the following disciplinary punishments may be issued:

1. ***Principal Suspension*:**

   The principal of a school district may issue an out of school suspension of up to five days to a student for a code of conduct violation. Prior to issuing the suspension, the principal must advise the parent(s)/guardian(s) of the student of their rights for an informal conference in which the parent(s)/guardian(s) can question the complaining witness.

2. ***Superintendent's Hearing***:

   If the principal deems that the code of conduct violation warrants a suspension of longer than five days, he/she can refer the violation to the Superintendent of Schools for a Superintendent's hearing. The Superintendent or his/her designee will convene a due process hearing. During said hearing, the parent(s)/guardian(s) have the ability to cross-examine District witness(es) and call witnesses on their behalf.

3. ***Disciplinary Punishments for Students with Disabilities***

If a student has an IEP or a 504 plan and has violated the school district's code of conduct, a manifestation hearing is held to determine whether the charged conduct was a manifestation of the IEP or 504 plan. If the charged conduct is determined to be a manifestation, then a student can be transferred to an alternative placement for no more than 45 cumulative days during a given school year. If there is no manifestation, then the student may be issued discipline like a general education student.

The "School to Prison Pipeline" has developed due in measure to the nature of these suspensions. The current system punishes misconduct by exclusion. Students with code of conduct violations are removed from the school setting and often placed into situations in which supervision, and more importantly instruction and the positive socialization effects of a school setting are not present during the day. This provides the unfortunate opportunity for students to become caught up in unacceptable and possible criminal activity. Further, whether knowingly or not, certain school districts suspend students of color and students with a disability at a greater frequency than students who are Caucasian or do not have an IEP or 504 plan. This disparate treatment of minority students and students with disabilities is shown in greater detail *infra*, in Section IV(A) entitled "Populations Subject to Disparate Treatment," through case studies and other statistical data from the United States Department of Education's Office of Civil Rights. Due to the fact that suspension is the statutorily endorsed discipline that may be issued in accordance with Education Law Section 3214, this trend will only continue to worsen unless ameliorative statutory change is effectuated.

School districts have not only suspended students for misconduct on school grounds, but have referred misconduct to law enforcement. As described more fully in Section IV(A)(1) *infra*, law enforcement referrals have increased significantly in 2018 and there is data that demonstrates implicit bias has led to high rates of referrals for students of color and/or students with a disability. Students who have been suspended or referred to law enforcement are more at risk to enter the juvenile system causing the flow of the "School to Prison Pipeline" to increase.

C. Recommendations

This Report includes the following recommendations that should be made to Education Law Section 3214. This Task Force believes that the inclusion of language in Education Law Section 3214 to permit and endorse the use of restorative justice practices in lieu of suspension of students will help rectify this growing problem of the "School to Prison

Pipeline." By statutorily endorsing school district use of alternative disciplinary procedures to suspension, this Task Force believes that many more school districts will utilize this model to treat with student misconduct. The Task Force trusts that this will interrupt the disturbing trend of increase in the flow of the "School to Prison Pipeline." The Task Force appreciates that there are several of the over seven hundred New York school districts that have exercised local discretion and have instituted restorative justice techniques. Our recommendation should not be taken to suggest that school districts were without independent authority to adopt restorative justice procedures.

This Task Force also recommends that school districts review their code of conducts to include the use of restorative justice practices for specific code of conduct violations. While this Task Force does not suggest a change in the law mandating the use of restorative justice practices for code of conduct violations, the New York State Education Department ("NYSED") and the Board of Regents should undertake review of this statutory modification.

The Task Force urges that the New York State Education Department study and consider the following:

1. The development of a standardized methodology for measuring disparities in discipline at both district and school levels across the protected classes of race, gender, disability and, if possible, by LGBTQ status. NYSED would report the data annually to districts and the public.

2. The study and development of model materials and processes that districts and schools can use to analyze the root causes of the disparities demonstrated in their data. The Task Force suggests that this include information on strategies including training, services, courses, materials, consultants and best practices that have been shown to successfully reduce disparities in discipline to assist schools and/or districts in recognizing and addressing such disparities.

Finally, we urge the State Legislature and Governor to provide ample financial support to school districts' introduction of restorative justice as an alternative to exclusionary discipline.

II. Overview of the School to Prison Pipeline

The School to Prison Pipeline Task Force ("Task Force") of the New York State Bar Association is cognizant that student suspension from school is often the first step in a chain of events leading to undesirable consequences. In an attempt to address this important issue extant in many New York State school districts, the Task Force studied workable alternatives to student suspensions and thus urges the New York State Bar Association to affirmatively recommend that the Student Suspension statute, Education Law §3214 be amended to ensure that school districts consider employing restorative practices in their codes of conduct.

Research indicates that students who are excluded from school face dire consequences including lower academic achievement; higher truancy; higher dropout rates and a higher contact with the juvenile justice system. All of this leads to lower local and state economic growth.[2] In addition, the Office of Civil Rights ("OCR") has documented that students of certain racial groups tend to be disciplined more than their peers. For example, African-American students without disabilities are more than three (3) times as likely as white peers without disabilities to be suspended or expelled.[3]

Statistical studies further demonstrate that students who are suspended are three times more likely to have risk of contact with the judicial system and two times more likely to drop out of school than are students who are not suspended from school. Furthermore, students with a first arrest and court appearance are four times more likely to drop out of school and students even who are treated as a juvenile in a court proceeding are seven times more likely to secure a future of adult criminal records.[4]

According to the Center for Urban Education Success, Restorative Justice Practice is an increasingly acknowledged and employed approach to school discipline, behavior, and relationships. Rather than focusing upon punitive measures, which lead to anger, shame and ostracism, Restorative Justice Practice is focused on repair and reconciliation. Its

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[2] *See generally*, Russel J. Skiba, Mariella I. Arredondo, & M. Karega Rausch, *New and Developing Research on Disparities in Discipline*, DISCIPLINE DISPARITIES: A RESEARCH TO PRACTICE COLLABORATIVE AT INDIANA UNIVERSITY, March 2014.

[3] U.S. DEP'T OF JUST. & U.S. DEP'T OF EDUC., DEAR COLLEAGUE LETTER ON THE NONDISCRIMINATORY ADMINISTRATION OF SCHOOL DISCIPLINE 3 (Jan. 8, 2014), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html.

[4] Fred Cheesman, *Facts about the School-to-Prison Pipeline*, NAT'L CONSORTIUM ON RACIAL AND ETHNIC FAIRNESS IN THE CTS., (2016), *available at* http://www.national-consortium.org/~/media/Microsites/Files/National%20Consortium/Conferences/2016/Materials/School-to-Prison-fact-sheet.ashx; *see also* Steven C. Teske, & J. Brian Huff, *The Court's Role in Dismantling the School-to-Prison Pipeline*, JUV. AND FAM. JUST. TODAY, Winter 2011, at 14-17.

principles are rooted in indigenous communities and religious traditions[5] where the concept of justice relies on an assumption that everyone in a community is relationally connected to one another and to their community and that when a wrong has occurred, "it represents a wound in the community, a tear in the web of relationships"[6] which requires repair. Restorative Justice Practice holds accountable everyone involved in a relationship – offenders, victims, and community members. Unlike exclusionary discipline, which separates victims and offenders, Restorative Justice Practice techniques are designed to bring these stakeholders together where they can take turns speaking in a safe listening space. Using both proactive and interventional strategies, students, teachers, and everyone else in the school community (social workers, staff, administrators, parents, school safety officers, etc.) meet in various formats, such as restorative circles, community building circles, restorative conversations and peer mediation[7] which steers the conversations away from retribution and toward reintegrating wrongdoers back into the community. These Restorative Justice strategies are particularly beneficial in school settings where members of the community will be seeing each other repeatedly and often following a conflict.[8] Similar to punitive discipline, Restorative Justice philosophy and practices can lead to community transformation[9] over time, but deepened relationships and community rather than crime and isolation characterize the transformed culture.

The Late Chief Judge Judith Kaye tirelessly worked to secure legislation which would move school districts away from imposing only punitive disciplining measures on students and towards the employment of restorative practices. The New York State Bar Association should move in a direction to support legislative change making Judge Kaye's vision a reality and to work toward the goal of dismantling the School to Prison Pipeline.

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[5] Anne Gregory & Rhona S. Weinstein, *The Discipline Gap and African Americans: Defiance or Cooperation in the High School Classroom*, 46 J. SCH. PSYCHOL. 455, 455-475 (2008).

[6] HOWARD ZEHR, THE LITTLE BOOK OF RESTORATIVE JUSTICE 29 (2015).

[7] Tom Cavanaugh, Patricia Vigil & Estrellita Garcia, *A Story Legitimating the Voices of Latino/Hispanic Students and Their Parents: Creating a Restorative Justice Response to Wrongdoing and Conflict in Schools*, 47 EQUITY & EXCELLENCE IN EDUC. 565, 565-79 (2014); Anne Gregory, Russi Soffer, Easton Gaines, Aria Hurley & Neela Karikehalli, *Implementing Restorative Justice in Schools: Lessons Learned From Restorative Justice Practitioners in Four Brooklyn Schools*, BROOKLYN COMMUNITY FOUNDATION, Nov. 2016, http://www.brooklyncommunityfoundation.org/sites/default/files/lessons_learned_about_early_implementation_of_restorative_justice_in_schools_for_distribution.pdf; Allison Ann Payne & Kelly Welch, *The Effect of School Conditions on the Use of Restorative Justice in Schools*, 16 YOUTH VIOLENCE AND JUV. JUST. 224, 224-40 (2017).

[8] Thalia González, *Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline*, 41 J.L. & EDUC. 281, 281-335 (2012).

[9] Jeanne B. Stinchcomb, Gordon Bazemore & Nancy Riestenberg, *Beyond Zero Tolerance: Restoring Justice in Secondary Schools*, 4 YOUTH VIOLENCE AND JUV. JUST. 123, 123-47 (2006).

One note of caution – the Task Force does not recommend the dismantling of traditional student discipline under Section 3214 of the Education Law. There is little doubt that across New York State many school districts use the tools provided by this statute appropriately, effectively, and in accord with student due process protection.

III. Overview of the Current Law

Every board of education, board of trustees, board of cooperative educational services and county vocational extension board must adopt and amend a code of conduct to maintain order on school property[10] or at a school function.[11] The code of conduct governs the conduct of students, teachers, school personnel, and visitors. At a minimum the code of conduct must include:

- **Conduct Guidelines:** appropriate conduct, language and dress on school property and acceptable treatment of teachers, school administrators, other school personnel, students and visitors on school property;[12]

- **Disciplinary Measures:** appropriate range of disciplinary measures that may be imposed for violation of the code;[13]

- **Roles:** roles of teachers, administrators, other school personnel, the board or other governing body, and parents;[14]

- **Provisions Against Bullying and Harassment:** provisions "prohibiting harassment, bullying, and/or discrimination against any student, by employees or students that creates a hostile school environment by conduct or by threats, intimidation or abuse, including cyberbullying" as defined in N.Y. Education Law § 11(8);[15]

- **Security Procedures:** standards and procedures to assure the security and safety of students and school personnel;[16]

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[10] School property means "[(1)] 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 [(2)] in or on a school bus, as defined by section [142] of the vehicle and traffic law." N.Y. EDUC. LAW § 11(1) (McKinney 2018).

[11] 8 NYCRR § 100.2(l)(2); School function is defined as "a school-sponsored extracurricular event or activity." N.Y. EDUC. LAW § 11(2) (McKinney 2018).

[12] 8 NYCRR § 100.2(l)(2)(ii)(a).

[13] *Id*.

[14] *Id*.

[15] *Id*. § 100.2(l)(2)(ii)(b).

[16] *Id*. § 100.2(l)(2)(ii)(c).

- **Removal Procedures:** provisions for removing students and other persons who violate the code from the classroom or school property;[17]

- **Disruptive Pupils:** provisions "prescribing the period for which a disruptive pupil may be removed from the classroom for each incident, provided that no such pupil shall return to the classroom until the principal makes a final determination pursuant to Education Law § 3214(3-a)(c), or the period of removal expires, whichever is less;"[18]

- **Specific Disciplinary Measures:** disciplinary measures to be taken against those who possess or use weapons or illegal substances, use physical force, commit acts of vandalism, violate another student's civil rights, threaten violence, or harass, bully, and/or discriminate against other students;[19]

- **Responding to Bullying, Harassment, and/or Discrimination:** provisions "for responding to acts of harassment, bullying, and/or discrimination against students by employees or students …, which with respect to such acts against students by students, incorporate a progressive model of student discipline that includes measured, balanced and age-appropriate remedies and procedures that make appropriate use of prevention, education, intervention and discipline, and considers among other things, the nature and severity of the offending student's behavior(s), the developmental age of the student, the previous disciplinary record of the student and other extenuating circumstances, and the impact the student's behaviors had on the individual(s) who was physically injured and/or emotionally harmed;"[20]

- **Disciplinary Procedures and Alternative Education:** provisions for the detention, suspension and removal from the classroom of students, consistent with applicable laws, including policies and procedures to ensure the continued educational programming and activities for students who are placed in detention, suspended from school or removed from the classroom;[21]

- **Reporting and Enforcement:** procedures to report and determine violations and procedures to impose and carry out disciplinary measures;[22]

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[17] *Id*. § 100.2(l)(2)(ii)(d).
[18] *Id*. § 100.2(l)(2)(ii)(e).
[19] *Id*. § 100.2(l)(2)(ii)(f)-(g).
[20] *Id*. § 100.2(l)(2)(ii)(h).
[21] *Id*. § 100.2(l)(2)(ii)(i).
[22] *Id*. § 100.2(l)(2)(ii)(j).

- **Compliance with Other Laws:** procedures to ensure that the code and its enforcement comply with state and federal laws;[23]

- **Criminal Acts:** provisions for notifying local law enforcement agencies about which code violations constitute a crime;[24]

- **Parental Notification:** circumstances under and procedures by which persons in parental relation to the student will be notified of code violations;[25]

- **Court Complaints:** circumstances under and procedures by which a complaint in criminal court, a juvenile delinquency petition, or person in need of supervision petition will be filed;[26]

- **Referrals to Human Service Agencies:** circumstances under and procedures by which referrals to appropriate human service agencies are made;[27]

- **Minimum Suspension Periods:** a minimum suspension period for students who repeatedly are substantially disruptive of the educational process or substantially interfere with the teacher's authority over the classroom (suspending authority may reduce this period on a case-by-case basis to be consistent with any other state or federal law);[28]

- **Violent Students:** a minimum suspension period for acts that would qualify the student as a violent pupil as defined by section 3214 of the Education Law (suspending authority may reduce this period on a case-by-case basis to be consistent with any other state or federal law);[29]

- **Student Bill of Rights:** a bill of rights and responsibilities of students that focuses on positive student behavior and that will be annually publicized and explained to all students;[30]

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[23] *Id*. § 100.2(l)(2)(ii)(k).
[24] *Id*. § 100.2(l)(2)(ii)(l).
[25] *Id*. § 100.2(l)(2)(ii)(m).
[26] *Id*. § 100.2(l)(2)(ii)(n).
[27] *Id*. § 100.2(l)(2)(ii)(o).
[28] *Id*. § 100.2(l)(2)(ii)(p).
[29] *Id*. § 100.2(l)(2)(ii)(q).
[30] *Id*. § 100.2(l)(2)(ii)(r).

- **In-Service Programs:** guidelines and programs for in-service education programs for all district staff members to ensure effective implementation of the school policy on student conduct and discipline;[31] and

- **Retaliation: a** provision "prohibiting retaliation against any individual who, in good faith, reports or assists in the investigation of harassment, bullying, and/or discrimination."[32]

The code of conduct must be developed in collaboration with students, teachers, administrators, parent organizations, and school personnel.[33] Each school district must file a copy of its code of conduct and any amendments to the code of conduct with the Commissioner no later than thirty days after their adoption.[34] As set forth above, a school district's code of conduct lays the foundation for student disciplinary procedures.

A. Education Law § 3214: Student Discipline Proceedings

The Fourteenth Amendment to the United States Constitution provides that no State shall "deprive any person of life, liberty, or property, without due process of law … ."[35] In 1975, the United States Supreme Court, in *Goss v. Lopez*, held that the Fourteenth Amendment "protects the citizen against the State itself and all of its creatures – Boards of Education not excepted."[36] More importantly, in such case, the Court held for the first time that a student's entitlement to a public education is a property interest protected by the Fourteenth Amendment's Due Process Clause "which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause."[37]

Furthermore, in *Goss v. Lopez*, the Court noted that "young people" who attend the public school system "do not 'shed their constitutional rights' at the schoolhouse door."[38] More specifically, the Court observed that a "10-day suspension from school is not *de minimis* … and may not be imposed in complete disregard of the Due Process Clause." Although a short suspension is far less serious than an expulsion, the Court found that "[n]either the property interest in educational benefits temporarily denied nor the liberty interest in reputation, which is also implicated, is so insubstantial that suspensions may

[31] *Id*. § 100.2(l)(2)(ii)(s).
[32] *Id*. § 100.2(l)(2)(ii)(t).
[33] *Id*. § 100.2(l)(1)(i).
[34] *Id*. § 100.2(l)(2)(iii)(a).
[35] U.S. CONST. amend. XIV, § 1.
[36] *Goss v. Lopez*, 419 U.S. 565, 574 (1975).
[37] *Id*.
[38] *Id*. (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)).

constitutionally be imposed by any procedure the school chooses, no matter how arbitrary."[39]

The Court's holding in *Goss v. Lopez* set the ground rules for state disciplinary procedures. While attempting to balance the interests of students and schools, the Court held that:

> Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.[40]

The ruling established in *Goss v. Lopez* affords students the right to due process prior to being suspended or expelled but it does not afford them the utmost protections under the law. For example, student discipline proceedings need not take the form of a judicial or quasi-judicial trial and students do not have the right to legal counsel or the right to confront and cross-examine witnesses for a suspension of 10 days or less.[41]

Even though the *Goss v. Lopez* decision focused primarily on suspensions of ten days or less, the Court nonetheless recognized that "[l]onger suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures."[42] Therefore, the Court left it up to the states to determine exactly what "more formal procedures" are required for long-term suspensions or expulsions.

Overall, the Court in *Goss* established the principle that fundamental fairness is inherent to the student discipline process. Therefore, *Goss v. Lopez* remains the cornerstone for student discipline proceedings in most, if not all states, especially New York.

The New York State Legislature created Education Law Section 3214 in 1947 as a procedure to discipline students, which includes suspension.[43] A school district's board of education, board of trustees (or sole trustee), the superintendent of schools, district superintendent of schools, or principal of a school may suspend the pupils from required attendance upon instruction for the following conduct:

- Insubordination
- Being Disorderly
- Being Violent

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[39] *Id*. at 576.
[40] *Id*. at 581.
[41] *Id*. at 583.
[42] *Id*. at 584.
[43] N.Y. EDUC. LAW § 3214 (McKinney 2018).

- Being Disruptive
- or Conduct otherwise endangers the safety, morals, health or welfare of others.[44]

A violent pupil is defined as an elementary student or secondary student under twenty-one years of age who: [45]

- Commits an act of violence upon a teacher, administrator, or other school employee;[46]
- Commits, while on school district property, an act of violence upon another student or any other person lawfully upon said property;[47]
- Possesses, while on school district property, a gun, knife, explosive, or incendiary bomb, or other dangerous instrument capable of causing physical injury or death;[48]
- Displays while on school district property, what appears to be a gun, knife, explosive or incendiary bomb or other dangerous instrument capable of causing death or physical injury;[49]
- Threatens, while on school district property, to use any instrument that appears to be capable of causing physical injury or death;[50]
- Knowingly and intentionally damages or destroys the personal property of a teacher, administrator, other school district employee or any person lawfully upon school district property;[51] or,
- Knowingly or intentionally damages or destroys school district property.[52]

A disruptive pupil is an elementary or secondary student under twenty-one years of age who is substantially disruptive of the educational process or substantially interferes with the teacher's authority over the classroom.[53]

1. ***Corporal Punishment or Aversive Interventions***

Section 3214 of the Education Law provides disciplinary procedures for disciplining students but it does not provide for the use of corporal punishment. No teacher, administrator, officer, employee or agent of a school district in New York State or Board

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[44] *Id*. § 3214(3)(a).
[45] *Id*. § 3214(2-a).
[46] *Id*. § 3214(2-a)(1).
[47] *Id*. § 3214(2-a)(2).
[48] *Id*. § 3214(2-a)(3).
[49] *Id*. § 3214(2-a)(4).
[50] *Id*. § 3214(2-a)(5).
[51] *Id*. § 3214(2-a)(6).
[52] *Id*. § 3214(2-a)(7).
[53] *Id*. § 3214(2-a)(b).

of Cooperative Educational Services (BOCES), a charter school, state-operated or state supported school, may use corporal punishment against a pupil.[54] Corporal punishment is defined as any act of physical fore upon a pupil for the purpose of punishing that pupil.[55]

However, there are certain, and very limited instances, in which reasonable physical force can be used, including:[56]

i. To protect oneself from physical injury;[57]
ii. To protect another pupil or teacher or any person from physical injury;[58]
iii. To protect the property of the school, school district or others;[59] or
iv. To restrain or remove a pupil whose behavior is interfering with the orderly exercise and performance of school or school district functions, powers and duties, if that pupil has refused to comply with a request to refrain from further disruptive acts.[60]

Further aversive interventions cannot be used against pupils as a tool to reduce or eliminate maladaptive behaviors.[61] An aversive intervention is defined as an intervention that is intended to induce pain or discomfort to a student for the purpose of eliminating or reducing maladaptive behaviors, including:[62]

i. Contingent application of noxious, painful, intrusive stimuli or activities; strangling, shoving, deep muscle squeezes or other similar stimuli;[63]
ii. Any form of noxious, painful or intrusive spray, inhalant or tastes;[64]
iii. Contingent food programs that include the denial or delay of the provision of meals or intentionally altering staple food or drink in order to make it distasteful;[65]
iv. Movement limitation used as punishment, including but not limited to helmets and mechanical restraint devices;[66] or
v. Other stimuli or actions similar to the interventions described above.[67]

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[54] 8 NYCRR § 19.5(a)(1).
[55] *Id*. § 19.5(a)(2); 8 NYCRR § 100.2(l)(3)(i).
[56] 8 NYCRR § 19.5(3); 8 NYCRR § 100.2(l)(3)(i).
[57] 8 NYCRR § 19.5(3)(i); 8 NYCRR § 100.2(l)(3)(i)(a).
[58] 8 NYCRR § 19.5(3)(ii); 8 NYCRR § 100.2(l)(3)(i)(b).
[59] 8 NYCRR § 19.5(3)(iii); 8 NYCRR § 100.2(l)(3)(i)(c).
[60] 8 NYCRR § 19.5(3)(iv); 8 NYCRR § 100.2(l)(3)(i)(d).
[61] 8 NYCRR § 19.5(b)(1).
[62] *Id*. § 19.5(b)(2).
[63] *Id*. § 19.5(b)(2)(i).
[64] *Id*. § 19.5(b)(2)(ii).
[65] *Id*. § 19.5(b)(2)(iii).
[66] *Id*. § 19.5(b)(2)(iv).
[67] *Id*. § 19.5(b)(2)(v).

However, an aversive intervention does not include voice control, limited to loud, firm commands; time-limited ignoring of a specific behavior; token fines as part of a token economy system brief physical prompts to interrupt or prevent a specific behavioral interventions medically necessary for the treatment or protection of the student; or other similar interventions.[68]

2. *Off Campus Conduct and Social Media*

Pupils may be disciplined for off-campus misconduct when it is "reasonably foreseeable" that the misconduct will "create a risk of a material and substantial disruption" in the school setting.[69] The board may take disciplinary action against a student who committed a school-related criminal act or school-related act that indicates the student's presence in school poses a danger to the health, safety, morals, or welfare of other students.[70] However, a school district may not punish a student's criminal conduct if it does not affect the school setting.[71]

The New York State Education Department ("NYSED") and New York's Attorney General have released guidance documents which define cyberbullying as the repeated use of information technology, including email, instant messaging, blogs, chat rooms, cell phones and gaming systems to deliberately harass, threaten, antagonize or intimidate others.[72] Students have routinely been disciplined for conduct that occurred on social media, for example, posts relating to violence at school,[73] and cyberbullying, to both teachers and students.[74]

With regard to searching students' personal devices, students have a legitimate expectation of privacy in school, and school officials must balance that expectation of privacy against the school's interest in maintaining order and discipline.[75] When determining whether a school appropriately searched a student's device for the purpose

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[68] *Id*. § 19.5(b).
[69] *Doninger v. Niehoff*, 527 F.3d 41 (2d. Cir 2008); *Appeal of S. W.*, 44 Ed. Dept. Rep. 446 (2005); *Appeal of K.S.*, 43 Ed. Dept. Rep. 492 (2004); *Appeal of R.C.*, 41 Ed. Dept. Rep. 446 (2002); *Appeal of Mangaroo*, 33 Ed. Dept. Rep. 286 (1993).
[70] *Appeal of Pollnow*, 21 Ed. Dept. Rep. 291 (1981).
[71] *Id*.
[72] *The New York State Dignity for All Students Act: A Resource and Promising Practices for School Administrators & Faculty*, NEW YORK STATE EDUCATION DEPARTMENT, (December 2017), *http://www.p12.nysed.gov/dignityact/documents/FINALDignityForAllStudentsActGuidanceDec2017.pdf*; *Cyberbullying*, ATTORNEY GENERAL: BARBARA D. UNDERWOOD, https://ag.ny.gov/internet/cyberbullying (last visited December 21, 2018). The term cyberbullying is also defined in the Dignity for All Students Act as harassment or bullying which occurs through any form of electronic communication. N.Y. EDUC. LAW. § 11(8) (McKinney 2018).
[73] *Wisniewski v. Bd. of Educ. of the Weedsport C.S.D.*, 494 F.3d 34 (2d Cir. 2007).
[74] *Appeal of E.S.*, 50 Ed. Dept. Rep.____, Decision No. 16,105 (2010); *Appeal of J.F. and J.F.*, 46 Ed. Dept. Rep. 205 (2006); *Appeal of Ravlik*, 40 Ed. Dept. Rep. 262 (2000); *Appeal of Leahy*, 39 Ed. Dept. Rep. 375 (1999).
[75] *New Jersey v. T.L.O.*, 469 U.S. 341 (1985).

of discipline, a school must determine: 1) whether the search was justified in its inception, and 2) was the search reasonably related in scope to the circumstances which justified the interference in the first place.[76]

3. *Procedure for Suspension or Removal of Pupils*

i. Teacher Removal of Disruptive Students.

Teachers have the power and authority to remove a disruptive pupil from his/her classroom consistent with discipline measures contained in the district's code of conduct.[77] School authorities must establish policies and procedures to ensure that the educational programming and activities for students removed from the classroom continues.[78] Students may not be removed in violation of any state or federal law or regulation.[79] The teacher must inform the student and school principal of the reasons for the removal.[80]

If the teacher finds that the pupil's continued presence in the classroom does not pose a continuing danger to persons or property and does not present an ongoing threat of disruption to the academic process, the teacher has to explain the basis for the removal to the student, allowing the student to informally present his/her version of the incident, prior to removing the student from the classroom.[81]

In all other cases, the teacher must explain the basis for the removal to the student and provide an informal opportunity to be heard within twenty-four hours of the student's removal.[82] If the twenty-four hour period does not end on a school day, it will be extended to the corresponding time on the next school day.[83]

The principal must inform the student's parent or person in parental relation to the student of the removal and the basis for it within twenty-four hours. If the twenty-four hour period does not end on a school day, it will be extended to the corresponding time on the next school day.[84] The student and his/her parent will, upon request, be given an opportunity for an informal conference with the principal to discuss the reasons for the removal.[85]

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[76] *Id.*
[77] N.Y. EDUC. LAW § 3214(3-a) (McKinney 2018).
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] *Id.*

If the student denies the charges, the principal will explain the basis for the removal and allow the student and his/her parent an opportunity to present the student's version of the incidents.[86] The informal hearing must be held within forty-eight hours of the student's removal.[87] If the forty-eight hour period does not end on a school day, it will be extended to the corresponding time on the second school day next following the student's removal.[88]

The principal will not set aside the discipline imposed by the teacher unless he/she finds that the charges against the student are not supported by substantial evidence, that the student's removal violates the law, or that the conduct warrants suspension from school (suspension will then be imposed).[89] The principal's determination must be made by the close of business on the day succeeding the forty-eight hour period for an informal hearing.[90]

Students may not return to the classroom until the principal makes a final determination, or the period of removal expires, whichever is less.[91] The principal may, in his/her discretion, designate a school district administrator to carry out these functions.[92]

ii. Suspensions of Five Days or Less

A student's legitimate entitlement to a public education may not be taken away for misconduct without due process.[93] As previously mentioned, only a school district's board of education, board of trustees (or sole trustee), the superintendent of schools, district superintendent of schools or principal of the school where the pupil attends will have the power to suspend a pupil for a period not to exceed five school days.[94] When a pupil is to be suspended, the board of education, board of trustees (or sole trustee), the superintendent of schools, district superintendent of schools, or principal must provide the pupil with notice of the charged misconduct prior to the suspension.[95] The school district must also immediately notify the parent(s) or person in parental relation in writing that the student may be suspended from school.[96] Such written notice must be

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[86] *Id*.
[87] *Id*.
[88] *Id*.
[89] *Id*.
[90] *Id*.
[91] *Id*.
[92] *Id*.
[93] *See Goss,* 419 U.S. 565.
[94] N.Y. EDUC. LAW § 3214(3)(b)(1) (McKinney 2018). The principal's authority to suspend may not be delegated. *See Appeal of A.L., Jr.*, 42 Ed. Dept. Rep. 368 (2003) (finding that a suspension imposed by the assistant principal was improper); *see Appeal of T.B.*, 52 Ed. Dept. Rep. , Decision No. 16,385 (2012).
[95] N.Y. EDUC. LAW § 3214(3)(b)(1); *see also Goss*, 419 U.S. 565.
[96] *Appeal of J.G.*, 39 Ed. Dept. Rep. 393 (1999) (holding that telephone notification does not satisfy the writing requirement); *see also Appeal of V.G.*, 44 Ed. Dept. Rep. 271 (2005); *Appeal of T.B.*, 52 Ed. Dept. Rep. _____

provided by personal delivery, express mail delivery or an equivalent means reasonably calculated to assure that the parent receives the notice within 24 hours of the suspension decision.[97] Notification sent by regular mail does not satisfy the delivery requirement.[98] The notice must describe the incident for which the suspension is proposed and inform the parent of his/her right to request an immediate informal conference with the principal.[99] The notice must also state that the student and parent have a right to an informal conference and that they have the right to question the complaining witness.[100] Failure to notify of these rights will result in expunging the suspension from the student's record.[101]

Furthermore, the board of education, board of trustees (or sole trustee), the superintendent of schools, district superintendent of schools, or principal, must provide an explanation for the suspension if the pupil denies the misconduct.[102] The pupil and the person in parental relation to the pupil must be afforded an opportunity for an informal conference with the principal, person, or body authorized to impose discipline[103] at which the pupil and/or person in parental relation will be authorized to present the pupil's version of the event(s) and to ask questions of the complaining witness.[104] Such informal conference must take place prior to the suspension.[105] However, should the pupil's presence in the school pose a continuing danger to persons or property, or an ongoing threat of disruption to the academic process, the pupil's notice and opportunity for an informal conference will take place as soon after the suspension as is reasonably practicable.[106] Notwithstanding, a teacher should immediately report and refer a violent pupil to the principal or superintendent for a violation of the code of conduct pursuant to N.Y. Education Law §2801 and a minimum suspension.[107]

Decision No. 16,385 (2012). Further, such written notice must be provided in the parent's primary language or mode of communication. *Appeal of S.C.*, 44 Ed. Dept. Rep. 164 (2004).

[97] *Appeal of a Student with a Disability*, 44 Ed. Dept. Rep. 136 (2004).

[98] *Id*.

[99] *Appeal of a Student Suspected of Having a Disability*, 38 Ed. Dept. Rep. 52 (1998).

[100] *Appeal of Coleman*, 41 Ed. Dept. Rep. 101 (2001); *Appeal of a Student Suspected of Having a Disability*, 39 Ed. Dept. Rep. 476 (1999); *Appeal of P.R. and C.R.*, 41 Ed. Dept. Rep. 48 (2001).

[101] *Appeal of Coleman*, 41 Ed. Dept. Rep. 101 (2001); *Appeal of a Student Suspected of Having a Disability*, 39 Ed. Dept. Rep. 476 (1999); *Appeal of P.R. and C.R.*, 41 Ed. Dept. Rep. 48 (2001).

[102] N.Y. EDUC. LAW § 3214(3)(b)(1); *see also Goss*, 419 U.S. 565.

[103] *Appeal of Somers*, 32 Ed. Dept. Rep. 431 (1993).

[104] N.Y. EDUC. LAW § 3214(3)(b)(1); *see also Goss*, 419 U.S. 565. It is insufficient to merely provide the student and his/her parent an opportunity to speak with the principal without the complaining witnesses present or an opportunity to speak to the complaining witnesses without the principal present. *Appeal of A.L., Jr.*, 42 Ed. Dept. Rep. 368 (2003); *Appeal of Allert*, 32 Ed. Dept. Rep. 342 (1992).

[105] *Appeal of a Student with a Disability*, 44 Ed. Dept. Rep. 136 (2004).

[106] N.Y. EDUC. LAW § 3214(3)(b)(1); *see also Goss*, 419 U.S. 565.

[107] N.Y. EDUC. LAW § 3214(3)(b)(2) (McKinney 2018).

As for in-school suspensions, a full §3214 disciplinary hearing is not required. Due process requires that a student be given an opportunity to appear informally before the person or body authorized to impose discipline to discuss the conduct.[108] Also, similar to suspensions for five days or less, school districts are not required to maintain a record of the informal meeting for an in-school suspension.[109]

A student or person in parental relation to the student may appeal a suspension of five days or less directly to the Commissioner of Education, unless the board of education has a board policy which sets forth the proper appeal procedures for such suspension.[110] Failure to strictly adhere to the due process requirements outlined above, will result in the Commissioner of Education issuing a directive to expunge the suspension from the student's record.[111] However, school districts may correct alleged procedural due process violations by holding a curative hearing and by allowing the student to return to school from the time the due process violation occurred to the date of the curative hearing.[112]

iii. Suspensions Exceeding Five Days

Education Law §3214 also develops procedures for suspensions exceeding five days, which also require notice and an opportunity for a fair hearing. The timing, contents of the notice, and nature of the hearing depend on the circumstances of the case.[113] However, if the pupil is a student with a disability, or presumed with a disability, a manifestation proceeding must occur pursuant to N.Y. Education Law 3214(3)(g). [114]

In contrast to suspensions for five days or less, only the superintendent and the board have authority to suspend a student for more than five days. The pupil must have had

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[108] *Appeal of Watts*, 23 Ed. Dept. Rep. 459 (1984).
[109] *Id*.
[110] *Appeal of S.C.*, 44 Ed. Dept. Rep. 164 (2004); *see also Appeal of A.B.*, 57 Ed. Dept. Rep. , Decision No. 17,172 (2017). Commissioner of Education will only overturn a suspension if it was determined to be arbitrary, capricious, lacked rational basis or was affected by error of law. *Bd. of Educ. of Monticello Cent. Sch. Dist. v. Comm'r of Educ.*, 91 N.Y.2d 133 (1997).
[111] *See Appeal of P.B.*, 53 Ed. Dept. Rep._____, Decision No. 16,533 (2013) (ordering the student's suspension be expunged for the following reasons: (1) the parent's right to an informal conference was not provided in the notice prior to the student's suspension; (2) the district failed to personally deliver the notice or use a method reasonably calculated to ensure receipt within 24 hours; and (3) the district failed to provide the parent(s)/guardian(s) with a meaningful opportunity to attend the informal conference and speak to witnesses prior to the imposition of the suspension); *see also Appeal of McMahon and Mosely*, 38 Ed. Dept. Rep. 22 (1998); New York State School Boards Association, New York State Association of School Attorneys, "Student discipline, never easy, gets a little harder," (January 27, 2014) *available at* http://www.nyssba.org/news/2014/01/24/on-board-online-january-27-2014/student-discipline-never-easy-gets-a-little-harder/.
[112] *Appeal of C.Q. and J.Q.*, 41 Ed. Dept. Rep. 294 (2002).
[113] N.Y. EDUC. LAW § 3214(3)(c)(1) (McKinney 2018); *see also Goss*, 419 U.S. 565.
[114] N.Y. EDUC. LAW § 3214(3)(c)(1).

the opportunity for a fair hearing, upon reasonable notice,[115] at which such pupil will have the right of representation by counsel,[116] who has the right to question witnesses[117] against such pupil and to present witnesses and other evidence[118] on his or her behalf.[119] This type of hearing is called a Superintendent's Hearing, as the superintendent of schools, district superintendent of schools, or community superintendent, or his/her designee will personally hear and determine the proceeding or will designate a hearing officer to conduct the hearing.[120] The hearing does not need to be held within five days of the suspension, but the student must be allowed to return to school after five days if no hearing has been held.[121] A pupil who has previously been suspended for an action by a principal, can be disciplined through a Superintendent's hearing for the same misconduct.[122] During a hearing, the hearing officer may administer oaths and issue subpoenas in connection with the proceeding.[123] Unlike suspensions of five days or less, a record of the hearing must be maintained but no stenographic transcript is required, and a tape recording is satisfactory.[124] At the conclusion of the hearing, the hearing

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[115] Reasonable notice varies under the circumstances of each case but one day's notice is insufficient. *Appeal of Eisenhauser*, 33 Ed. Dept. Rep. 604 (1994); *see also Carey v. Savino*, 91 Misc. 2d 50 (holding that less than one day's notice is insufficient to comport with due process because it does not allow the student enough time to secure counsel). Such notice "must provide the student with enough information to prepare an effective defense, but need not particularize every single charge against a student." *Appeal of a Student with a Disability*, 39 Ed. Dept. Rep. 428 (1999); *Monticello*, 91 N.Y.2d 133 (finding that notice must allow the student and his/her counsel, if any, to prepare and present an adequate defense). Furthermore, the charges must be "sufficiently specific to advise the student and his counsel of the activities or incidents which have given rise to the proceeding and which will form the basis for the hearing." *Appeal of M.P.*, 44 Ed. Dept. Rep. 132 (2004).

[116] There is no requirement that a student must be represented by counsel. *Appeal of Albicocco*, 21 Ed. Dept. Rep. 166 (1981).

[117] Written statements of witnesses in lieu of testimony cannot be introduced by the school district during a hearing because such introduction violates the student's right to question witnesses. *Appeal of Coleman*, 41 Ed. Dept. Rep. 101 (2001); *Appeal of D.C.*, 41 Ed. Dept. Rep. 277 (2002).

[118] *Appeal of a Student with a Disability*, 39 Ed. Dept. Rep. 428 (1999) ("As long as students are given a fair opportunity to tell their side of the story and rebut the evidence against them, due process is served.").

[119] N.Y. EDUC. LAW § 3214(3)(c)(1).

[120] A due process violation does not occur where the superintendent imposes the suspension and acts as the hearing officer. *Appeal of Labriola*, 20 Ed. Dept. Rep. 74 (1980); *Appeal of Payne*, 18 Ed. Dept. Rep. 280 (1978) (finding that the performance of multiple functions by the same person is not a *per se* due process violation).

[121] *Appeal of McMahon and Mosely*, 38 Ed. Dept. Rep. 22 (1998).

[122] A short suspension imposed in conjunction with a further penalty for the same action does not constitute double jeopardy. *Appeal of Swingle*, 32 Ed. Dept. Rep. 245 (1992).

[123] N.Y. EDUC. LAW § 3214(3)(c)(1).

[124] *Id.* No *per se* due process violation occurs when there are inaudible portions of the tape recording. *Appeal of A.G.*, 41 Ed. Dept. Rep. 262 (2002) (holding that the petitioner must show how the inaudible portions of the hearing record may have mitigated against the finding of guilt or penalty imposed before a due process violation will be found to have occurred); *Appeal of Labriola*, 20 Ed. Dept. Rep. 74 (1980) (finding that the inaudible portions of the hearing record did not violate the student's due process rights where the school

officer will make findings of fact and recommendations to the superintendent as to the appropriate measure of discipline.[125] Unless completed by the superintendent, the hearing officer's report will be advisory only, and the superintendent can accept all or any part thereof.[126] However, the decision to suspend a student must be based on "competent and substantial evidence that the student participated in the objectionable conduct."[127] A student's admission of misconduct is sufficient proof of guilt[128] and hearsay evidence may also constitute competent and substantial evidence.[129]

A Superintendent's Hearing determination can be appealed to the school district's board of education who will make its decisions solely upon the record of the hearing.[130] The board of education may adopt, in whole or in part, the decision of the superintendent of schools.[131] However, if the basis for the suspension is the possession of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto, or any of the weapons, instruments, or appliances specified in N.Y. Penal Law §265.01[132] on school grounds or

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district gave the student the opportunity to correct any errors). School districts are not required to make a record for suspensions of five days or less. *Appeal of Lee, D.*, 38 Ed. Dept. Rep. 262 (1998).

[125] N.Y. EDUC. LAW § 3214(3)(c)(1).

[126] *Id.*; *see Appeal of Cellini*, 30 Ed. Dept. Rep. 473 (1991).

[127] *Appeal of a Student with a Disability*, 39 Ed. Dept. Rep. 427 (1999); *see also Appeal of Gorzka*, 35 Ed. Dept. Rep. 20 (1995); *Appeal of Swingle*, 32 Ed. Dept. Rep. 245 (1992); *Appeal of Albicocco*, 21 Ed. Dept. Rep. 166 (1981).

[128] *Appeal of Esther E.*, 39 Ed. Dept. Rep. 357 (1999); *Appeal of Eddy*, 36 Ed. Dept. Rep. 359 (1997); *see also Monticello*, 91 N.Y.2d 133 (holding that unimpeached testimony that the student admitted the misconduct supports a finding of guilty).

[129] *Appeal of a Student Suspected of Having a Disability*, 39 Ed. Dept. Rep. 476 (1999); *Appeal of a Student Suspected of Having a Disability*, 39 Ed. Dept. Rep. 127 (1999); *Monticello*, 91 N.Y.2d 133.

[130] N.Y. EDUC. LAW § 3214(3)(c)(1).

[131] *Id.*

[132] A person is guilty of criminal possession of a weapon in the fourth degree when:

(1) He or she possesses any firearm, electronic dart gun, electronic stun gun, gravity knife, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chukka stick, sand bag, sand club, wrist-brace type slingshot or slingshot, shank or "Kung Fu star"; or

(2) He or she possesses any dagger, dangerous knife, dirk, machete, razor, stiletto, imitation pistol, or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another; or

(3) [*repealed*]

(4) He possesses a rifle, shotgun, antique firearm, black powder rifle, black powder shotgun, or any muzzle-loading firearm, and has been convicted of a felony or serious offense; or

(5) He possesses any dangerous or deadly weapon and is not a citizen of the United States; or

(6) He is a person who has been certified not suitable to possess a rifle or shotgun, as defined in subdivision sixteen of section 265.00, and refuses to yield possession of such rifle or shotgun upon the demand of a police officer. Whenever a person is certified not suitable to possess a rifle or shotgun, a member of the police department to which such certification is made, or of the state police, will forthwith seize any rifle or shotgun

school property by the student, the hearing officer or superintendent will not be barred from considering the admissibility of such weapon, instrument, or appliance as evidence, notwithstanding a determination by a court in a criminal or juvenile delinquency proceeding that the recovery of such weapon, instrument or appliance was the result of an unlawful search or seizure.[133] Furthermore, student disciplinary hearings may still occur even if there are pending criminal charges against the student involving the same behavior because it is illogical to bar students who have committed lesser offenses from attendance at school for five days while allowing those who committed serious crimes to return pending disposition of the criminal charges.[134]

Should a student be suspended for more than five days by the board of education, the Board may hear and determine the proceeding or appoint a hearing officer who will have the same powers and duties as the Board with respect to a Superintendent's Hearing.[135]

The penalty imposed by either the superintendent or the board must be proportionate to the offense.[136] A penalty imposed by a school district will be overturned if it is so excessive to warrant substitution of the Commissioner's judgment for that of the superintendent or the board.[137] Furthermore, school districts may only impose penalties that are legally permissible under §3214 of the Education Law.[138] The only legally permissible penalty under §3214 is suspension from attendance.[139] School districts may not impose alcohol/drug assessments, counseling services, psychiatric evaluations or community service as a penalty.[140] A permanent suspension is an extreme penalty that may only be applied in extraordinary circumstances where the student shows "an

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possessed by such person. A rifle or shotgun seized as herein provided will not be destroyed, but will be delivered to the headquarters of such police department, or state police, and there retained until the aforesaid certificate has been rescinded by the director or physician in charge, or other disposition of such rifle or shotgun has been ordered or authorized by a court of competent jurisdiction.

(7) He knowingly possesses a bullet containing an explosive substance designed to detonate upon impact.

(8) He possesses any armor piercing ammunition with intent to use the same unlawfully against another.

N.Y. PENAL LAW § 265.01 (McKinney 2018).

[133] N.Y. EDUC. LAW § 3214(3)(c)(1).

[134] *Pollnow v. Glennon*, 594 F.Supp. 220 (S.D.N.Y. 1984).

[135] N.Y. EDUC. LAW § 3214(3)(c)(2); *see Appeal of Cellini*, 30 Ed. Dept. Rep. 473 (1991).

[136] *Appeal of Eddy*, 36 Ed. Dept. Rep. 359 (1997).

[137] *Id*.

[138] *Appeal of J.G.*, 39 Ed. Dept. Rep. 393 (1999).

[139] *Appeal of McMahon and Mosely*, 38 Ed. Dept. Rep. 22 (1998).

[140] *See e.g., Appeal of a Student with a Disability*, 39 Ed. Dept. Rep. 427 (1999); *Appeal of J.G.*, 39 Ed. Dept. Rep. 393 (1999); *Appeal of McMahon and Mosely*, 38 Ed. Dept. Rep. 22 (1998); *Appeal of Eddy*, 36 Ed. Dept. Rep. 359 (1997).

alarming disregard for the safety of others"[141] and where it is necessary to safeguard other students, which is discussed more fully below.

iv. Suspension of Pupils who Possess a Weapon on School Property

If a pupil brings a weapon[142] on school property, the pupil will be immediately suspended for a period of not less than one calendar year.[143] Further, any nonpublic school pupil participating in a program operated by a public school district using funds,[144] who is determined to have brought a firearm to or possessed a firearm at a public school, or other premises used by the school district to provide such programs, will be suspended for a period of not less than one calendar year from participation in such program.[145] School districts may also impose permanent suspension on students who bring guns to school.[146] A superintendent of schools, district superintendent of schools, or community superintendent will have the authority to modify the suspension requirement on a case by case basis.[147] The determination of a superintendent will be subject to review by the board of education which is similar to any suspension of a student for longer than five days, and by the Commissioner of Education pursuant to Education Law §310.[148]

Notwithstanding the foregoing, Education Law §3214 does not permit a superintendent to suspend a student with a disability in violation of the Individuals with Disabilities Education Act ("IDEA") or Article 89 of the Education Law.[149] If the pupil is under the age of sixteen, the Superintendent will refer the pupil to a presentment agency for a juvenile delinquency proceeding consistent with Article Three of the Family Court Act, unless the student is fourteen or fifteen years of age in which they would qualify for juvenile offender status.[150] Further, should the pupil have written authorization[151] of such educational institution possession of such weapon would not warrant discipline.[152]

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[141] *Appeal of A.S. and S.K.*, 44 Ed. Dept. Rep. 129 (1994).
[142] 18 U.S.C. § 930(2)(g).
[143] N.Y. EDUC. LAW § 3214(3)(d)(1) (McKinney 2018); *see also* Federal Gun-Free Schools Act, 20 U.S.C. § 4141 *et. seq.*
[144] Pursuant to the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301, *et. seq.*
[145] N.Y. EDUC. LAW § 3214(3)(d)(1); *see also* 20 U.S.C. § 4141 *et. seq.*; 20 U.S.C. § 6301, *et. seq.*
[146] *Appeal of Henry*, 34 Ed. Dept. Rep. 470 (1995).
[147] N.Y. EDUC. LAW § 3214(3)(d)(1).
[148] *Id.*
[149] *Id.*
[150] *Id.*; N.Y. CRIM. PROC. LAW § 1.20(42) (McKinney 2018).
[151] Written authorization must be in a manner authorized by N.Y. PENAL LAW § 265 for activities approved and authorities by the trustees or board of education or other governing body of the public school and such governing body adopts appropriate safeguards to ensure student safety. N.Y. EDUC. LAW § 3214(3)(d)(2).
[152] N.Y. EDUC. LAW § 3214(3)(d)(2).

v. Disciplining Pupils in Possession of Drugs, Alcohol, and Tobacco

School districts have the authority to discipline pupils for possessing, selling, using, or being under the influence of drugs, alcohol, or tobacco while on school property.[153] School districts may suspend students for such activities because those activities endanger the safety, morals, health, and welfare of others, and are likely a violation of the school district's code of conduct.[154] The Commissioner of Education has held that it is not irrational or an abuse of discretion to impose a greater penalty for drugs than for alcohol or tobacco.[155]

For a school to discipline a pupil for being under the influence of alcohol they need to first determine whether the pupil is under the influence of alcohol by acquiring competent and substantial evidence. One way to acquire such evidence is through the use of breathalyzers for such determination.[156] School districts must properly administer such devices since the use of a breathalyzer constitutes a search under the Fourth Amendment.[157] A search must be: (1) justified at its inception; and (2) reasonably related in scope to the circumstances that justified the inception of the search.[158] In addition to the use of a breathalyzer, a school district may acquire competent and substantial evidence that a pupil has consumed alcohol by smelling alcohol on a pupil's breath or observing out of character behavior.[159]

Certain activities involving drugs, alcohol, and tobacco constitute crimes under the New York Penal Law. Therefore pupils who engage in these activities will be disciplined and may also be referred to local law enforcement agencies.[160]

vi. Waiver of the Right to a Student Disciplinary Hearing

A student's due process right to an opportunity for a student disciplinary hearing may be waived if the waiver is intelligent, knowing and voluntary.[161] For a waiver to be valid, the student and his/her parent must be informed of their rights and the consequences of waiving those rights.[162] The school district must provide the student and his/her parent with a written document that explains their rights and the consequences of waiving those rights.[163] A lawful waiver may only allow penalties that are legally permissible under

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[153] *Appeal of D.G.*, 43 Ed. Dept. Rep. 299 (2003); *Appeal of Cynthia and Robert W.*, 37 Ed. Dept. Rep. 437 (1998).
[154] A*ppeal of D.G.*, 43 Ed. Dept. Rep. 299 (2003); *Appeal of Cynthia and Robert W.*, 37 Ed. Dept. Rep. 437 (1998).
[155] *Appeal of J.P.*, 44 Ed. Dept. Rep. 204 (2004); *Appeal of C.C.*, 44 Ed. Dept. Rep. 207 (2004).
[156] *Appeal of James*, 39 Ed. Dept. Rep. 482 (2000).
[157] *Id.*; *O'Connor v. Ortega*, 480 U.S. 709 (1987).
[158] *O'Connor*, 480 U.S. 709.
[159] *Appeal of D.G.*, 43 Ed. Dept. Rep. 299 (2003).
[160] 8 NYCRR § 100.2.
[161] *Appeal of J.G.*, 39 Ed. Dept. Rep. 393 (1999).
[162] *Id.*
[163] *Appeal of V.L.*, 44 Ed. Dept. Rep. 160 (2004).

§3214 of the Education Law.[164] In other words, a school district's waiver system must only allow the imposition of penalties that are legally permissible.[165]

vii. Procedure for After a Pupil Has Been Suspended

If a suspended pupil is of compulsory attendance age,[166] immediate steps must be taken for his/her attendance upon instruction elsewhere or for supervision or detention of said pupil pursuant to Article Seven of the Family Court Act.[167] In other words, any student of compulsory age who is suspended from attendance at school must receive an alternative education.[168] Such alternative instruction must be substantially equivalent to the student's regular classroom program.[169] If a pupil has been suspended for cause, the suspension may be revoked by the board of education whenever it is in the best interest of the school and the pupil to do so.[170] The board of education may also condition a student's early return to school and suspension revocation on the pupil's voluntary participation in counseling or specialized classes, including anger management or dispute resolution.[171]

viii. Involuntary Transfer[172] of Students

The board of education, board of trustees or sole trustee, the superintendent of schools, or district superintendent of schools may transfer a pupil who has not been determined to be a student with a disability or a student presumed to have a disability for discipline purposes from regular classroom instruction to an appropriate educational setting in another school upon the written recommendation of the school principal and following independent review.[173]

A school principal may initiate a non-requested transfer where it is believed that such a pupil would benefit from the transfer, or when the pupil would receive an adequate and appropriate education in another school program or facility.[174] No recommendation for pupil transfer will be initiated by the principal until such pupil and a person in a parental

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[164] *Appeal of McMahon and Mosely*, 38 Ed. Dept. Rep. 22 (1998).

[165] *Id*.

[166] N.Y. EDUC. LAW § 3205 (McKinney 2018) ("In each school district of the state, each minor from six to sixteen years of age will attend upon full time instruction.").

[167] *Id*. § 3214(3)(e). School districts must promptly, not instantaneously, provide alternative instruction. *Appeal of Deborah F.*, 42 Ed. Dept. Rep. 178 (2002).

[168] *Appeal of Pickney*, 37 Ed. Dept. Rep. 284 (1998).

[169] *Appeal of A.L., Jr.*, 41 Ed. Dept. Rep. 368 (2003).

[170] N.Y. EDUC. LAW § 3214(3)(e).

[171] *Id*.

[172] Involuntary Transfer does not include a transfer made by a school district as part of a plan to reduce racial imbalance within the schools or as a change in school attendance zones or geographical boundaries. *Id*. § 3214(5)(a).

[173] *Id*.

[174] *Id*. § 3214(5)(b).

relation has been sent written notification of the consideration of transfer recommendation.[175] The notice sent to the parents, sets a time and place of an informal conference with the principal and will inform such person in parental relation and such pupil of their right to be accompanied by counsel or an individual of their choice.[176]

After the informal conference, should the principal conclude that the pupil would benefit from a transfer or that the pupil would receive an adequate and appropriate education in another school program or facility, the principal may issue a recommendation of transfer to the superintendent.[177] The recommendation will include a description of behavior and/or academic problems indicative of the need for transfer and a description of alternatives explored and prior action taken to resolve the problem.[178] A copy of the letter must be sent to the person in parental relation and to the pupil.[179]

Upon receipt of the principal's recommendation for transfer and a determination to consider that recommendation, the superintendent must notify the person in parental relation and the pupil of the proposed transfer and of their right to a fair hearing,[180] and must list community agencies and free legal assistance which may be of assistance.[181] The written notice must include a statement that the pupil or person in parental relation has ten (10) days to request a hearing and that the proposed transfer will not take effect, except upon written parental consent, until the ten (10) day period has elapsed or if a fair hearing is requested, until after a formal decision following the hearing is rendered, whichever is later.[182]

ix. Manifestation Proceeding: For Students with Disabilities

a. Discipline Procedures for Students with Disabilities under N.Y. Education Law § 3214

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[175] *Id.*
[176] *Id.*
[177] *Id.* § 3214(5)(c).
[178] *Id.*
[179] *Id.*
[180] *Id.* § 3214(3)(c).
[181] *Id.* § 3214(5)(d).
[182] *Id.*

As previously discussed, Education Law §3214 sets forth a specific procedure for disciplining students with disabilities,[183] or students presumed to have a disability.[184] This is referred to as a manifestation proceeding. A student with, or presumed to have a disability[185] may be suspended or removed from his or her current educational placement for violation of school rules only in accordance with the procedures established for a manifestation[186] proceeding.[187]

The trustees or board of education of any school district, a district superintendent of schools, or building principal has the authority to order the placement of a student with a disability into an appropriate interim alternative educational setting ("IAES"), or another setting.[188] They also have the authority to suspend a pupil for a period not to exceed five consecutive school days where such student is suspended as long as the

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[183] *Id*. § 4401(1).

> A "student with a disability" means a person under the age of twenty-one who is entitled to attend public schools pursuant to section thirty-two hundred two of this chapter and who, because of mental, physical or emotional reasons can only receive appropriate educational opportunities from a program of special education. Such term does not include a child whose educational needs are due primarily to unfamiliarity with the English language, environmental, cultural or economic factors. Lack of appropriate instruction in reading, including in the essential components of reading instruction as defined in subsection three of section twelve hundred eight of the elementary and secondary education act of nineteen hundred sixty-five, or lack of appropriate instruction in mathematics or limited English proficiency will not be the determinant factor in identifying a student as a student with a disability. "Special education" means specially designed instruction which includes special services or programs as delineated in subdivision two of this section, and transportation, provided at no cost to the parents to meet the unique needs of a child with a disability. A "child with a handicapping condition" means a child with a disability.

Id.

[184] Student presumed to have a disability is defined as a student who the school district is deemed to have knowledge was a student with a disability before the behavior that precipitated disciplinary action. N.Y. EDUC. LAW § 3214(3)(g)(2); *see also* 20 U.S.C. § 1415(k).

[185] A school district is deemed to have knowledge that the student had a disability if prior to the time the behavior occurred: (1) the student's parent has expressed concern to school district personnel in writing that the student is in need of special education (may be oral if parent does not know how to write or has a disability that prevents a written statement); (2) the student's behavior or performance demonstrates the need for special education; (3) the student's parent has requested that an individual evaluation of the student be conducted; or (4) the student's teacher, or other school district personnel, has expressed concern about the student's behavior or performance to the director of special education or to other school district personnel in accordance with the district's established child find or special education referral system. 8 NYCRR § 201.5(b); *see also Appeal of a Student Suspected of Having a Disability*, 41 Ed. Dept. Rep. 341 (2002).

[186] N.Y. EDUC. LAW § 3214(3)(g)(2)(ii) (A manifestation team is a representative of the school district, the parent or person in parental relation, and relevant members of the committee on special education, as determined by the parent or person in parental relation).

[187] *Id*. § 3214(3)(g)(1).

[188] *Id*. §§ 3214(3)(g)(3)(ii), (iv).

suspension does not result in a change in placement,[189] or if determined upon a recommendation of a hearing officer.[190]

The superintendent of schools of a school district, either directly or upon recommendation of a hearing officer, may do the following: 1) order the placement of a student with a disability into an IAES, or another setting; 2) suspension for up to ten (10) consecutive school days, inclusive of any period in which the student is placed in an appropriate interim alternative educational placement, another setting or suspension, where the superintendent determines that the student has engaged in behavior that warrants a suspension and does not result in change of placement;[191] and 3) order the change in placement of a student with a disability to an IAES for up to forty-five (45) days, but not to exceed the period of suspension ordered by a superintendent.[192]

However, should a Committee on Special Education ("CSE") determine that the behavior of a student with a disability was not a manifestation of the student's disability, then the student can be disciplined similar to a student that does not have a disability, except that such student must continue to receive services, albeit in an interim alternative setting.[193]

b. Discipline Procedures for Students with (or presumed to have) a Disability under the Commissioner's Regulations

The Commissioner of Education has adopted regulations for suspensions and removals of students with disabilities. A manifestation of a review of the relationship between the student's disability and the behavior subject to disciplinary action must be made immediately, if possible, but in no case later than ten (10) school days after:

1) A decision is made by a superintendent of schools to change the placement of a student to an IAES; or
2) A decision is made by an impartial hearing officer to place a student in an IAES; or
3) A decision is made by a board of education, district superintendent of schools, building principal or superintendent to impose a suspension that constitutes a disciplinary change in placement. [194]

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[189] The United States Supreme Court has held that removing a student from school for more than ten days constitutes a change in educational placement. *Honig v. Doe*, 484 U.S. 305 (1988).
[190] N.Y. EDUC. LAW §§ 3214(3)(g)(3)(ii), (iv).
[191] *Id*. § 3214(3)(g)(3)(iii). Such short-term suspensions may be used to temporarily remove a disabled student who violated the school district's code of conduct or who poses an immediate threat to the safety of others, even if the behavior related to the disability. *Appeal of a Student with a Disability*, 34 Ed. Dept. Rep. 634 (1995).
[192] N.Y. EDUC. LAW § 3214(3)(g)(3)(iv).
[193] *Id*. § 3214(3)(g)(3)(vi).
[194] 8 NYCRR § 201.4(a).

A manifestation review is conducted by a manifestation team following the determination by a hearing officer that the student is found guilty of the misconduct.[195] The manifestation team includes a representative of the school district knowledgeable about the student and the interpretation of information about child behavior.[196] The parent and other relevant members of the CSE are also included in the manifestation review.[197] The manifestation team reviews all relevant information in the student's file, including the student's individualized education plan ("IEP"), any teacher observations, and any relevant information provided by the parents to determine if:

1) The conduct in question was caused by or had a direct and substantial relationship to the student's disability; or
2) The conduct in question was the direct result of the school district's failure to implement the IEP.[198]

If either of these conditions are met, then it is determined that the conduct was a manifestation of the student's disability.[199] If a nexus is found between the misconduct and the student's disability, a suspension beyond ten school days may not be imposed, unless the student's presence constitutes a dangerous situation.[200] Also, if the manifestation team ultimately determines that the conduct was a manifestation of the student's disability, a referral must be made to the CSE to determine whether a program modification is required.[201] In order to make such determination, the CSE must conduct a functional behavioral assessment ("FBA") and return the student to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan ("BIP").[202] If no nexus is found between the student's misconduct and his/her disability, the school district may impose a penalty.[203] However, the student's placement may not be changed without compliance with due process requirements.[204]

No later than the date on which a decision is made to change the placement of a student with a disability to an interim alternate educational setting ("IAES"),[205] or a decision to

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[195] *Id.* § 201.4(b). Students with disabilities are "entitled to an assessment by a multidisciplinary team to recommend accommodations and modifications necessary to meet the educational needs of the student." *Appeal of a Student with a Disability*, 34 Ed. Dept. Rep. 634 (1995).
[196] 8 NYCRR § 201.4(b).
[197] *Id.*
[198] *Id.* § 201.4(c).
[199] *Id.* § 201.4(d)(1).
[200] *Appeal of a Student with a Disability*, 35 Ed. Dept. Rep. 22 (1995).
[201] *Id.*
[202] 8 NYCRR § 201.4(d)(2).
[203] *Appeal of a Student with a Disability*, 36 Ed. Dept. Rep. 273 (1996). If no nexus is found, a student's anecdotal record may be considered but only under these circumstances. *Id.*
[204] *Appeal of a Student with a Disability*, 35 Ed. Dept. Rep. 22 (1995).
[205] 8 NYCRR § 201.2(k).

impose a suspension or removal,[206] that constitutes a disciplinary change in placement,[207] the parent must be notified of such decision and will be provided with the procedural safeguards notice.[208]

The trustees or board of education of any school district, a district superintendent of schools, or a building principal with the authority to suspend students pursuant to Education Law §3214 will have the authority to order the placement of a student with a

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> An interim alternative educational setting or IAES is a temporary educational placement, other than the student's current placement at the time the behavior precipitating the IAES placement occurred. A student who is placed in an IAES will:
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> 1) Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and
> 2) Receive as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

Id.

[206] 8 NYCRR § 201.2(l) (Removal is defined as: "1) a removal of a student with a disability for disciplinary reasons from that student's current educational placement and 2) the change in placement of a student with a disability to an IAES by an impartial hearing officer.").

[207] *Id.* § 201.2(e).

> A disciplinary change in placement means a suspension or removal from a student's current educational placement that is either:
>
> 1) For more than 10 consecutive school days or
> 2) For a period of 10 consecutive 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; because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and because such additional factors as the length of each suspension or removal, the total amount of time the student has been removed and the proximity of the suspensions or removals to one another. The school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

Id.

[208] 8 NYCRR § 201.4(3).

> Prior written notice must include:
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> (i) a description of the action proposed or refused by the district;
> (ii) an explanation of why the district proposes or refuses to take the action;
> (iii) a description of other options that the CSE considered and the reasons why those options were rejected;
> (iv) a description of each evaluation procedure, assessment, record, or report the CSE used as a basis for the proposed or refused action;
> (v) a description of other factors that are relevant to the CSE's proposal or refusal;
> (vi) a statement that the parents of a student with a disability have protection under the procedural safeguards of this Part, and, if this notice is not an initial referral for an evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
> (vii) sources for parents to contact to obtain assistance in understanding the provisions of this Part
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> *Id.* § 201.7.

disability into an appropriate IAES, another setting or suspension for a period not to exceed five (5) consecutive school days, and not to exceed the amount of time that a nondisabled student would be subject to suspension for the same behavior.[209]

A superintendent of schools, either directly or upon recommendation of a hearing officer designated to conduct a superintendent's hearing, may order the placement of a student with a disability into an IAES, another setting, or suspension for up to ten (10) consecutive school days, inclusive of any period in which the student has been suspended or removed[210] for the same behavior.[211] Should the superintendent determine that the student has engaged in behavior that warrants a suspension, the duration of any such suspension or removal will not exceed the amount of time that a nondisabled student would be subject to suspension for the same behavior.[212] Except for when a student with a disability has a pattern of suspensions or removals, a superintendent of schools may only order additional suspensions of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct.[213]

However, a student with a disability may not be removed other than imposition of the five (5) or ten (10) school day suspension if the removal would result in a disciplinary change in placement based on pattern of suspensions or removal as determined by school personnel.[214] If the manifestation team has determined that the behavior was not a manifestation of such student's disability or the student is placed in an IAES, the student may be removed.[215]

Should a student with a disability be charged with behavior involving serious bodily injury, weapons, illegal drugs or controlled substances, a superintendent of schools, either directly or upon recommendation of a hearing officer, may order the change in placement of a student with a disability to an appropriate IAES, to be determined by the CSE for up to forty-five (45) school days, but not to exceed the period of suspension ordered by the Hearing Officer,[216] where the student:[217]

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[209] 8 NYCRR § 201.7(b).
[210] Irrespective of any suspension of five days or less for the same behavior issued by the Principal under 8 NYCRR § 201.7(b).
[211] 8 NYCRR § 201.7(c).
[212] *Id.*
[213] *Id.*
[214] *Id.* § 201.7(d).
[215] *Id.* § 201.7(d).
[216] N.Y. EDUC. LAW § 3214(3).
[217] 8 NYCRR § 201.7(e)(1).

1) Has inflicted serious bodily injury,[218] upon another person while at school, on school premises or at a school function under the jurisdiction of the educational agency;[219]

2) Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the educational agency;[220] or

3) Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the educational agency.[221]

Notwithstanding the foregoing, the period of suspension or removal ordered by the superintendent may not exceed the amount of time that a nondisabled student would be suspended for the same behavior.[222] School personnel may also consider any unique circumstances on a case-by-case basis when determining whether a change in placement consistent with the other requirements of Part 201 of the Commissioner's Regulations is appropriate for a student with a disability who violates a school district's Student Code of Conduct.[223]

During any period of suspension, a student with a disability will be provided services to the extent required.[224] During a suspension or removal for periods of up to ten (10) school days in a school year that do not constitute a disciplinary change in placement, students of compulsory attendance age with a disability will be provided with alternative instruction on the same basis as nondisabled students.[225]

B. Dignity for All Students Act (DASA)

The Dignity for All Students Act ("DASA") was signed into law on September 13, 2010, and took effect on July 1, 2012 (with supplemental provisions on cyberbullying taking effect in July of 2013), to afford all students in public schools a safe and supportive school environment free of harassment, bullying and discrimination.[226] The legislation

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[218] *Id.* § 201.2(m) ("Serious bodily injury means bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty.").
[219] *Id.* § 201.7(e)(1)(i).
[220] *Id.* § 201.7(e)(1)(ii).
[221] *Id.* § 201.7(e)(1)(iii).
[222] *Id.* § 201.7(e)(2).
[223] *Id.* § 201.7(f).
[224] *Id.* § 201.10(a).
[225] *Id.* § 201.4(b).
[226] N.Y. EDUC. LAW § 12 (McKinney 2018); *see also The Dignity Act for All Students*, N.Y. ST. EDUC. DEP'T (NYSED), http://www.p12.nysed.gov/dignityact/ (last updated July 9, 2018).

amended the Education Law by creating Article 2, "Dignity for All Students." The Act also expanded Section 801-a of the Education Law by requiring that the mandated course of instruction in grades kindergarten through twelve, in civility, citizenship and character education include a component raising awareness and sensitivity to discrimination or harassment and civility.[227] Additionally, DASA amended Education Law, Section 2801 by requiring the inclusion of language, compliant with DASA, into school districts' Codes of Conduct.[228]

1. Requirements for School Districts

i. Article 2 of the Education Law

DASA provides that no student will be subjected to harassment or bullying, nor will any student be subjected to discrimination based on the student's "actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender[229] or sex."[230] The law's broad definition of harassment makes it clear that the law protects students from threats, intimidation and abuse based on, but not limited to, the above categories.[231] DASA applies to harassment, bullying or discrimination of students by employees or students on school property or at a school function.[232] However, DASA does not prohibit denial of admission into, or exclusion from, a course of instruction based on a person's gender otherwise permissible under

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[227] N.Y. EDUC. LAW § 801-a (McKinney 2018).
[228] *Id.* § 2801(n).
[229] DASA states that "gender" means "actual or perceived sex and will include a person's gender identity or expression." *Id.* § 11(6).
[230] *Id.* § 12(1).
[231] DASA defines harassment and bullying as:

> the creation of a hostile environment by conduct or by threats, intimidation or abuse, including cyberbullying, that (a) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional or physical well-being; or (b) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; or (c) reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student; or (d) occurs off school property and creates or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property.

Id. § 11(7). The conduct, verbal threats, intimidation or abuse includes but is not limited to such acts "based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex." *Id.* The statute also includes the definition of "cyberbullying," which is defined as harassment or bullying occurring through any form of electronic communication. *Id.* § 11(8).
[232] N.Y. EDUC. LAW § 12(1).

law, or to prohibit, as discrimination based on disability, actions that would otherwise be permissible under law.[233]

Under DASA, a school district's Board of Education is required to create policies and guidelines implementing its provisions. School districts must establish policies intended to create a school environment that is free from harassment, bullying, and discrimination; guidelines to be used in school training programs to discourage the development of harassment, bullying, and discrimination, and to make school employees aware of the effects of harassment, bullying, cyberbullying, and discrimination on students; guidelines that are designed to raise employees' awareness and sensitivity to potential harassment, bullying and discrimination, and to enable employees to prevent and respond to incidents of harassment, bullying and discrimination; as well as guidelines relating to the development of nondiscriminatory instructional and counseling methods.[234]

Additionally, a Dignity Act Coordinator must be appointed at every school. The Dignity Act Coordinator is an individual "thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex."[235]

Provisions in the policies and procedures must include, but not be limited to, provisions which:

1. Identify the principal, superintendent, or either individual's designee as the school employee charged with receiving reports of harassment, bullying and discrimination;[236]

2. Enable students and parents to make an oral or written report of harassment, bullying or discrimination to teachers, administrators and other school personnel that the school district deems appropriate;[237]

3. Require school employees who witness harassment, bullying or discrimination, or who receive an oral or written report of such incidents, to promptly orally notify the principal, superintendent or either individual's designee not later than one school day after such school employee witnesses or receives a report of harassment, bullying or discrimination, and to file a written report with the principal, superintendent or either individual's designee not later than two school days after making such oral report;[238]

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[233] *Id.*
[234] *Id.* § 13(1)-(3).
[235] *Id.* § 13(3).
[236] *Id.* § 13(1)(A).
[237] *Id.* § 13(1)(B).
[238] *Id.* § 13(1)(C).

4. Require the principal, superintendent or either individual's designee to lead or supervise the thorough investigation of all reports of harassment, bullying and discrimination, and to ensure that such investigation is completed promptly after receipt of any written reports;[239]

5. Require that when an investigation reveals any such verified harassment, bullying or discrimination, the school take prompt actions reasonably calculated to end the harassment, bullying or discrimination, eliminate any hostile environment, create a more positive school culture and climate, prevent recurrence of the behavior, and ensure the safety of the student or students against whom such harassment, bullying or discrimination was directed. The actions must be consistent with the guidelines to be created by the school district related to the development of measured, balanced and age-appropriate responses to such incidents;[240]

6. Prohibit retaliation against any individual who, in good faith, reports, or assists in the investigation of harassment, bullying or discrimination;[241]

7. Include a school strategy to prevent harassment, bullying and discrimination;[242]

8. Require the principal to make a regular report to the superintendent on data and trends related to harassment, bullying and discrimination;[243]

9. Require the principal, superintendent or either individual's designee to promptly notify the appropriate local law enforcement agency when such individual believes that any harassment, bullying or discrimination constitutes criminal conduct;[244]

10. Include appropriate references to the provisions of the school district's code of conduct that are relevant to harassment, bullying and discrimination;[245]

11. Require that at least once during each school year, each school provide all school employees, students and parents with a written or electronic copy of the school district's policies on bullying, harassment and discrimination created in accordance with DASA, or a plain-language summary thereof, which includes a notification of the process by which students, parents and school employees may report harassment, bullying and

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[239] *Id.* § 13(1)(D).
[240] *Id.* § 13(1)(E).
[241] *Id.* § 13(1)(F).
[242] *Id.* § 13(1)(G).
[243] *Id.* § 13(1)(H).
[244] *Id.* § 13(1)(I).
[245] *Id.* § 13(1)(J).

discrimination. However, it is not necessary for school districts to further distribute such policies and guidelines to school employees, students and parents if they otherwise do so;[246] and

12. Require the school district to maintain current versions of the school district's policies created pursuant to the requirements of DASA, on the school district's internet website, if one exists.[247]

School Training Programs under DASA

Back in May of 2012, the Board of Regents adopted Regulations with respect to training requirements.[248] The Regulations require school districts to establish guidelines to implement school employee training programs, which promote a positive school environment free from harassment, bullying, and discrimination, and to discourage and respond to such incidents. In addition, these Regulations were amended in 2013 to require school districts to create guidelines that also address bullying, and that make school employees aware of the effects of harassment, bullying, cyberbullying, and discrimination.[249] The guidelines will include, but not be limited to, the following:

- training to raise awareness and sensitivity to potential acts of discrimination and/or harassment directed at students, committed by employees or students, on school property or at school functions, including but not limited to, discrimination and/or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex. Such training must address the "social patterns of harassment, bullying and discrimination, the identification and mitigation of such acts, and strategies for effectively addressing problems of exclusion, bias, and aggression in educational settings;"[250]

- training to enable employees to prevent and respond to incidents of discrimination, bullying and/or harassment;[251]

- training to make employees aware of the effects of harassment, bullying, cyberbullying, and/or discrimination on students;[252]

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[246] *Id.* § 13(1)(K).
[247] *Id.* § 13(1)(L).
[248] *See* 8 NYCRR § 100.2.
[249] N.Y. EDUC. LAW § 13(2).
[250] 8 NYCRR § 100.2(jj)(3)(i); N.Y. EDUC. LAW § 13(5).
[251] 8 NYCRR § 100.2(jj)(3)(ii).
[252] *Id.* § 100.2(jj)(3)(iii).

- training to ensure the effective implementation of school policy on school conduct and discipline, including but not limited to, guidelines on promoting a safe and supportive school climate while discouraging harassment, bullying and/or discrimination against students by students and/or school employees;[253] and

- training to include safe and supportive school climate concepts in curriculum and classroom management.[254]

The Regulations do not specify the extent of the training required; however, the Regulations provide it may be incorporated into an existing professional development plan required under the Commissioner's Regulations and/or conducted in conjunction with any other training for school employees.[255] DASA and its accompanying regulations also require a school district's board of education to create guidelines relating to the development of measured, balanced and age-appropriate responses to instances of harassment, bullying or discrimination by students. Such guidelines must include: (a) remedies and procedures that follow a progressive model that make appropriate use of intervention, discipline and education, which vary in method according to the nature of the behavior, the developmental age of the student and the student's history of problem behaviors, and (b) are consistent with the school district's code of conduct.[256]

Dignity Act Coordinator Training & Dissemination of Dignity Act Coordinator Information

Under DASA, Dignity Act Coordinators are required to receive training that coincides with the requirements of school training programs under Education Law §13. Therefore, Dignity Act Coordinators are required to be provided with training:

1. which addresses the social patterns of harassment, bullying and discrimination, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, and sex;[257]

2. in the identification and mitigation of harassment, bullying and discrimination;[258] and

[253] *Id.* § 100.2(jj)(3)(iv).
[254] *Id.* § 100.2(jj)(3)(v).
[255] *See id.* § 100.2(jj)(3)(vi).
[256] N.Y. EDUC. LAW § 13(4).
[257] 8 NYCRR § 100.2(jj)(4)(iii).
[258] *Id.* § 100.2(jj)(4)(iv).

3. in strategies for effectively addressing problems of exclusion, bias, and aggression in educational settings.[259]

Furthermore, Dignity Act Coordinators and school employees should be informed during the training program that the Regulations should not be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender, or to prohibit discrimination based on disability, that would be permissible under law.[260]

Additionally, the Commissioner's Regulations include requirements for appointment of, and dissemination of information regarding, the Dignity Act Coordinator(s). The Dignity Act Coordinator(s) must be approved by the board of education, trustees or board of trustees and "be employed by such school district, BOCES or charter school, as applicable, and be licensed and/or certified by the Commissioner as a classroom teacher, school counselor, school psychologist, school nurse, school social worker, school administrator or supervisor, or superintendent of schools."[261] Also, their name(s) and contact information must be shared with all personnel, students and parents.

The Regulations require that contact information be disseminated in the following manner:

1. listing the information in the Code of Conduct and updates thereto posted on the school district's website;[262]
2. including the information in the plain language summary of the Code of Conduct provided to all parents at the beginning of the year;[263]
3. including the information to parents and persons in parental relation at least once per school year in a manner determined by the school, including, but not limited to, through electronic communication and/or sending the information home with students;[264]
4. posting the information in highly-visible areas of school buildings;[265] and
5. making the information available at the school district and at school-level administrative offices.[266]

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[259] *Id.* § 100.2(jj)(4)(v).
[260] *Id.* § 100.2(jj)(5).
[261] *Id.* § 100.2(jj)(4)(vi).
[262] *Id.* § 100.2(jj)(4)(vii)(a).
[263] *Id.* § 100.2(jj)(4)(vii)(d).
[264] *Id.* § 100.2(jj)(4)(vii)(e).
[265] *Id.* § 100.2(jj)(4)(vii)(b).
[266] *Id.* § 100.2(jj)(4)(vii)(c).

In the event the Dignity Act Coordinator vacates his/her position, another school employee will immediately be designated for an interim appointment as Coordinator, pending approval of a successor Coordinator within thirty (30) days.[267]

ii. Education Law, Section 801-a

Under Education Law, Section 801-a, school districts are required to provide instruction in civility, citizenship and character education which includes a component instructing students on the principles of honesty, tolerance, personal responsibility, respect for others, observance of laws and rules, courtesy, dignity and other traits that will enhance the quality of students' experiences in, and contributions to, the community.[268] The course must also include an additional component which emphasizes discouraging acts of harassment, bullying and discrimination. This component must include instruction of safe, responsible use of the Internet and electronic communications. DASA expands the concepts of "tolerance," "respect for others" and "dignity" by requiring school districts, when providing the required civility, citizenship, and character education, to include in such instruction, raising "awareness and sensitivity to discrimination, bullying or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes."[269]

<u>Commissioner's Regulations</u>

In line with Section 801-a of the Education Law, Section 100.2(c) of the Commissioner's Regulations outlines the required subjects of instruction in elementary and secondary schools.[270] The regulation includes a requirement that all public school students, other than students in charter schools, receive instruction in civility, citizenship and character education as required by Section 801-a of the Education Law.

Additionally, the Board of Regents adopted a Regulation that became effective on July 1, 2012, which includes a provision requiring charter schools to provide instruction that supports the development of a school environment free of harassment, bullying, and discrimination as required by DASA.[271] Charter schools were previously exempt from the requirement. The instruction must contain the same components as the instruction provided by other public schools. However, because it is not necessary for charter schools to provide a curriculum component on civility, citizenship and charter education,

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[267] *Id.* § 100.2(jj)(4)(viii).
[268] N.Y. EDUC. LAW § 801-a.
[269] *Id.*
[270] *See* 8 NYCRR § 100.2(c).
[271] *See id.* § 119.6.

the instruction must be incorporated into another portion of a charter school's curriculum.[272]

iii. Education Law Section 2801 and Codes of Conduct

DASA amended Section 2801 of the Education Law, by requiring school districts to include in their Codes of Conduct provisions in compliance with Article 2 of the Education Law, or DASA. Specifically, Article 2 of the Education Law requires inclusion into a school district's Code of Conduct, a version of the policy prohibiting harassment and bullying of students by employees or students, and/or discrimination by same, based upon a student's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.[273] The policy must be age appropriate and written in plain language.[274] Currently, Education Law § 2801(5) requires school districts to annually review their Codes of Conduct and update them if necessary.[275]

Commissioner's Regulations

Section 100.2(l)(2) of the Commissioner's Regulations, which sets forth the provisions required to be included in a Code of Conduct, were amended in accordance with DASA. Specifically, the Regulations require that school districts modify their Codes of Conduct to include:

- "provisions prohibiting harassment, bullying and/or discrimination against any student, by employees or students, [on school property and/or at a school function or off school property where such acts create or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property,] that creates a hostile environment by conduct, [with or without physical contact and/or by verbal] threats, intimidation or abuse, including cyberbullying [of such a severe nature] that either: (1) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional and/or physical well-being, including conduct, threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause emotional harm; or (2) reasonably causes or would reasonably be expected to cause physical injury to a student to fear for his or her physical safety. … Such conduct will include, but is not limited to, acts based on a person's

[272] *See id.* § 100.2(c)(2); *see also id.* § 119.6.
[273] N.Y. EDUC. LAW § 12; *see also* N.Y. EDUC. LAW ART. 2.
[274] N.Y. EDUC. LAW § 12(2).
[275] *Id.* § 2801(5).

actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender, or sex."[276]

- "disciplinary measures to be taken for incidents on school property or at school functions involving harassment, bullying and/or discrimination."[277]

- "provisions for responding to acts of bullying, harassment and/or discrimination against students by employees or students … which, with respect to such acts against students by students, incorporate a progressive model of student discipline that includes measured, balanced and age-appropriate remedies and procedures that make appropriate use of prevention, education, intervention and discipline, and considers among other things, the nature and severity of the offending student's behavior(s), the developmental age of the student, the previous disciplinary record of the student and other extenuating circumstances, and the impact the student's behaviors had on the individual(s) who was physically injured and/or emotionally harmed. Responses will be reasonably calculated to end the harassment, bullying and/or discrimination, prevent recurrence, and eliminate the hostile environment. The progressive model of student discipline will be consistent with the other provisions of the code of conduct."[278]

- "provisions setting forth the procedures by which local law enforcement agencies will be notified promptly of code violations, including but not limited to incidents of harassment, bullying, and/or discrimination, which may constitute a crime."[279]

- "a bill of rights and responsibilities of students which focuses upon positive student behavior and a safe and supportive school climate, which will be written in plain-language, publicized and explained in an age-appropriate manner to all students on an annual basis."[280]

- "guidelines and programs for in-service education programs for all district staff members to ensure effective implementation of school policy on school conduct and discipline, including but not limited to, guidelines on promoting a safe and supportive school climate while discouraging, among other things, harassment, bullying and discrimination against students by students and/or school employees; and including safe and supportive school climate concepts in the curriculum and classroom management."[281]

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[276] 8 NYCRR § 100.2(l)(2)(ii)(b).
[277] *Id.* § 100.2(l)(2)(ii)(g).
[278] *Id.* § 100.2(l)(2)(ii)(h).
[279] *Id.* § 100.2(l)(2)(ii)(l).
[280] *Id.* § 100.2(l)(2)(ii)(r).
[281] *Id.* § 100.2(l)(2)(ii)(s).

- "provisions prohibiting retaliation against any individual who, in good faith, reports or assists in the investigation of harassment, bullying, and/or discrimination."[282]

Furthermore, Section 100.2(l)(2) of the Commissioner's Regulations also requires Boards of Education and Boards of Cooperative Educational Services to ensure community awareness of their Codes of Conduct by posting the complete Code of Conduct, including any annual updates or amendments thereto, on their website, if they maintain one, and by providing copies of a summary of the Code of Conduct to all students, in an age-appropriate, plain-language version, either at a school assembly held at the beginning of each school year or by mailing it to all persons in parental relation before the beginning of each school year.[283] Additionally, school districts are to provide a complete copy of the Code of Conduct to all existing and new teachers and to make a complete copy available for review by students, parents, other school staff and other community members.[284]

iv. School Safety Plans

In addition to codes of conduct, school districts must also adopt and amend a comprehensive district-wide school safety plan and building level emergency response plans regarding crisis intervention, emergency response, and management.[285] These plans must be developed by a district-wide school safety team and a building level emergency response team.[286]

Such comprehensive district wide safety plans must include the following:

1) Policies and procedures for responding to implied or direct threats of violence by students, teachers, or other school personnel as well as visitors to the school, including threats by students against themselves, including suicide.[287]

2) Policies and procedures for responding to acts of violence by students, teachers, other school personnel, as well as school visitors, including consideration of zero-tolerance policies for school violence.[288]

3) Appropriate prevention and intervention strategies, including:[289]

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[282] *Id.* § 100.2(l)(2)(ii)(t).
[283] *Id.* § 100.2(l)(2)(iii)(b).
[284] *Id.*
[285] N.Y. EDUC. LAW § 2801-a(1) (McKinney 2018).
[286] *Id.*
[287] *Id.* § 2801-a(2)(a).
[288] *Id.* § 2801-a(2)(b).
[289] *Id.* § 2801-a(2)(c).

a) Collaborative arrangements with state and local law enforcement officials, designed to ensure that school safety officers and other security personnel are adequately trained, including being trained to de-escalate potentially violent situations;[290]
b) Non-violent conflict resolution training programs;[291]
c) Peer mediation programs and youth courts;[292] and
d) Extended day and other school safety programs.[293]

4) Policies and procedures for contacting appropriate law enforcement officials in the event of a violent incident.[294]

5) Policies and procedures for contacting parents, guardians or persons in parental relation to the students of the district in the event of a violent incident and policies and procedures for contacting parents, guardians, or persons in parental relation to an individual student of the district in the event of an implied or direct threat of violence by such student against themselves, including suicide.[295]

6) Policies and procedures relating to school building security, including where appropriate the use of school safety officers and/or security devices or procedures.[296]

7) Policies and procedures for the dissemination of informative materials regarding the early detection of potentially violent behaviors.[297]

8) Policies and procedures for annual school safety training for staff and students.[298]

9) Protocols for responding to bomb threats, hostage taking, intrusions, and kidnappings.[299]

10) Strategies for improving communication among students and between students and staff and reporting of potentially violent incidents, such as the

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[290] *Id.* § 2801-a(2)(c)(i).
[291] *Id.* § 2801-a(2)(c)(ii).
[292] *Id.* § 2801-a(2)(c)(iii).
[293] *Id.* § 2801-a(2)(c)(iv).
[294] *Id.* § 2801-a(2)(d).
[295] *Id.* § 2801-a(2)(e).
[296] *Id.* § 2801-a(2)(f).
[297] *Id.* § 2801-a(2)(g).
[298] *Id.* § 2801-a(2)(h).
[299] *Id.* § 2801-a(2)(i).

establishment of youth-run programs, peer mediation, conflict resolution, creating a forum or designating a mentor for students concerned with bullying or violence and establishing anonymous reporting mechanism for school violence.[300]

11) A description of the duties of hall monitors and any other school safety personnel.[301]

A building level emergency response plan must include the following elements:

1) Policies and procedures for response to emergency situations, such as those requiring evacuation, sheltering, and lock-down.[302]

2) Designation of an emergency response team comprised of school personnel, law enforcement officials, fire officials, and representatives from local regional and/or state emergency response agencies.[303]

3) Floor plans, blueprints, schematics, or other maps of the school interior, school grounds and road maps.[304]

4) Establishment of internal and external communication systems in emergencies.[305]

5) Definition of the chain of command in a manner consistent with the national interagency incident management system/incident command system.[306]

6) Coordination of the emergency response plan with the state-wide plan for disaster mental health services to assure that the school has access to federal, state, and local mental health resources.[307]

7) Procedures for review and the conduct of drills and other exercises to test components of the emergency response plan.[308]

8) Policies and procedures for securing and restricting access to the crime scene in order to preserve evidence in cases of violent crimes on school property.[309]

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[300] *Id.* § 2801-a(2)(j).
[301] *Id.* § 2801-a(2)(k).
[302] *Id.* § 2801-a(3)(a).
[303] *Id.* § 2801-a(3)(b).
[304] *Id.* § 2801-a(3)(c).
[305] *Id.* § 2801-a(3)(d).
[306] *Id.* § 2801-a(3)(e).
[307] *Id.* § 2801-a(3)(f).
[308] *Id.* § 2801-a(3)(g).
[309] *Id.* § 2801-a(3)(h).

2. *Requirements for the Commissioner of Education*

DASA requires the Commissioner of Education to provide direction, which may include model policies, to school districts to prevent harassment, bullying, and discrimination.[310] The Commissioner must also provide grants to school districts to facilitate the implementation of the guidelines.[311] In addition, DASA requires the Commissioner to promulgate regulations to assist school districts in implementing this law, as well as provide guidance related to the application of the regulations. Such regulations will include, "but not [be] limited to, regulations to assist school districts in developing measured, balanced and age appropriate responses to violations of this policy, with remedies and procedures following a progressive model that makes appropriate use of intervention, discipline and education."[312]

Additionally, DASA requires the Commissioner to create a procedure so that school districts report to the State Education Department, at least annually, material incidents of discrimination, bullying and harassment on school grounds or at a school function.[313] The reports must delineate the specific nature of the incidents of harassment, bullying or discrimination and may comply with the reporting requirements through the use of the existing uniform violent incident reporting system.[314]

Furthermore, the Commissioner must provide school districts with guidance and educational materials relating to best practices in addressing cyberbullying and which help families and communities work cooperatively with schools in addressing cyberbullying, whether it occurs on or off school property, or at or away from a school function.[315]

The Commissioner will also prescribe regulations that require, in addition to all other certification and licensing requirements, that school professionals applying for a certificate or a license, on or after July 1, 2013, have completed training on the social patterns of harassment, bullying and discrimination and the identification and mitigation of same, as well as strategies for effectively addressing problems of exclusion, bias and aggression in educational settings. This includes, but is not limited to, certificates or licenses for service as a classroom teacher, school counselor, school psychologist, school social worker, school administrator or supervisor, or superintendent of schools.[316]

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[310] *Id.* § 14(1).
[311] *Id.* § 14(2).
[312] *Id.* § 14(3).
[313] *Id.* § 15.
[314] *Id.*
[315] *Id.* § 14(4).
[316] *Id.* § 14(5).

Reporting Regulations

The Commissioner has created Regulations amending Section 100.2 of the Commissioner's Regulations to add a Dignity Act reporting requirement. The Regulations require each school district to submit to the Commissioner an annual report of material incidents of discrimination, bullying and harassment that occurred in such school year, in accordance with Education Law Section 15 and the Commissioner's Regulations. The reports will be submitted in a manner prescribed by the Commissioner, on or before the basic educational data system (BEDS) reporting deadline or at such other date as determined by the Commissioner.[317] The reports will include material incidents of harassment, bullying, and/or discrimination resulting from an investigation of a written or oral complaint made to the superintendent, school principal or their designee, or any other school employee; or are otherwise directly observed by such individuals regardless of whether a complaint is made.[318]

In accordance with the Regulations, a ''material incident of harassment, bullying, and/or discrimination'' is:

> "a single verified incident or a series of related verified incidents where a student is subjected to harassment, bullying, and/or discrimination by a student and/or employee on school property or at a school function. In addition, such terms will include a verified incident or series of related incidents of harassment or bullying that occur off school property, [where such acts create or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property], and is the subject of a written or oral complaint to the superintendent, principal, or their designee, or other school employee. Such conduct will include, but is not limited to, threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender or sex."[319] Denials of admission into, or exclusion from a course of instruction, based on gender or disability that would be permissible under law are excluded from this definition.

The report will include: the types of bias involved and where multiple types of bias are involved, all should be reported; whether the incident resulted from student and/or employee conduct; whether the incident involved physical contact and/or verbal threats, intimidation or abuse, including cyberbullying; and the location where the incident occurred.[320]

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[317] 8 NYCRR § 100.2(kk)(3)(i).
[318] *Id.* § 100.2(kk)(3)(ii).
[319] *Id.* § 100.2(kk)(1)(ix).
[320] *Id.* § 100.2(kk)(3)(iii).

3. *Immunity from Liability for Reporting Incidents*

DASA provides for immunity for good faith reporting. Specifically, any person having reasonable cause to suspect that a student has been subjected to discrimination, bullying or harassment who, acting reasonably and in good faith, reports such incident to school officials, the Commissioner, or police, or otherwise initiates, testifies, participates or assists in a proceeding, will have immunity from any civil liability that arises from taking of such action. No school district or employee will retaliate against such person.[321]

Reporting Regulation

The aforementioned Regulation regarding reporting requirements includes a provision protecting good faith reporters and prohibiting retaliation that is directly in line with Article 2 of the Education Law.

4. *Application to Charter Schools*

Under Regulation 8 NYCRR § 119.6, each charter school must include in its Code of Conduct provisions prohibiting harassment, bullying and discrimination, in accordance with the requirements for public schools.

IV. Sub-Committee Reports and Observations

The readily available research discussed below demonstrates that despite efforts to comply with the mandates of the Education Law, other alternatives are necessary to treat with those unfortunate situations when a chain of events starting with a student suspension lead to the undesirable consequences of the School to Prison Pipeline.

A. Populations Subject to Disparate Treatment

The suspensions or other disciplinary measures currently taken against students pursuant to Education Law Section 3214 is of an extreme disparate nature. The School to Prison Pipeline Report issued by the American Bar Association (hereinafter referred to as "ABA Report"), concludes that students of color, students with disabilities, and LGBTQ students all experience the adverse impacts caused by suspensions and other disciplinary actions at far higher rates than would be expected based on their numbers in the student population.[322] Such disparate treatment of these classes of students is also evident in New York due to the application of Education Law Section 3214.

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[321] N.Y. EDUC. LAW § 16 (McKinney 2018).

[322] Sarah E. Redfield & Jason P. Nance, *American Bar Association Joint Task Force on Reversing the School-to-Prison-Pipeline*, AMERICAN BAR ASSOCIATION 10-11 (2016), https://www.americanbar.org/content/dam/aba/administrative/diversity_pipeline/stp_preliminary_report_final.authcheckdam.pdf [hereinafter ABA Report].

While the School to Prison Pipeline has been a genuine problem for quite some time, recent data from the U.S. Department of Education's Civil Rights Data Collection shows that there is significant disparity among certain classes of students. "This disproportionality manifests itself all along the educational pipeline from preschool to juvenile justice and even to adult prison for students of color, for students with disabilities, for LGBTQ students, and for other groups in particular settings. These students are poorly served at every juncture."[323]

The ABA Report specifically states that "[s]tudents of color are disproportionately:

- lower achievers and unable to read at basic or above [average;]
- damaged by lower expectations and lack of engagement[;]
- retained in grade or excluded because of high stakes testing[;]
- subject to more frequent and harsher punishment[;]
- placed in alternative disciplinary schools or settings[;]
- referred to law enforcement or subject to school-related arrest[;]
- pushed or dropping out of school[;]
- failing to graduate from high school[; and]
- feel threatened at school and suffer consequences as victims."[324]

The disproportionality mentioned above also manifests itself in similar ways for students with disabilities, and other factors such as race and ethnicity, gender, and disability compound the disproportionality. Specifically, "[s]tudents with disabilities (or those who are labeled as disabled by the school) are disproportionately:

- students of color, especially in discretionary categories under the Individuals with Disabilities Education Act (IDEA);
- less likely to be academically proficient;
- disciplined, and more harshly so;
- retained in grade, but still dropping out or failing to graduate;
- more likely to be placed in alternative disciplinary schools or settings;
- or otherwise more likely to spend time out of the regular classroom, to be secluded or restrained; and
- referred to law enforcement or subject to school-related arrest and incarceration."[325]

Further, the ABA Report found that the disparities in treatment for student suspensions are also present in the juvenile justice system where youth of color, youth with disabilities, and LGBTQ youth are typically disproportionately arrested, referred, detained (longer),

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[323] *Id.* at 10.

[324] *Id.*

[325] *Id.* at 11.

charged, found delinquent (or transferred to adult court). [326] The juveniles in the system statistically have been disproportionately imprisoned rather than sentenced to a diversion program or probation in order to help rehabilitate the person.[327] As a byproduct, those caught in the School to Prison Pipeline are less likely to have access to meaningful education to enable them to graduate from high school and prepare them for higher education and work opportunities.[328]

The ABA Report ultimately concludes that the disproportionality of suspensions among social and racial classes cannot be explained by the notion that "certain groups are more likely to be engaged in bad or delinquent behavior."[329] Rather, the authors of the ABA report cite major causes of the disparities such as the wide discretion contained in most student discipline codes.[330] Since there is a strong correlation between attendance and academic success, multiple suspensions lead to academic failure and a far higher risk of criminal justice system involvement.[331] Most importantly, it is evident from the data that that disciplinary actions, including suspensions, do not lead to better outcomes for students, nor does it help provide for a safer school setting.[332]

The ABA Report detailed the disparate nature of the School to Prison Pipeline on a national level. The national data portrays the use of student suspensions as a tool to support the biases that are held in everyday life. As stated above, this Task Force was tasked with the mission to determine whether such biases and disparate treatments extend to New York State School Districts based on the language of Education Law §3214.

1. ***Does New York Have a Disparities Problem?***

As discussed *infra,* Education Law Section 3214 permits school districts to suspend students as a means of disciplinary action. Such suspensions can be levied by a School Principal of five or less days, or by the Superintendent of Schools, if the suspension is to be longer than five days.[333] In each type of suspension, the student is entitled to due process in the form of an informal conference, if the suspension is issued by the Principal, or in the form of a Superintendent's Hearing, if the suspension is issued by the Superintendent. It is apparent from the data regarding out of school suspensions within New York State that the disparities problem explained below is predominant among large urban school districts.

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[326] *Id.*
[327] *Id.*
[328] *Id.*
[329] *Id.* at 20.
[330] *Id.* at 18-20.
[331] *Id.* at 20-22.
[332] *Id.* at 22-24.
[333] N.Y. EDUC. LAW § 3214.

During the 2016-2017 school year, there were 35,234 total suspensions in New York City Schools.[334] 25,696 (72.9%) of these suspensions were a short-term principal's suspension while 9,538 (27.1%) of these suspensions were long-term suspensions.[335] Of those suspensions, 46.9% of the suspensions were of black students, even though black students encompassed only 26.5% of the entire student population.[336] 38.9% of the suspensions were students that had an individualized education plan ("IEP"), despite only 19.4% of the entire student population having an IEP.[337] In 2015-2016, nearly 50% of the 37,647 suspensions were Black students, whereas 38.6% of the suspensions were students with an IEP.[338] The student population was only 27.1% Black and 18.7% of students had an IEP.[339] It is evident from this data, that there is clearly a disparity of suspensions for Black students and students with IEPs.

Furthermore, during the 2016-2017 school year, black students in school districts outside of New York City were suspended at a rate of four times more than the suspension of white students.[340] Additionally, while the total suspension rate of students was the highest in high schools across New York State, black students in primary and middle schools were suspended nearly five times more than white students.[341]

Research also shows that students of color are more likely to be referred to law enforcement for disciplinary infractions than Caucasian students.[342] In the second quarter of 2018, 58% of the law enforcement arrests in New York City schools were black

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[334] *Student Safety Act Reporting on Suspensions: 2016-2017 School Year*, NEW YORK CIVIL LIBERTIES UNION, https://www.nyclu.org/sites/default/files/ssa_suspension_factsheet_2016-2017.pdf (last visited Dec. 19, 2018). The total number of suspensions reported by New York City for the 2017-2018 academic year has increased to 36,668 which amounts to a 4.1% from 2016-2017. *Student Safety Act Reporting on Suspensions: 2017-2018 School Year*, NEW YORK CIVIL LIBERTIES UNION, https://www.nyclu.org/sites/default/files/ssa_suspension_fact_sheet_2017-2018.pdf (last visited Dec. 19, 2018).

[335] *Student Safety Act Reporting on Suspensions: 2016-2017 School Year*, NEW YORK CIVIL LIBERTIES UNION, https://www.nyclu.org/sites/default/files/ssa_suspension_factsheet_2016-2017.pdf (last visited Dec. 19, 2018).

[336] *Id.*

[337] *Id.*

[338] *Student Safety Act Reporting on Suspensions: 2015-2016 School Year*, NEW YORK CIVIL LIBERTIES UNION, https://www.nyclu.org/sites/default/files/SSA_Suspension_FactSheet_2015-2016.pdf (last visited Dec. 19, 2018).

[339] *Id.*

[340] *Stolen Time: New York State's Suspension Crisis*, THE NEW YORK EQUITY COALITION 4-7 (Dec. 2018), *available at* https://s3-us-east-2.amazonaws.com/edtrustmain/wp-content/uploads/sites/5/2018/12/09090556/Stolen-Time.pdf.

[341] *Id.*

[342] American Civil Liberties Union, *School-to-Prison Pipeline [Infographic]*, ACLU https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/school-prison-pipeline-infographic (last visited Dec. 28, 2018).

students while only 6.3% of arrests were white students.[343] As these students are referred to law enforcement, the likelihood of future referrals outside of student code of conduct referrals increases. In a study completed in Texas, students who were suspended or received referrals were three times as likely as a non-suspended student to enter the juvenile system within one year of the disciplinary infraction.[344]

This nationwide issue also extends to school districts in New York. As stated previously, the data collected by the United States Department of Education, Office of Civil Rights, indicates that school districts suspend students of color and students with disabilities at significantly higher rates than white students and those without disabilities.[345] A comprehensive report was completed by a Task Force chaired by former Chief Judge Judith Kaye, which found that in the New York City School District:

- Most suspensions are for minor and common school misbehavior;
- Students of Color and students receiving special education services are suspended in disproportionate numbers;
- There was no evidence that the higher rate of suspensions for students of color was linked to higher rates of misbehavior;
- The disproportionality of suspensions for students of color had increased as the number of suspensions overall had decreased; and
- The majority of suspensions were concentrated among a small number of schools.[346]

As stated above, across New York State, there is evidence of disparate treatment of suspensions toward minority students and those students with IEPs. The issue of disproportional treatment towards student suspensions in school districts is not limited to New York City. In 2014 the New York State Attorney General's Office entered into consent decrees with the cities of Syracuse[347] and Albany[348] School Districts in an effort to correct disparate discipline.

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[343] New York Civil Liberties Union, *Student Safety Act Reporting*, NYCLU https://www.nyclu.org/sites/default/files/ssa_2018_q2_nyclu.pdf (last visited Dec. 28, 2018).

[344] Tony Fabelo et al., *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*, COUNCIL OF ST. GOV'TS JUST. CENTER, xii (July 2011), *available at* https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf.

[345] U.S. DEP'T OF JUST. & U.S. DEP'T OF EDUC., *supra* note 3.

[346] *Keeping Kids In School and Out of Court: New York City School Justice Partnership Task Force Report and Recommendations*, N.Y. ST. PERMANENT JUD. COMMISSION ON JUST. FOR CHILD., 4–6 (2013), https://www.nycourts.gov/IP/justiceforchildren/PDF/NYC-School-JusticeTaskForceReportAndRecommendations.pdf.

[347] Investigation of Eric T. Schneiderman, Att'y Gen. of the State of N.Y. of Syracuse City Sch. Dist., AOD No. 14-159, (Off. of the Att'y Gen. of the State of N.Y., Civ. Rts. Bureau July 10, 2014), *available at* https://ag.ny.gov/sites/default/files/pdfs/bureaus/civil_rights/Syracuse_City_School_District_AOD-Executed.pdf [hereinafter Syracuse City Sch. Dist. Consent Decree].

[348] Investigation of Eric T. Schneiderman, Att'y Gen. of the State of N.Y. of the City Sch. Dist. of Albany, AOD No. 15-243, (Off. of the Att'y Gen. of the State of N.Y., Civil Rights Bureau Dec. 4, 2015), *available at*

In Syracuse, the New York State Attorney General's Office determined that:

> [R]acial disparities exist throughout the disciplinary process, as black students are disciplined at higher rates than white students. Overall, during the 2011-2012 school year, almost 44% of black students received at least one teacher referral, while the figure for white students was nearly 26%. For in-school suspensions, nearly 27% of black students received at least one in-school suspension, while 15% of white students received such a suspension. Finally, 25% of black students received at least one suspension out of school, while 12% of white students received at least one such suspension. For black students in middle school grades, 62% received at least one teacher referral, 44% received at least one in-school suspension, and 42% received at least one out-of-school suspension, compared to figures of 41%, 26% and 28% for white students, respectively. Black students were recommended for Superintendent's Hearings—a necessary precursor to Long-Term Suspensions—at twice the rate as white students. During the 2012-2013 school year, one in every ten black students in secondary school (grades 6-12) was recommended for Superintendent's Hearings, whereas one in every twenty white students in secondary school received such a recommendation.[349]

Additionally, in Albany, the New York State Attorney General's Office determined that there was "significant racial disparities in rates of referral."[350]

> For each school year between August 2009 and May 2014, over 40% of all black students received at least one office referral, compared to 20% of all white students. These disparities result from policies that vest wide discretion in staff to remove students from the classroom without adequate guidance or limitation on exercising that discretion. Since 2012, the District has made concerted efforts to increase training opportunities for staff in classroom management, cultural competency, and positive behavior interventions and supports.[351]

Further, the school district also engaged in disparate treatment towards other minority students, as well as students with disabilities. Such disparate treatment was also seen in gender based cases as well as amongst age groups.

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https://www.albanyschools.org/district/Programs/AG_report/2015-16/AG_agreement_12-15.pdf [hereinafter City Sch. Dist. of Albany Consent Decree].

[349] Syracuse City Sch. Dist. Consent Decree, *supra* note 347, at 6.

[350] City Sch. Dist. of Albany Consent Decree, *supra* note 348, at 8.

[351] *Id.* at 8-9.

While there are school districts with significant disproportionality among certain student groups when issuing suspensions and are inappropriately influenced by gender, race, disability, there are many school districts that do not administer discipline in a disproportionate manner. This suggests that some school districts within New York State may be models for reform within a district.

2. *The Role of Implicit Bias, Coupled with Vague Definitions of Misconduct, in Creating Disparities*

The ABA Report,[352] and recent reports from the NAACP Legal Defense Fund ("NAACPLDF")[353] and the U.S Government Accountability Office[354] identify the combination of implicit bias and the discretion offered by vaguely defined offenses, like disobedience, defiance and disruption, as factors that permit unintended disparities to be created.

The NAACPLDF Report succinctly explains the interrelationship between implicit bias and vague disciplinary standards:

> "The inclusion of discretionary offenses for which students may be suspended has disproportionately harmed Black students even though Black students are not more likely to act out in school. Research has consistently established that Black students do not have higher rates of misconduct than other students. Rather, Black students are disproportionately disciplined for more subjective offenses, such as disrespecting a teacher or being perceived as a threat, than their White counterparts. These disparities result from and perpetuate stereotypes about Black students, specifically the stereotype that they are aggressive and dangerous.
>
> Only recently have we fully understood that not only do such disparities perpetuate stereotypes regarding students of color, but are themselves the product of stereotypes subconsciously present in almost all of us. Every day, each of us is exposed to a variety of media that communicate negative stereotypes about persons of color. These stereotypes, unknowingly, affect behaviors of all people, including teachers. Teachers develop implicit biases that cause them to interpret otherwise innocent behavior as part of a pattern of negative behavior inherent in the student. Paired with disciplinary codes

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[352] *See* ABA Report, *supra* note 322, at 18-20, 54-56.

[353] AJMEL QUERESHI & JASON OKONOFUA, LOCKED OUT OF THE CLASSROOM: HOW IMPLICIT BIAS CONTRIBUTES TO DISPARITIES IN SCHOOL DISCIPLINE 4 (Jin Hin Lee et al. eds., 2017), https://www.naacpldf.org/wp-content/uploads/LDF_Bias_Report_WEB-2.pdf [hereinafter NAACPLDF Report].

[354] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-18-258, DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES 4 (2018).

> that define misconduct in vague terms, stereotypes significantly shape teacher decisions as to which students they punish. These discriminatory behaviors affect not only teachers, but the students who are their victims. Reacting to years of discriminatory treatment, students may adjust their behavior, reacting coldly to teachers with whom they are not familiar, fearing that the teacher, like others, will unfairly target them for discipline."[355]

In order reduce the disparities in discipline that contribute to the School to Prison Pipeline school districts need timely and accurate information on the location and populations within their district where disparities are shown to be occurring, and access to research based tools to remedy them. The Trump Administration's Federal Commission on School Safety stated in a report issued on December 18, 2018, that the 2014 guidance issued jointly by the U.S. Department of Education and the Department of Justice, which requires schools to monitor and remediate disparities in discipline by race, disabilities and other factors, should be abandoned.[356] The New York State Education Department ("NYSED") already collects information on discipline that can be used to identify disparities by race, gender, and disability (and by combinations of them) at both the district and school level. Since the 2014 Federal guidance forms the basis of NYSED's requirements,[357] the Task Force recommends that NYSED adopt its own disparities regulations that do not depend on the Federal guidance. Since the research discussed above shows that simply reducing the total number of suspensions alone will not cure the disparities problem and may indeed make it worse, an approach that is explicitly targeted at reducing disparities will be needed to actually reduce disparities in discipline across protected groups and to reduce the School-to-Prison Pipeline. One such approach is the use of restorative justice practices which is described below in more detail.

In an effort to achieve an informed approach to the adoption of disparities regulations, the Task Force suggests the New York State Education Department/Board of Regents consider the following regarding the collection of data. While existing data does suggest implicit bias and the resulting disparate treatment of students of color or who have disabilities in the state's large urban areas, there are hundreds of suburban and rural school districts in the State.

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[355] NAACPLDF Report, *supra* note 349, at 4 (citations omitted) (internal quotation marks omitted).

[356] Federal Commission on School Safety, *Final Report of the Federal Commission on School Safety*, 67-72 (Dec. 18, 2018), *available at* https://www2.ed.gov/documents/school-safety/school-safety-report.pdf.

[357] The "2014 School Discipline Guidance Package" issued by the U.S. Department of Education and the U.S. Department of Justice can be found on the U.S. Department of Education's website. *School Climate and Discipline: Federal Efforts*, U.S. DEP'T OF EDUC., https://www2.ed.gov/policy/gen/guid/school-discipline/fedefforts.html (last modified Dec. 8, 2015). The guidance package contains four documents: (1) Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline; (2) Guiding Principles; (3) Directory of Federal School Climate and Discipline Resources; and (4) Compendium of School Discipline Laws and Regulations.

1. The adoption of a standardized methodology for measuring disparities in discipline at both district and school levels across the protected classes of race, gender, disability and, if possible, by LGBTQ status. Annually this information should be reported to Districts and the public. Districts that have district-wide or school disparities above a threshold point set by the State Education Department would be required to develop remedial plans with targets and goals to reduce the disparities below the threshold within a reasonable period of time.

2. Using the current research on strategies that are effective in the reduction of disparities, the State Education Department should consider the development of model materials and processes that districts can use to analyze the root causes of the disparities shown in their data and information on strategies including training, services, courses, materials, consultants, and best practices that have been shown to successfully reduce disparities in discipline.

B. Restorative Justice & Current Productive Practices

Efforts have been made throughout the country regarding utilization of restorative justice as an integral part of the student disciplinary process. New York has been among one of the states to begin exploring the use of restorative justice alternatives rather than only using the traditional punitive model of suspending students for bad behavior. As explained in further detail below, restorative justice alternatives allow for a more instructive and effective model of discipline by permitting students to learn and grow from their mistakes while continuing their educational path.

Restorative justice is an increasingly acknowledged and employed approach to school discipline, behavior, and relationships. Restorative justice operates with an underlying thesis that "human beings are happier, more cooperative and productive, and more likely to make positive changes in their behavior when those in positions of authority do things *with* them, rather than *to* or *for* them."[358] Restorative justice lies at the intersection of criminal justice, school culture, and professional development. As an increasing amount of evidence demonstrates the long-standing system of punitive discipline to be not only ineffective in reducing behavioral incidents but to be detrimental to young people, particularly those of color, school districts are increasingly turning to the research-supported practices of restorative justice.[359] In New York State, numerous cities have introduced initiatives to bring restorative justice into their schools. For example, in 2015,

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[358] Allison Ann Payne & Kelly Welch, *supra* note 7, at 226.

[359] VALERIE L. MARSH, BECOMING RESTORATIVE: THREE SCHOOLS TRANSITIONING TO A RESTORATIVE PRACTICES CULTURE (2017), *available* at http://urcues.org/wp-content/uploads/2017/10/Restorative-Practices-Brief-2_final-25_EDITED.pdf; VALERIE L. MARSH, RESTORATIVE PRACTICES: HISTORY, SUCCESSES, CHALLENGES & RECOMMENDATIONS (2017), *available at* http://urcues.org/wp-content/uploads/2017/06/Restorative-Practices-Brief-1_final.pdf.

New York City's Department of Education instituted a policy toward behavior that incorporated restorative justice, which was precipitated by a two-decade long rise in student suspensions and an overrepresentation of black students being suspended.[360] Similarly, the Rochester City School District has recently reworked its code of conduct with a de-emphasis on suspensions through the use of restorative justice.[361]

The effectiveness of restorative justice is most often measured by quantitative studies that document its repeated success in reducing the severity and frequency of school violations.[362] To that end, restorative justice has been found to be an effective means of narrowing the discipline gap that disproportionately punishes students of color,[363] resulting in disruption of the School-to-Prison Pipeline. However, restorative justice is more than a discipline reform. It is also an approach to transforming school culture.[364] Studies that include qualitative methods are particularly helpful in learning about how restorative justice affects relationships, especially among students and teachers. These studies show that students prefer restorative justice to traditional punitive measures[365]

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[360] SAMANTHA POWNALL, A, B, C, D, STPP: HOW SCHOOL DISCIPLINE FEEDS THE SCHOOL-TO-PRISON PIPELINE, (Johanna Miller et al. eds., 2013), *available at* https://www.nyclu.org/sites/default/files/publications/nyclu_STPP_1021_FINAL.pdf.

[361] Justin Murphy, *RCSD Board Approves New Code of Conduct*, DEMOCRAT & CHRONICLE (June 16, 2016), http://www.democratandchronicle.com/story/news/2016/06/16/rcsd-code-of-conduct-suspensions-restorative/85978032/.

[362] GORDON BAZEMORE & MARA SCHIFF, "NO TIME TO TALK:" A CAUTIOUSLY OPTIMISTIC TALE OF RESTORATIVE JUSTICE AND RELATED APPROACHES TO SCHOOL DISCIPLINE 77 (2010); Thalia González, *supra* note 8; Sarah Guckenberg et al., *Restorative Justice in U.S. Schools: Summary Findings from Interviews with Experts*, WESTED (Oct. 2015), https://jprc.wested.org/wp-content/uploads/2015/11/1447101213resourcerestorativejusticeinusschoolssummaryfindingsfromintervieswithexperts.pdf; David R. Karp & Beau Breslin, *Restorative Justice in School Communities*, 35 YOUTH & SOC'Y 249, 249-72 (2001); Brenda E. Morrison, *Regulating Safe School Communities: Being Responsive and Restorative*, 41 J. OF EDUC. ADMIN. 690, 690-704 (2003); Mara Schiff, *Dignity, Disparity, and Desistance: Effective Restorative Justice Strategies to Plug the "School-to-Prison Pipeline*," UCLA: THE CIV. RTS. PROJECT (Jan. 2013), https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/dignity-disparity-and-desistance-effective-restorative-justice-strategies-to-plug-the-201cschool-to-prison-pipeline/schiff-dignity-disparity-ccrr-conf-2013.pdf; Jeanne B. Stinchcomb, et al., *supra* note 9; Ted Wachtel, *Defining Restorative*, INTERNATIONAL INSTITUTE FOR RESTORATIVE PRACTICES (2013), https://www.iirp.edu/pdf/Defining-Restorative.pdf.

[363] Anne Gregory et al., *The Promise of Restorative Practices to Transform Teacher-Student Relationships and Achieve Equity in School Discipline*, 26 J. EDUC. AND PSYCHOL. CONSULTATION 325, 325-53 (2016); Anne Gregory et al., *The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?*, 39 EDUC. RESEARCHER 59, 59-68 (2010); Mara Schiff, *supra* note 362.

[364] Anne Gregory et al., *supra* note 363; Tom Cavanaugh, Patricia Vigil & Estrellita Garcia, *supra* note 7; Allison Ann Payne & Kelly Welch, *supra* note 7.

[365] Wendy J. Drewery, *Conferencing in Schools: Punishment, Restorative Justice, and the Productive Importance of the Process of Conversation*, 14 J. COMMUNITY AND APPLIED SOC. PSYCHOL. 332, 332-44 (2004); Barry A. Fields, *Restitution and Restorative Justice in Juvenile Justice and School Discipline*, 22 YOUTH STUD. AUSTL. 44, 44-51 (2003); Anne Gregory et al., *supra* note 363; Jane O'Dea & Craig Loewen, *Life in the hallway: Students' Perceptions of Violent and Disruptive Behaviour in Their Schools*, *in* BUILDING FOUNDATIONS FOR SAFE AND CARING SCHOOLS: RESEARCH ON DISRUPTIVE BEHAVIOR AND VIOLENCE, 47-82 (Grace Malicky et al. eds., 1999).

and that restorative justice has a large positive impact on the entire school culture. With restorative justice practices in place, students gain a voice in their communities and teachers experience less stress.[366]

The evidence is clear – restorative justice works as a viable alternative to punitive discipline in schools. In contrast to restorative justice, there is a vast amount of evidence that finds the punitive approach to be ineffective in improving discipline and associated with a constellation of additional problems, such as social justice offenses, fueling the School-to-Prison Pipeline, decreased achievement, increased misbehavior, and increased likelihood that communities both inside and outside the school will suffer. Restorative justice offers more than the traditional punitive discipline, such as community, relationship, repair, decreased incidences of misbehavior, improved school culture, decreased racial discipline gap, and student agency. The road to reform is never easy, nor is it ever quick to achieve effective reform; however, restorative justice provides incentives supported by evidence that school communities can improve the experiences of all members/participants – including staff, parents, teachers, administrators, and especially students.

As mentioned previously, New York has explored the use of restorative justice practices by forming its own School-Justice Partnership which examined the disciplinary challenges in New York referred to above and issued recommendations for addressing disparities in discipline. The Task Force, led by the late Chief Judge Judith S. Kaye and supported by the New York State Permanent Judicial Commission on Justice for Children, issued a comprehensive array of recommendations to combat discipline disparities in New York schools. Among them was a recommendation to use "Restorative Approaches"[367] to build the capacity for schools to implement and institutionalize the commitment to use positive interventions with their students. Restorative justice is by no means a new concept, but this was one of the early appearances of the practice in this context in the state of New York.

In New York State as well as many other parts of the country, there has been an increased recognition that punitive disciplinary measures such as school suspensions often cause more problems than they solve and aggravate existing problems. As a result of such recognition, a consensus is growing that the use of more proactive, solution-oriented alternatives are worthwhile. While these alternatives take many forms and the effectiveness of some of them is not yet entirely clear, one common aspect of all of them is that they aim to achieve restorative justice. The various forms of restorative justice seek to bring individuals involved in a conflict together to engage in a constructive dialogue

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[366] Guckenberg et al., *supra* note 362.

[367] *Keeping Kids In School and Out of Court: New York City School Justice Partnership Task Force Report and Recommendations*, *supra* note 346, at 31.

to resolve the conflict at its root, in the belief that by doing so, we will likely reduce future conflict. In other words, each modality of restorative justice shifts the focus of a disciplinary hearing or inquiry toward repairing the harm caused in a conflict and away from punishment as a stand-alone resolution. Inherent in all restorative justice's iterations is a belief that when we do the difficult work of resolving conflict at its root, we reduce future conflict and come away from the process with more empathy and a decreased likelihood of repeating the same mistakes that led to the original conflict.

The use of restorative justice practices has spread across New York schools at an impressive pace. In April 2017, the New York State School Boards Association released a report entitled "Rethinking School Discipline."[368] The report advocates for a dramatic shift away from punitive disciplinary practices and toward restorative justice.[369] This is but one example of the broad consensus that is building around the effectiveness and importance of using restorative justice practices rather than relying on suspension and expulsion of students to change behavior.

Across the country, restorative justice models adopted by large districts have resulted in dramatic decreases in the numbers of suspensions. In Chicago, for example, upon adoption of a restorative justice approach, school suspensions were reduced from 23 percent of the student body to 16 percent over the course of five academic years.[370] Though restorative justice alone does not fully account for the reduction, the shift in focus and goals that it represents appeared to play a significant role.

Various models have been adopted across New York State as well, with varying degrees of success. The Buffalo City School District has included restorative justice in its updated code of conduct and has begun to move some schools within the District towards a restorative model. In New York City, there have been sustained efforts across several boroughs to bring restorative justice into both schools and the juvenile justice system. Some thought leaders have included Common Justice, Brooklyn Restorative Justice Project, and the Red Hook Community Justice Center.

In Syracuse, suspension rates were among the highest in the nation at 35 percent of the District's student population being suspended. Not only was the suspension rate at Syracuse high but the racial disparity among students receiving suspensions was also very high. It was so high that the Attorney General's office took notice and launched an

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[368] GAYLE SIMIDIAN, RETHINKING SCHOOL DISCIPLINE (David Albert ed., 2017), *available at* https://www.nyssba.org/clientuploads/nyssba_pdf/rethinking-school-discipline-04272017.pdf.

[369] *Id.*

[370] W. David Stevens et al., *Discipline Practices in Chicago Schools: Trends in the Use of Suspensions and Arrests*, UNIV. OF CHICAGO CONSORTIUM ON CHICAGO SCH. RES. (March 2015), https://consortium.uchicago.edu/sites/default/files/publications/Discipline%20Report.pdf

investigation in 2013.[371] Eventually, the District entered into an "Assurance of Discontinuance" with the Attorney General's office to implement restorative justice practices along with a host of other adjustments to the District's disciplinary practices. Despite the School District decreasing the total suspensions in half over a period of three years, the District has been unable to resolve its disproportionality of suspensions, as Black male students are being suspended at a rate that is disproportionate to their peers, rendering them twice as likely to be suspended.

Across the state, smaller school districts have also sought to implement restorative justice practices in their schools. In the Rochester area, Partners in Restorative Initiatives (PIRI) has trained both schools inside the Rochester City School District and schools outside of Rochester and has produced great results. In East High School, located in Rochester, suspensions dropped from 2,541 during the 2015-2016 academic year, to only 909 the following academic year. Again, while this dramatic drop which is the largest in the District cannot be attributed to restorative justice practices alone, it does seem to suggest their utility. Outside of Rochester, PIRI also works in the Avon Central School District in Avon, New York to implement a comprehensive list of restorative options for various challenges in schools. While no empirical data exists as to the efficacy of this program, the school continues to successfully use Community-Building Circles, Talking Circles, Celebration or Honoring Circles, Academic Circles, Circles of Understanding, Healing Circles and Conflict Circles. The District also has a restorative committee and they meet with each building to discuss the progress and success of restorative justice practices. The District has spent time looking at their disciplinary referrals and have found that increasing the number of community building activities such as circles and community-wide assemblies and activities reduces the monthly number of referrals.

The empirical evidence supporting use of restorative justice exists in studies of students in countries outside the United States, but there is still room for a significant amount of analysis of the effectiveness of these programs within the United States. The Federal Office of Juvenile Justice and Delinquency Prevention did complete a study in July of 2017 demonstrating a moderate reduction of recidivism rates in students who participated in restorative justice in comparison to students who were brought through the traditional juvenile justice court system. Additionally, the study confirmed a higher level of victim satisfaction among those victims who participated in restorative justice rather than the traditional criminal justice system. Significantly more research is needed into the various models and their efficacy across the diverse student populations that make up New York State. Thus, as discussed below, the Task Force recommends that any

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[371] Julie McMahon, *Black Students Twice as Likely to be Suspended in Syracuse Despite Discipline Overhaul*, SYRACUSE.COM: THE POST STANDARD (Jan. 12, 2017) https://www.syracuse.com/schools/index.ssf/2017/01/black_students_twice_as_likely_to_be_suspended_in_syracuse_despite_discipline_ov.html.

implemented models also contain a data collection component to allow for evidence-based analysis going forward.

1. *Current Productive Practices and School Wide Prevention Models*

There are several models and programs that schools may implement as an alternative to traditional punitive models of school discipline. Suspensions are currently the primary means of discipline for student misconduct as set forth in New York State Education Law Section 3214.

Recognizing that suspensions are an exclusionary means of discipline, as explained in more detail below, we recommend that School Districts be provided by statute with the opportunity to use restorative practices in addition to or instead of suspensions. Students who are disconnected from their schools through the use of suspensions are more likely to fall behind academically, become further involved in criminal behavior, and ultimately become more likely to enter the School to Prison Pipeline.

Furthermore, the use of suspensions rarely offers a resolution to behavioral problems. "Exclusionary discipline in the form of suspensions and expulsions harm students academically. Multiple studies show the clear link between missed class time and course failure. Being absent from class is strongly associated with students failing their course work."[372]

In contrast, the use of restorative justice practices offers the benefits of keeping students in school, providing a resolution to the initial misconduct, and promoting positive, prosocial bonds between students and faculty.

The following school response models are options that schools may choose to use in their districts. The following models address the school climate in its entirety, including students, teachers, and administrators, with a focus on building a positive community within the school itself and addressing root causes of disciplinary issues. These models are designed to help address discipline issues prior to an incident occurring and/or prior to escalation. Schools should have the option to choose a model that best fits the needs of their specific community.

One school response model is the Multi-tiered System of Support. The New York State Board of Regents considered a report in May 2018 on Social Emotional Learning (SEL).[373]

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[372] THE CHILDREN'S AGENDA, BREAKING THE SCHOOL-TO-PRISON PIPELINE: HOW IMPROVING SCHOOL CLIMATE SUPPORTS ACADEMIC SUCCESS 9 (2019) (internal citations omitted), *available at* https://www.thechildrensagenda.org/wp-content/uploads/2019/02/rochester_schoolclimatereport_FINAL_website.pdf.

[373] N.Y. STATE EDUC. DEP'T, *Introducing New Guidance and Resources for Social Emotional Learning*, (May 2, 2018), *available at* http://www.regents.nysed.gov/common/regents/files/518brd1.pdf.

In accordance with the recommendations of the Safe Schools Task Force, Department staff and the Task Force's School Climate and Student Engagement Workgroup have developed new SEL guidance materials and are prepared to present benchmarks for voluntary implementation by the field and a framework for SEL implementation in New York State beginning in June 2018. The report focused on a "whole child/whole school approach to supporting and educating young people that are healthy, safe, engaged, and challenged, [which] is the foundation upon which SEL implementation must take place. Such an approach works with the whole school community to integrate SEL principles into the fabric of school life."[374]

Facilitating SEL schoolwide involves multiple components of school life including, but not limited to the following: (i) Alignment of district and school support, personnel policies, and existing and new practices in a multi-tiered system of support (MTSS); and (ii) Addressing discipline as an opportunity for social emotional growth that seeks concurrent accountability and behavioral change through SEL-based restorative justice practices.

The system **used for facilitation social emotional learning** is built on a Multi-Tiered System of Support (MTSS) incorporating tiers of intervention and support for both academic instruction and behavioral instruction. The tiers are as follows:

> Tier 1: Universal intentions that are school wide in each classroom serving all students. (80% of the total population)
>
> Tier 2: Specialized interventions serving at risk students. (5 – 15% of the total population)
>
> Tier 3: Tertiary Interventions – serves high risk students (1 – 5% of the total population)

MTSS is predicated on five (5) pillars: (i) Social Emotional Learning; (ii) Mental Health Support; (iii) Behavioral Supports and Interventions; (iv) Restorative Practices; and (v) Academic Supports and Interventions/RTI, as seen below on the following chart.

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[374] N.Y. STATE EDUC. DEP'T, *Social Emotional Learning Essential for Leaning, Essential for Life: Attachment 2 May 2018 Regents Item*, 22 (May 2, 2018), *available at* http://www.regents.nysed.gov/common/regents/files/518brd1.pdf.

	SEL	Mental Health Support	Behavioral Supports & Interventions	Restorative Practices	Academic Supports & Interventions/RTI
Tier 3	• Individual instruction in SEL competencies strategies and skills • Practice and coaching	• Crisis intervention • Individual counseling/ support plan • Family Collaborations • Referral to services	• Wraparound services • Functional Behavioral Assessments (FBAs), Behavioral Intervention Plans (BIPs) • Faculty/staff mentor • Academic and/or behavioral coach	• Family Conferences/ Collaborations • Formal Restorative Conference(s)	• Intensive instruction (1-2 students) • After school tutoring • Computer-assisted programs • Specially-designed instruction (SDI)
Tier 2	• Targeted explicit instruction in SEL competencies, strategies, and skills • Practice and coaching with feedback • Peer-to-peer SEL workshops • SEL focused community building circles	• Individual/small group counseling • Support groups (e.g. anger management, etc.) • Family Engagement • Substance abuse prevention counseling • Referral to services	• Faculty/staff mentor • Daily Check In/Check Out • Daily Progress Reports (DPR) • Social and Academic Instructional Groups (Small Group) • Individual Behavior Contract • Academic and/or behavioral coach • Targeted afterschool support program(s)	• Peer Mediation • Restorative Problem-Solving Circles • Formal Restorative Conference • Community service	• Peer Tutoring and Paired Reading • Small group supplemental instruction • Guided instruction • Visual/auditory aids/cues and manipulatives
Tier I	• Explicit instruction in SEL Competencies • Integration of SEL within the content areas • General teaching practices that model and support SEL • School climate surveys (student, staff, families) • SEL Plan based on survey and other student data • Family engagement	• Mental health education • Mental health screening • Prevention/ Intervention supports (e.g. stress management, wellness, drug/substance abuse/ suicide prevention, etc.) • Trauma-Informed/ trauma-sensitive approach • Peer education	• Schoolwide Behavioral Expectations • Evidence-based classroom management • Guidance conference(s) • Training of peer educators • Student leadership opportunities • Bullying prevention (i.e., DASA) • Culturally responsive practices • Student government, extracurriculars • Afterschool and summer programs • Community schools • Community service opportunities	• Community Building Circles • Negotiation Skills Training • Peer Mediation • Restorative Circles • Community service • Student circle keeper training • Family Engagement • Responsive discipline policies	• Standards-aligned, differentiated, data informed, cross-curricular, culturally responsive instruction • Goal-setting for learning • Student self/peer assessments • Project based learning/ assessments • Family engagement • Universal Design for Learning • Health Education Coordination

Adapted from Illinois SS/HS State Group and Erie 2 BOCES

A second model is known as the School Responder Model, which is a multi-systemic approach to prevention and early intervention for youth at risk of justice involvement. Key components include: Identifying at-risk youth, the implementation of community-based services, and developing a behavioral health team to appropriately respond to students in need of behavioral interventions. This proactive approach recognizes that students with behavior issues may have other underlying issues, such as adverse childhood experiences, learning disabilities, etc., that if appropriately addressed, may help resolve classroom misbehavior.[375]

2. *Restorative Justice Practices as Intervention*

In addition to the school wide prevention models discussed above, school districts may also implement restorative justice practices at the intervention point in lieu of suspending students. These restorative justice practices could when appropriate replace the use of suspensions as a means of addressing disciplinary matters. Many of the intervention models outlined below include positive, constructive forms of discipline as the ultimate outcome, such as writing apology letters, performing community service, and staying after school for extra help. These models allow for creative consequences as well. For example, if a student has had issues with cell phone use, perhaps one of the "disciplinary" outcomes for him/her is to turn in their cell phone at the main office each day for the duration of the school day. Another example would be if a student breaks the dress code by wearing a hat, perhaps the student would be remanded to write an essay or report on

[375] Jacquelyn Greene & Olivia Allen, *Disrupting School-Justice Pathways for Youth with Behavioral Health Needs*, NAT'L CTR. FOR MENTAL HEALTH AND JUV. JUST. (2017), https://www.ncmhjj.com/wp-content/uploads/2017/10/NCJFCJ_SJP_ResponderModel_Final.pdf.

the safety risks of wearing hats in schools rather than being sent to in-school suspension for the day.

One intervention model that may be used by school districts is Student Court, also known as Teen Court or Peer Court. Student courts are school based intervention programs that utilize trained students to conduct peer led sentencing hearings in place of traditional school-based interventions. This model allows the student who has been charged with behavioral misconduct the opportunity to tell their side of the story. The accuser can also provide their perspective on what happened. After listening to aggravating and mitigating circumstances, student volunteers deliberate on a fair and appropriate consequence for the action. Sentences are meant to be constructive and ultimately reconnect students with their school and student body. This model uses the power of positive peer pressure. It has been long understood that students respond to their peers in a more positive way than they do to adults in authority.[376]

Another intervention model often used by school districts is Youth Court. Like Student Courts, Youth Courts are peer-led diversion programs. They are an alternative to traditional court-based intervention for incidents that rise to the level of a chargeable offense, and typically include law enforcement and judicial involvement. The Youth Court model can be adapted to be used within the school setting. This restorative justice practice may be used to address issues that go beyond student code of conduct issues, such as possession of drugs, alcohol or weapons on school property. Key tenants to Youth Courts are accountability (acknowledging wrongdoing), restorative justice (incorporating victims and restoring balance after a crime has been committed), and giving young people second chances (everyone makes mistakes – one bad decision should not define a youth forever). When given the opportunity to acknowledge wrongdoing and explain him/herself to their peers, young people learn more from their mistakes and are less likely to repeat those behaviors in the future. According to a 2016 study conducted in Los Angeles County Teen Court, youth who participated in Teen Court were less likely to repeat offend than those who went through formal probation.[377] Furthermore, Youth Courts give young people a sense of ownership and control. Involvement fosters a sense of community since teens relate to each other more than they do to adults. Taking that a step further, it builds positive connections between the offender and the community through the completion of community service and other pro-social activities. Student volunteers benefit from civic education and involvement, often garnering lifelong skills, such as public speaking, critical thinking, and communication. Because Youth Courts rely on student volunteers, they are an economically viable option for many communities. Another benefit to the

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[376] Michael Lynch & Dante Cicchetti, *Children's Relationships with Adults and Peers: An Examination of Elementary and Junior High School Students*, 35 J. SCH. PSYCHOL. 81, 81-99 (1997); *see also* Sarah D. Sparks, *Teenagers are Wired for Peer Approval*, 32 EDUC. WEEK 8, 8 (2013) (citing Dustin Albert et al., *The Teenage Brain: Peer Influences on Adolescent Decision Making*, 22 CURRENT DIRECTIONS IN PSYCHOL. SCI. 114, 114-20 (2013)).

[377] Lauren N. Gase et al., *The Impact of Two Los Angeles County Teen Courts on Youth Recidivism: Comparing Two Informal Probation Programs*, 12 J. EXPERIMENTAL CRIMINOLOGY 105, 105-26 (2016).

implementation of Youth Courts as an alternative to traditional courts is the flexibility and adaptation of each court to fit its community's specific needs. There are a variety of styles of Youth Courts that can be used: peer jury, youth judge, tribunal, and adult judge. This menu of options allows programs to evaluate what will work best in their unique circumstances and setting. When young people are engaged, listened to, and held accountable, especially by their peers, they are much more likely to learn a positive lesson from their mistakes when compared to those who are disciplined/sanctioned in more traditional ways. The benefits of Youth Court intervention/diversion programs are immeasurable due to the far-reaching effects they have on the young offenders, the volunteers, mentors, and the community at large.

Individual youth courts are typically the creation of local communities, which develop and operate youth court programs.[378] For example, in 1984 the "Tarrytown Youth Court Program" was established in that village as an alternative to formal family court adjudication of certain offenses committed by minors.[379] The program was administered by the village police department. If a youth court does not already exist within the community of a particular school district, a school district may be able to contract with a youth court nearby. Alternatively, multiple school districts may be able to pull together resources to establish a youth court for use by multiple districts.

A third intervention model school districts may consider using is Restorative Conferencing. Restorative conferencing emphasizes the harm done by an offense and works to rebuild or restore the relationship through positive actions. Conference programs are similar to victim-offender reconciliation/mediation programs in that they involve the victim and offender in an extended conversation about the offense and its consequences. However, conferencing may also include the participation of families, community support groups, police, social welfare officials and attorneys. Conference programs demonstrate to the offender that many people care for him/her. All parties arrive at and agree to a plan for reparation, which increases commitment to it as a just resolution. Conferencing is used only when the offender admits guilt. It is not used to determine guilt or innocence.

A fourth intervention model to be considered by school districts is Circles. Circles involve conflict resolution based on Native American principles that emphasize restoring harm and balance through a circular conversation. Participants include the person who committed the harm, the person who was harmed, and members of the community, which can include the student body. Circles hold young people responsible for their actions while working to rebuild positive connections using mutually helpful actions.

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[378] Margaret Fisher, *Youth Courts: Young People Delivering Justice*, AMERICAN BAR ASSOCIATION, (March 2002) at 8, *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/196944.pdf.
[379] 1984 N.Y. Op. Att'y Gen. (Inf.) 87, Op. No. 84-12 (Feb. 22, 1984).

Lastly, another intervention model school districts may use instead of student suspension is a model known as **Accountability Boards**. Accountability Boards include a panel of adults who preside over a hearing during which the offender can explain their side of the story. The panel may ask questions of the offender and explore root causes or problems that may have contributed to the behavior. The panel then comes up with a set of recommendations based on restorative principles that will hold the offender accountable but also ultimately help address the underlying problem. For example, if a young person having problems with drug use appears before an Accountability Board, the board may impose a drug and alcohol screening and/or treatment as part of their recommendation.

V. Detailed Recommendation: Amend N.Y. Education Law § 3214 to Include Restorative Justice

Based upon the foregoing research, this Task Force makes the following recommendations to help reduce the disproportionality among students and school suspensions, and to help improve the School to Prison Pipeline.

This Task Force recommends that restorative justice be added to N.Y. Education Law Section 3214 as an available alternative statutory approach to school discipline. Gradually, this approach may eventually replace exclusionary discipline policies (e.g., suspensions and expulsions) with diversion programs (e.g., student court, circles, mediation) that keep students in school. This plan will only be effective if it is well received by school administrators, which means that funding, training, follow through resources, and data collection and reporting must be put in place. Education Law Section 3214 should be modified to allow for restorative justice alternatives to be implemented in New York schools. We recognize that the complete elimination of suspensions and expulsions of students is not feasible. However, we would recommend that those disciplinary options be reserved under limited circumstances and used only after ameliorative alternatives are explored with the student and parent(s). Where school districts elect not to implement restorative justice techniques, those school districts must exercise good faith when using established procedures without impunity.

While the Task Force has been preparing this paper on the School to Prison Pipeline, the Commissioner of Education has adopted an emergency regulation to include out of school suspensions data in determining which schools should be posted on "needs improvement" lists by the State Education Department.[380] These regulations, which are set to be approved in final form in February 2019 by the Board of Regents, underscores that the New York State Education Department understands that the suspension of students is an issue that needs to be resolved.[381]

Bills have been introduced in the New York State Legislature seeking to modify Education Law Sections 2801 and 3214 to include restorative justice practices. However,

[380] *See* 8 NYCRR §§ 100.2, 100.21

[381] *Id.*

in both the Assembly and the Senate these efforts have been unsuccessful.[382] The proposed Assembly bills which provide for the use of restorative justice practices, prevention programs, and interventions require the same to be used prior to and in conjunction with suspensions arising from classroom discipline infractions. Furthermore, the proposed bills include a standard for discipline in certain situations in which classroom removal or suspension is basically prohibited including but not limited to tardiness, unexcused absences from class or school, leaving school without permission, violation of school dress code, and lack of identification upon request of school personnel.

While the Task Force understands and endorses the need for wider use of restorative justice practices, it is also aware of the good faith efforts of school administrators in the administration of school discipline. The Assembly and Senate bills would impose significant restrictions on school district administrators' discretion in treating with student misconduct. These include limiting suspensions to a maximum of twenty days, unless mandated by law (e.g., bringing a firearm to school), and the exclusion of certain grades from suspension. Even though it would be beneficial for the State Education Department to review alternative approaches to suspending students in grades Kindergarten through third grade, this proposal, along with the suspension cap, is not a change recommended by the Task Force at this time. Rather, the Task Force has taken a more tempered approach to introduce statutory restorative justice as an option for school districts to embrace.

Further, it would be nearly impossible for the use of restorative justice practices in the proposed bills to be successful without sufficient additional funding for school district staff to be trained to use restorative justice effectively.

While the Task Force commends the proponents of the Assembly and Senate bills for understanding and appreciating the grave results of the School to Prison Pipeline, mandating school districts to use restorative justice practices ignores those situations when a suspension or a removal of a student may be appropriate and necessary. Rather, the Task Force recommends modifying Section 3214 to expressly endorse greater school district use of restorative justice practices as an alternative to the suspension of students by expressly providing in the law the option for school districts to implement restorative justice practices when appropriate and suitable for the student. This permits tailored introduction of restorative justice based on local needs. It avoids the "stigma" of a mandate.

The Task Force appreciates the fact that school districts do not need legislative authority to implement restorative justice practices. However, school districts are creatures of statute – i.e., municipal corporations guided by the express provisions of New York's

[382] N.Y. Assem. 3873, 240th Leg. Session, Reg. Session (N.Y. 2017). It is important to note that such bills have been reintroduced during the 2019-2020 legislative session. *See* N.Y. Assem. 1981, 242nd Leg. Session, Reg. Session (N.Y. 2019).

Education Law. The Task Force believes that the absence of a statutory endorsement of restorative justice has led to less than robust use of restorative justice by New York school districts. The Task Force believes that inclusion of restorative justice in Section 3214 of the Education Law will lead to the salutary result of expansive use of restorative justice by school districts electing its use. Further, our proposed legislation does require parental involvement in the use of restorative justice.

As noted previously, several school districts have already begun to introduce the use of restorative justice practices. This Task Force has attached, in Appendix C[383] of this Report, two example codes of conduct from certain school districts which currently include the use of restorative justice practices. These school districts should be commended for their forward thinking in an attempt to help reverse the School to Prison Pipeline.

For example, suspensions have reduced significantly in the Rochester City School District ("Rochester") since the implementation of its new Code of Conduct, which includes restorative justice practices as an alternative to suspensions. Since the implementation of Rochester's Code of Conduct, student suspensions have decreased by approximately 28%.[384]

Most importantly the Task Force believes that the endorsement by the State Legislature of the proposed statutory amendment to Section 3214 of the Education Law to include the use of restorative justice practices in lieu of suspending students will highlight and underscore the success of these school based strategies. It will further support voluntary utilization of restorative justice efforts that will lead to these students who have been charged with code of conduct violations to remain in the classroom where they belong and where they have the best chance to avoid the "School to Prison Pipeline." This Task Force's grave concern regarding long term suspensions is that students who are already susceptible to bad influences, whether drugs, alcohol, violence or other behaviors, will be more susceptible to these influences without being able to attend class while serving a suspension. This is how the School to Prison Pipeline begins, and is the premise for this Task Force's recommendation to include the use of restorative justice practices in Education Law Section 3214 for student discipline proceedings. This Task Force believes that the School to Prison Pipeline can be alleviated, if not reversed, by our proposed modification to Education Law Section 3214, which provides additional protections to students during the disciplinary phase by incorporating the permissive use of restorative justice practices if such use is justified. This Task Force's suggested modification to Education Law Section 3214 is attached hereto as Appendix A.

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[383] Appendix C is included for the sole purpose of providing illustrative examples of restorative justice practices in school district Codes of Conduct. The use of the attached Codes of Conduct in this Report should not be viewed as an endorsement of the entire Code of Conduct.

[384] THE CHILDREN'S AGENDA, *supra* note 372, at 10.

By providing school districts with statutorily endorsed alternative measures such as restorative justice practices, the loss of students to the lifelong negative vagaries of the School to Prison Pipeline will be alleviated.

Ideally, the implementation of restorative justice practices will eventually take the place of suspensions and expulsions for most disciplinary cases. The imposition of restorative justice as a substitute for existing disciplinary procedures would be met with significant opposition among the over seven hundred school districts in the State of New York because it will be viewed as another State mandate on our already taxed school district resources. Restorative justice should not be the object of grudging acceptance by school districts. Even though not mandatory, we are hopeful that the recommendation of this report will be viewed in a solitary manner by our K-12 educational system.

The source of reluctance of the implementation of restorative justice is the significant financial limitations imposed by the state through the existing tax cap legislation. This limitation on school district resources severely hinders our already highly taxed school districts and imposes a reluctance to innovate. The State of New York must allocate sufficient funding to those school districts that embrace restorative justice techniques. When compared to the expenditure of limited tax dollars arising from prosecution and incarceration of unfortunate youth who find themselves on the "other" end of the School Prison Pipeline the investment reaps incalculable benefits.

The New York State Education Department should give consideration to the creation of State funded training programs, teaching personnel how to guide, support, and help navigate the accused student through the restorative justice process.

The Task Force is cognizant that its recommendation focusing on a modification of the New York statute is simply a start to reform student disciplinary proceedings. However, our proposed statutory enactment will underscore the State's recognition of the severe societal concerns with the existing structure of student discipline in our public schools. It will bring expanded interest and public comment on the use of restorative justice and hopefully it will spur increased allocation of already scarce dollars to support this effort to keep students in an educational setting and to reverse the School to Prison Pipeline.

In addition to the foregoing, the Task Force was initially tasked with recommending policy regarding the use of School Resource Officers ("SROs").

Some school districts, in conjunction with the local police department, employ an SRO through the local police department. An SRO is used in some school districts to assign an on-duty police officer from the local police department in a school building. The police officer is typically not employed by the school district and officers are required to adhere to traditional standards for searches and seizures when investigating criminal activity. An SRO acts as a liaison between the police department and the school district, and the

scope of its duties is determined mutually by the parties. Hence, in instances where an SRO is utilized, an agreement between the school district and the local law enforcement department is put in place.

The use of SROs in school districts is an important issue that this Task Force considered in the drafting of this Report; however, it was unable to reach a conclusion for a recommendation. Nevertheless, it is a subject that requires further review and consideration by another committee or study group, possibly in conjunction with the Criminal Justice section of the New York State Bar Association.

VI. Conclusion

The School to Prison Pipeline has been and will continue to be a serious problem in New York due to the rigidity of Education Law §3214. School Districts across New York State have been issuing suspensions in accordance with Education Law §3214 in a disparate manner towards minorities and students with disabilities. As a result, these populations have been forced out of the educational setting and in an environment where they are succumbing to negative societal influences. The pipeline will continue to grow if everyone sits idly by. By amending Education Law §3214 formally endorsing use of restorative justice practices in the administration of discipline for student code of conduct violations, this Task Force believes an important first step will have been taken to cure this problem.

APPENDIX A

§ 3214. Student placement, suspensions and transfers.

7. Restorative Justice Practices.

a. In lieu of a suspension pursuant to subsection 3 of this section, school districts may use restorative justice practices. School districts should consider the use of restorative justice practices for student offenses and student code of conduct violations, including but not limited to:

i. Truancy;
ii. Minor drug offenses such as possession of a vape pen without illegal substances;
iii. First time offense for possession of marijuana;
iv. Violations of the Dignity for All Students Act;
v. Cutting of class;
vi. Dress code violations;
vii. Excessive unexcused absences, lateness's or early dismissals;
viii. Other minor offenses that would typically result in receipt of a principal suspension; and
ix. Pupils who are insubordinate, disorderly, violent, or disruptive.

b. Such restorative justice practices that should be considered by school districts include but are not limited to:

i. Youth Court;
ii. Mediation or peer mediation;
iii. Peer groups or Peer Mentoring Programs;
iv. Restorative conferencing; and
v. Restorative circles.

c. Procedure for Utilization of Restorative Justice Practice(s).

i. Should a school district wish to implement a restorative justice practice for a student offense or code of conduct violation, the school district must first issue a letter to the parent/guardian of the student, indicating the charge(s) against the student and that the school district is considering the use of a restorative justice practice in lieu of suspension for the charge(s).

ii. The parent/guardian (or student, if over the age of 18) will have three days from receipt of the letter to indicate whether the restorative justice practice will be accepted.

iii. Should the parent/guardian/student accept the school district's offer of a restorative justice practice, the school district must implement the restorative justice practice no more than five days after notification of acceptance.

iv. The issuance of restorative justice practice(s) will be notated in the student's record and will be referred to should the student commit any future offenses or code of conduct violations.

d. Sanctions that may result from the restorative justice practices include but are not limited to:

i. Community Service;
ii. Mental Health Counseling;
iii. Drug Counseling;
iv. Drug Testing;
v. Seminars on subjects such as civility, bullying, drugs, alcohol;
vi. Essays and educational workshops; and
vii. A combination of two or more of these.

e. If a student fails to complete the restorative justice practice sanction in the timeframe implemented by the restorative justice practice, the school district has the discretion to either reconvene the restorative justice practice or proceed with a Superintendent's Hearing in accordance with subsection 3 of this section.

f. Nothing herein contained in this Subsection shall be construed to effect, diminish, or impair the rights and obligations created by federal and/or state law with regard to suspension and/or student discipline.

APPENDIX B*

* Opinions expressed in the Report attached as Appendix B are those of the authors of the Report and do not represent those of the Task Force on the School to Prison Pipeline and the New York State Bar Association.

STOLEN TIME

NEW YORK STATE'S SUSPENSION CRISIS

THE NEW YORK EQUITY COALITION

"You're just **stealing time** from [students]. So many fall behind and have trouble catching up. It's pretty much setting them up for failure."

THE NEW YORK EQUITY COALITION

STOLEN TIME

Elesha was walking down the hallway with her friends when a few of them started kidding around and pushing each other.[1]

One girl hit a boy with a binder. He responded by playfully shoving her back, causing her to lose her balance and fall over.

The girl got up and all of the students headed to class. Elesha thought nothing more about what happened — until the last period of the day when she was called to the office.

It turned out her friend had injured her finger, and since Elesha was with the group when it happened, administrators said she was partially responsible.

Her punishment: A 45-day suspension.

"We were just playing around," she said. "But they said it was my fault."

Rashawn was just five years old when his grandmother died, and the small child struggled with emotions like grief and sadness.

He carried that burden with him each day into the classroom, sometimes acting out or not following directions.

It was not long before he received his first suspension. And many more followed.

"I was acting out a lot," Rashawn said. "I just didn't know how to deal with it. I was just a little kid."

Those incidents that piled up in elementary school haunted him through his time in the school system, in some cases, he believes, leading teachers to think nothing of suspending him again.

"It goes on your record and teachers start looking at you differently," he said. "They look at you like you're a bad person. After that first one, it seemed like every time I did something wrong I'd get suspended."

By the time he reached middle school, Rashawn learned how to manage his emotions and hasn't received a suspension since.

Yet he feels like some teachers still see him differently.

"Now, teachers who know me see that and say, 'That's not you,'" Rashawn said. "But others still see that and treat me differently."

Elesha and Rashawn are not alone. Across New York State, school districts imposed out-of-school suspensions on more than 66,000 students in the 2016-17 school year — an average of at least one student a minute, every hour of the school day.[2]

At the most basic level, suspensions deprive a student of classroom instruction — even though students who are suspended may be most in need of academic engagement. And beneath the surface, suspensions can represent a step in the school-to-prison pipeline and reflect a school climate characterized by punishment and fear — rather than a caring and supportive environment created by skilled educators with high academic expectations.

Efforts to eliminate unnecessary suspensions and other exclusionary discipline measures are gaining momentum. The New York State Education Department (NYSED) and Board of Regents have committed to hold schools accountable for reducing suspensions as part of the state's new accountability system. *Safe and Supportive Schools Act* legislation jointly sponsored by Assembly Education Committee

Chairperson Catherine Nolan and State Senator Velmanette Montgomery has a real chance at passage, supported by a diverse coalition of organizations. In addition, school districts including New York City are investing in restorative practices that give educators powerful alternatives to suspensions.

The time for urgency and action has come.

In this policy brief, The New York Equity Coalition adds its voice to the growing movement to protect students from exclusionary discipline. In the pages that follow, we explore new data on how New York school districts disproportionately target Black students with suspensions. We then point to specific policy solutions that can protect students, support educators, and improve the quality of education in our schools.

WHY ARE SUSPENSIONS AN EQUITY ISSUE?

Out-of-school suspensions are just one piece of the exclusionary discipline picture — along with classroom removals, in-school suspensions, expulsions, summonses, and school-based arrests. This paper focuses on out-of-school suspensions because of the availability of data on its use and its importance in the current policy landscape. Most notably, schools will soon be held accountable for reducing the rates of out-of-school suspensions for all groups of students — making this an important public measure of school performance.

Research underscores the equity imperative of focusing on this issue:

- **Schools nationwide suspend Black students at a far greater rate than White students,[3] but Black students are *not* more likely to be disruptive in school.** A synthesis of available research noted that "investigations of student behavior, race, and discipline have yielded no evidence that African American over-representation in school suspension is due to higher rates of misbehavior, regardless of whether the data are self-reported, or based on analysis of disciplinary records."[4]

- **Educators are more likely to discipline Black students for subjective reasons.** As one 2002 study concluded: "The majority of reasons for which white students are referred more frequently seem to be based on an objective event (e.g., smoking, vandalism) that leaves a permanent product. Reasons for black referrals to the office, on the other hand, are infractions (e.g., loitering, excessive noise) that would seem to require a good deal more subjective judgment on the part of the referring agent. Even the most serious of the reasons for office referrals among black students, *threat*, is dependent on perception of threat by the staff making the referral."[5]

- **Adults' implicit bias can be an important driver of disparities in student discipline.** Summarizing research from Stanford University, the NAACP Legal Defense and Educational Fund described how implicit — or subconscious — bias can work: Given the same records recounting student misbehavior, "teachers reported more negative responses to the misbehavior if it was by a student they believed to be Black, as opposed to a student they believed to be White. Teachers reported that the misbehavior was more severe, felt more hindered by it, and felt more irritated by the Black student. Teachers also expressed a desire to discipline the Black student more severely for the misbehavior and were more likely to anticipate that the Black student would be suspended in the future."[6] Implicit bias is, of course, not unique to the education sector; however, actively combatting it is essential to ensuring that all students receive the quality education they deserve.

- **Suspensions and other forms of exclusionary discipline are associated with a wide range of negative outcomes for students.** In 2014, the U.S. Departments of Justice and Education found that "studies have suggested a correlation between exclusionary discipline policies and practices and an array of serious educational, economic, and social problems, including school avoidance and diminished educational engagement; decreased academic achievement; increased behavior

problems; increased likelihood of dropping out; substance abuse; and involvement with juvenile justice systems."[7] A study of students in Florida found that "being suspended even once in 9th grade is associated with a two-fold increase in the risk for dropping out."[8]

- **There is a growing movement to implement alternatives to suspensions through *restorative practices.*** Restorative practices take different forms, which are generally characterized by being non-punitive "while retaining the ability to hold misbehaving students accountable" and as an approach that "keeps young people in school, addresses the root causes of the behavior issues, and repairs relationships between students."[9] Although it is too soon for large-scale quantitative data on the impact of restorative practices, case studies and qualitative findings report "promising results… in terms of their impact on school climate, student behavior, and relationships between students and with staff"[10] *(see sidebar).*

REDUCING SUSPENSIONS AT UNIVERSITY OF ROCHESTER EDUCATIONAL PARTNERSHIP AT EAST

During the 2013-14 school year, the suspension rate for Black and Latino students at Rochester's East High School was 23 percent and 19 percent, respectively. But that was before the school came under new leadership and the oversight of the University of Rochester. By the 2016-17 school year, the overall suspension rate fell from 19 percent to 4 percent. For Black and Latino students, it dropped to 5 percent and 4 percent, respectively.

The school's new leadership made addressing excessive suspensions a top priority, and invested resources into implementing restorative justice programs.

East used some of the additional funding it received as an Educational Partnership Organization (EPO) to hire counselors and social workers. Those social workers are the driving force behind implementing restorative practices at the school such as training for every staff member, including custodians, clerical workers, and security officers.

The shift has been a welcome one for students. "Basically, suspensions were the go-to response to any kind of discipline problem," said Savannah, who attended East before the change. "I personally notice the difference, that there are a lot fewer suspensions. Instead, we talk about our problems, and what's causing our feelings."

RESTORATIVE PRACTICES IN NEW YORK CITY

In 2016, New York City funded a new program piloting restorative practices as an alternative to punitive discipline in Brooklyn's District 18, which includes Flatbush and Canarsie.

As part of the pilot, the district's central office partnered with a non-profit that specializes in restorative practices, hired a district coordinator, and trained staff in every district school with the tools and philosophies needed to fully implement replacements to punitive discipline.

In the second year, restorative practices were rolled out to students across the district.

In 2017-18, District 18 saw a 19 percent reduction in suspensions and removals from 2016-17, while citywide suspensions and removals rose by nearly 6 percent.

In 2017, the program was expanded to three additional New York City districts.

Data source for Rochester: New York State Education Department, unpublished 2013-14 and 2016-17 suspension data; analysis conducted by The Education Trust–New York.

Data source for New York City statistics: New York City Department of Education, "Suspension Reports," https://infohub.nyced.org/reports-and-policies/ government/intergovernmental-affairs/suspension-reports; analysis conducted by Educators for Excellence.

THE DATA: OUT-OF-SCHOOL SUSPENSIONS IN NEW YORK STATE

Using previously unpublished state data, The New York Equity Coalition finds a statewide crisis in the use of suspensions to exclude Black students from classroom instruction.

OUR FINDINGS:

1 NEW YORK'S EDUCATION SYSTEM *SUSPENDS BLACK STUDENTS AT A FAR GREATER RATE* THAN THEIR WHITE PEERS.

New York State faces stark statewide racial disparities in how school districts impose out-of-school suspensions on students.

Outside of New York City, schools suspended more than 11 percent of Black students in 2016-17.[11] This represents ***more than four times*** the rate that schools suspended White students *(see Figure 1)*.

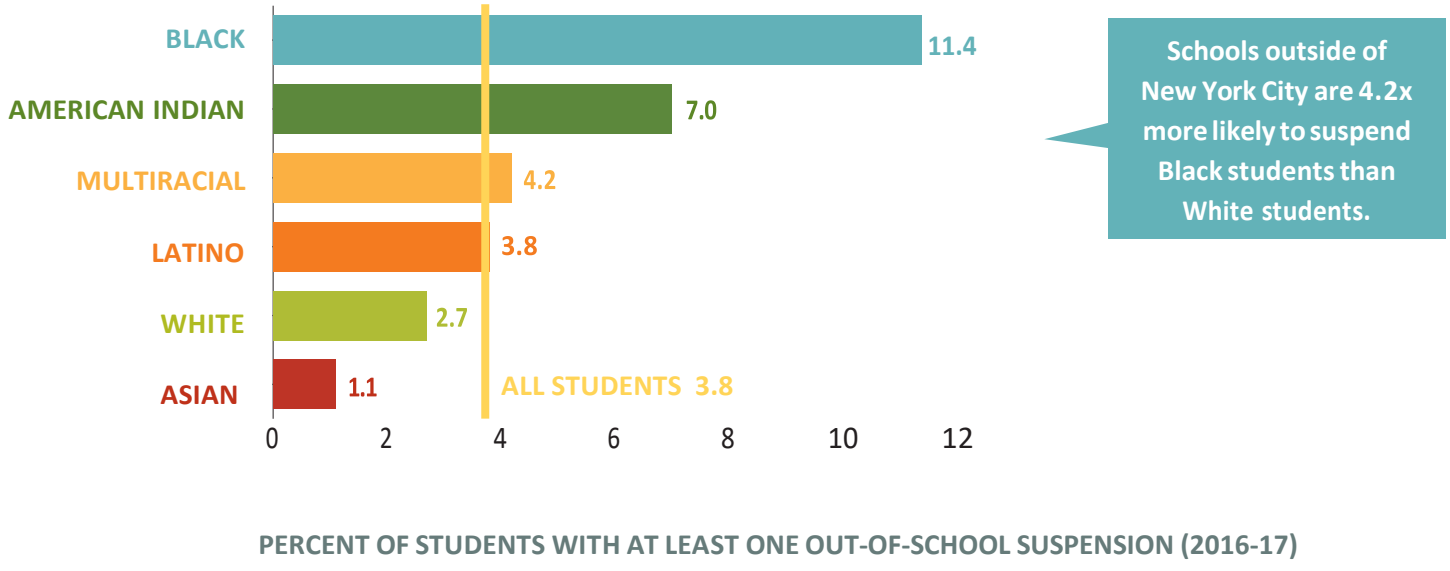
In New York City, the district suspended Black students at a rate ***more than five times*** that of their White peers *(see Figure 2)*. (Out-of-school suspensions in New York City are imposed at a lower overall rate and are described separately throughout this policy brief because the City imposes suspensions differently than most other school districts in New York; these differences are described in greater detail below.)

Other important elements of New York's disproportionate discipline system include:

- ***Suspension rates* are highest in high schools, but *racial disparities* are greatest in elementary/middle schools.** Schools outside of New York City were nearly five times as likely to suspend Black elementary/middle school students and in New York City were more than six times as likely to suspend Black elementary/middle school students, compared to their White elementary/middle school peers. Suspensions in these early years can create the perception that a child is "trouble" from a very early age, and deprives students of instructional time when they should be developing the building blocks of future learning.

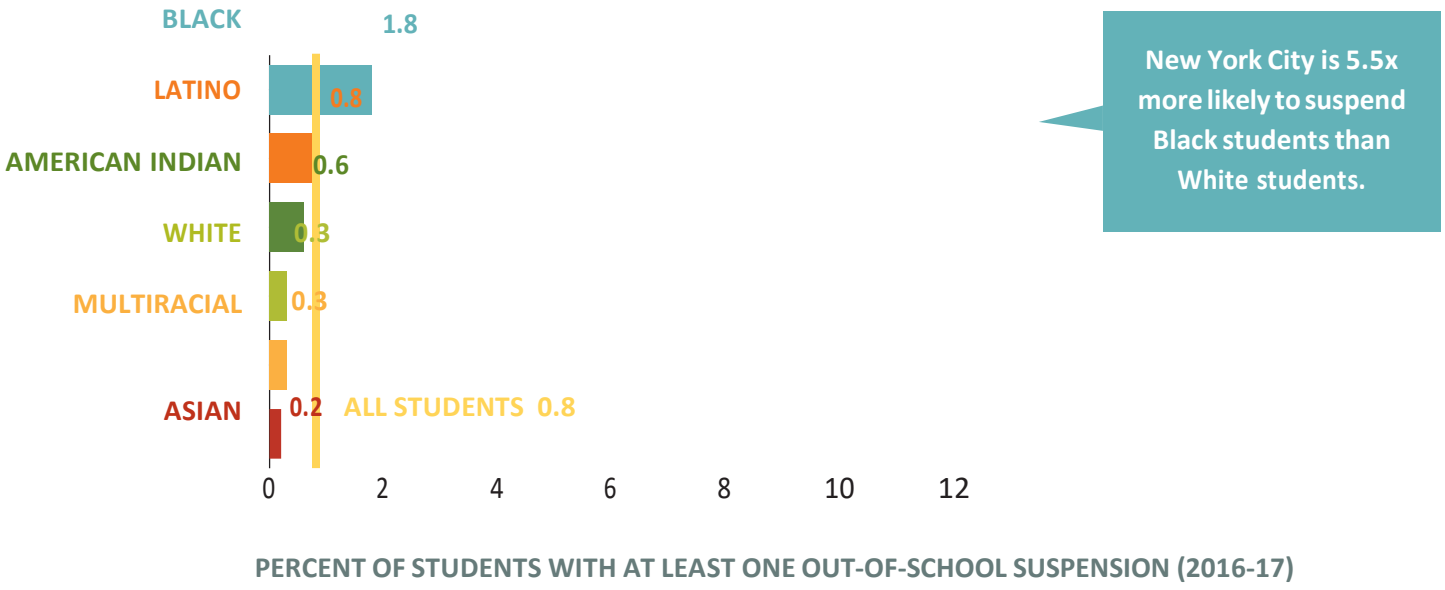
- **Schools impose the most disproportionate discipline on *Black female students*.** For

Figure 1: Percent of students outside of New York City with at least one out-of-school suspension



Source: New York State Education Department. Unpublished 2016-17 data. Analysis conducted by The Education Trust–New York.

Figure 2: Percent of students in New York City with at least one out-of-school suspension

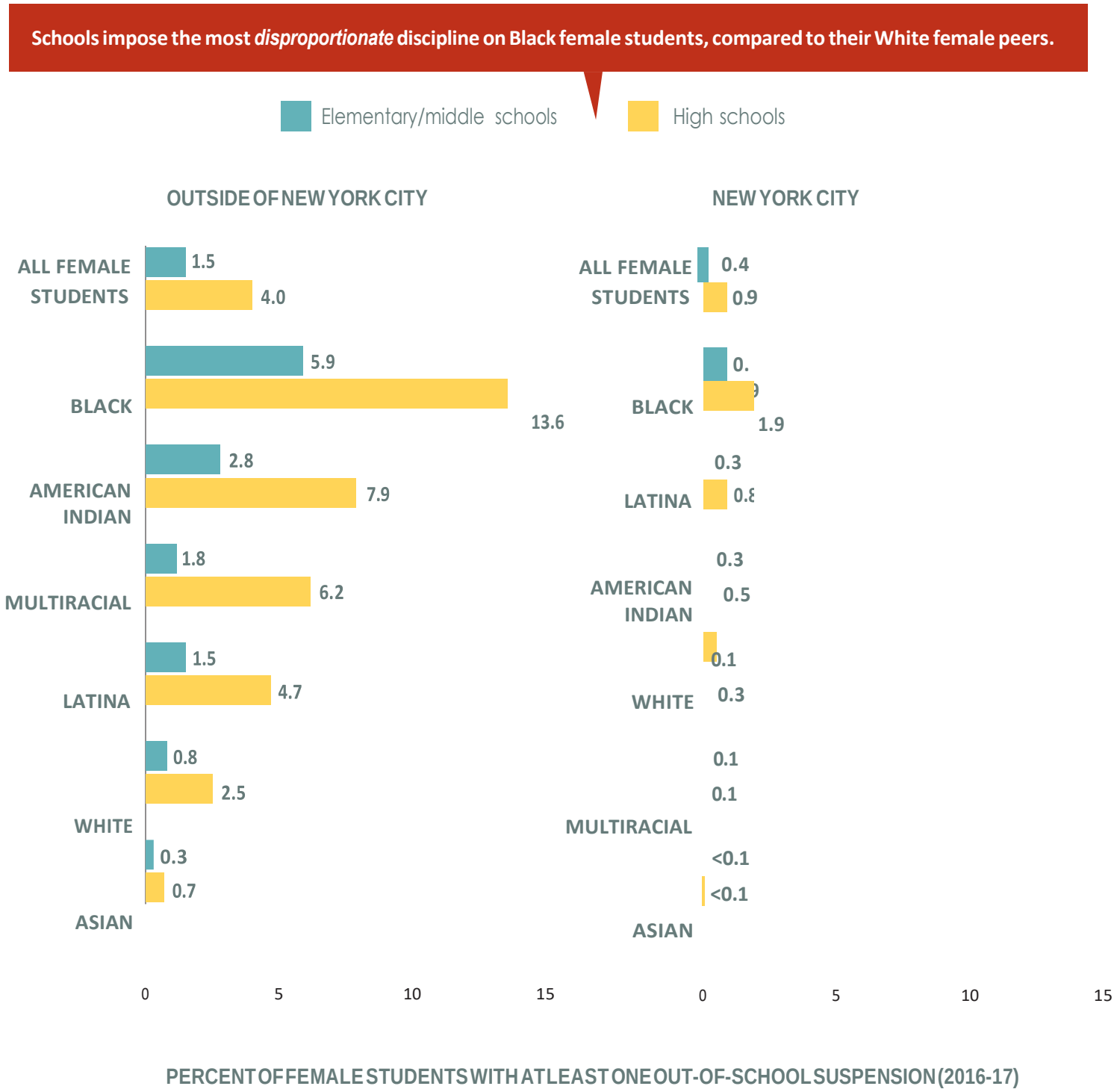


Source: New York State Education Department. Unpublished 2016-17 data. Analysis conducted by The Education Trust–New York.

NEW YORK SCHOOL DISTRICTS **SUSPENDED A STUDENT AT LEAST ONCE EVERY MINUTE** IN THE 2016-2017 SCHOOL YEAR.

example, elementary/middle schools outside of New York City were nearly eight times as likely to suspend Black female students as their White female peers, and in New York City the district was nearly 11 times as likely to suspend Black female elementary/middle school students as their White female peers *(see Figure 3)*.

Figure 3: Percent of female students with at least one out-of-school suspension

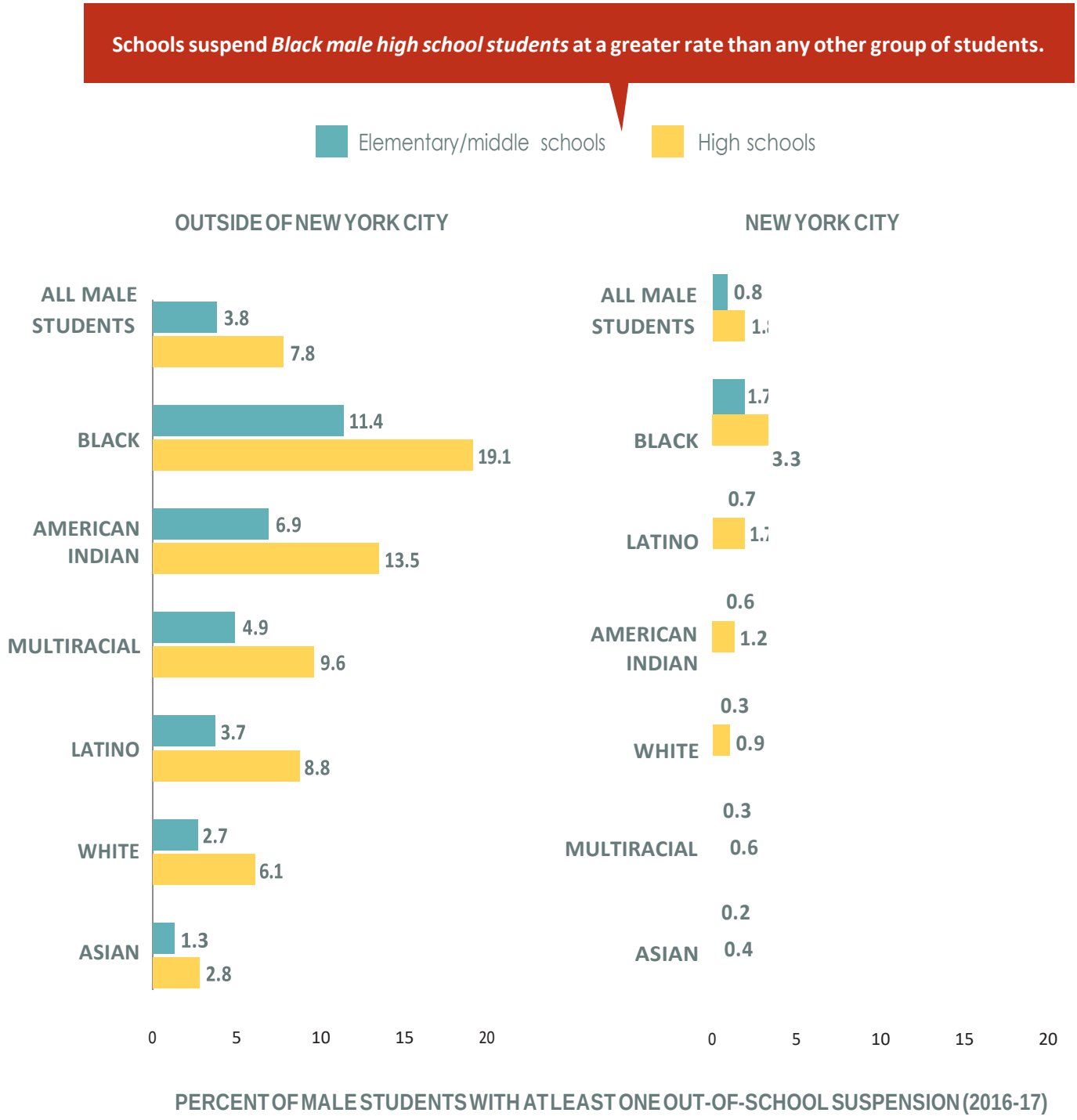


Source: New York State Education Department. Unpublished 2016-17 data. Analysis conducted by The Education Trust–New York.

- **Schools suspend *Black male high school students* at a greater rate than any other group of students.** Outside of New York City, schools suspended 19 percent of Black male high school students — or nearly one in five Black male students in high schools *(see Figure 4)*.

These disparities are driven by two factors: high overall suspension rates in Big 4 and urban/suburban school districts — which together enrolled 60 percent of Black students outside of New York City — and disproportionate suspension of Black students across *all* need/resource classifications of school districts.[12]

Figure 4: Percent of male students with at least one out-of-school suspension



Source: New York State Education Department. Unpublished 2016-17 data. Analysis conducted by The Education Trust–New York.

2 BIG 4 AND URBAN/SUBURBAN HIGH-NEED SCHOOL DISTRICTS HAVE THE *HIGHEST OVERALL OUT-OF-SCHOOL SUSPENSION RATES* — AND NEW YORK CITY HAS THE LOWEST.

Across New York State, the chance that a school will impose at least one out-of-school suspension on a student varies widely based on the type of school district *(see Figure 5)*.

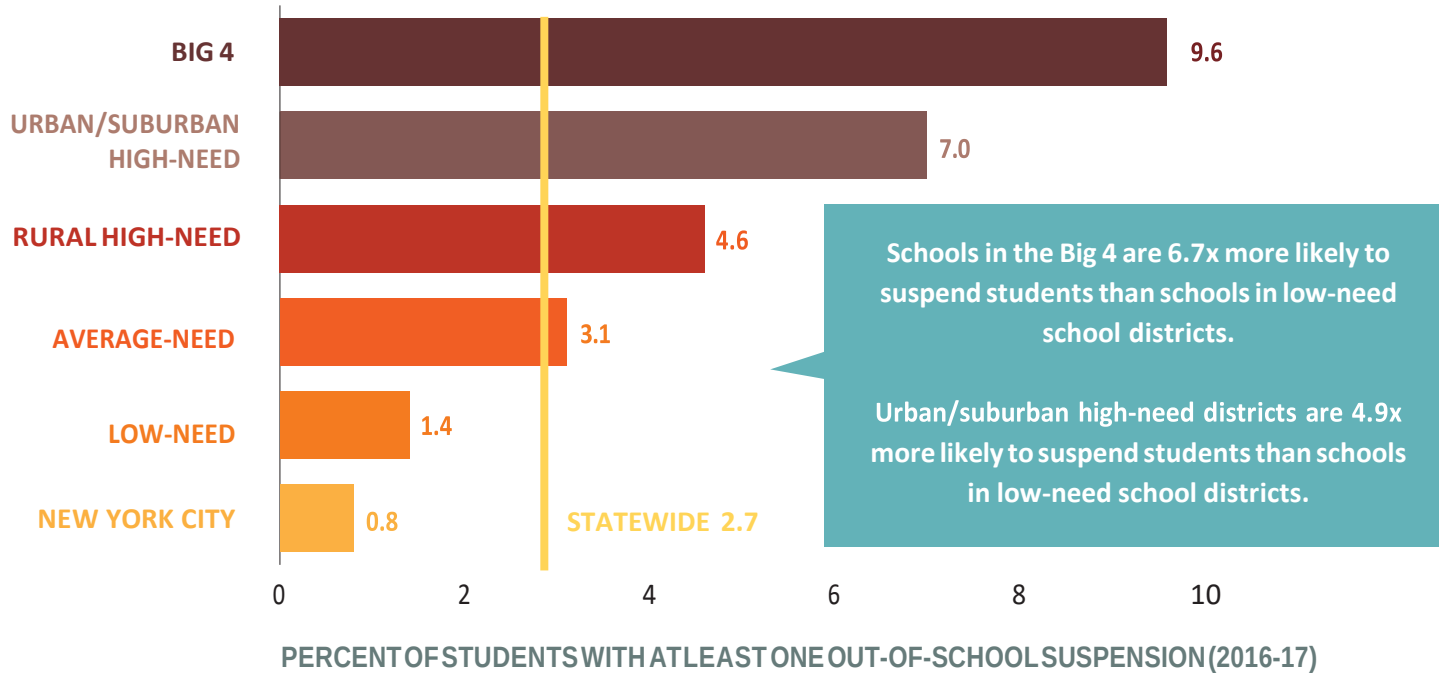
Schools in the Big 4 — Buffalo Public Schools, Rochester City School District, Syracuse City School District, and Yonkers Public Schools — were nearly seven times as likely to suspend students as schools in low-need school districts. Buffalo had the highest overall suspension rate among the Big 4 school districts, with an especially high suspension rate — 19 percent — for Black students *(see Figure 6)*.

In addition, schools in urban/suburban high-need districts were nearly five times as likely to suspend students as schools in low-need school districts.

New York City imposed out-of-school suspensions at a lower rate than all other classifications of school districts in the state. In New York City, unlike in many other school districts, suspensions that last up to five days are considered "Principal's Suspensions" and are *in-school* suspensions (and therefore are not captured in the data included in this policy brief). *Out-of-school* suspensions — which are "Superintendent's Suspensions" — are limited to those that last more than five days.[13] Based on separate public data made available by New York City, out-of-school suspensions represented approximately 27 percent of all New York City suspensions in 2016-17.[14] It is important to note that in-school and out-of-school suspensions are both types of exclusionary discipline.

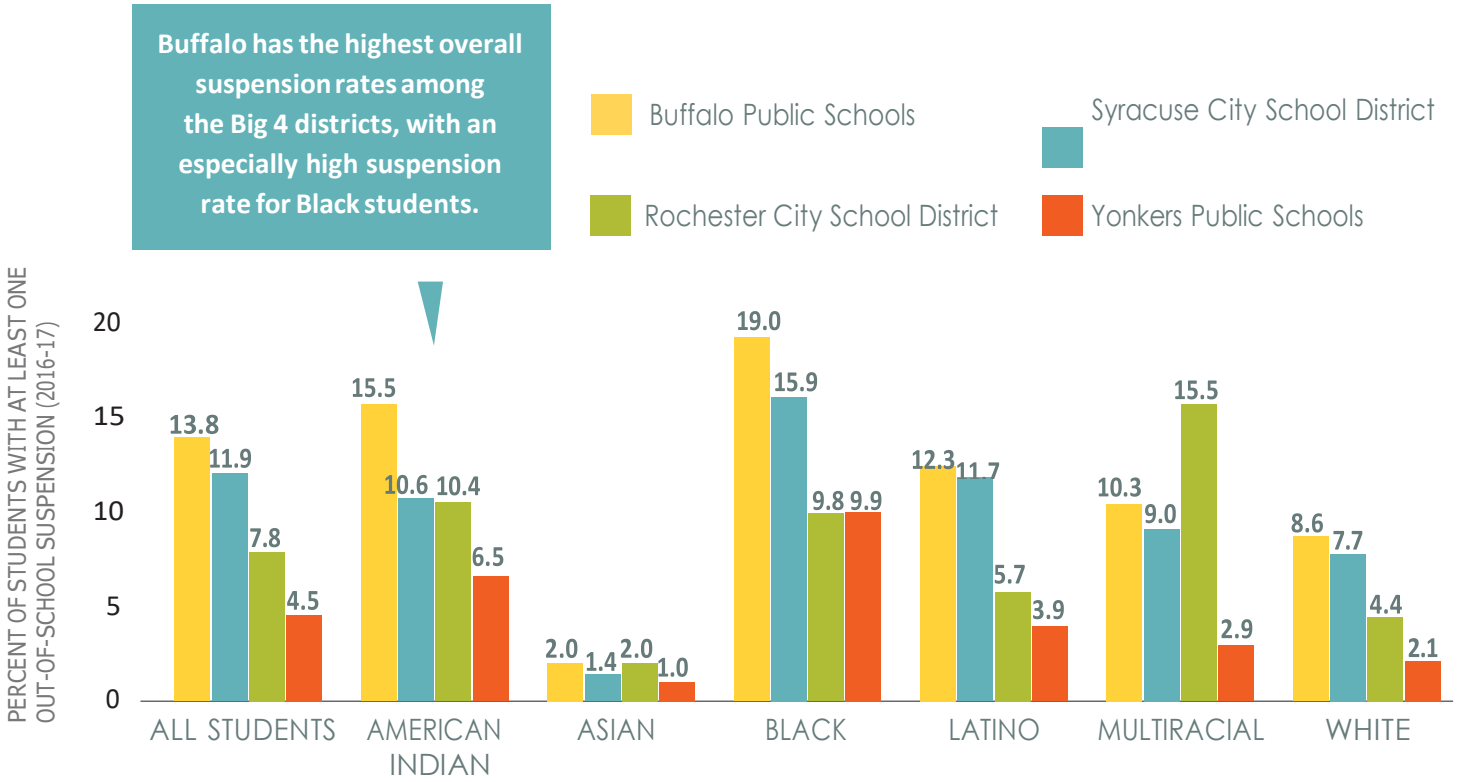
Even within the classifications of school districts with relatively lower overall suspension rates — low- and average-need school districts and New York City — the data reveal that the rate of imposing out-of-school suspensions is far higher in schools with more low-income students than in schools

Figure 5: Percent of students with at least one out-of-school suspension by school district need/ resource capacity category



Source: New York State Education Department. Unpublished 2016-17 data. Analysis conducted by The Education Trust–New York.

Figure 6: Percent of students with at least one out-of-school suspension in the Big 4 school districts



Source: New York State Education Department. Unpublished 2016-17 data. N-sizes are less than 100 students for the following groups; American Indian and Multiracial students in Rochester and American Indian students in Yonkers. All others groups include more than 200 students. Analysis conducted by The Education Trust–New York.

with fewer low-income students *(see Figure 7)*. This finding is consistent with national research showing a correlation between school poverty and overall discipline rates.[15]

3 LOW-NEED SCHOOL DISTRICTS AND NEW YORK CITY HAVE THE *BIGGEST RACIAL DISPARITIES* IN SUSPENSION RATES.

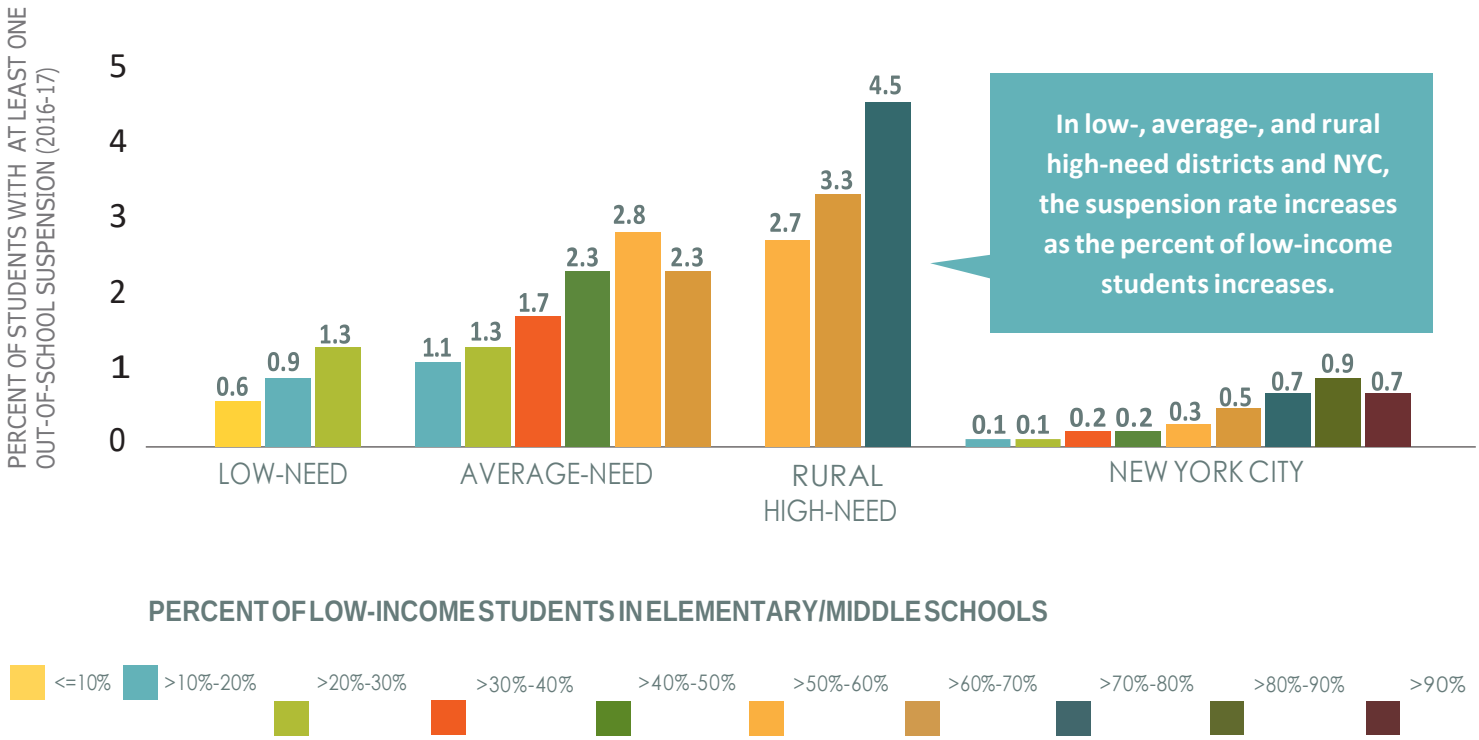
All classifications of New York school districts were at least twice as likely to suspend Black students as their White peers *(see Figure 8)*.

The disparity was greatest in New York City, where the district suspended Black students at a rate more than five times that of White students. (As noted above, out-of-school suspensions are subject to a different policy in New York City than is typical statewide.)

Low-need school districts also displayed a large disparity in suspension rates. These school districts suspended Black students at a rate nearly five times that of White students. In low-need school districts, Black students represented 4 percent of the student body but 15 percent of all students who received at least one out-of-school suspension *(see Figure 9)*.

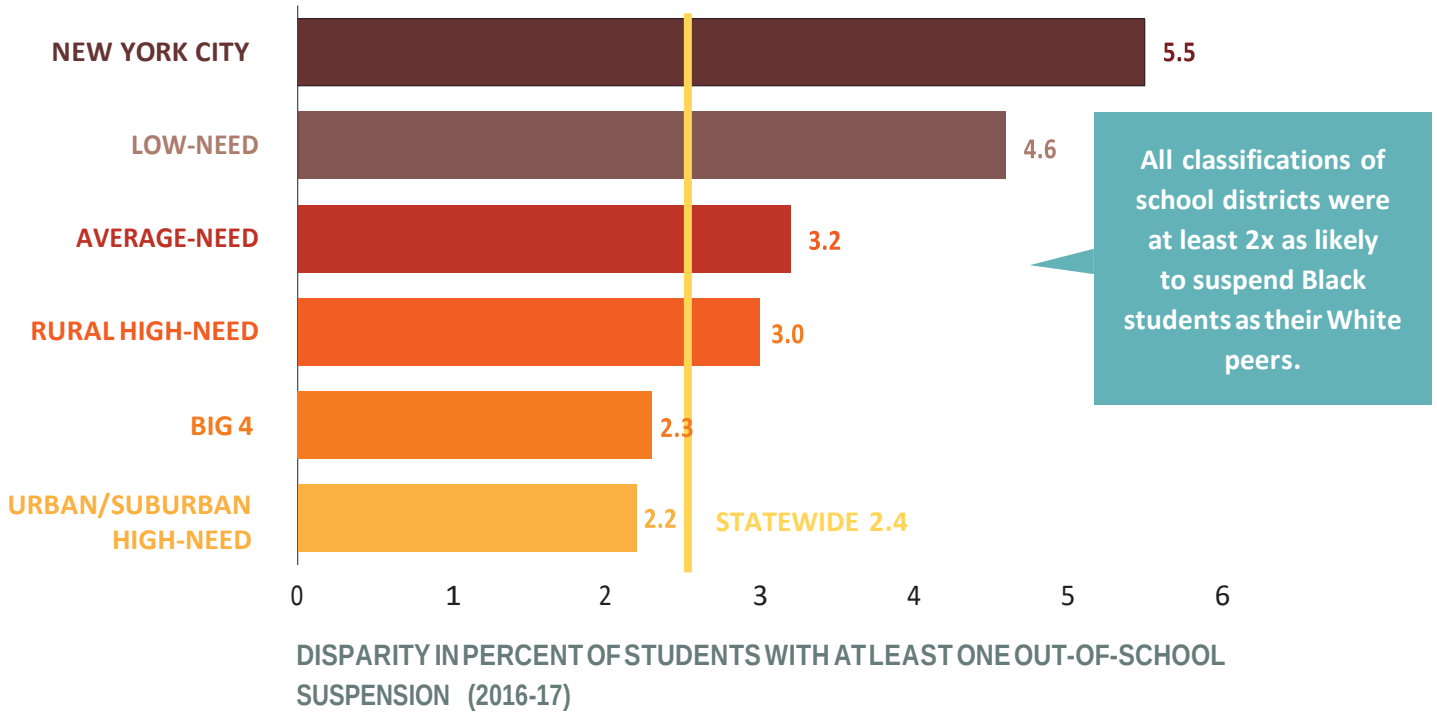
It is notable, and has important policy implications, that these two very different types of school districts had *both* the lowest overall suspension rates *and* the greatest disparities in how suspensions are imposed on Black and White students.

Figure 7: Suspension rates by percent of low-income students enrolled in the school



Source: New York State Education Department. Unpublished 2016-17 data. Schools with less than 20 low-income students excluded from analysis. Percent of students with one or more out-of-school suspension(s) is included when the number of elementary/middle schools is more than 20. Analysis conducted by The Education Trust–New York.

Figure 8: Disparities in school suspension of Black students by school district need/resource capacity category



Source: New York State Education Department. Unpublished 2016-17 data. Analysis conducted by The Education Trust--New York.

Figure 9: Disproportionality in school suspension of Black students by school district need/resource capacity category

Statewide, Black students represent…	15% OF ALL STUDENTS	33% OF ALL STUDENTS WHO ARE SUSPENDED AT LEAST ONCE
In **low-need school districts,** Black students represent …	4% OF ALL STUDENTS	15% OF ALL STUDENTS WHO ARE SUSPENDED AT LEAST ONCE
In **average-need school districts,** Black students represent …	6% OF ALL STUDENTS	17% OF ALL STUDENTS WHO ARE SUSPENDED AT LEAST ONCE
In **rural high-need school districts,** Black students represent…	3% OF ALL STUDENTS	9% OF ALL STUDENTS WHO ARE SUSPENDED AT LEAST ONCE
In **urban/suburban high-need school districts,** Black students represent…	25% OF ALL STUDENTS	46% OF ALL STUDENTS WHO ARE SUSPENDED AT LEAST ONCE
In **Big 4 school districts,** Black students represent…	43% OF ALL STUDENTS	64% OF ALL STUDENTS WHO ARE SUSPENDED AT LEAST ONCE
In **New York City,** Black students represent…	23% OF ALL STUDENTS	50% OF ALL STUDENTS WHO ARE SUSPENDED AT LEAST ONCE

Source: New York State Education Department. Unpublished 2016-17 data. Analysis conducted by The Education Trust--New York

Edward, a teacher at a high-poverty school, said that for many years teachers at his schools relied heavily on suspending students, rather than addressing the underlying reasons for their behavior.

His school has a large population of students who live in shelters or foster homes, along with many who have incarcerated parents. Others come from neighborhoods where they are exposed to crime and drugs.

"Students who misbehave misbehave for a reason," Edward said. "And there's always a reason."

"When kids went back to the classroom, there really wasn't much by way of trying to help them change their behavior," he added. "It felt and seemed more like a way of punishing them and getting them away from a teacher who was frustrated by them. I didn't feel like it was helping in any way."

So Edward sought alternatives, and worked with his principal to arrange for teachers to undergo training in restorative and responsive practices.

Several years into those efforts, there is a noticeably positive shift in school climate.

"I see a lot more explaining. I see a lot more teachers pulling kids into the hallway to speak to them, instead of embarrassing them. I see a lot more teachers smiling at kids," he said. "We are really trying to make the school better for teachers and for kids by the way we treat each other."

"The goal is to do a lot more counseling and be a lot more proactive so that we can affect behavior before it happens and teach kids about it, so that rather than suspending them, the behaviors that caused it no longer exist," he added.

SHORT-TERM POLICY RECOMMENDATIONS

The New York Equity Coalition calls on education leaders across all branches of state government to make 2019 a turning point in moving towards the elimination of suspensions and other exclusionary discipline.

To achieve this goal, the coalition believes that policymakers should address the following three priorities:

1 HOLD SCHOOLS ACCOUNTABLE FOR REDUCING SUSPENSIONS AND OTHER EXCLUSIONARY DISCIPLINE.

We support and are grateful to NYSED and the Board of Regents for including out-of-school suspensions in the state's new accountability system under the Every Student Succeeds Act (ESSA). This important step will ensure that schools are held accountable for the out-of-school suspension rates of *all* groups of students.

As important next steps:

- We commend NYSED for **strengthening the draft ESSA regulations** regarding suspensions in response to public comments. **It is important that the Board of Regents approve this updated language and specific implementation timeline at their December meeting.** The updated draft regulation includes vital details on how the out-of-school suspensions accountability indicator will work and provides predictability to school districts and educators. The updated draft regulation specifies that the out-of-school suspensions accountability indicator will be implemented as follows:
  - 2017-18 suspension results will be used as the baseline to measure progress;
  - 2018-19 suspension results will be used to provide schools with a rating for each separate group of students for which the school is held accountable (e.g., low-income students, students of color, English language learners, and students with disabilities);
  - 2019-20 suspension results will be used to require schools that receive the lowest rating level for any group of students to develop an action plan; and
  - 2020-21 suspension results represent the first year that the out-of-school suspension indicator will be used as part of the methodology to determine the accountability status of schools and districts.[16]
- NYSED should commit to provide public data and then expand the accountability indicator to incorporate additional forms of exclusionary discipline, including but not limited to **classroom removals, in-school suspensions, expulsions, summonses, and school-based arrests**. We recognize that NYSED would have to implement additional data collection in order to make this change — a step that we recommend putting in place for the 2019-20 school year.
- To help schools implement smart policies that increase student engagement and safety, we support NYSED's work to implement a **statewide school climate survey** that can provide valuable data to educators and the public. In order to reach statewide implementation with adequate support for schools within the next year, NYSED should be provided with adequate resources to accomplish this important work.

2 STRENGTHEN LAWS AND REGULATIONS TO STOP SUSPENSION ABUSE.

How to do it:

- We support the provisions of the ***Safe and Supportive Schools Act*** **(A3873/S3036 in the last legislative session)**, which would generally ban suspensions in kindergarten through second grade, enact a cap on the total number of days a student can be suspended, and require school districts to use developmentally appropriate, graduated, and proportionate discipline and implement restorative practices.

- NYSED should also update its **regulations to encourage the use of developmentally appropriate and proportionate interventions and supports** in disciplinary matters, rather than unrestricted authority to suspend, and to expand the use of restorative practices to build and encourage positive behavior and school climate.

- In 2014, President Obama announced guidelines that made clear the U.S. Department of Education could find schools in violation of civil rights law for discriminatory disciplinary policies or disproportionate disciplinary rates. Unfortunately, the current administration has asked a task force to consider "repeal of the Obama Administration's 'Rethink School Discipline' policies"[17] and the U.S. Secretary of Education has publicly expressed skepticism about their scope.[18] In response, state Attorneys General and civil rights leaders have mobilized to protect the guidelines.[19] New York should lead by **enacting and enforcing these provisions at the state level and investigate racial disparities** in how schools impose suspensions and other exclusionary discipline measures.

- NYSED should require **teacher and school leader preparation programs** to include instruction in restorative practices, developmentally appropriate, graduated, and proportionate discipline practices; trauma-informed practices; and strategies to combat implicit bias. For example, the NAACP Legal Defense and Educational Fund points to the "wise feedback" intervention, which "is designed to improve communication between students and teachers in a very practical way. Researchers have found that students trust teachers more when teachers are thoughtful about how they provide critical academic feedback or 'wise feedback.' 'Wise feedback' is feedback that sets high standards for students, but assures students that they can meet those standards."[20]

3 INVEST IN SUPPORTIVE LEARNING ENVIRONMENTS FOR ALL STUDENTS.

How to do it:

- NYSED should dedicate a portion of its **federal ESSA funding to implement restorative practices**, including professional development for educators. It should also require schools with high suspension rates overall or that are disproportionate for any subgroup of students to use ESSA funding for this purpose and to implement practices that address implicit bias.

- In the upcoming state budget process, state leaders should provide necessary funding to **support and expand restorative practices**, mental health services, and school counselors. The New York Equity Coalition's earlier report, *Within Our Reach*, found that Latino and Black students are twice as likely as their White peers to attend a middle school without a single school counselor, and that 42 percent of Latino students and 40 percent of Black students attend high schools with more than 250 students for each school counselor, compared to 27 percent of White students.[21] ■

THE TOLL SUSPENSIONS TAKE ON STUDENTS

Watching people get suspended for minor things stresses you out. You think it could be you the next time.

"It is very hard to catch up when you miss even a few days of school. They don't make it easy for students to stay on track.

It just made me feel like it's the students against the adults.

I didn't feel like there was anyone at the school who would support me. It always seems to be whatever the teacher says, and no one listens to the students.

"Once I came back, it was sort of hard to catch up. You lose out on the time. You lose out on the lessons. You just lose those days.

At the school I go to if you get in trouble they are on you. They have people watching to see what you do. I feel like they're just trying to get you again.

IT DOESN'T HAVE TO BE THIS WAY

We want to make it so students know if they are having a problem they can rely on any staff member who they might have a relationship with.

Relationships are at the core of what we do.

"It's about doing this with each other, not to each other.

When we sit down in a restorative justice circle, it's not adults and kids. We're all people.

"We don't just suspend. There's a long process of parent outreach, student outreach, and interventions. The everyday behaviors are not enough to get someone suspended.

DATA NOTE

Unless otherwise noted, all data findings in this policy brief are based on unpublished 2016-17 school-level Basic Educational Data System (BEDS) data provided by the New York State Education Department. Data reflect the number of students reported "suspended from school (not including in-school suspensions) for one full day or longer anytime during the school year…. A student is counted only once, regardless of whether the student was suspended one or more times during the school year."[22]

The 2016-17 dataset included a total universe of 4,455 district-run schools (suspension data was not provided for charter schools).

The schools were categorized into elementary/middle and high schools using the grade organization codes found in the NYSED school directory. A school with a grade organization code of "1," "2," or "3" was counted as an elementary/middle school and a school with a grade organization code of "4," "5," or "6" was counted as a high school. In total, this resulted in 3,158 elementary/middle schools, 1,263 high schools, and 34 schools with either no grade organization code or a code of "0" or "8." The 34 schools that could not be categorized as elementary/middle or high schools were excluded from our analysis.

Of the 3,158 total elementary/middle schools, the following schools were excluded from the analysis:

- 19 schools with no suspension data;
- 19 District 75 schools;
- 3 Special Act schools;
- 7 schools with a total enrollment of less than 50 students; and
- 24 schools with unreliable suspension data (e.g., the number of students suspended by race/ethnicity exceeded the total enrollment of students by race/ethnicity, total suspensions exceeded the sum of suspensions by race/ethnicity, etc.).

In total, 3,086 (98 percent) of the 3,158 elementary/middle schools were included in the analysis.

Of the 1,263 total high schools, the following schools were excluded from the analysis:

- 10 high schools with no suspension data;
- 37 District 75 schools;
- 20 Special Act schools;
- 2 schools with a total enrollment of less than 50 students; and
- 23 schools with unreliable suspension data (e.g., the number of students suspended by race/ethnicity exceeded the total enrollment of students by race/ethnicity, total suspensions exceeded the sum of suspensions by race/ethnicity, etc.).

In total, 1,171 (93 percent) of the 1,263 high schools were included in the analysis.

Other important issues relating to suspensions — including suspension rates for students with disabilities and suspension rates for pre-kindergarten students — are beyond the scope of the dataset.

Analysis was conducted by The Education Trust–New York on behalf of The New York Equity Coalition.

ENDNOTES

[1] The names of all students and teachers quoted in this policy brief have been changed.

[2] New York State Education Department, "2016-17 Public School Suspension Counts," (Provided upon request by The Education Trust–New York). Findings are based on data from district-run schools and do not include charter schools. Additional information on data sources can be found in the Data Note at the end of the report.

[3] U.S. Government Accountability Office, "Discipline Disparities for Black Students, Boys, and Students with Disabilities," (Washington, D.C.: March 2018). Available at: https://www.gao.gov/assets/700/690828.pdf.

[4] Russell Skiba, Suzanne Eckes, and Kevin Brown, "African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy," *New York Law School Law Review* 54 (2009/2010). Available at: http://www.indiana.edu/~equity/docs/Skiba%20et%20al%2054%204.pdf.

[5] Russell J. Skiba, et al., "The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment," *The Urban Review* 34, No. 4 (December 2002). Available at: http://www.indiana.edu/~equity/docs/ColorofDiscipline2002.pdf.

[6] NAACP Legal Defense and Educational Fund, Inc., "Locked Out of the Classroom: How Implicit Bias Contributes to Disparities in School Discipline," (New York, N.Y.: 2017). Available at: https://www. naacpldf.org/files/about-us/Bias_Reportv2017_30_11_FINAL.pdf.

[7] U.S. Department of Justice and U.S. Department of Education, "Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline," (Washington, D.C.: January 8, 2014). Available at: https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html .

[8] Robert Balfanz, Vaughan Byrnes, and Joanna Fox, "Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade," (Los Angeles, CA: The Civil Rights Project, UCLA, 2013). Available at: https://escholarship.org/uc/item/4sq993qd.

[9] Trevor Fronius, et al., "Restorative Justice in U.S. Schools: A Research Review," (San Francisco, CA: WestEd, 2016). Available at: https://jprc.wested.org/wp-content/uploads/2016/02/RJ_Literature-Review_20160217.pdf.

[10] Ibid.

[11] Throughout this report suspension rates refer to the share of students on whom a school imposed at least one out-of-school suspension during the 2016-17 school year, unless otherwise noted. Additional information on data sources can be found in the Data Note at the end of the report.

[12] "Classifications" of school districts refer to the New York State Education Department's categorization of school districts into the following need/resource capacity categories: New York City, large city (Big 4), urban/suburban high-need, rural high-need, average-need, and low-need.

[13] New York City Department of Education, "Chancellor's Regulation A-443." Available at: https://www.schools.nyc.gov/docs/default-source/default-document-library/a-443-3-5-04-english.
In addition, in New York City: "An elementary or middle school student (grades K-8), who is awaiting his/her superintendent's suspension hearing, must be provided with a full-time instructional program. A high school student (grades 9-12), who is awaiting his/her superintendent's suspension hearing, must be provided with a minimum of two hours per day of instruction. The instruction may be provided before school hours, after school hours or during school hours…. Once a superintendent's suspension hearing has been held and if the student is thereafter placed on continued or extended suspension… the student must be provided with a full-time instructional program."

[14] New York City Department of Education, "Student Discipline: 2016-17," https://infohub.nyced.org/reports-and-policies/government/intergovernmental-affairs/suspension-reports, (downloaded November 24, 2018).

[15] U.S. Government Accountability Office, "Discipline Disparities for Black Students, Boys, and Students with Disabilities."

[16] New York State Education Department, "Proposed Emergency Adoption of Amendments to Sections 100.2(ff), 100.2(m), 100.18, 100.19, and Part 120 of the Commissioner's Regulations and the Addition of a New Section 100.21 of the Commissioner's Regulations Relating to the Implementation of the State's Approved Every Student Succeeds Act (ESSA) Plan," (September 12, 2018; Revised September 16, 2018). See §100.21(b)(2)(xi), available at: http://www.nysed.gov/common/nysed/files/essa-september-2018.pdf.

[17] The White House, "Fact Sheet: President Donald J. Trump is Taking Immediate Actions to Secure Our Schools," (Washington, D.C.: March 12, 2018). Available at: https://www.whitehouse.gov/briefi gs-statements/president-donald-j-trump-taking-immediate-actions-secure-schools.

[18] Betsy DeVos, "Listening Sessions on School Safety and Climate," *Betsy's Blog*, U.S. Department of Education, April 6, 2018, https://blog.ed.gov/2018/04/betsys-blog-listening-sessions-school-safety-climate.

[19] Office of the Attorney General, State of California, "Re: States' opposition to withdrawal of School Discipline Guidance Package," (Sacramento, CA: August 24, 2018). Available at: https://ag.ny.gov/sites/default/files/federal_school_discipline_guidance_multistate_ag_letter_v.6_08.24.2018.pdf. Signatories include New York Attorney General Barbara Underwood.

The Leadership Conference on Human and Civil Rights, "Letter to Secretary DeVos: Preserve the School Discipline Guidance," (Washington, D.C.: March 22, 2018). Available at: https://civilrights.org/letter-to-secretary-devos-preserve-the-school-discipline-guidance.

[20] NAACP Legal Defense and Educational Fund, Inc., "Locked Out of the Classroom: How Implicit Bias Contributes to Disparities in School Discipline."

[21] "Within Our Reach: An agenda for ensuring all New York students are prepared for college, careers, and active citizenship," (New York, N.Y.: The New York Equity Coalition, 2018). Available at: https://equityinedny.edtrust.org/wp-content/uploads/sites/14/2018/05/Within-Our-Reach.pdf.

[22] See: https://data.nysed.gov/glossary.php?report=reportcards.

THE NEW YORK EQUITY COALITION

WWW.EQUITYINEDNY.ORG

For additional information, please contact The Education Trust–New York at 646.844.0228.

APPENDIX C

DEVELOPING SAFE AND SUPPORTIVE SCHOOLS

BUFFALO PUBLIC SCHOOLS

STANDARDS FOR COMMUNITY-WIDE CONDUCT AND INTERVENTION SUPPORTS

2018 - 2019

Dr. Kriner Cash
Superintendent of Buffalo Public Schools

www.buffaloschools.org

Buffalo Public Schools

Dr. Kriner C¥h
Superintendent of Buffalo Public Schools
712 City Hall
Buffalo,New York 14202
716-816-3500

Eric Jay Rosser, Ph.D.
As ociate Superintendent of Student Support Services
701 City Hall
Buffalo, New York 14202
716-816-3596

Tonja Williams,Ed.D.
Assistant Superintendent of Student Support Services
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716-816-3547

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The Buffalo Public School District docs not discriminate on the basis of an individual's actual or perceived race, color, creed, religion, religious practice, national origin, ethnic group, sex (including sexual harassment and sexual violence), gender identity, sexual orientation (the term "sexual orientation" means heterosexuality, homosexuality, bisexuality , or asexuality), political affiliation, age, marital status, military status, veteran status, disability, weight, domestic violence victim status, arrest or conviction record, genetic information or any other basis prohibited by New York State and/or federal non-discrimination laws in its programs and activities and provides equal access to the Boy Scouts and other designated youth
groups. Inquiries regarding the District's non-discrimination policies should be directed to:
HRCompliance@buffaloschools.org

Human Resources
720 City Hall
Buffalo, New York 14202
(716) 816-3500

www.buffaloschools.org

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DIRECTORY OF SUPPORT SERVICES

If a student or care giver needs assistance or services beyond the school, the following offices may be helpful:

Attend ance Services 816-3593

Board of Education Swiich Board Operator 816-3500

Central Processing Center (Registration and Transfers) 816-3717

Guidance and Counseling 816-3702

Health Related Services 816-r 912

Home Schooling Office 816f3715

Homeless Education Program 81i3988

Home Instruction 816-3632

Medical Leave Instruction 816-3624

Language Assessment ..... 816-3717 ext. 5

Multilingual Education 816-3048

Neglected and Delinquent At Risk Youth Program 816-3172

Office of Care giver Advocacy 816-4678

Office of Care giver/Family Engagement 816-3170

Security 816-3707

Special Education ..... 816-3060 ext. I

Pre-school 816-3060

Student Placement. 816-3060

Student Support Services (Suspension Hearings) 816-3547

Superintendent's Office 816-3575

TO REPORT STUDENTS NOT ATTENDING SCHOOL

Contact the

TRUANCY HOTLINE

at

816-3806

INTRODUCTI ON

The Buffalo Public Schools is commiued to ensuring that our schools are safe and orderly environments in which Leaching and learning Lakes place each day.

Care givers as Care Partners

Students, care givers and school personnel all have a role in making school safe and must cooperate with one another to achieve this goal. School staff should keep care givers informed of their child's behavior and enlist care givers as partners in addressing areas of concern. Outreach lo care glrs can include, but is not limited to, a phone call and/or a ritten communication. As role models, care givers and sch ol staff should exhibit the behaviors which they would lik9 to see students emulate. To ensure that care givers bec me active and involved partners in promoting a safe and supportive school environment, care givers must be familiar with the *Sta11dards for Community-wide Conduct a11d /11ten·e11tio11 Supports 2015-2016* . Educators arc responsible for informing care givers about their child's behavior and for nurturing the skills students need to succeed in school and in society. Care givers are encouraged to discuss with their child's teacher and other school staff, issues that may affecl student behavior and strategies that might be effective in working wilh the student. It is important that there be maxi mum consullation and communication between the school and the home. Guidance conferences attended by the principal or his/her designce, a school counselor, the student's care givers/guardians, and one or more of the student's teachers are an effective means of encouraging care giveral input and should be held with students where appropriate. Care givers who want to discuss interventions in response to student behavior should contact their child's school, including the Care giver Advocate, or, if necessary, the Oflice of 816-4678.

Caregiver Notification

School officials are responsible for sharing the information in this docu ment with students, care givers/guardians, and staff. The District will make every effort to provide this information through multimedia methods including:

- A video on the District website
- Audio tapes in various languages
- District Facebook

In the event a student engages in inappropriate behavior, the principal or principal's designee must report the behavior to the student's care giver/guardian. When a student is believed to have committed a crime, the police must be summoned and the care giver/guardian must be contacted. See Chancellor's Regulation A-41 2.

The Buffalo Public Schools *Standards for Community- wide Conduct and lnterve11tio11 Supports 2015-2016* was developed lo ensure that students – and all members of the Buffalo Public Schools community – learn and engage in appropriate behavior that supports student success in life and in society. The Standards are for the entire school district and all of its individual school communities. It lays out the Buffalo Public Schools' expectations for students, care ivcrs, gardians a_nd school .base staff, and it lists and describes the mappropnate and d1srupt1ve behaviors that arc unacceptable in school settings. Because the Buffalo Public Schools is committed to correcting inappropriate behaviors within ils school senings so that students may remain in school and learn, the *Standards* include prevention and intervention strategics to be used, as appropriate, with any discipline response.

Student engagement is integral to creating a positive school culture and climate that fosters students' social/emotional growth and academic achievement. Providing students with multiple opportunities to participate in a wide range of pro- social activities and, at the same time, bond with caring, supportive adults can help prevent negative behaviors.

Examples can include: providing students with meaningful opportunities to share ideas and concerns and participate in school-wide initiatives; student leadership development; periodic recognition of students' achievement in a range of academic and co-curricular areas; using corrective feedback; and developing school-wide positive behavior systems. Such opportunities, coupled with a comprehensive guidance program of prevention and intervention, provide students with the experience, strategies, skills, and support they need to thrive.

INTRODUCTI ON

Promoting Positive Student Behavior

Each school is expected lo promote a positive school climate and culture that provides students with a supportive environ ment in which to grow both academically and socially. Schools arc expected to take a proaf live role in nurturing students' pro-social behavior by providing them with a range of positi ve behavioral supports as well as meaningful opportunities for social emotional learning. Effective social emotional learning helps students develop fundamental skills for life effectiveness, including: recognizing ad managing emotions; developing caring and concern for others: establishing positive relationships; making resp .nsible decisions; and handling challenging situations corstructively and ethically. Such skills help prevent nejative behaviors and the disciplinary consequences that result when students do not live up to behavioral standards. Student engagement is also integral to creating a positive school clima1e and culture thal effectively fosters students' academic achievement and social/emotional growth. Providing students with multiple opportunities to participate in a wide range of pro-social activities and, al the same time bond with caring, supportive adults mitigates against negative behavior. Examples can include: providing students with meaningful opportunities to share ideas and concerns and participate in school-wide initiatives; student leadership development; periodic recognition of students' achievements in a range of academic and co- curricular areas; using corrective feedback; and developing school- wide positive behavior systems. Such opportumlles, coupled with a comprehensive guidance program of prevention and intervention, provide students with the experiences, strategies, skills and support they need to thrive.

Prevention and Intervention

School personnel are responsible for developing and using strategies that promole optimal learning and positive behavior throughout a student's school experience. They are also responsible for addressing behaviors which disrupt learning. Administrators, teachers, school counselors, social workers, psychologists and other school staff are expected to engage students, including students with disabilities, in intervention and prevention strategics that address a student's behavioral issues and discuss these strategics with the student and his/her care giver. Intervention and prevention approaches may include guidance support and services to address personal and family circumstances; social/emotional learning, such as conflict resolution/peer mediation/negotiation, anger management, and/or communication skills acquisition; implementation of Response to Intervention (Rtl) behavior strategies, the use of alternative instructional materials and/or methods; enrichment services; alternate class placement; and/or development or review of functional behavior assessments and beh Jvior intervention plans which should be developed and/or re icwed as an early intervention strategy. If, at any time, schtol officials suspect that a student's difficulties may be the r suit of a disability which may require special educatio services, the student should be referred immediately to the Commi ttee on Special Education. Through the use of intervention and prevention strategics that engage students and give them a clear sense of purpose, school staff facilitate students' academic and social- emotional growth and assist them in following school rules and policies.

Attendance

Attendance at school is vital to a student's academic progress and success. School personnel will ensure that appropriate outreach, intervention and support are provided for students who exhibit attendance problems that may manifest themselves as truancy or patterns of unexcused absence or educational neglect.

In cases of truancy, school personnel must meet with the Student and care giver/guardian in order to determine needed supports and an appropriate course of action which may include, but is not limited to: an intervention, referral for counseling, and/or referral to after-school programs.

The school's PBIS Universal and Seconda ry Teams should review the data of chronic absenteeism and/or truancy and should involve attendance teachers, attendance designees, school counselors, teachers, social workers and other school staff in facilitating a resolution. Cases of suspected educational neglect must be called into the New York State Central Register in compliance with Chancellor's Regulation A-750.

ACKNOWLEDGEMENT OF CODE OF CONDUCT

DISSEI\:lINATION OF CODE OF CONDUCT

Pursuanl Lo Educalion Law §280(4) and 8 NYCRR §I 00.2(1)(2)(iii)(b), Lhe District will ensure Lhal the community is aware of this Code of Conduct *(Standardsfor Community-wide Conduct and /merve11tio11 Supports)* by:

I) Providing a public hearing prior to Board approval

2) Providing copie of a summary of the Code to all students, in an age-appropriate, plain language version, at a general school ass mbly held at the beginning of the school year

3) Making copies of the Code available to all care givers at the beginning of the school year

4) Providing a su mary of the Code of Conduct written in plain language to all ca givers of District studenls before the beginning of the school year and making this summary available later upon request

5) 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 afler adoption

6) Providing all new employees with a copy of the current Code of Conduct when they arc first hired

7) Making copies of the Code available for review by students, care givers and other community members and provide opportunities to review and discuss this Code with the appropriate personnel

Note: The District will make every cffort to provide written and audio versions of this Code of Conduct in multiple languages.

ACKNOWLEDGEMENT OF CODE OF CONDUCT

ACKNOWLEDGEMENT OF RECEIPT:
STANDARDS FOR COMMUNITY-WIDE CONDUC AND INTERVENTION SUPPORTS

Please sign one form for each Buffalo Public Schools student in your household and return it to your student's school.

(Note: Failure to sign and re(um thisform to the school does not relieve the studelll from thtresponsibility of conforming to the Buffalo P1f11ic Schools' Standards for Community-wide Conduct and /me ¹e11tio11 Supports 2017-2018)

I have received a copy of *Buffalo Public Schools' Standards for Community-wide Conduct and /11terve11tion Supports 2017-2018.*

Student's Name *(please prim)*

Student's School *(please print)*

Name of Care giver or Guardian *(please prim)*

Signature of Care giver or Guardian

Date

ACKNOWLEDGEMENT OF CODE OF CONDUCT

ACKNOWLEDGEMENT OF INTERNET SAFETY/ACCEPTABLE USE OF TECHNOLOG\ POLICY

(Note: Failure to sign and return this form does not relieve the st11de11t from tire responsibility of conforming to this policy.)

As a stu<fnt user of the Buffalo Public Schools communication system, ,agree that the technology components that are part of the communications system are the property of the Buffalo Public Schools. I furthermore agree not to access or to retrieve any electronic communication from these resources other than those that Ihave been granted prior authorization to access or to retrieve.

As a student user of the communications systems, Iagree to comply fully with the Buffalo Public Schools Internet eptable Use of Technology rlicy and administrative regulation (summarized on page 31 of this

I am aware that the District may authorize appropriate use of a cell phone in class, when it is use for educational purposes only and only Ihen authorization is given by the classroom teacher.

Iam aware that the Buffalo Public sch ols reserves the right to review, audit, intercept, access and discfose all mallers of the Buffalo Public Schools electronic communications systems at any time, with or without notice to its users, and that such rights may be exercised during or after normal working hours and even if the electronic communications appear to have been deleted from the systems. Iacknowledge that Ihave no expectations as to privacy or confidentiality of any electronic communication in the Buffalo Public Schools communications systems.

Iunderstand that if Ifail to comply with the Internet Safety/Acceptable Use of Technology policy or administrative regulation and Iam discovered to be in violation of the rules dictated in either, I may be subject to disciplinary action and/or applicable legal penalty as prescribed.

Signature of Student User Date

As the care giver or legal guardian of the student user who had signed this acknowledgement, I (check appropriate box)

D Grant D Deny

permission for the student user to access Buffalo Public Schools' communications systems in accordance with applicable policy and regulation. I understand that individuals and families may be held liable for violation and that some materials on the Internet may be objectionable, but I accept responsibility to assist in setting and conveying standards for the student user to follow when using the Buffalo Public Schools' communications systems.

Signature of Care giver or Guardian Date

Behavior Systems

Tier 3ITertiary Interventions (1-5%)

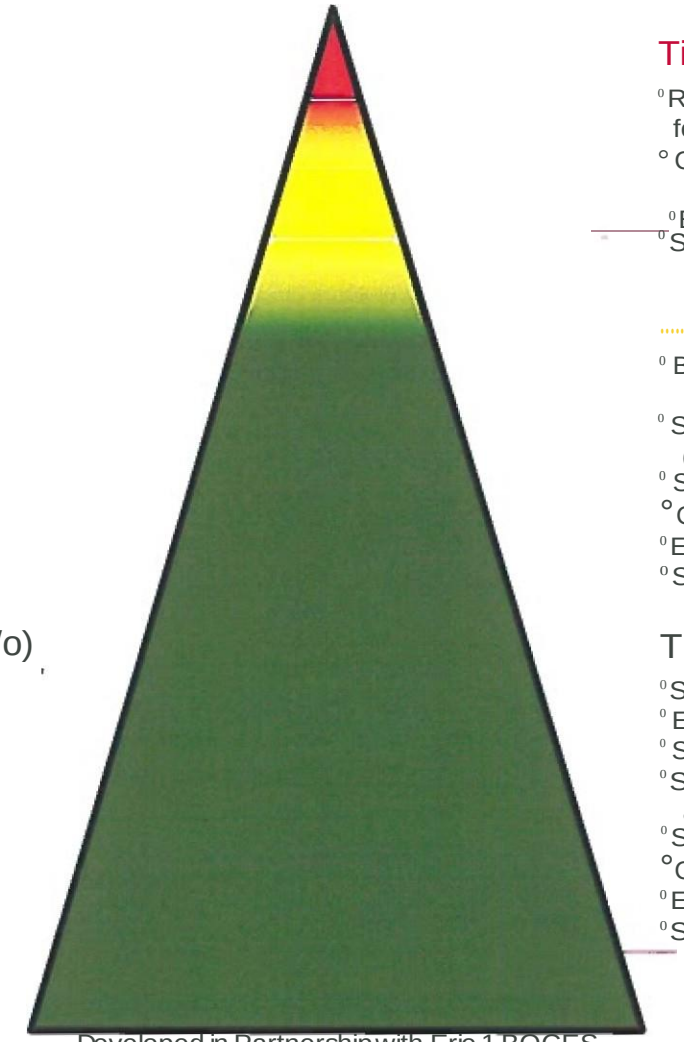
- Individual Students
- Assessment-based
- High Intensity

ventions (5-15%)

- Some Students (at-risk)
- High Efficiency
- Rapid Response
- Small Group Interventions
- Some Individualizing

Tier 1/Universal Interventions '80-90%)

- All Students
- Preventive, Proactive



Behavior Supports

Tier 3/Tertiary Supports

- Referral to Community Resources for Enhanced Services for Children and Families (PreK-12)
- Complex Functional Behavioral Assessment/Behavior Intervention Plan (Complex FBA/BIP) (PreK-12)
- EstaQlifill Data-based Decision Rules
- Student Progress Monitoring through Use of Data

- Brief Functional Behavioral Assessment/Behavior Intervention Plan (Brief FBA/BIP) (PreK-12)
- Simple Interventions with Individual Features/Mentoring (PreK-12)
- Social Academic Instructional Groups (SAIG) (PreK-12)
- Check-in/Check-out (CICO) (PreK-12)
- Establish Data-based Decision Rules
- Student Progress Monitoring through Use of Data

Tier 1/Universal Supports

- School-wide Behavior Expectations (PreK-12)
- Explicit instruction of Behavior in all Settings (PreK-12)
- School-wide Acknowledgement Systems (PreK-12)
- Safe & Civil Schools START on Time - Safe Transitions and Reduced Tardies to Class (9-12)
- Systemic Supervision of all Common Areas (PreK-12)
- Clear Consequences & Violation Procedures (PreK-12)
- Establish Data-based Decision Rules
- StudeolProgress Monitoring through Use of Data

Buffalo Public Schools

Positive Behavior Systems
A Response to Intervention (Rtl) Behavior

PREVENTATIVE PRACTICES / INTERVENTION STRATEGIES

POSITIVE BEHAVIOR SYSTEMS

Tier 1 Universal Interventions:

Universal Systems include school-wide programs that foster proactive safe, hethy supportive learning environments and promote social and emotional learning along with developing a connection among school, home and community. Through Positive Behavior Supports, schools intervene before problematic behavior escalates. Schools use research-based, scientifically validated interventions lo achieve high rates of student success.

Universal interventions target the entire populftion of a school through the development and demonstration of pro-social behaviors, skill development and behavirral health well-being. The content of Universal supports enect the specific needs of the school population, therefore, implementation may look different al each building. Systematically teaching behavioral expectations and acknowledging students for following them is a more positive approach than waiting for misbehavior to occur before responding. Data guides the design of Universal strategies. Some students do not respond to Universal behavioral strategies. Students who require additional interventions beyond Universal Support will be referred for Secondary support.

Tier 1 Universal Systems Team:

The Universal Team drives the implementation of Rtl Behavior for the school building. Each school has its own Universal Team. Average membership totals 8 including a building administrator, behavioral specialist (school counselor, social worker. psychologist), special education teacher, general education teachers that represent grade levels and specials, support staff and non-district roles (care giver representative, community representative, student representative in upper grades). The Team develops and implements effective behavior management and motivation practices – as well as behavior support for all students. Progress data and outcome data are collected and reviewed by the Team to determine the success of implementation and to determine areas of need.

Tier 2 Secondary Interventions:

Secondary Systems provide targeted interventions to support students who are not responding to Universal strategies. Interventions within the Secondary System are more specific tq the needs of some children and designed for a smaller number of students who require more focused behavioral support. Interventions are implemented through the use of a comprehensive developmental approach that focuses on skill development, increasing protective factors for students and families and preventing risk factors or early on-set problems from progressing.

Decisions to implement Secondary support re determi ned based on records of student behavior/student data. Effective Secondary interventions are meant to prod 1ce measurable changes in behavior and improvement 1n a student's success. Progress monitoring is used for evaluating student outcomes, determining if adjustments should be made to an intervention or if a student needs more intensive interventions provided through Tertiary supports. Secondary Interventions include:

0 CICO – Check-in Check-out: Students check in with designated CICO Facilitator/s before the beginning and at the end of each school-day to receive positive contact, pre-corrects, reminders of school-wide expectations and, if needed, basic school supplies. At the end of each class period, classroom teachers provide behavioral feedback, based on the school-wide expectations, on a Daily Progress Report Card (DPR).

0 SAIG – Social/Academic Instructional Groups: Youth are supported in a small group for direct instruction of school-wide expectations and/or replacement behaviors, including structured practice and direct behavioral feedback. Interventions lead to generalization most effective when youth arc also supported by CICO, where classroom teachers provide youth positive behavioral feedback on a DPR related to their transference of newly learned skills taught during group.

PREVENTATIVE PRACTICES / INTERVENTION STRATEGIES

0 Individualized CICO, Groups & Mentoring:

Individualized CICO has most of the same features as the generic CICO but includes some fairly simple individualizations (i.e. change in location of CICO, addition of more Check-ins, etp.) without creating individual student goals or god! lines (which would only come after an FBA/BIP). Mentoring involves one adult meeting with one or more students at a time, one or more times per week, to provide pre-corrects and a positive connection with the school through a positive relationship.

0 Brief FBA/BIP - Functional Behavior Assessment

/Behavior Intervention Plan: Brief behavior plans ar1 developed for one student at a time, based on a bric} assessment of function of behavior by the Tier 2 Problem Solving Team. Brief Tier 2 behavior intervention plans address only one behavior, typically in one selling. Interventions arc chosen or designcd based on youth's strengths, assessed function of behavior and skills-delicits.

Tier 2 Secondary Systems Team:

The Secondary Systems Team focuses on students who are not responding to Universal support. Team members report on data related to students' response to Secondary interventions (CICO, SAIG, Individualized Interventions and Brief FBA/BIP) and problem-solve around improvements needed to the System or a specific intervention.

Tier 2 Secondary Problem Solving Team:

The Problem Solving Team assesses individual youth and problem solves strategics and solutions to address the individual students' needs. Team members report out on aggregate student data from the interventions they facilitate. A determination is made as to whether a student is responding to Secondary interventions and a determination is also made for students who need more intensive interventions provided through Tertiary supports.

Tier 3 Tertiary Interventions:

Tertiary supports arc designed for individual students who arc identified as having severe, chronic or pervasive concerns. The goal of Tertiary support is to diminish problem behavior and increase a student's skills and opportunities for an enharlced quality of life. A collaborative teaming process is followed when developing and implementing tertiary supports. An individualized comprehensive and developmental approach is utilized in the implementation of Tertiary interventions that arc designed to reduce risk factors and increase protective factors of students.

Tertiary interventions support is tailored to meet a student's specific needs and the characteristics and specific circumstances related to the student. Tertiary supports llow teams to vary features of the process to provide the jmost individualized behavior support possible. Tertiary Interventions include:

0 Complex FBA/BIP: An individualized team is created specifically for one youth at a time (includes family, community, and relevant school-based adults) to assess youth strengths, skills-deficits, and function of behavior, as well as to develop a comprehensive intervention plan. Plan addresses multiple settings and/or behaviors.

0 Wraparound (Wrap): An identified team facilitator engages a child and their family in developing a unique team to support youth success at home, school and in the community. Facilitator arranges for frequent team meetings lo develop, reline, and progress-monitor interventions and supports that address multiple life domains across settings (home, school, community). Plans include highly individualized interventions and supports designed based on youth strengths and needs (quality of life indicators) identified by youth, family and other team members.

NTERVENTION RESPONSE:POS TIVE RELATONSHPS

Research shows that positive relationships help children learn. When our communities, schools and homes are free from fear, anger and other distractions, human development can occur. We know that students are more likely to succeed when they reel connected to others in their community, and are less likely to act out i n ways that cause disruption to the school environment. (For more on this topic, sec Bonnie Bernard's *Fostering Resiliency i11 Kids* or Robert Blum's "A Case for School Connectedness," *Ed11catio11al Leadership*, April 1005)

Tips for Calming Conflict

0 Show students you understand. Listen well, with sincere concern, to create positive relationships among students and adults. Trust then becomes the foundation for academic success and conflict resolution.

0 Ask open-ended questions. Say, for example, "What was that like for you?" or "Tell me more about that." This gets more than a "Yes" or "No" response, and help students tell their story.

0 Use reflective listening when intervening in a connict. Get the attention or an angry person by renecting back the feelings you hear in a nonjudgmental way. Let students tell their story – say just enough to help them do it.

0 Help students problem-solve disputes. Use open- ended questions and renective listening to help students think about what happened. Trust that, with guidance, students will identify a solution that works for them.

Skills and Strategies for Building Positive Relationships

0 Communicating understanding

0 Structuring task for student succefs

0 Reinforcing student behavior in a positive manner

0 Setting rules, limits and consequences

0 Creating a safe and trusting environment

0 Remaining neutral

Ol Using nonjudgmental language

0 Responding only when a response is necessary

01 Staying calm in tense situations

0 Encouraging people to "vent" while being aware of safety

0 Listening and repeating what students say (rcnective listening)

0 ldentifying and labeling feelings, values and topics to be resolved (strategic listening)

() Asking open-ended questions

0 Assisting people in using a positive problem-solving process

Suggested Practices for Establ shing Positive Relationships

0 Daily Rap. Students need to learn to communicate with one another in ways that help them build healthy relationships instead of records of suspension and arrests. The Daily Rap is an intervention designed a r o u n d core categories of social and emotional skills. Working in dialogue circles, teachers and staff build open communication with students so that they can talk about topics and resolve issues before they escalate to violence.

0 Morning Meetings. Classroom meetings in which the teacher and all students come together arc usually for one of two purposes: lo build commun ity at a relatively peaceful ti me or to resolve a conflict. At the morning meeting, students sit in a circle and do activities together that help build caring within the group and between individuals. The meeting provides a place students come to understand the truest meaning of "finding common ground." They come to see, tolerate and appreciate the ways of one another, including their cachers. The most basic element of caring that aids this p ocess is the genuine willingness to listen attentively.

0 Student AdJisories. Students meet in small groups with an adult advi or to focus on character and civic development. Students discuss day-to-day issues, define their values, develop a trusting relationship with an adult advocate, hone communication skills and participate in social justice or service learning projects. Student Advisories offer emotional support for students during adolescence. Ideally, the advisory teacher is someone students know they can trust and talk lo about their progress in school. The activity can provide peer recognition in an accepting environment, and offset peer pressure and negative responses from peers in other areas.

0 Student Ambassadors. The Student Ambassador goal is to engage students in activities that promote student connectedness and belonging lo the school experience. Student Ambassadors serve as the youth voice for the student body. The students participate in team building activities and plan and conduct activities with their peers, in an effort to maintain a positi ve school climate and lo motivate and engage the entire school commun ity in Addressing barriers to learning such as poor attendance.

ADDITIONAL INTERVENTION STRATEGIES

To help students conduct themselves appropriately, *Buffalo Public Schools Standards for Com1111111ity-ivide Conduct and /11ten·entio11 Supports 2017-2018* lists prevention and intervention strategies that may be used prior to or in addition to any disciplinary response to student behavior. Examples of such strategies include the following:

0 Behavior Intervention Plan (BIP): An approach to correcting inappropriate lor disruptive student behavior through a plan designed by school staff to offer positive behavioral interventions, strategies and supports. This plan is appropriate for studenfs with and without disabilities. ABIP is developed based n the results of an FBA).

0 Community Conferencing: Allows students, school staff and others involved in a conflict to discuss the conflict and how it affected them and to propose solutions.

0 Community service: Allows students to participate in some sort of activity to serve and benefit the community. Examples include working in a soup kitchen, cleaning up public spaces, helping at a facility for the aged, or similar activities.

0 Conference: Involves students, care givers, guardians, teachers, school staff and principals in discussion about student misbehavior and potential solutions that address social, academic and personal issues related to the behavior.

0 Conflict resolution: Empowers students to take responsibility for peacefu lly resolving conflicts. Students, care givers, guardians, teachers, school staff and principals engage in activities that promote problem solving skills and techniques, such as conflict and anger management, active listening and effective communication.

0 Functional Behavior Assessment (FBA): Involves gathering information about students' inappropriate or disruptive behavior and determining approaches that school staff should take to correct or manage student behavior. This information is used to develop a Behavior Intervention Plan for the student.

0 Guidance Conferences: Guidance conference-; can be used as an alternative to suspension a-; a level I , 2, 3 or 4 rc!>ponsc. Members of the school adminii.tration , centr.il oflice, the student's caregiver and the student will meet to discu ss behavioral chjllenges or code of conduct infractions and jointly develop a contract of conduct. The student and care giver will ackn wledgc understanding and receipt ol the contract with the xpcctation that the student will adhere to the expectations of he District's Code of Conduct.

0 Individual Education Program (IEP) teams: Includes groups of individuals who arc responsible for identifying and evaluating students with disabilities; developing, reviewing and revising IEP's for students with disabilities, Functional Behavior Assessments and Behavior Intervention Plans, and determining the placement or students with disabilities in a least restrictive environment. (Note: Specific to students with disabilities or students suspected of having a disability)

0 Mentoring program: Involves pairing students with mentors (a school counselor, teacher fellow student or community member) who help their personal, academic and social development.

0 Care giver outreach: Requires school staff to inform care givers or guardians of their children's inappropriate or disruptive behavior. Outreach made in writing or by telephone is intended to make care givers aware of the student's behavior, task completion and achievement, and can include a request for care givers to accompany students to school.

0 Peer mediation: A form of conflict resolution in which students help other students deal with and develop solutions to conflict.

PREVENTATIVE PRACTICES / INTERVENTION STRATEGIES

0 Referral to appropriate substance abuse counseling services: Occurs for behavior related lo substance abuse, or with those for whom there is reason lo believe substance abuse counseling is needed. Service can be school or community based.

0 Refcrral to com m u n ity -based or g a n iz a tio n s: Can involve a variety of services, including after-school programming, individual or group counseling, leadership development, conflict resolution and tutoring.

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Progressive Consequences

Consequences are most effective with students when they deal directly with the problem, in a way that students view it as fair and impartial. School personnel who interact with students are expected to Ufe disciplinary action only when warranted and to place emphasis on the students' ability to grow in self-discipline.

When choosing interventions and consequences for students' behavior, teachers, administrators, and staff must balance the District's goals of eliminating school disruptions and maxi mizing student instruction time. Prior to disciplining students, the following factors shall be considered:

1. Age, health, and disability or special education statu of the student

2. Appropriateness of student's academic placement

3. Student's prior conduct and record of behavior

4. Student's understanding of the impact of their behavior attitude

5. Student's willingness to repair the harm caused by their behavior

6. Seriousness of the behavior offense and the degree of harm caused

7. lmpact of the incident on overall school community

8. Whether the student's violation threatened the safety of any student or staff member

9. The likelihood that a lesser intervention would adequately address the violation

Where appropriate, discipline will be progressive. This means that a student's first violation will usually merit a consequence of a lesser degree than subsequent violations, taking into account all factors relevant to the severity of the current violation. However, in instances where a student's conduct is dangerous or threatens the safety of others, a more severe form of disciplinary action may be warranted, even if it is the student's first offense.

If the conduct of a student with a disability results in a Jong term suspension or a series of short term suspension, consequences shall be administered consistent with the separate requirements of this *Standardsfor Community-wide Conduct and /111en·e111io11 Supports* for disciplining students with a disability or presumed to have a disability.

Understanding consequences as a "teachable moment" is fundamental to a positive approach to discipline. Progressive consequences use incremental interventions to address inappropriate behavior with the ultimate goal of leaching pro-social behavior. Progressive consequences do not seek punishment. Instead, progressive consequences seek concurrent accountability and behavioral change.

The goal is prevention of a recurrence of negative tehavior by helping students learn from their mistakes. Ess ntial to the implementation of progressive discipline is helping students who have engaged in unacceptable behaviolto:

- understand why the behavior is unacceptable nd the harm it has caused
- understand what they could have done differently in the same situation
- take responsibility for their action
- be given the opportunity to learn pro-social strategies and skills lo use in the future
- understand the progression of more stringent consequences if the behavior reoccurs

Every reasonable effort should be made to correct student misbehavior through interventions and other school-based resources and the least severe disciplinary responses. Interventions are essential because inappropriate behavior or violations of the *Standards for Con11mmity-1vide Conduct and /11terve11tio11 Supports* may be symptomatic of more serious problems that students arc experiencing. It is, therefore, important that school personnel be sensitive to issues that may influence the behavior of students and respond in a manner that is most supportive of their needs.

Appropriate disciplinary responses should emphasize prevention and effective intervention, prevent disruption to students' education, and promote the development of a positive school culture.

INAPPROPRIATE AND DISRUPTIVE BEHAVIORS: LEVELS OF RESPONSE

When students arc disruptive or act f nappropriately, school staff and principals respond logicaJly, appropriately and consistently. Buffalo Public Schools *Standards for Commu11ity-wide Conduct and /111en·e11tio11 Supports 2017-2018* describes four levels of possible response to inappropriate and disruptive behavior. Each inappropriate or d is ru pti ve bchavior is assigned to one or more of thee levels of intervention a n d r c s p o n sc . Principals an school staff should use only the levels suggested for each behavior.

If Jhe inappropriate or disruptive behavior is assigned to two or more levels, then, wherever possible. the lowest level of intervention and d i sc ip li n a r y response should be used first. For example, if a student refuses to follow directions, school staff and principals should first use intervention s t r a t e g i cs a n d r e spo n ses i n Le v e l I before moving to Level 2.

When principals and school staff respond to student behavior, they are expected to take into account page numerous factors. (Sec prior for a comprehensive list)

LEVELS OF INTERVENTIONS AND RESPONSES

Example of Classroom Interventions and Responses

These interventions aim to teach correct and alternative behavior so students can learn and demonstrate safe and respectful behavior. Teachers are encouraged to try a variety of teaching and classroom management strategies. Teachers should use these responses in a graduated fashion.

- Establish relationships with students
- Contact care giver via telephone, e-mail or text message
- Verbal correction
- Reminders and redirection (e.g. role play)
- Written reflection or apology
- Seat change
- Care giver or guardian conference
- Detention
- Care giver or guardian accompany student to school
- Daily progress sheet on behavior
- In-class time out
- Establish buddy teacher system
- Loss of classroom privileges
- Teacher or student conference
- Guidance Conference

Examples of Student Support Team Interventions and Responses

These interventions often involve support staff, both school based and within the broader community, and aim to engage the student's support system to ensure successful learning and consistency of interventions, and change the conditions that contribute to the student's inappropriate or disruptive behavior. Staff should use these responses in a graduated fashion.

- Care giver or guardian notification
- Community conferencing
- Mentoring program
- Peer mentoring
- Referral to school-based health or mental health clinic
- Referral to community organization
- Referral to after-school program
- Service to school
- Conflict resolution
- Restorative Justice
- Community mediation
- Guidance Conference

Short-term behavioral progress report

LEVEL 2

Examples of Administrative Interventions and Responses

These interventions can involve the school administration and aim to correct behavior by stressing the seriousness of the behavior while keeping the student in school. Staff should use these responses in a graduated fashion.

- Change in schedule or class
- Care giver or guardian notification
- Restorative justice strategies, including school and community service
- Loss of privilege
- Restitution
- Detention
- Reprimand by appropriate administrator
- Referral to Student Support Team (SST) for consideration of necessary intervention
- Revision to IEP (for students with disabilities)
- Community conferencing
- Assignment of work projects
- Mentoring
- FBA/BIP
- Conflict resolution
- Guidance Conference

LEVEL 3

Examples of Suspension and Referral Responses

These interventions may involve the short-term removal of a student from the school environment because of the severity of the behavior. The duration of the short-term suspension, if issued, is to be limited as much as practicable while adequately addressing the behavior. Staff should use these responses in a graduated fashion.

- Care giver or guardian notification
- In-school suspension
- Short-term suspension (one to five days)
- Referral to SST
- Referral to substance abuse counseling
- Referral to the Credit Recovery Program
- Guidance Conference
- Restorative Justice strategies, including school and community service
- Referral to IEP team (students with disabilities)
- Revision to IEP (student with disabilities) as needed
- Develop Functional Behavioral Assessment and Behavior Intervention Plan
- Referral to community organizations, including community conferencing and community mediation

LEVEL 4

Example of Extended Suspension and Referral Responses

These interventions involve the removal of a student from the school environment because of the severity of the behavior. They may involve the placement of the student in a safe environment that provides additional structure to address behavior. These interventions focus on monitoring the safety of the school community and ending self-destructive and dangerous behavior. Staff should use these responses in a graduated fashion.

- Care giver or guardian notification
- Extended suspension
- Functional Behavioral Assessment
- Community conferencing
- Referral to community organizations
- Expulsion (serious behavioral infractions)
- Referral to IEP team (students with disabilities) for Manifestation determination

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- Alternative education placement by the Central Processing Office
- Behavioral Intervention Plan
- Community mediation
- Referral to substance abuse counseling
- Permanent eKpulsion
- Restorative Justice strategies, including school and community service

INAPPROPRIATE AND DISRUPTIVE BEHAVIORS AND LEVELS OF RESPONSE

KEY: USE LOWEST LEVEL INDICATED FIRST

Level 1: Classroom Support and Student Support Team – may be appropriate when student has no prior incidents and interventions have not been put in place	level 2: Appropriate Administration – may be appropriate when supports have been put in place in the classroom to address behavior but the behavior has continued to negatively affect the learning of the students and others	level 3: Short Term Suspension – may be appropriate when interventions and supports have been put in place but the behavior is escalating (repeated offenses)	Level 4: Request for Long Term Suspension – may be appropriate when student's behavior seriously affects the safety of others in the school

INAPPROPRIATE OR DISRUPTIVE BEHAVIOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	MAY BE REFERRED TO POLICE OR APPROPRIATE AGENCY
Absences					
• Unexcused absence from school	●				
• Persistent or excessive absence from school	●				
• Habitual truancy (i.e., unlawfully absence from school for a number of days in excess of 20 percent of any making period, quarter or year)	●	●			
Academic Dishonesty					
• Cheating or Plagiarism (Pre-K-8)	●	●			
• Cheating or Plagiarism (9-12)	●	●	●		
Alcohol					
• Under the influence	●	●	●	●	●
• Using or possessing	●	●	●	●	●
• Distributing or selling	●	●	●	●	●
Attack on Student (ie. hitting, kicking or punching another student without warning or provocation)					
• No injury (no visual, physical injuries; Includes incidents of domestic violence or relationship disputes)		●	●	●	
• Bodily injury for pre-k to grade 4		●	●	●	
• Bodily injury for grades 5 to 12			●	●	●
Bomb Threat					
• Pre-k to grade 4	●	●	●	●	●
• Grades 5 to 12				●	●

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KEY: USE LOWEST LEVEL INDICATED FIRST

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INAPPROPRIATE OR DISRUPTIVE BEHAVIOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	MAY BE REFERRED TO POLICE OR APPROPRIATE AGENCY
Bullying, Including Cyber-bullyIng and GangRelated Incidents					
• Intentional condujt (including verbal, physical or written conduct) or electron c communication that is threatening or , seriously Intimidating and substantially disrupts the orderly operation of a school	●	●		●	●
• Serious bullying (.e., repeatedly over time engaging in Intentional negative behaviors that adversely affect another student's ability to participate In or benefit from a schools education or extra-curricular programs)		●	●	●	●
Bus VIolatIon					
• Minor disruption on the bus(i.e.,eating, drinking,being too loud, standing)	●	●			
• Serious disruption on the bus (fighting, throwingobjects, distractingthe bus driver, opening emergency exists, etc)		●	●	●	●
Class Cutting					
• Repeated,intentional failure to appear or attend a scheduled das.s	●	●	●		
Classroom Disruption					
• Talking out in class or talking out of turn; throwing objects; picking on, bothering or teasing other students; and other behavior that distracts from student learning	●	●			
Defiance of Authority and/or Insubordination (nonvIolent/nonphysical)					
• Failure to follow directions	●	●			
• Failure to respond to school staff questions orrequests	●	●			
• Failure to follow directions,leading to a potential threat or harm to self or another person	●	●	●	●	
• Failure to follow directions that directly leads to the harm of self or others	●	●	●	●	

NAPPROPRIATE AND DISRUPTIVE BEHAVIORS AND LEVELS OF RESPONSE

KEY: USE LOWEST LEVEL INDICATED FIRST

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INAPPROPRIATE OR DISRUPTIVE BEHAVIOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	MAY BE REFERRED TO POLICE OR APPROPRIATE AGENCY
Disrespectful Behavior					
• Making inappropriate gestures symbols or comments, or using profane or offensive language	●	●			
• Using verbal insults or put-dow s, or lying to, misleading or giving false information to school staff	●	●	●	●	
• Using verbal insults or put-downs, or lying to, misleading or giving false information to school staff that leads to emotional or physical harm to another person	●	●	●	●	●
Dress Code Violation					
Refer to dress code standards listed on page 30	●	●			
Drugs or Controlled Substance (at school, school sponsored activities or when involved h hcidents affecting the safety or welt.ire of the school community)					
• Under the Influence		● ●	●	●	●
• Using or possessing			●	●	●
• Distributing or selling				●	●
Extortion/Coercion (i e., taking or attempt Ing to take from another - money or property - by threat of force, express or implied)					
• Prk to grade 4		●	●		
• Grades 5 to 12			●	●	●
False Activation of a Fire Alarm					
• Pre k to grade 4		●	●	●	●

•Grades 5 to 12

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NAPPROPRIATE AND DISRUPTIVE BEHAVIORS AND LEVELS OF RESPONSE

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INAPPROPRIATE OR DISRUPTIVE BEHAVIOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	MAY BE REFERRED TO POLICE OR APPROPRIATE AGENCY
Fighting					
• Physical aggression with another student (g,shoving or pushing)	●	●	●		
•Minor fighting (may include incidents resul ,;ng in minor injuries)	●	●	●	●	
Fire Setting/Arson					
• Deliberately starting a fire; destruction of property as a result of starting a fire			●	●	●
Gambling					
• Requiring the use of money or exchangeable goods	●	●	●	●	
Hallway Misbehavior					
• Running,making excessive noise or loitering	●	●			
Hate Crime (a criminal offense against a person or property motivated in whole or in part by an offender's bias against a race,religion,disability,ethnic origin or sexual orientation).			●	●	
Harassment Based on Race, Ethnicity, Gender, Sexual Orientation, Disability or Religion					
•Mnor harassment (i.e.,verbal discriminatory actions)	●	●	●	●	
•Serious harassment (i.e.,persistent or long term harassment		●	●	●	●
Inciting or Participating In Disturbance					
• Causing a large disruption to the atmosphere of order and discipline in the school that is necessary for effective learning, outside of general classroom disruption, (cafeteria, hallway, library, bus stop,etc.)		●	●	●	●
• Using a personal communication device to attract others to initiate a disturbance		●	●	●	●

NAPPROPRIATE AND DISRUPTIVE BEHAVIORS AND LEVELS OF RESPONSE

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Inhalants				
• Under the influence Medical personnel must be immediately notified If a stu ent is found to be under the influence or using an inhalant.	●	●	●	●
• Usingor possessing	●	●	●	●
• Distributingor selling	●	●	●	●
Physical Contact with School Personnel (Including school visitors, community partners, before or after school providers, schooVclassroom pets, service dogs, etc)				
•Unintentional incidental physical contact with school personnel (i.e.. pushing through staff in doorway running down hallway)	●	●		
• Attack against school personnel; physical attacking an' employee of the Buffalo Public Schools or other adult, ncluding striking a staff member who is intervening in a fight or other disruptive activity (pre-k to grade 4)		●	●	●	●
• Attack against school personnel physical attacking an employee of the Buffalo Public Schools or other adult, including striking a staff member who is intervening in a fight or other disruptive activity (grades 5 to 12)		●	●	●	●
Portable Electronic Devices Use at Unauthorized Times				
• Use of cell phones, PDAs, iPods, electronic game devices On the first infraction, students must only be given a warning. Only after the first infraction can the student be subject to Level 1 responses. On the second Infraction, care giver notification must occur.	●	●		
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KEY: USE LOWEST LEVEL INDICATED FIRST

- Use of electronic devices for which it is determined that such use leads to or directly causes physical or emotional harm to another person

INAPPROPRIATE OR DISRUPTIVE BEHAVIOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	MAY BE REFERRED TO POLICE OR APPROPRIATE AGENCY

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Level 4: Request for Long Term Suspension – may be appropriate when student's behavior ser ously affects the safety of others in the school

INAPPROPRIATE OR DISRUPTIVE BEHAVIOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	MAY BE REFERRED TO POLICE OR APPROPRIATE AGENCY
Property Damage, Including Graffiti					
• Minor or accidental damage (less than $50)	●	●			
• Damage to another person's or school property SSOO}		●	●	●	●
• ~~Damage to another person's or school property (over $500)~~			■■	■■	■■
School Equipment Use without Permission					
• Use of computers, fax machine, phones, etc.	●	●			
Serious Bodily Injury					
• Causing substantial risk of death or causing permanent or serious disfigurement, bss of function of any part of the body or impairment of the function of any part of the body				●	●
Sexual Assault or Offense					
• Forced sexual act School Staff is required to contact Buffalo Police Immediately for any sexual assault				●	●
Sexually,,-Based Infraction					
requests for sexual favors; other inappropriate verbal,written	■■	■■	■■		●
• Sexual harassment (ie., unwelcome sexual advances, or physical conduct of a sexual nature)				●	
• Sexual activity or sexual misconduct (i.e., indecent exposure, engaging in sexual activity, etc.) (pre to grade 4)	■■	■■	■■	●	●
• Sexual activity or sexual misconduct (grades 5 to 12)			■■	●	●

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INAPPROPRIATE OR DISRUPTIVE BEHAVIOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	MAY BE REFERRED TO POLICE OR APPROPRIATE AGENCY
Tardiness					
• Persistent or excessive tardiness to class or school	●	●			
Technology Acceptable Use Polley Violation					
• Refer to page 31 of these *Standards* for details	●	●			
Threat Against School Personnel (Physical Gesturing, Written Threat or Verbal Threat)					
• Pre-k to grade 4	●	●	●	●	●
• Grades 5 to 12		●	●	●	●
Theft					
• Less than $500		●	●		
• Greater than $500 (It is recommended that police not be contacted for students in pre-k or kindergarten)			●	●	●
Tobacco Possession or Use					
• School staff is required to refer students to appropriate substance abuse counseling.	●	●			
Trespassing					
• Being on school property without permission, including while suspended or expelled; includes breaking and entering		●	●	●	●
Unauthorized Sale or Distribution (i.e., unauthorized or unapproved selling or distributing of goods not otherwise included in this code such as counterfeit money, stolen goods, non-school approved items					
• Items with little monetary value (under $50)	●	●			
• Items with significant monetary value		●	●		

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INAPPROPRIATE OR DISRUPTIVE BEHAVIOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	MAY BE REFERRED TO POLICE OR APPROPRIATE AGENCY
Verbal or Physical Threat to Student					
• Threatening or a gressive language or gestures directed toward another st dent	●	●	●	●	
Weapons, Firearms and Explosives (at school, school-sponsored activities or when hvolved h Incidents affecting the safety or welfare of the school community)					
• Explosives (possession, sale, distribution, detonation or threat of detonation of any Incendiary or explosive material or device including firecrac kers, smoke bombs. Flares or any combustible or explosive substances or combination of substance or articles, other than afirearm)			●	●	● MUST Be Referred to Police
• Firearms (possession of a firearm as defined in 18 USC 921 of the federal code - i.e., handguns, rifles, shotguns and bombs)				●	● MUST Be Referred to Police
• Other guns (possession of any gun, of any kind, baded or unloaded. operable or inoperable, including any object that is a bok alike of a gun, other than a firearm – ie., BB guns, pellet guns, water guns, etc.)			●	●	●
• Other weapons (possession of any implement which could cause bodily harm, other firearm, or other gun) Expulsion for no less than one calendar year is mandated by state law for firearms violation, but can be modified on a case by-case basis by Buffalo Public Schools.			●	●	● MUST Be Referred to Police
• Explosives (possession, sale, distribution, detonation or threat of detonation of any incendiary or explosive material or device including firecrackers, smoke bombs. Flares or any combustible or explosive substances or combination of substance or articles, other than afirearm)			●	●	● MUST Be Referred to Police
Elopement • leaving school grounds or wandering through school hallways, etc. without permission	●	●	●	●	

Dignity for All Students Act

The Dignity for All Students Act (Dignity Act) ensures that no student is subject to discrimination or harassment, base on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice disability, sexual orientation, gender/gender identity or sex by school employees or students on school property, on a school bus, at a school function or that is initiated off school grounds and continued at school.

Harassment may include, Lmong other things, the use, both on and off school propbrty, of information technology, including, but not limited lo email, instant messaging, biogs, chat rooms, pages, cell prone, gaming systems and social media websites, to deliberately harass or threaten others. This type of harassment is generally referred to as "cyber-bullying."

The District is committed to safeguarding the rights given to all students under state and federal law. In addition, to promote a safe, healthy, orderly and civil school environment, all District students have the right to:

1. Expect a school environment that is conducive to learning

2. Be treated respectfully by those in the school community

3. Take part in all District activities on an equal basis regardless of race, color, creed, national origin, religion, gender, sexual orientation or disability (consistent with the District's Anti-Harassment Policy)

4. Be provided with school rules, and when necessary, receive an explanation of those rules from school personnel

S. Present their version of the relevant events to school personnel authorized to impose a discipl inary penally, in connection with the imposition of the penalty

STUDENT RIGHTS AND RESPONSIBILITIES

Students have the right to

1 To attend school in the district in which one's legal care giver 9" legal guardian resided and receive a free and appropriate public education from age 5 to 21, as provided by law

2 To expect that school will be a safe, orderly and purposeful place for all students to gain an education and to be treated fairly

3 To be respected as an individuaJ and treated courteously, fairly and respectfully y other students and school staff

4 To express one's opinions verball or in wri ting

5 To dress in such a way as to express one's personality

6 To be afforded equal an appropriate educational opportunities

7 To take part in all school activities on an equal basis regardless of race, coIor, creed, re1igion, reIigious practices, sex, sexual orientation, gender, national origin, ethnic group, political affiliation, age marital status, or disability

8 To have access to relevant and objective information concerning drug and alcohol abuse, as well as access to individuals or agencies capable of providing direct assistance to students with serious personal problems

9 To be protected from intimidation, harassment, or discrimination based on actual or perceived race, color, weight, national origin, ethnic group, religion, or religious practice, sex, gender/gender identity, sexual orientation, or disability, by employees or students on school property or at a school sponsored event, function or activity

Students have the responsibility to

1 To attend school daily, regularly and on time, perform asignments, strive to do the highest quality work possible, bd prepared to learn, and be granted the opportunity to receive a good education

2 To be aware of all rules and expectations regulating student's behavior and conduct themselves in accordance with these guidelines

3 To respect everyone in the sdhool community and to treat others in the manner that one wluld want to be treated

4 To express opinions and idehs in a respectful manner so as not to offend, slander, or reJrict the right and privileges of others

5 To dress appropriately in accordance with the dress code, so as not to endanger physical health, safety, limit participation in school activities or be unduly distracting

6 To be aware of available educational programs in order to use and develop one's capabilities to their maximum

7 To work to the best of one's ability in all academic and extracurricular activities, as well as being fair and supportive of others

8 To be aware of the information and services and to seek assistance in dealing with personal problems, when appropriate

9 To respect one another and treat others fairly in accordance with the District Code of Conduct and the provisions of the Dignity Act. To conduct themselves in a manner that fosters an environment that is free from intimidation, harassment, or discrimination. To report and encourage others, to report any incidents of intimidation, harassment or discrimination

CARE GIVER AND GUARDIAN RIGHTS AND RESPONSIBILITIES

Cre givers and guardians have the right to

1 Be actively involved in their children's education

2 Be treated courteously, fairly and respectfully by all school staff and principals

3 Get information abou t t+ policies of the Buffalo Board of Education and procedures that relate to their children's education

4 Get regular reports, written or oral, from school staff regarding their children's academic progress or behavior, including but not limited to report cards, behavior progress reports and conferences

5 Receive information and prompt notification of inappropriate or disruptive behaviors by their children and any disciplinary actions taken by principals or school staff

6 Receive information about due process procedures for discipl inary matters concerning their children, including information on conferences and appeals

7 Receive information from school staff about ways to improve their children's academic or behavioral progress, including but not limited to counseling, tutoring, after school programs, academic programs, and mental health services within Buffalo Public Schools and the community

8 Receive information about services for students with disabilities and English language learners, when applicable

9 Receive communication through provided translators

Care givers and guardians have the responsibility to

1 Make sure their children attend school regularly and on time and, when children are absent, let schools know why

2 Tell school officials about any concerns or complaints in a respectful and timely maJer

3 Work with principals and school staff to address any academic or behavioral problems their children may expenence

1

4 Support Buffalo Public Schools by being a role model for their children, talking with their children about school and expected behavior

5 Read and become familiar with the policies of the Board of Education, administrative regulations and the *Standards for Community-wide Conduct and /11terve11tio11 Supports*

6 Give updated contact information to Buffalo Public Schools and their children's individual school

7 Give their children a space to complete their homework or allow participation in after-school programs that permit the completion of homework

8 Be respectful and courteous to staff, other care givers, guardians and students while on school premises

9 Teach their children respect and dignity for themselves, and other students regardless or actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender/gender identity, or sex, which will strengthen the child's confidence and promote learning in accordance with the Dignity for All Student Act.

PRINCIPAL AND SCHOOL STAFF RIGHTS AND RESPONSIBILITI ES

Principals and school staff have the right to

1 Work in a safe and orderly environment

2 Be treated courteously, fairly and respectfully by students, care givers or guardians and other school staff

3 Communicate concerns, suggestions and complaints To Buffalo Public Schools' district office

4 Receive supportive professional evelopmcnt and training

5 Receive the necessary resources tr deliver quality instruction

6 Modify instruction, if consistent with the policies of the Buffalo Board of Education and with system regulations

Principals and school staff have the responsibility to

1 Attend work daily, be punctual and use well-planned, creative and engaging instructional plans every day

2 Maintain safe and orderly schools by using prevention and intervention strategies, and by following the Buffalo Public Schools' *Standards for Comm1111iry-wide Conduct and /11terve11tio 11 Supports*

3 Be respectful and courteous to students, care givers and guardians, serving as role models for students

4 Be knowledgeable about the policies of the Board of Education and administrative regu lations and rules, and enforce them fairly and consistently

5 Be knowledgeable about federal and state laws and regulations about the disciplinary process for students with disabilities

6 Communicate policies, expectations and concerns, and respond to complaints or concerns from students and care givers or guardians in a timely manner and in a language they understand

7 Make sure that students are referred to the appropriate committees, departments, offices, divisions, agencies or organizations when outside support is necessary

8 Kee care givers and guardians informed of student academic progress and behavior, create meaningful opportunities for their participation, and provide regular communication in a language they understand

9 Provide makeup work for students with lawful absences, including those students who are absent for disciplinary reasons

1D Partidpate in required protssional development opportumlles

11 Maintain and encourage a cli ate of mutual respect and dignity for all students regardless of actual or percei ved race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender/gender identity, or sex, with an understanding of appropriate appearance, language, and behavior in a school setting, which will strengthen students' self-image and promote confidence to learn

12 Confront issues of discrimination and harassment in any situation that threatens the emotional or physical health or safety of any students, school employee or any person who is lawfully on school property or at a school function

13 Address personal biases that may prevent equal treatment of all students in the school or classroom setting

14 Report incidents of discrimination and harassment that are witnessed or otherwise brought to the attention of the teacher, school counselor, student supportservic es personnel, or other staff, to the principal, in a time Iy manner

15 **Principals:** Follow up on any incidents of discrimination and harassment that are witnessed or otherwise brought lo the Principal's attention in a timely manner in collaboration with the District Dignity Act Coordinator (DAC).

DISTRICT ADMINISTRATOR RESPONSIBILITIES

Buffalo Public Schjls District Administrators have the responsibility to

1 Create and implement policies and procedures that encourage safe and orderly schools for all students, school staff and principals

2 Protect the legal rights of school staff, pincipals, students and care givers or guardians

3 Be courteous, respectful and fair with studelts, care givers or guardians, school staff and principals

4 Provide a broad-based and varied curricu lum to meet individual school needs

5 Inform the community, students, care givers or guardians, school staff and principals about policies of the Board of Education

6 Ensure the protection of legal rights of students with disabilities

7 Provide staff who are trained to meet the needs of students

8 Provide support and professional development training to principals and school staff to help them support students

9 Support principal and school staff in the fulfillment of their disciplinary responsibilities as defined by Buffalo Public Schools' *Standards for Community-wide Conduct and lnterve111io11 S11pports*

10 Contact and involve care givers or guardians on discipl inary issues

Buffalo Public Shool Superjntendcnt whas the responsibility to

11 Promote a safe, orderly, respectful and stimulating environment , free from intimidation, discrimination and harassment, supporting active teaching and learning

12 Review with District administrators th9 policies of the Board of Education and state and federal tats relating to school operations and management

13 Inform the School Board about educat onal trends, including student discipline

14 Work to create instructional programs that minimize problems of misconduct and are sensitive to student and teacher needs

15 Work with District administrators in enforcing the *Standards for Com1111111ity-wide Conduct and l11terventio11 Supports* and ensuring that all cases are resolved promptly and fairly

16 Address all areas of school-related safety concerns

BOARD OF EDUCATION RESPONSIBILITIES

The Board of Education has the responsibility to

1 Collaborate with students, Jeachers, administrator and care giver organizations, school safety personnel, other school personnel and the community to develop a Code of Conduct that clearly defines expectations for the conduct of students, District personnel and other persons on school property and al school functions

2 Adopt and review at least annually the District's Code of Conduct to evaluate the Code's effectiveness and the fairness and consistency of its implementation

3 Appoint a Dignity Act Coordinator (Principal) in each school building. The Principal will be thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender/gender identity, and sex. The Principal will be accessible to students and other staff members for consultation and advice as needed on the Dignity Act.

4 Lead by example by conducting Board meetings in a professional, respectful, courteous manner. fl is further expected that, the Board of Education will take appropriate measures where violations of the Code of Conduct occurs

STANDARDS FOR DRESS CODE

All persons are expccled 10 give proper attenlion lo personal cleanliness and to dress appropriately for fChool and school functions. Students and their care givers have the primary responsibility for acceptable student dress and appearance. Teachers and all other District personnel should exemplify and reinforce acceptable student dress and help students develop an understanding of appropriate appearance in the school setting, by also adhering to these standards.

When o? school property or at a school function, a person's dress, gooming and appearance, including jewelry, make-up and nails, must

1. be sfe, appropriate and not disrupt or interfere with the educational process;

2. not include revealing garments such as tube tops, net tops, halter tops, spaghetti straps, plunging necklines (front and/or back) excessively short skirts or shorts, stretch/yoga pants, and sec-through garments;

3. Cover all underwear with appropriate outer garments, including the wearing of pants at waist level;

4. include safe and appropriate footwear. Inappropriate footwear includes, but is not limited to; backless shoes (i.e. flip-flops, bedroom slippers). Exceptions will only apply to documented medical conditions;

5. not include headgear of any kind (including, but not limited to hats, caps, and hoods) except when required by medical or religious reasons;

6. not be lewd, vu lgar, obscene, and libelous or denigrate others, or cause a disruption to the school that impedes the educational program;

7. not promote and/or endorse the use of alcohol, tobacco or illegal drugs and/or encourage other illegal or violent activities;

8. not include coats, jackets & other outerwear, sweat shirts with hoods or "hoodiesT, inside of buildings (except for student is grade!> Pre K-4);

9. not include jewelry that may be deemed a weapon. This includes, but is not li mited to, a single ring or piece of jewelry covering multiple fingers, spiked necklaces or belts, belts with large removable buckles, chain-like neckwear, ninja-type stars, etc. Belt must be buckled;

10. not include clothing that is associated with or idelifiable as a symbol of gang membership.

Con idcring back pad.s nr hook bags may he deemed to he a h.izard in some cases, and to ensure the safety of the school communily, students m.iy only carry backpacks or book bags to their last period of the day and prior lo dismissal. The only exclusion to this expectation is where the backpack or hook hag is mac.Jc from clear or sec-through material .

Additional rcslncuons may be determined by the school with the approval of the Board of Education.

Students who violate the dress code will be required to modify their appearance by covering or removing the offending item, and if necessary and/or practical, replaci ng it with an acceptable item. Any student who refuses to do so may be subject to discipline in accordance with these *Standards for Commu1tity-wide Conduct and /l1ten•e11ti011 Supports.*

Dress code violation warrant either a Level I or Level 2 response; students should not be suspended or otherwise removed from their educational program because of a dress code violation

STANDARDS FOR PORTABLE ELECTRONIC DEVICES

When a cell phone is confiscated from a student, staff will immediately notify the care giver(s)/guardian(s) of the student so other arrangements (means of communication) can be made with their child. The confiscation provi ions in these *Standards for Community-wide Condub and /111en•e11tio11 Supports* presume staff will immediately communicate wi th the care givers/guardians .

1. The decision to bring an electronic communication device (including but not limited to cell phones, pagers, iPods, i Phones, Ipds, etc.) or electronic game devices is a decision of the student and/or the student's care giver/guardian. St, dents, care givers and guardians are on notice that the District assumes no liability for the damage, destruction, theft c1' 1oss of such devices on school property. When making the ecision to bring such devices to school, the student and care giver/guardian jointly and severally assume the risk of potential damage, destruction, theft or loss.

2. Upon entering the School all cell phones must be stored in the student's locker. The cell phone must be stored "OFF' or in non-operational mode.

3. Students ma y not car ry abou t or opera te cell phones in school buildings and school busses.

4. Any students carrying or operating a cell phone in a school building will be subject to having that item confiscated by School District Administrative or Safety/Security Staff.

5. Such devices will be confiscated at the building. Care giver/Guardian must meet with building administrator to recover the item.

6. Cell Phones, Pagers, two-way radios (FCC Licensed or unlicensed), and all other electronic devices with wireless communication capabilities (i.e. handheld computers, PDA, Bluetooth etc.) are NOT PERMITTED for use by students in any Buffalo Public School, except as authorized by the principal or Superintendent for specific educational purposes .

7. Should a student be found to repeatedly violation this policy, the device shall be confiscated and delivered to the District S a fc t y /Security O f f i c e . The C a r e giver/Guardian must make arrangements to pick up the item. Students may be subject to discipline in accordance with these *Standards for Community-wide Conduct a11d llterve11tio11 Supports*. Violation of the Portable Electronic Device Policy warrants either a Level I or Levetl 2 response; students should not be suspended or otherwise removed from their educational program because of a portable electronic violation.

8. The taking, disseminating, transferring, or sharing of obscene, pornographic (child or aduh), lewd, or otherwise illegal image or photographs, whether by electronic data transfer (wir less communication devices, or otherwise (commonly c led texting, sexting, posting to soc.:i al media, emailing, etc.l may constitute a CRIME under State and/or Federal law. Any person taking, disseminating (through electronic or ıthcr mean'>), transferring, or sharing obscene, pornographic, lewd, or otherwise illegal images or photographs will be subject to the disciplinary procedures of the school district AND REPORTED TO LAW ENFORCEMENT AND/OR OTHER APPROPRIATE STATE AND FEDERAL AGENCIES, WHICH MAY RESULT IN ARREST, CRIMINAL PROSECUTION , AND LIFETIME INCLUSION ON SEXUAL OFFENDER REGISTRIES .

9. Police, Law/Enforcement Officials of a Government Agency, School Safety/Security and School Administrati ve Staff have authorization to possess and operate communication equipment for the conduct of appropriate business.

Note: The District may authorize appropriate use of a cell phone in class, when it is used for educational purposes ONLY.

REPORTING STUDENT VIOLATIONS

All Dislricl staff who arc authorized to impose disciplinary sanctions is expected to do so in a prompt, fair and lawful manner. District staff that are not authorized lo impose disciplinary sanctions are expected to promptly report violations of the *Standards for Comm11nity-wide Conduct and /11tervellfio11 Supports* to their supervisor, who shall in tum impose an appropriate disciplinary sanction, if so authorized and if appropriate, or refer the matter to a staff member who is authorized to impose an appropriate sanction if appropriate.

All students arc expected tq promptly report violations of the *Standards for C01tum111ity-1vide Conduct and /11terve11tio11 Supports* lo a teacher, guidance counselor, the building principal or his Jr her designee. Any student observing a student posses ing a w c a p o n , alcohol or illegal substance on school ropeny or at a school function nut reoort this i n f o r m a l i o n immediately lo a teacher, the building principal, the principal's designee or the Superintendent.

Any weapon, alcohol or illegal substance found shall be confiscated immediately, if possible, followed by notification to the care giver of the student involved, and the appropriate disciplinary sanction, which may include permanent suspension and referral for prosecution.

The building principal or his or her dcsignee should only notify law enforcement when there is a violation of the *Standards for Comm1111ity-wide Conduct and lllfervention Supports* that requires referral to the police.

The building principal or his or her designee must notify appropriate law enforcement of those violations which constitute or may constitute a crime, and which, in his or her judgment, substantially affect the order or security of a school, its students and/or its staff, as soon as practicable. The notification may be made by telephone or direct report, and may be followed by a letter. The notification must identify the student and explain the conduct which violated the Code of Conduct and which constitutes or may constitute a crime. Guidelines for such reports are contained in the 1999 Memorandum of Understanding between the Buffalo Police Department and the Buffalo Public Schools, the terms of which, shall govern such reports.

STUDENT EXCLUSION PROCEDURES

A. Imposition of Penalties

Students who arc found to have violated the District's *Standards for Comm11nity-wide Cond11ct and /111erve11tio11 S11pports* may be subject to the following penalties, eith r alone or in combination. The school personnel identified after each penalty are authorized lo impose that penalty, consistent with the student's right to due process. (Also sec Appendix A)

1. Oral warning or admonition – any member of the District staff

2. Wriuen w a r n i n J - b u s d r i v e r s . h a 11 a n d I u n c h monitors, t:lichcr aides, coaches, guidance counselors, teacher, assistant principal, principal, Superintendent

3. Wrillen notification to care giver – bus driver, hall and lunch monitors, teacher aides, coaches, guidance counselors, teachers, assistant principal, principal, Superintendent

4. Detention – teachers, assistant principal, principal, Superintendent

S.Suspension from transportation - assistant superintendent of service center operation, assistant principal, principal, Superintendent

6, Suspension from athletic participation – coaches, assistant principal, principal, Superintendent

7. Suspension from social or extracurricular activities – activity sponsor, assistant principal, principal, Superintendent

8. Suspension of other privileges -principal, Superintendent

9. in-school suspension -principal, Superintendent

10. Removal from classroom – teachers, principal, Superintendent

11. Short-term (five days or less) suspension from school -principal, Superintendent, Board of Education

12. Long-term (more than five days) suspension from school – Superintendent, Board of Education.

13. Permanent suspension from school – Superintendent, Board of Education.

B. Procedures

The amount of due process a student is entitled to receive before a penalty is imposed depends on the penalty being imposed. In all cases the school personnel, authorized to impose the penalty, must inform the student of the alleged misconduct and must reach a determination concerning the facts sun}lunding the alleged misconduct. All students will be afforded an opportunity, if requested, to present their version of the facts to the school personnel imposing the disciplinary penalty.

Students who arc to be given penalties other than an oral warning, written warning or written notification to their care givers arc entitled to additional rightsibefore the penalty is imposed. These additional rights are e plained below. (Also see Appendix B)

1. Detention. Teachers, plncipal and the Superintendent may use after school tention as a penalty for student misconduct in situations where removal from the classroom or suspension would be inappropriate. Detention must be served within one school day from the date of issuance. Exceptions can be made for illness or extenuating circumstances and the student and/or care giver notifies the appropriate person, if circu mstances allow. Detention takes precedence over extra-curricular activities, athletic practices or events and student employment. Detention will be imposed as a penalty only after the student's care giver has been notified to confirm there is no care givcral objection to the penalty and that the student has appropriate transportation home following the detention. Failure to serve detention will result in another day of detention or in-school or out-of- school suspension unless an exception to extenuating circumstances applies.

2. Suspensi on from transportation. *H* a student docs not conduct himself/herself properly on a bus, the bus driver is expected to bring such misconduct to the building principal's attention. Students may have their riding privileges suspended by the assistant superintendent of service center operations, assistant principal, the building principal or the Superintendent or their designces. In such cases, the student's care giver will become responsible for seeing that his or her child gets to and from school safely.

If suspension from transportation will result in the student not being able to attend school, the transportation suspension will be revoked and another Intervention consequence will be used with the Level of offense.

A student subjected to a suspension from transportation is not eptitled lo a hearing pursuant to Education La w §3214 (unless the suspension from transportation will amount to a suspension from attendance). However, the care givers shall be given notification of such action as soon as possible, and the student and the student's care giver will be provided with a reasonable opportunity for an informal conference with the building principal or the principal's dcsignee to discuss the conduct Ed the penalty involved. Should the suspension from tra sportation amount to a suspension from attendance at sc · I, the procedures of §3214 will be followed.

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 is not entitled to a hearing pursuant to Education law §3214. However, the care givers shall be given notification of such action, as soon as possible, and the student and the student's care giver 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 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 the *Standards for Community-wide Conduct and Intervention Supports* violation in an "in- school suspension."

A student subjected to an in-school suspension is not entitled to a hearing pursuant to Education Law §3214. However, the care givers shall be given notification of such action as soon as possible, and the student and the student's care giver will be provided with a reasonable opportunity for an informal conference with the District official imposing the in-school suspension, lo discuss the conduct and the penalty involved.

5. Teacher removal of disruptive students. (See Appendix C – Teacher Removal of Student from Classroom Timclinc)

A student's behavior can affect a teacher's ability to teach and can make it difficult for other students in the classroom to learn. In most ji nst ances the classroom teacher can control a student's behavior, and maintain or restore control over the classroom by using good classroom management techniques. These tcchniques may include practices that involve the teacher directing a

regain his or her composure/self-control f

the

student to sit in a designated area of the room or briefly leaving the classroom to give the student an opportunity to

nder

supervision of an aide or other adult supervi r. Use of classroom management techniques such as the , does not constitute disciplinary removal for purposes of these *Standards*, so long as the student is not sent to he care or custody of someone other than the classroom temficr.

On occasion, a student's behavior may become disruptive. For purposes of these *Standards*, 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, i.e., interrupts or interferes with a student's ability to learn or impedes or interferes with a teacher's ability to teach or to maintain order in the classroom. A substantial disruption of the educational process or substantial interference with a teacher's authority occurs when a student demonstrates a persistent and/or vociferous unwillingness to comply with the teacher's instructions or repeatedly violates the teacher's classroom behavior rules in a manner which interferes with the process of instruction in the class. Examples include repeated and/or severe instances of speaking loudly or disrespectfully to the teacher or others, speaking out of turn, leaving his or her seat without permission, physical contact with another or throwing items.

A classroom teacher may remove a disruptive student from class for up to four days (including the day on which the removal occurs) when other behavior management techniques have been used but have not been successful in eliminating the disruptive conduct, or the conduct is so severe that such techniques cannot feasibly be used. The removal from class, only applies to the class of 1hc removing teacher. Removal

Accordingly, any special education student who has received nine previous days of suspension and/or removal, may be removed only with verification from the principal or Chairperson of the Committee on Special Education, such that removal will not violate the student's rights under stjte or federal law.

If the disruptive student docs not pose a danger or ongoing threat of disruption to the academic process, the teacher must provide the student with an explanation for why he or she is being removed and an opportunity to explain his or

removed. Only after the informal discussion may a teacher

of a student with a disability, under certain circumstances, may cause a change in the student's placement.

her version of the relevant events before the student is remove a student from class. However, if th student poses a danger or ongoing threat of disruption, the t:tcher may order the student to be removed immediately. The teacher must, however, explain to the student why he or ste was removed from the classoom and give the student c ance to present his or her version of the relevant events w!lh n 24-hours.
The teacher must complete a District-established disciplinary removal 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 removal form. If the principal is not available by the end of the same school day, the teacher must leave the form for the principal and meet with or call the principal prior to the beginning of classes on the next school day.

Within 24-hours after the student's removal, the principal must notify the student's care givers, in wriling, that the student has been removed from class and why. The notice must also inform the care giver that he or she has the right, upon request, to meet informally with the principal to discuss the reasons 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 within 24 hours of the student's removal, at the last known address for the care givers. Where possible, notice should be provided by telephone if the school has been provided with a telephone numbcr(s) for the purpose of contacting care givers.

The principal may require the teacher who ordered the removal to auend the informal conference within working hours. If at the informal meeting the student denies the charges, the principal must explain why the student was removed and give the student and the student's care giver a chance to present the student'f version of the relevant events. The informal meeting must be held within 48 hours of the student 's removal. The timing of the informal meeting may be extended by mutual agreement of the care giver and principal.

The principal may overturn the removal of the student from class, if the principal finds any one of the following:

1. The charges against the student arc not supported b substantial evidence.

2. The Sludent's removal is in violation of law, including lh District's Standards *for Community-wide Conduct a11a llterve11tio11 Supports.*

3. The conduct warrants suspension from school pursuant to Education Law §3214 and a suspension will be imposed.

Where an informal conference has been requested, the principal is to issue his decision by the close of business on the day following the 48-hour period for the informal conference. 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 occurs first.

Any disruptive student removed from the classroom by the classroom teacher shall be offered continued educational programming and activities, alternative means of instruction, until he/she is permitted to return to the classroom. The alternative instruction shall be provided by personnel in the school. The alternative instruction shall begin as soon as practicable , but in no event later than the second day of removal. Mechanisms for the provision of such services at each school shall be developed, and the principal shall be responsible for assuring that alternative instruction is provided to each eligible student. A day of removal shall not be counted as a day of absence for purposes of the District 's attendance policy (unless the student fails to auend the alternative instruction which is provided).

Each teacher must keep a written log (on a District provided form) for all cases of removal of students from his or her class. The principal must keep a written building log (on a District provided form) of all r e m o v a I s of students from class.

The principal may dcsig ate another administrator to carry out his or her duties under this section, and the term "principal" as used in these removal procedures shall be deemed to include any such designee.

6. Suspension from school. Suspension from school is a significant penally, which may be imposed upon students who violate the *Standards for Comm1111ity- wide Conduct and Intervention Supports* and warrant a Level 3 or Level 4 response.

(a.) arc insubordinate, disorderly, violent or disruptive, or whose conduct otherwisF endangers the safety, morals, health or welfare of others;

(b.) engage in off-campus conduct (not at school or while not under the supervision of school authority or any employee or board member of the district), that adversely affects the educative process or endangers the health, safety or morals of students, or poses a threat of harm to him or herself, or to school property. Off campuo; conduct inqludes (but is not limited to) incidents that occur: out<.ide of s_f hool, after or before school hours (evenings, weekend . hohdays, etc.), off-school property, at school events, during sufnmcr school, etc.

(c.) In some ca'>Cs, long term suspensions imposed on a student due to a code of conduct violation may receive a penally that extends into the next school year. While the student will he allowed to attend summer school (if applicable). they will not be permillcd to return to regular instruction until the completion of the suspension as indicated on the notice of final disposition.

(d.) The Board retains its authority to suspend students, but places primary responsibility for the suspension of students with the Superintendent and the building principals. In the case of short term c;uspcnsions and/or long term suspensions, the school building principal retains ultimate discretion in imposing a Level 3 response (short term suspension or 1-5 days) or requesting a level 4 response (long term suspensions of 6 or more days).

(e.) 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 *Standardsfor Community-wide Conduct and /11terve11tio11 Supports.* 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, and in no event later than the end of the next school day.

(f.) These procedures are also applicable where the student is suspended by an administrator from only one (or more) classes rather than from his or her entire educational program.

(g.) Upon receipt of a notice of final disposition from a long term suspension hearing, care giver do have the right to rcquet an appeal through an administrative review conference. During the administrative review conference care givers, student-;, family advocates, etc. have the right to prc-;ent additional information regarding the case, provide additional evidence. and have the case reviewed by the District's Student Discipl ine Review Ollicer. The administrative review conference muo;t be rcquec;ted within 5 hu-;ines dayc; of the receipt of final disposition. Details regarding the admii!.trative review conference arc included in the final disposition leuer.

a. Short-term (5 days or less) suspension from school.

(See Appendix D-Short-term Suspension Tim line)
When the Superintendent or principal (referred t as the "suspending authority") proposes to suspend a st dent Charged with misconduct for five days or less pJrsuant to Education law §3214 (3), the suspending authon must immediately notify the student ora II . If thc student denies the misconduct, the suspending au hority must provide an explanation for the basis of the proposed suspension. The suspending authority must also notify the student's care givers in writing within 24 hours that the student may be, (or has been), 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 care givers. 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 care givers. The notice shall provide a description of the charges against the student and the incident for wh ich suspension is proposed and shall inform the care givers 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 care givers.
At the conference, the care givers shall be permitted to ask questions of the complaining witnesses under such procedures as the principal may establish. Care givers may also bring a representative or additional person of their choice to the conference.

The notice and opponunity for an informal conference shall take place before the student is suspended unless the student's presence in school poses a serious and continuing danger to others that cannot otherwise be remedied (through the use of in-school suspension or other non-exclusionary tactics).

If the student's presence docs 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 care givers in writing of his or her decision.

The authority of the principal to suspend a student is limited to a maximum of five (5) days, and the return of the student at the end of the suspension may not be conditioned upon the care givcr(s) meeting with the principal.

b. Long-term (more than 5 days) suspension from school.

(See Appendix E-long-term Suspension Timeline) When th Superintendent or building principal or designee dJtermines that a suspension for more than five days may b, warranted, he or she shall give reasonable notice to the stfdent and the student's care givers of their right to a fair hearing. At the hearingthe student shall have the right to be represented by counsel,the right to question witnesses against him or her, and the right to present witnesses and other evidence on his or her behalf.

The Supcrinlendent may personally hear and determine the proceeding or may, at his or her discretion, designate a hearing officer to conduct lhe 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 mai11tained, but no stenographic transcript shall be required. A ltape recording shall be deemed a satisfactory record. Care givers and students may request to listen to the recording of the hearing, at the school. The hearing officer shall make recommendations as to findings of fact and lhe appropriale measure of discipline to the Superintendent. The report of the heari officer shall be advisory only, and the Superinten ent may accept, reject or modify all or any part thereof. W enever practicable, prior to the issuance of his report the earing officer shall hold an informal conference with the ce giver in an effort to reach a mutually agreed upon resol lion of the case, before the formal report is issued to th Superintendent.

An appeal of the decision of the Superintendent may be made to the Board, which 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 fourteen calendar days of the date of the Superinlendent's decision, unless the care givers can show that extraordinary circumstances precluded them from doing so. The Board may adopt in whole or in part the decision of the Superinlendent. Final decisions of the board may be appealed to the Commissioner of Education within 30 calendar days of the decision.

c. Permanent suspension.

Permanent suspension is reserved for extraordinary circumstances such as conduct which poses a life- threatening or other serious danger to the safety and well- being of other persons. The procedures used shall be the same as those for a long-term suspension.

d. Alternate instruction.

When a student of compulsory attendance age is suspended from school pursuanl lo Education Law §3214, the District will take steps to provide continued educalional programs and activities, alternative means of instruction, for the student. The alternative instruction may be provided by personnel in the school, or at an alternative school, by home instruction, or by a school suspension instruction program. The alternative instruction shall begin as soon as practicable, but in no event later lhan the third day of suspension. Mechanisms for the provision of such services at each school shall be developed by the District, and the principal shall be responsible for assuring that alternati ve inslruction is provided to each eligible student. When a student above compulsofY attendance age is suspended from school, the District will consider providing alternative instruction on a case-by-case basis.

C. Minimum Period of Suspension

1. Students who bring a weapon to School.

Any st dent, including students with disabilities pursuant to Federal and State Laws and Commissioner's Regulalions Part 2 po and 201, found guilty of bringing a weapon, includrg, but not limited to, a rifle, sholgun, pislol, handgun, silencer, electronic dart gun, stun gun, machine gun, air gun, spring gun, BB gun (Commissioner's Decision No. 14,733, No. 15,041); onto school property will be subject to suspension from school for at least one calendar year. Any studenl found guilty of bringing an imitation gun onto school property may be subject lo the same penalty. Before being suspended, the sludent will have an opportunity for a hearing pursuant to Education Law §3214. The Superintendent has the authority lo 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) Age, heallh, and disability or special education slatus of the student

2) Approprialeness of student's academic placement

3) Student's prior conduct and record of behavior

4) Student's understanding of the impact of their behavior attitude

5) Student's willingness to repair the harm caused by their behavior

6) Seriousness of the behavior offense and the degree of harm caused

7) Impact of the incident on overall school community

8) Whether the student's violation threatened the safety of any student or staff member

9) The likelihood that a lesser intervention would adequately address the violation

10) The Superintendent may recommend that a threat assessment, special intervention , health examination, or mental health exami nation be completed by a ce ified District employee or designee in order to determine if a student suspended for bringing a weapon lo school pursuant to the District *Standards for Community-wide Conduct and lnterventio11 Supports* is eligible for a return to school from a long-term suspension prior to the original date of return and/or to determine and promote the educational interests of the student.

2. Violent stude ts who commit acts other than bringing a wea on to school.

Any student, other than a tudent with a disability, who is found to have committed an act which makes hi m a violent student as delined in these *Standards*, 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 minimu m five-day suspension, the student and the student's care giver will be given the same notice and opportunity for an informal conference given to all students subject to a short-term suspension. If the proposed penalty exceeds the minimum live-day suspension, the student and the student's care giver will be given the same notice and opportunity for a hearing given to all students subject to a long-term suspension. The suspending authority has the authority to modify the minimum live-day suspension on a case-by-case basis. Indeciding 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 who repeatedly substantially interfere with the teacher's authority over the classroom.

Any student, other than a student with a disability, who repeatedly is substantially disruptive of the educational process or substantially interferes with the teacher's authority over the classroom, will be suspended from school for al least five days. For purposes of the *Standards for Community-wide Conduct and /11ten:elllio11 Supports*, "repeatedly is substantially disruptive" means engaging in conduct that results in the student being removed from the classroom by teacher(s) pursuant to Education Law 3214 (3-a) and these *Standards* on four or more occasions during a semester. If the proposed penalty is the minimu m live-day suspension, the student and the student's care giver will be given the same notice and opportunity for an informal conference given to all students subject to a short-term suspension. If the proposed penalty exceeds the minimum five-day suspenon, the student and the student's care giver will be given th same notice and opportuni ty for a hearing given to all stud nts subject to a long-term suspension. The suspending authority has the authority to modify the minimum five-d y suspension on a case-by-case basis.

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

D. Referrals

1. Counseling and Human Services Agencies.

BPS staff may be a resource to care givers for referrals of students to counseling and human services agencies.

2. PINS Petitions.

The District may in appropriate cases seek the assistance of the Family Court through a PINS petition when students exhibit a pattern of unexcused absences, in accord ance with the District's Attendance Policy. In addition, any student who is found to have brought a weapon to school, any violent student or any student who commits criminal acts on school property will be referred to the proper law enforcement agency in accordance with the terms of these *Standards.*

3. Juvenile Delinquents and Criminal Offenders.

The Superintendent is required to refer the following students to the County Attorney or District Attorney, as appropriate for a juvenile delinquency proceeding before th• Family Court or proceedings before the appropriate criminal court:

(a) Any student who is found to have brought a weapon to school, or

(b) Any student 14 or 15 years old who qualifies for juvenile offender status under he Criminal Procedure Law §1.20 (42).

(c) Any violent student.

(d) Any student committ ng an offense against the District, the school or any school personnel.

4. Law Enforcement. Reports to law enforcement shall be made in accordance with the 1999 Memorandum of Understanding between the Buffalo Police Department and the Buffalo Public Schools.The terms of that Memorandum are incorporated as part of the *Sta11dards for Comm1111ity-wide Conduct and /11ten·e11tio11 Supports.*

DUE PROCESS FOR STUDENTS WITH A DISABILITY

(Subject to change due to changes in the law resulting in IDEA 2004)

(See Appendix F - Removal of Students with Disabilities)

The Board recognizes that it may be necessary to suspend, remove or otherwise discipline students with disabilities to address disruptive or inappropriate behavior. The Board also recognizes that students with disabilities have 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 disTplining students with disabilities are consistent with the p cedural safeguards required by applicable Jaws and regulat,ons.

These *Standards far tomm1111ity-wide Conduct and /111erve11tio11 Supports* afords students with disabilities subject to disciplinary action no greater or lesser rights than those expressly afforded by applicable federal and stale law and regulations.

A. Authorized Suspension or Removal of Students With Disabilities.

1. For purposes of this section of the *Standards for Community-wide Conduct and /11ten·e11tio11 Supports*, only the following definitions apply.

A "suspension" means a suspension pursuant Lo Education Law §3214.

A "removal" means a removal for disciplinary reasons from the students' current educational placement other than

- a suspension
- a 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 or herself or others
- a change in placement to an IAES for behavior involving weapons, illegal drugs or controlled substances.

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 educational program (IEP), that will enable the student to meet the goals set out in such IEP, and include services and modification to address the behavior which precipitated the IAES placement that arc 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 placenl as follows:

Students with disabilities can be suspeded or placed in another setting, including IAES, for up to I0 days in the same manner as their non-disabled peers. The 10 day cap is either consecutive days or cumulative days if the removal constitutes a change in placement.

(a) The Board, the Superintendent of schools or a building principal 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- disablcd 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 10consecutive 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 docs 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 IO 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 (see Section B, below).

(d) The Superintendent may order the placement of a student with a disability in an lAES 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, if the student carries or possesses a weapon to school or to a school function, the student knowinly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while al school or a school function, or innicts serious bodily injury to another individual. The Superintendent may order this change even if the student's behavior is a manifestation of the student's disability.

i. "Weapon" means the same a!"dangerous weapon" under I 8 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 pocketknife, with a blade of less than 2 1/2 inches in length.

ii. "Controlled substance" means a drug or other substance identified in cenain provision of the federal Controlled Substances Act specified in both federal and state Jaw and regulations applicable to this policy.

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

iv. "Serious bodily injury" mean<; • Causing substantial risk of death or causing permanent or serious disfigurement, loss of function of any part of the body or impairment of the function of any part of the body

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 program poses a substantial likelihood of injury to the student or others. A court also may order such a student to be placed into an IAES.

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 cnsecutive school days; or

(b) for a period of 10 cumulative school days or more if the student is subjected to a series of suspensions or removals that constitute a pattern because they accumulate more than I0 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 pro imity of the suspension or removals to one another.

2. School personnel may not suspend or emove a student with disabilities if imposition of the susnsion or removal would result in a disciplinary change in p acement (based on a pattern of suspension or removal) nd the behavior resulting in suspension is determined to be a manirestation of the student's disability.

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 Regardng the Suspension or Removal of Students with Disabties

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 and/or review behavioral intervention plans whenever the District, if first suspending or removing a student with a disability for more than I0 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 I0 school days in a school, is subjected to a suspension or removal that docs 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 deems necessary.

(b) Conduct a manifestation deletminalion review within I0 days of the decision to cha ge a student with a disability's placement for discipline reas ns.

Conduct a manifestation determination reJicw of the relationship between the student's disabilJty 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 or harm to the student or others; or a decision is made to impose a suspension that constitutes a disciplinary change in placement.

2. The care givers 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 Jaw 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 precipitati ng 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 school district is deemed to have knowledge that a student is presumed to have a disability if the care giver of the child has expressed concern in writing to supervisory or administrative personnel that the child is in need of special education, if the care giver of the child requested an evaluation of the child; if the teacher or other school district personnel expressed specific concerns about a pattern of behavior to the specific education coordinator or other appropriate supervisory

personnel; or if the Superintendent, building principal, or other school official so determines.

(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 disaility.

(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:

i. conducted an individual evaluation and determined that the student is not a student with a disability, or

ii. determined that an evaluation was not necessary and provided notice to the care givers of such determination, in the manner required by applicable law and regulations.

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

However, if a request for an individual evaluation is made

while such non.ctisabled 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 care givers 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 lAES for either misconduct involving weapons, illegal drugs or controlled substances or because maintaining the student in his/her current educational setting poses a risk of harm to the student or others; or a decision is made to impose a suspension or removal that constitutes a disciplinary change in placement. The procedural safeguards notice prescribed by the Commissioner shall accompany the notice of disciplinary removal.

4. The care givers 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 car givers 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 he procedures set forth in the Commissioner's regulati ns incorporated into these *Standards.*

6. The removal of a student with disabilities other tha a suspension or placement in an lAES shall be conducte in accordance with the due process procedures applicable to such removals of non-disabled student, 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

Commissioner's regulations incorporated into these *Standards.*

D. Expedited Due Process Hearings

t. An expedited due process hearing shall be conducted in the manner specified by the Commissioner's regulations incorporated into these *Standards*, if:

(a) The Districl 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 danger s for the student to be in his or her current educatil'al placement during such proceedings.

(b) The care giver requests such a hearing from a determirlation that the student's behavior was not a manifesation of the student's disability, or relating to any decision regarding placement, including but not limited to any decision lo place the student in an IAES.

- 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 determi nation thal 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 !AES pending the decision of the impartial hearing officer or until expiration of the IAES placement, whichever occurs first, unless the care givers and the District agree otherwise.

- 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 !AES.

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 care givers within five business days after the Jastlhearing date, and in no event later than 45 calendar days after receipt of the request for a hearing, wi thout exceptions or extensions.

E. Referral to law enforcement and juclal authorities

In accordance with Lhe provisions of IDEA and its imp,ementing 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 disabil ities are transmitted for consideration to the appropriate authorities to whom a crime is reported.

PROHIBITION OF CORPORAL PUNISHMENT

Corporal punishment is any acl of physical force upon a student for the purpose of punishing that student. c;orporal punishment of any student by any District emplbyee is strictly forbidden. However, in situations where alternati ve proced ures 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 injuly.

2. Protect the pr perty of the school or others that, left unprotected, woulr otherwise result in a major loss for the school district or other person; or threaten the safely of others.

3. Restrain or remove a student whose behavior interferes with the orderly exercise and performance of school District functions, powers 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.

- Student Privacy

The Board of Education is committed to ensuring an atmosphere on school property and al school functions that

is safe and orderly. To achieve this kind of environ ment, any school personnel authorized to impose a disciplinary

penalty on a student may question a student about an alleged violation of law or the District *Standards for Commu11ity-wide Conduct and /11tervention Supports.* Students are not entitled to any sort of "Miranda"-type warning before being questioned by school personnel.

In addition, the Board authorizes the Superintendent, building principals and District security officials lo 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 *Standards for Community-wide Conduct and /11terve11tio 11 Supports*. Other school personnel may conduct a search only in a situation where the circumstances do not allow the calling of the Superintendent, building principal or security o f f i c i a l.

Whenever p r a c l ic a b le , lhe s c h oo lofficial conducting a search shall consult with another person concerning the presence of reasonable suspicion and shall have another adult witness the search. Whenever practicable, before searching a studef.t or Lhe Student's belongings, the a u t h o r i z e a school o f f i c i a I should first ask the student if he or she possesses physical evidence that they violated the law or the Dislricl *Standards for Community-wide Conduct and /11terve11tion Supports* and/or ask the student to voluntarily consent to the search.

Searches will l be limited to the actions necessary lo locale the evidence ought. Whenever practicable, searches will be conducted in a private area and students will be present when their possessi lns are being searched.

The rules in t csc *Standards* regarding searches of students and their belongings do nol 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 I o c k e r *s* , desks and other school storage places may be subject to search al any time by school officials, without prior notice to students and without their consent.

In all cases, security reports shall be completed regarding the circumstances and results of the search. Any items taken during the course of the search shall be turned over lo security personnel or Jaw enforcement authorities.

1\ Random Metal Detector Wand Screening

Random metal-detector wand screenings are an effective and necessary means of detecting and deterring the possession of weapons and preventing its consequences, principally student violence, from occurring on school premises. Random screenings are screenings that are not conducted on a regularly scheduled basis and are not necessitated by particularized safety concerns or special events. The Superintendent or designee or other school officials may authorize metal-detector screenings on randomly chosen days during a specified period of the day, using trained personnel (and if available, Police Officers assigned to the school and/or "roving" units) to operate the metal detector wands or portable metal detectors available to their school.

As Needed Screening

The Superinlendent or designee or olher school officials may aulhorize metal-detector screenings on days chosen lo add ress pa rt icu lar safety concerns (such as recenl violence in the neighborhood) "as needed" or on days on which special events (such as athletic copclitions or dignilary visits) are held, using trained school personnel (and if available, Police Officers assigned to the school and/or roving units) to operate the metal delectors available to their school (any combination of walk- through units and/or hand-held wands), or using a task force comprised of trained school personnel, Safety and Security personnel, and Buffalo Pol icf Department Officers to operate the school's metal dctcctol wands or the portable metal detectors.

Visitors to the School

The Board encourages care givers and other citizens to visit the District's schools and classrooms to observe the work of students, teachers and other staff. Since schools arc a place of work and learning, however, cenaln limits must be set for such visits. The building principal or his or her designee is responsible for all persons in the bu ilding 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 parti%1ar school will be considered a visitor (including central orce stafl).

2. All visitors to the school must report to the office of the princfpal upon arrival at the school. There they will be required sign the visitor's register. If identification badges arc used in the building, they 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 care giver-teacher organization meetings, athletic competitions or public gatherings, are not required to wear an identification tag.

4. Care givers or citizens who wish to observe a classroom while school is in session are required to arrange such visits in advance with the principal and/or classroom teacher(s), so that class disruption is kept to a mini mum. Such arrangements should be made in a timely fashion by the school to facilitate responsiveness to care givers or citizens. Ideally, interested care givers or citizens should receive a response from the school within 24 hours of the request noting the next timely availability for a classroom visit.

5. Teachers arc expected not to take time to discuss individual matters with visitors.

6. Any unauthorized person on school property will be reported to the principal or his or her designcc. Unauthorized persons will be asked to leave. The police may be called if the situation warrants.

7. All visitors must abide by the rules contained in the *Standards for Community-wide Co11d11ct and Intervention Supports.*

(\ Enforcement for Persons Others Than Students

For all persons other than students, violation of this Code shall be subject to the following provisions.

A. Penalties

Persons who violate these *Standards* shall be subject lo the following penalties:

1. Visitors. Their aut rization, if any, to remain on school grounds or at the sch I function shall be withdrawn and they shall be directed to leave the premises. If they refuse to leave, they shall be s bject to ejection, or to arrest and prosecution, at the disc±tion of the Principal and the police. Where warranted, the may be excluded from school property and/or funclio s in the future.

2. Tenured f aculty mem bers and ad ministra tors. They shall be subject to disciplinary action, up to and including discharge, as the facts may warrant in accordance with Education Law §3020-a and any other legal and contractual rights that they may have.

3. Staff members in the classified service of the Civil Service entitled to the protection of Civil Service Law §75.They shall be subject to disciplinary action, up to and including discharge, as the facts may warrant in accordance with Civil Service Law §75 and any other legal and contractual rights that they may have.

4. District employees other than those described in subdivisions 2 and 3.They shall be subject to warning, reprimand, suspension, dismissal or other disciplinary action, as the facts may warrant in accordance with any legal and/or contractual rights they may have.

B. Enforcement

Each building principal or his or her designee shall be responsible for enforcing the conduct required by this Code.

When the building principal or his or her designee Jees an indi vidual engaged in prohibited conduct, which in his or her judgment does not pose any immediate threat of injury to persons or property, the principal or his or her designee shall tell the indi vidual that the conduct is prohibited and ask the individual to stop such behavior. The principal or his or her designee shall also wam the individual of the consequences for failing to stop. f the person ref uses to stop engaging in the prohibited con uct, or if the person's conduct poses an immediate threat f injury to persons or property, the principal or his olher designee shall have the individual removed immcdia ly from school property or the school function. If necess y, BPS security and/or law enforcement authorities will be contacted to assist in dealing with the person.

Following such an incident, the building principal or his or her designee shall report the incident to BPS security and to local law enforcement, if they have not already been notified.

The District will consider violations of these *Standards* as a possible basis for disciplinary action against any staff member, as appropriate in accordance, with the "Penalties" section above. In addition, the District reserves its rights lo pursue a civil or criminal legal action against any person violating these *Standards* and/or the law at or in connection with school.

The building principal or his or her designee must notify the appropriate local law enforcement agency of the *Standards* violations which constitute or may constitute a crime and which, in his or her judgment, substantially affect the order or security of a school its students and/or its staff, as soon as practicable. The notification may be made by telephone or direct report, and may be followed by a letter. The notification must identify the student and explain the conduct which violated the *Standards for Community-wide Conduct and /11terve11tio 11 Supports* and which constitutes or may constitute a crime. Guidelines for such reports are contained in the 1999 Memorandum of Understanding between the Buffalo Police Department and the Buffalo Public Schools, the terms of which shall govern such reports.

C. TRAINING

Slaff training wil lbe provided as needed lo ensure lhal lhe disciplinary practices in each school are effective and lhal relevant policies and procedures are equitably applied.

Trai ing may include such topics as child and adolescenl devclopmenl and psychology; age-appropriate responses; cuilure competence; restorative justice techniques; special accommodations for sludenls wilh disabilities; practices proven lo improve school climate, and the creation of safe spaces for lesbian, gay, bisexual, transgender, and questioning students.

D. ANNUAL DATA OLLECTION AND REVIEW

Schools will annually review th ir school climate and submit a publicly available wrilJen report. Based on the review, schools will make changes consistent wilh lhe inlenl of lhis and other policies.

The review will include the following:

a. The total enrollment for lhe school
b. Average daily attendance rate at the school
c. Dropout rates for grades seven through twelve
d. Average class size calculated as the total number of students enrolled in lhe school divided by the number of full-lime teachers in the school
c. The school's pol icy concerning bullying prevention and education
f. Intervention and prevention strategics
g. Number of conduct and discipline code violations, including the following offenses, disaggregated by school, race, elhnicity, age grade, disability, ELL slatus, and gender of the studenl, where available
   i. Possession of a dangerous weapon
   ii. Use or possession of alcohol, drugs or controlled substances, or tobacco products
   iii. Willful d i sobed i e n c e or o p en a n d p e r s i s l e n t defiance
   iv. Conducl equal lo first degree, second degree, lhird degree, or vehicular assault
   v. Behavior that is detri mental to the welfare or safely of other students or of other school personnel
   vi. Willful destruction or defacement of school property
   vii Other violations of the Code of Conduct and disciplinary action, is consistently applied to all students
   viii. Other violations of the Code of Conduct and discipline that resulted in documentation of the conduct in a student's records
   ix. Referrals disaggregated by staff member and school
   x. The extent to which lh policy, including but not limited to disciplinary ction, is consistently applied lo all students

Based on the review, schools ill make changes consistent with the intent of this and other policies.

',. Dissemination and Review

The Board of Education will review these *Standards for Camm1111ity-wide Ca11d11ct a11d /11terve11Iio11 S11pports* every year and update them as necessary. In conducting the review, the Board will consider how effective the *Standard's* provisions have been and whether the *Sta11dards* have been applied fairly and consistently. The Board may appoint an advisory committee to assist in reviewing the *Sta11dards* and the District's response to the *Sta11dards for Camm1111ity-wide Co11d11ct and lnten·e111ia11 S11pports* violations. The committee will be made up of representatives of student, teacher, administrator, care givers and community-based organizations, school safety personnel and other school personnel. Revisions lo the *Standards* will be made only after al least one public hearing, which provides for the participation of school personnel, care givers, students and any other interested party.

The District shall post the complete *Standardsfor Community-wide Conduct a11d /111erve11tion Supports* (with all amendments and annual updates) on the District website, if available. The District shall file a copy of the *Standards for Commu11i1y-wide Co11duct and /11terve11tio11 Supports* and any amendments with the Commissioner, in a manner prescribed by the Commissioner, no later than thirty (30) days after their respective adoptions.

APPENDIX

Appendix A

Buffalo Public Schools

Standards for Community-wide Conduct and Intervention Supports 2017-2018

Student Exclusion Procedures -Imposition of Penalties

	All $taff	Bus Drivers	Monitors /Aides	Coaches/ Actfvtty Sponsors	Teers	Assistant Prlndpal	Principal	superintendent	Board of Education
Or.ii Wamlnc /Admonition	X	X	X	X	X	)(	X	X	
Written Wamlnc		X	X	X	X	X	X	X	
Written Notification to Care		X	X	X	X	X	X	X	
Detention					X	--it	X	X	
Suspension from T"nspoft!rtlon						X	)(	X	
Sus!H!!sion from Athletic Partidpation				X		X	X	X	
SUspelon from Social or Extraa.ilar Activity				)(		X	X	X	
Suspension of Other Privileges							X	X	
In-school Suspension							)(	X	
Removal from Classroom					X		X	X	
Short-term Suspension							X	X	X
long-term Suspension							X	X	X

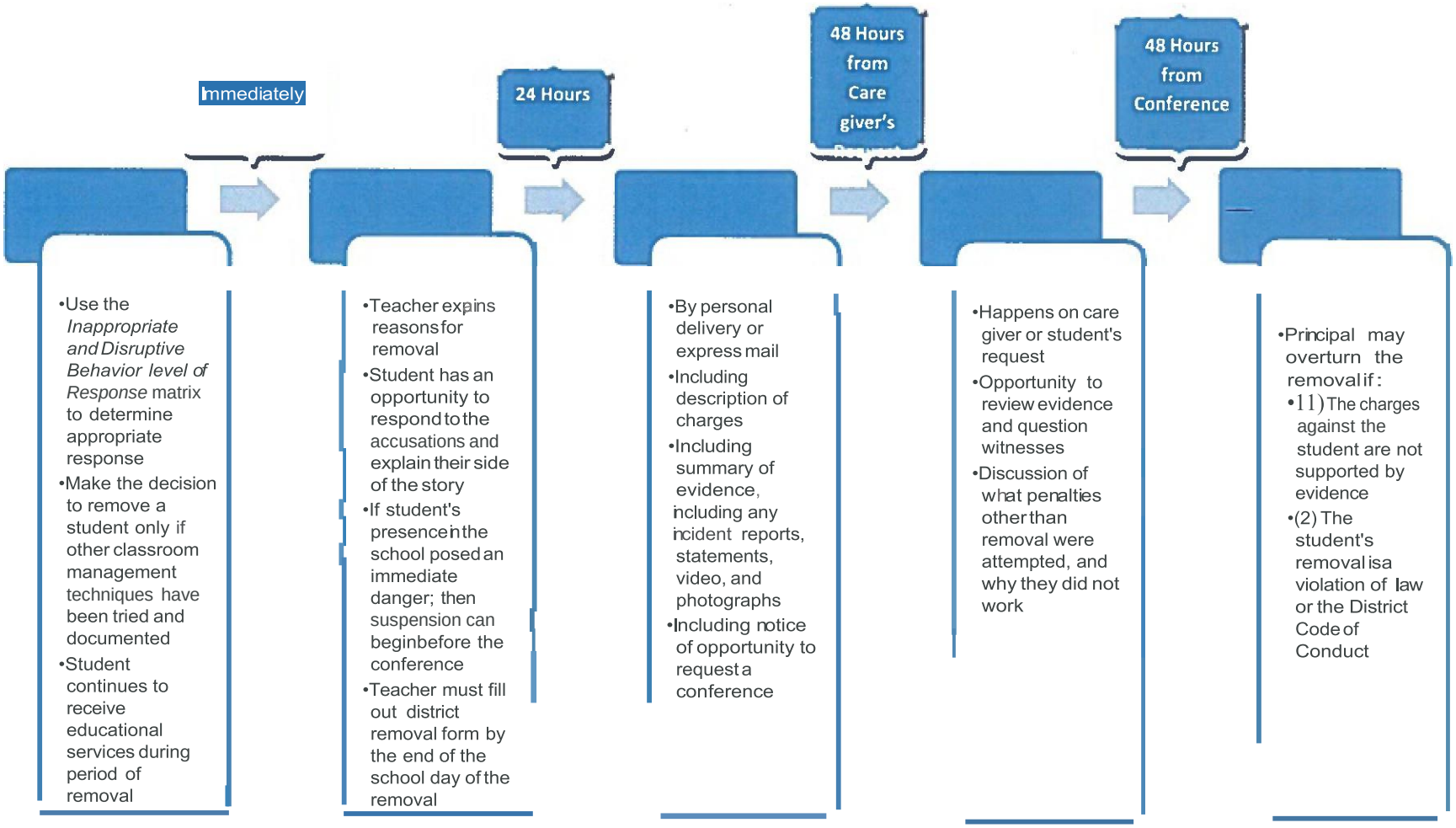
Buffalo Public Schools
Standards for Community-wide Conduct and Intervention Supports 2017-2018

Student Exclusion Procedures

	Care 1l vera1 Notfflc4ltion	Care g veral Notifk4ltion In Writing	Informal Conference	Appeal to Superintendent's Office	NVS Education Law §32 14 Hearing	Appeal to Boanl of Education
Detention	X	X				
SUspeon from Transportation	)(	X	)(			
suspension from Athletic Patlon	)(	X	X			
In-school suspension	X		X			
Teacher RemoVil	X	X	X			
Short-term suspension	X	)(	X			X
Long-terin SUspenslOn	X	X	)(	X	X	X
Permanent SUspenlon	X	)(	X	X	)(	)(

Appendix C

Teacher Removal of Student from Classroom



Appendix D

Short-Term Suspension Timeline

24 Hours

Incident Occurs

Use the *Inappropriate and Disruptive Behavior Level of Response* matrix to determine appropriate response

Notification to Caregiver

- By personal delivery or express mail
- Including description or charges
- Including summary of evidence, including any incident reports, statements, video, and photographs
- Including notice of opportunity to request a conrerence

Principal's Conference

- Happens on care giver/guardian or student's request
- Opportunity to review evidence and question witnesses
- Principal must provide written notice of final decision
- Discussion of what penalties other than suspension were attempted, and why they did not work

Suspension Begins

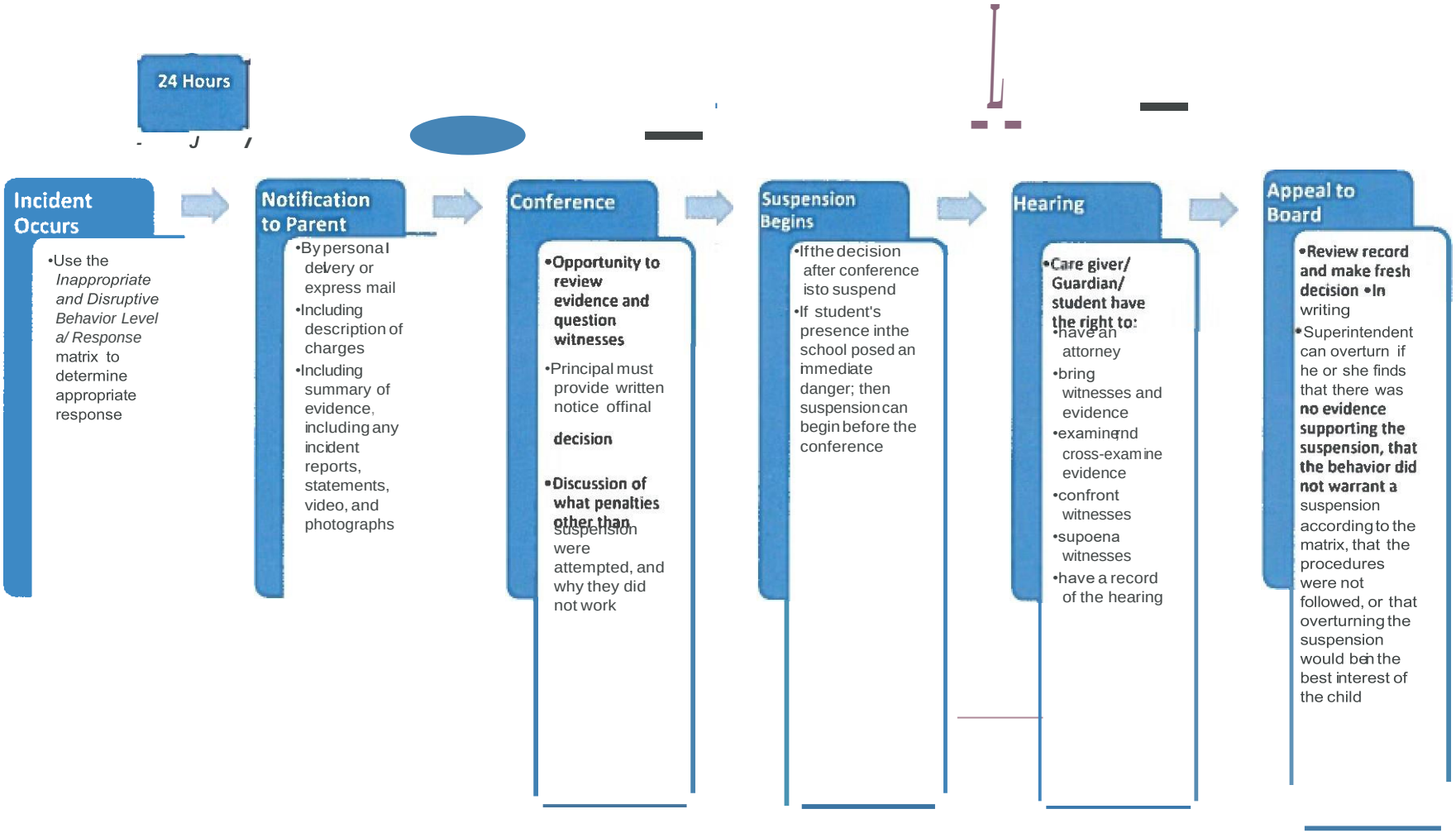
- If the decision after conference is to suspend
- If student's presence in the school posed an immediate danger; then suspension can begin before the conference

Appeal to Superintendent

- Happens on care giver/guardian or student's request
- Opportunity to review record and present new evidence regarding the suspension
- Superintendent can overturn if he or she finds that there was no evidence supporting the suspension, that the behavior did not warrant a suspension according to the matrix, that the procedures were not followed, or that overturning the suspension would be in the best interest of the child

Appendix E

Long-term Suspension and Permanent Suspension Timeline



GLOSSARY

GLOSSARY OF TERMS

Academic Dishonesty
Providing, receiving or viewing answers to quiz or test items or independent assignments; having out or using books, notes or notebooks during a test without permission from a staff member

Attack on Student
A student or students set upon another student m a forceful, hostile or aggressive way without warning or provocation; this includes behavior commonly referred to as "banking."

Bomb Threat
The making of threats or providing false information adout the presence of explosive materials or devices on sctpol property without cause in writing, in person or by phone, including text messaging

Bullying
Any intentional act done willfully, knowingly and with deliberation, by individuals or an indi vidual, which harms another person physically or emotionally

Bullying includes intentional conduct (including verbal, physical or written conduct) or electronic communication that is threatening or seriously intimidating and substantially disrupts the orderly operation of a school

Bullying is characterized by an imbalance of power between two students. If two students are equally engaged in an altercation, this is not a bullying situation, but instead considered a "conflict" between the two students. When an imbalance of power is present; it can be seen in small ways over a Jong period of time or in a large way all at one time

Cell Phone Misuse
Use, activation or display of cell phones, camera phones, video phones or other commun ication devises during the school day or on school buses

Color
The term refers to the apcare giver pigmentation of the skin, especially as an indication or possible indication of race.

Community Service
An unpaid service for the bcnelit of the public that is performed as part (or all) of the consequence for committing an infraction

Computer Misuse
Any unauthorized or inppropriatc use of computers, including the Internet, specific programs or hacking (i.e. sharing of obscene, pornographic, lewd or illegal images or photographs, unauthorized use of computers, software, or internet/intranet accounts, accessing inappropriate web sites)

Conference
A communication that takes place face to face or by telephone

Consequence
A result that follows from an action or condition

Controlled Substance
A drug or other substance identified under schedule I, ll, III, CV, or V in section 202 (c) of the Controlled Substances Act (21 U .S.C. section 8 l2[c]) (United States Code, 1994 edition, volume 1 1; Superintendent of Documents, U.S. Government Printing Office, Washington, D.E. 20402-9328: 1995 – available at the Office of Vocational and Educational Services for Individuals with Disabil ities, Room 1624, One Commerce Plaza, Albany, NY 12234)

Criminal Behavior
Any behavior that is considered an infraction against the Jaw

Cutting Class
Unlawful absence from a class or school activity

Cybcr-bullying
The use of information and communication technologies- e-mail, cell phones, pagers, chat rooms, text messages, instant message, personal website or biogs, personal pulling sites or a combination of these or any other electronic means – to support deliberate, repealed and hostile behavior by an individual or group with the intention of physically or psychologically intimidating others

Dangerous Implements

Any implement or substance used as a weapon to inllict bodily harm, including any objects or implement capable of causing harm or used in such a way as to cause harm to another, this includes but is not limited to laser pointers, pencil and scissors

Demonstration and Mass Protest

Willful disturbance of school activities through a march or rally that prevents the orderly conduct of school classes and activities

Destruction of Property or Vandalism

!image, destruct ion or defacement of property belonging ;J the school or others

ohability

clsability means (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is a demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment, provided, however, that in all provisions of this article dealing with employment, the term must be limited lo disabilities which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held (Education Law
§1 1(4) and
§1125(3)). A disability includes restriction or lack (due lo any impairment) of ability lo perform an activity in the manner or within the range considered typical.

Disrespect Toward Others

Inappropriate comments or physical gestures toward others

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

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

Employee

Any person receiving compensation from a school district or employee of a contracted service provider or worker placed within the school under a public assistance employment program, pursuant to title nine B of the article five of the Social Services Law, and consistent with the provisions of such title for the provision of services to such district, its students or employees, directly or through contract, whereby such services performed by such person involve direct student contact (Education Law §I I (4) and
§1125(3))

Ethnic Group

A group of people who identify with each other through a common heritage including language, culture, and often a shared or common religion and or ideology that stresses ancestry

Ethnicity or National Origin Harassment

A negative act or verbal expression toward an individual or group of the same race or national origin who share common or similar traits, languages, customs and tradi tions, based upon race, national origin, customs and traditions

Gender

The socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for men and women (masculine and feminine denotes "gender"); actual or perceived sex and includes a person's gender identity or expression (Education Law
§1 1(6))

Harassment

The creation of a hostile environment by conduct or by verbal threats, intimidation or abuse that has or would have the effect of unreasonably and substantially interfering with a student's education performance,

opportunities or benefits, or mental, emotional or physical wellbeing; or conduct, verbal threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; such conduct, verbal threats, intimidation or abuse includes but is not limitep to conduct, verbal threats, intimidation or abuse ased on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex (Educational Law §11(7)).

Hate Crim

The US Crnjgress has defined a hate crime as a "criminal offense against a person or property moti vated in whole or in part by al offender's hias against a race, rel igion, disabil ity, c hn ic origin or sexual orientation."

Illegal Drug

A controlled substance, but does not include a controlled substance legally possessed or used under the supervision of a licensed health care professional or a substance that is otherwise legally possessed or used under the authority of the Controlled Substances Act or under any other provision of Federal Jaw

Loss of Privileges

As a consequence of a violation of Buffalo Public Schools' Code of Conduct, a student can Jose the right to participate in school events and acti vities, including participation in graduation and senior activities (if the behavior warrants this consequence, only monies paid as senior dues for the missed activity will be refunded)

Makeup Work

When students arc removed from class because of inappropriate or disruptive behavior, school staff must provide students with missed assign ments and the opportunity to make up these assignments without penally. Students with Individualized Education Plans (IEPs) and 504 plans have additional protections that may require full IEP implementation, not just homework packets.

National Origin

A person's country of birth or ancestor's country of birth

Care giver

Care giver, guardian or person who possesses a custodial relationship to a student

Poisoning

Putting any substances in another person's food or drink that poisons or contaminates that food or drink, or on a person's body that causes injury or harm, or would likely cause injury or harm, to the person

Positive Behavioral Interventions & Sup orts Positive Behavioral Interventions & Supports is a school-wide behavior management framework that has a three-tier model of prevention and intervention (Tier I, universal; Tier 2, targeted; Tier 3 intensive). This framework has been implemented in all Buffalo Public Schools.

Positive Behavioral Interventions and Supports are developet at the school level by school staff, principals and stud nts to create a positive climate and cu lture, with consislen high expectations for behavior, incentives and consequences. By creating a school- wide system for these structures, Positive Behavioral Interventions and Supports help adults and children have a common understanding of the behavioral expectations for all individuals.

Additionally, through the use of data and regular meetings, the Positive Behavioral Interventions and Supports team within the school can tailor systems to beuer meet the needs of students. Care givers and guardians are encouraged lo serve on their school's Positive Behavioral Interventions and Supports Team

For more information about Positive Behavior Interventions and Supports, please contact your school.

Race

A group of persons related by a common descent or heredity; For purposes of enumeration, the U.S. Census Bureau uses terms such as: "White/Caucasian", "Black/African American/ African-descent, "Asian", "Bi-racial", 'Hispanics/Latinos", etc. to describe and classify the inhabitants of the United States.

Racial Harassment

A negati ve opinion or verbal expression toward an individual or group of persons who possess common physical characteristics (i.e., color of skin, eyes, hair and facial feature genetically transmitted by descent

and heredity) that distinguish them as a distinct division of human kind, based on these physical characteristics

Racial Harassment
A negative opinion or verbal expression toward an individual or group of persons who posses comntm physical characteristics (i.e., color of skin, eyes, hair and facial feature genetically transmitted by descent and heredity) that distinguish them as a distinct division of human kind, based on these physical characteristics

Religion
Specific fundamenta beliefs and practices generally agreed lo by large n mbers of the group or a body of persons adhering to a rrticular set of beliefs and practices

Religious Harassment
A negati ve opinion or verbal expression toward an individual or group of persons, who possess common religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being, based on religious beliefs

Religious Practice
A term including practices and observances such as attending worship services, wearing religious garb or symbols, praying at prescribed times, displaying religious objects, adhering to certain dietary rules, refraining from certain activities, proselytizing, etc.

Reportable to Police
Certain offenses require police reports while reporting of others depends on whether the activity is considered criminal behavior. Police reports are required when an offense is illegal offense if illegal or causes injury lo persons. Also see School Resource Ofliccrs

Restitution
Replacing item(s) that were stolen or damaged by providing fair market value by way of compensation or service

Safe and Civil Schools
Safe and Civil Schools is an initiative that guides schools through a process of designing a proactive and positive school-wide behavior plan. Staff develops and implements effective behavior management and motivation practices – as well as behavior supports for all students. Adults work toward creating an environment for students that are emotionally and physically safe and that foster independence, integrity, confidence, self-control, kindness, literacy and responsibility.

Included in *Safe and Civil Schools* is *Start 011 Time*, a comprehensi ve pi; · ram which guides schools through a process of designi g a proactive and positive plan for improving hallway ransitions and reducing tardies to class

Randy Sprick's *Sak & Civil Schools* has been listed in the National Registr;I of Evidence-based Programs and Practices (NREPP)

School Bus
Every motor vehicle owned and operated for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity, to o r from school or school activities, or, privately owned and operated for compensation for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities (Education Law §11(1) and Vehicle and Traffic Law §142).

School Day
Any day of required pupil attendance; unless preceded by the word "calendar". "day" means a school day

School Function
A school-sponsored extracurricu lar event or activi ty (Education Law §11(2))

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, secondary, adult education or post-secondary school or

any other property owned or leased by the District, or in or on a school bus, as detined in Vehicle and Traffic Law §142, or other transportation vehicle adopted by/for the District (Education Law §11(I))

Scool Resource Officer

The *Standards for Community-wide Co11d11ct and /11terve11tio11 Supports* identifies certain inappropriate or disruptive behaviors that may be considered a danger to the health, safety and welfare of the school community. When these behaviors occur, Schools Resource Officers must be notified. If school staff or principals are unsure of hether to contact school resource officers, they should! contact the Community Superintendent for the school. If and when school staff or principals take steps to contact Buffalo Police, care givers or guardians of the affected Jtudents must be notified i mmediately

School Uniform Policy

A mandatory school-based uniform policy is one in which the school prescribes a standard uniform and requires all students to participate

Serious Bodily Injury

Bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty

Sexual Activity

Inappropriate behavior of a sexual na ture while on school grounds or during school-sponsored activities, including but not limited to indecent exposure, consensual sexual contact, oral sex or possession of sexually explicit material

Sex

The biological and physiological characteristics that define men and women (Male and Female denotes "sex")

Sexual Assault

Physical sexual act by force or threat of force against a staff member or another student, including inappropriate touching

Sexual Harassment

Unwelcome sexual advances, requests for sexual favors, taking or sending sexually explicit videos, pictures or auditory recordings or other inappropriate verbal, written or physical conduct of a sexual nature, directed toward f>thers

Sexual Orientation

The sex lo which a person is sexually attracted; Someone attracted primarily or exclusively to members of the opposite sex is characterized as straight or heterosexual. Someone attracted primarily or exclusively to members of the same sex is characterized as homosexual. A person with a strong or viable llraction to both genders is characterized as bisexual or pnsexual. Actual or percei ved heterosexuality, homosexuali y, or bi-sexuality (Education Law §l 1(5))

Sexual-Orientation Harassment

A negative opinion or attitude toward an individual or group of persons based on their sexual attraction loward or responsiveness to members of the opposite or same sex

Social Media

Social media is comprised of online platform-; where users engage one another and share information and ideas lhrough lcxt, video, or pictures.

Stealing

Taking or attempting to take property of anolher person or institution without permission or knowledge of the owner, with the iment to deprive the owner of ils use. See also Theft

Student Ambassadors.

The Student Ambassador goal is to engage students in activities that promote student connectedness and belonging to the school experience. Student Ambassadors serve as the youth voice for the student body. The sludents participate in team building activities and plan and conduct activities with their peers, in an effort lo maintain a positive school climate and to motivate and engage the entire school community in address barriers to learning such as poor attendance

Tardiness

Arriving late to school or class

Theft

Taking or attempting to take property of another person or institution without permission or knowledge of the owner, with the intent to deprive the owner of its use. *See also Stealing*

Tobacco VHJlations

Possession, use, sale or distribution of tobacco or tobacco products, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or smokeless tobacco, electronic cigarettes, vapor devices or imitation cigarettes in any form.

Trespassing

Being on school property without perm sion, including while suspended or expelled; includes breaking and entering

Unsafe Action

Any action that has the potential to cause danger or physical harm to self or others, including the reckless use of a vehicle

Violent Student

A student under the age of 21 whom:

1. Commits an act of violence upon a school employee, or attempts to do so;

2. Commits, while on school property or at a school function, an act of violence upon another student or any other person lawfully on school property or at the school function, or attempts to do so;

3. Possesses, while on school property or at a school function, a weapon;

4. Displays, while on school property or at a school function, what appears to be a weapon;

S. Threatens, while on school property or at a school function, to use a weapon;

6. Knowingly and intentionally damages or destroys the personal property of any school employee or any person lawfully on school property or at a school function; or

7. Knowingly and intentionally damages or destroys school District property

8. Engages in harassing conduct, verbal threats, intimidation, or abuse that reasonably causes or would reasonably be expected to cause a student fear for his or her physical wellbeing.

Weapon (including look-alike and ammunition)

A firearm as defined in 18 USC §921 for purposes of the Gun-Free Schools Act, any other gun, BB gun, pellet gun, pistol, revolver, shotgun, rifle, machine gun, disguised gun, knife, dagger, dirk, razor, stiletto, switchblade knife, gravity knife, brass knuckles, sling shot, melal knuckle knife, box cutter, cane sword, electronic dart gun, Kung Fu star, electronic stun gun, pepper spray or other noxious spray, explosive or incendiary bomb, or other device, instrument, material or substance (including chemical and biological substances) 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 two and one-half inches in length

A weapon is, by way of illustration and without limitation, one of the following:

O Firearm: A firearm as defined in 18 U.S.C. 921 of the federal code. Examples include handgJns, rifles, shotguns and bombs. Refer to the federal code for the complete definition

¢ Other guns: Any gun of any kind, loaded or unloaded, operable or inoperable, including any object other than a firearm that looks like a gun. This shall include but is not limited to a pellet gun, paintball gun, stun gun, laser, BB gun, flare gun, nail gun, and airsoft gun

0 Other weapons: Any implement that could cause or is intended to cause bodily harm, other than a firearm or other gun. This shall include, but is not limited to, a switchblade knife, hunting knife, star knife, razor (including straight or retractable razor), brass knuckles, box cutter, nunchuck, spiked glove, spiked wristband, any mace derivative, tear gas device or pepper spray product

0 Weapon used to cause bodily harm or injury: Use of a weapon to injury any person on school property or while involved in a school-sponsored activity

Weight

Aside from the obvious meaning in the physical sciences, the word is used in reference to a person's "size".

PROHIBITED CONDUCT

The Board of Education expects all persons on school property and at school functions to conduct themsel ves in an appropriate and civil manner, with proper regard for the rights and welfare of students, District personnel, care givers and other members of the school community, and for the care of school frilities and equipment.

The Board recognizes the need to make its expectations for conduct while on school property or engaged in a school function, specific and clear. The rules of conduct listed below are intended to do that, and to focus on safety and respect for the rights and property of others.

All persons shall be deemed to be in violation f the *Standards for Community-wide Conduct and lnte 11tio11 Supports* and Board policy if, while on school prop rty or at a school event, they:

A. Engage in conduct that is disorderly. Exam les of disorderly conduct include, but are not limited to:

- Running in hallways.
- Making inappropriate and/or unreasonable noise.
- Using language or gestures that arc profane, lewd, vulgar or abusive.
- Obstructing vehicular or pedestrian traffic.
- Engaging in any willful act, which disrupts the normal operation of the school community.
- Entering a school building (other than the one a student regularly attends) without permission from the administrator in charge of the building.
- Entering any school premises or remaining in any school building without authorization after it is normally closed.
- Computer/electronic communications misuse, including any unauthorized use of computers, software, or intemet/intranet account; accessing inappropriate web sites; telephone and cell phone usage, or any other violation of the District's acceptable use policy.
- Loitering on school premises.

B. Engage in conduct that is insubordinate. Examples of insubordinate conduct include, but are not limited to:

- Failing to comply with the valid directions of teachers, school administrators or other school employees in charge of students or otherwise demonstrating disrespect.
- Lateness for, skipping or leaving school without permission (students).
- Skipping detention (students).

C. Engage in conduct that is disruptive. Examples of disruptive conduct include, but are not limited to:

- Failing to comply with the valid direc,ions of teachers, school administrators or other school personnel in charge of students.
- Speaking out of tum.
- Horseplay.
- Any other conduct, which would cause a student to be a disruptive student as defined in this Code of Conduct.

D. Engage in conduct that is violent or threatening. Examples of violent or threatening conduct include, but are not limited to:

- Committing an act of violence (such as hitting, kicking, punching, and/or scratching) upon a student, teacher, administrator, other school employee or other person, or attempting to do so.
- Possessing a weapon. Authorized law enforcemcnt officials are the only persons permitted to have a weapon in their possession while on school property or at a school function.
- Displaying what appears to be a weapon.
- Threatening to use any weapon or to do any form of harm to another individual, by any other means.
- Intentionally, or with reckless indifference or disregard, damaging or destroying the personal property of a student, teacher, administrator, other District employee or other person, including but not limited to, graffiti or arson.
- Intentionally, or with reckless indifference or disregard, damaging or destroying school District property.
- Fighting and/or using any form of physical force against another person.
- Instigating or initiating a fight or the use of any form of physical force against another person.

E. Engage in any conduct that endangers the safety, morals, health or welfare of others. Examples of such conducts include, hut arc not limited to:

• Lying lo school personnel.

• Stealing the properly of students, school personnel or any other person on school property or attending a school function.

• Defamation, which includes false statements or misrepresentations about an individual or identifiable group of individuals, that harm the reputation of the person or the identifiable group. This can include posting or publishing video, audio recordings or pictures (written material, cell phones, Internet, YouTube, etc.)

• Discrimination, which includes the use of race, color, creed, national origin, religion, gender, sexual orientation or disability as a basis for treating another in a negative manner on school property or al a school function.

• Bu llying, cyber-bullying, and harassment, which includes an action or statement, or a pattern of actions or statements, directed al an identifiable indi vidual or group, which are intended lo be, or which a reasonable person would perceive, as ridiculing or demeaning, including but not limited to all forms of harassment prohibited in the District's Anti-Harassment Policy, which is incorporated as a part of these *Standards for Comm1111ity-wide Conduct and /11terve11tio 11 S11pports.*

• Bullying, cyber-bullying, and intimidation, which includes engaging in actions or statements that put an indi vidual in fear of bodily harm.

• Hazing, this includes any intentional or reckless act directed against another, for the purpose of initiation into, affiliating with, or maintaining membership in any school sponsored activity, organization, club or team.

• Selling, using or possessing obscene material.

• Using vu lgar or abusive language, cursi ng or swearing.

• Smoking a cigarette, cigar, pipe or using chewing or smokeless tobacco, including but not limited to electronic cigarettes, vapor devices, or imitation cigarettes in any form.

Possessing, consuming, selling, distributing or exchanging alcoholic beverages or illegal substances,
or being under the influence of either. "Illegal substances" include, but are not limited to, inhalants. marijuana, synthetic marijuana, synthetic drugs (incense, bath sails, or herbal potpourri), ecstasy, cocaine, LSD, PCP, amphetamines, heroin, steroids, look-alike drugs, any substances commonly referred to as "designer drugs", or paraphernalia for u* of such drugs or be under the influence of any such subslance on school property or at a school function

• Inappropriately using, possessing or sharing prescription and/or over-the-counter drugs.

• Gambling, or inappropriate possession of gambling devices.

• Indecent exposure, that is, exposure to the sight of the private parts of the body.

• Initiating a report, warning, or threat of fire or other catastrophe (including but not limited to a bomb threat or a threat of harm from a chemical or biological substance) without valid cause, misuse of 91 1, or discharging a fire extinguisher.

F. Engage in misconduct while on a school bus, public transportation, or public transportation facility, while in transit to and from school.
It is important for all persons to behave appropriately to ensure their safety and that of others, and to avoid distracting transportation operators. Students and all other persons arc required to conduct themselves in a manner consistent with established standards for classroom behavior. Excessive noise, pushing, shoving, fighting, harassment, and discrimination will not be tolerated.

G. Engage in any fonn of academic misconduct. Examples of academic misconduct include, but not limited to:

• Plagiarism.

• Cheating.

• Copying.

• Altering records.

• Assisting another person in any of the above actions.

H. Instigate or encourage another person to violate these *Standards for Comm11nity-wide Conduct and l11terve11tio11 Supports.*

2017-2018

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The Board of Education does not discriminate on the basis of age. creed. disability. marital status. nati onal origin, race. color. gender or sexual orientation in its educational programs, services and activities. Inquiries regarding this nondiscrimination policy may be directed to Brian T. Lorentz. Deputy Director of Human Resources .720 City Hall. Buffalo. NY I4202 or by calling 716-8I6-3500.

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Coordinator/Behavior Support Systems

Care givers of the Valley Community Association
Peg Overdorf, Executive Director

Students of the Buffalo Public Schools

Via Evaluation
Gary Ciurczak, Ph.D., President

ROCHESTER CITY SCHOOL DISTRICT
CODE OF CONDUCT
Policy 1400

Approved by the Board of Education on June 16, 2016
pursuant to Resolution 2015-2016: 856

ACKNOWLEDGMENT

This Code of Conduct is the product of a collaborative effort by parents, students, teachers, District staff, and community members seeking to make classrooms and schools in the Rochester City School District safe, supportive, and joyful environments for teaching and learning.

This Code is intended to be a living document. We have begun with an initial goal of minimizing the push-out of students through suspensions and arrests, which are shown to contribute to what has been termed the "school-to-prison pipeline." Multiple layers contribute to students' success and well-being, including engaging families as partners and assuring that District personnel and school-level staff have the supports and resources they need to implement the new Code. The focus of all of our collaborative efforts, including this Code and beyond, is a vibrant and supportive school climate across the District.

We will learn as we put this Code into action. We will push toward the aspirations within it, even as we strive to assure the supports needed are in place. We will make changes and develop sections that need further work based upon our learning, and we will assess our progress ongoing in order to achieve the goals of keeping students safe, in school, and flourishing.

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SCHOOL CULTURE & CLIMATE

School culture and climate affect everyone in a school community. By creating supportive and welcoming communities, we ground the lives of every community member in the values we all care about, a quality education for all students and a supportive and positive school environment for students, parents, teachers, support staff or administrators. Such grounding for all creates a profound impact upon students, both in their academic progress and their relationships with peers and adults. It deeply enhances the quality of life and the work environment for all staff in the school building. It makes a school welcoming to families and our wider community. For schooling to be successful, each school must establish and maintain a positive school culture that supports all its members—students, families, and staff—as they work together to grow, both socially and academically.

Building positive school culture entails a great deal of active work by all members of a school community. Members must come together to determine the values by which they wish to live, ensuring in doing so that the voices of all are heard. They must explore with each other types of behaviors that they believe will support their shared values, as well as behaviors that they believe will undermine them. They must have--and take advantage of--frequent opportunities to reflect on behaviors they actually participate in or observe, and to consider how to use more supportive behaviors. They must engage in frequent dialogue with other community members regarding issues of community behavior, climate, and culture. Such matters need to be a major part of study and curriculum at the school, making social, moral and ethical growth a key component of education.

TO WHOM, WHEN AND WHERE THIS CODE APPLIES

Unless otherwise indicated, this Code applies to all students, District personnel, parents, visitors and other persons on school property or attending any school function, and applies to behavior:

1. In school during school hours;
2. Before and after school, while on school property;
3. While traveling in vehicles funded by RCSD;
4. At all school-sponsored events; and
5. Off school grounds or outside regular school hours that has the potential to result in a disruption to the educational process or endanger the health, safety or welfare of those in the school community.

PROMOTING POSITIVE STUDENT BEHAVIOR

The primary goal of student discipline is to engage and re-engage students in their educational work. Student discipline should encourage students to reflect on behavior that enables them to structure behavior productively and to support moral and ethical growth. Discipline should be governed by a desire for, and commitment to, a strong educational community based on deep and caring relationships and engagement in high-quality work.

STUDENT ENGAGEMENT

Student engagement is integral to creating a positive school culture and climate that fosters students' social/emotional growth and academic achievement. Providing students with multiple opportunities to participate in a wide range of pro-social activities, to take agency and leadership in setting the tone for their school, and, at the same time, to bond with caring, supportive adults can help prevent negative behaviors and create vibrant learning opportunities for all.

Examples can include:

- providing students with meaningful opportunities to share ideas and concerns and to take an active role in school-wide initiatives and decision-making;
- student leadership development that engages a wide variety of students with different interests, personalities and cultural backgrounds (i.e., not just academically excelling, civically engaged or so-called "popular" students) who put their creativity, talents, and peer influence into action to help set the tone of a vibrant school climate;
- regular recognition of students' achievements in a range of academic and co-curricular areas;
- practice sharing constructive feedback;
- school-wide systems that promote hope, aspirations, and positive, pro-social behavior.

Such opportunities, coupled with a comprehensive guidance program of prevention and intervention, provide students with the experiences, strategies, skills, and supports they need to thrive.

GUIDING PRINCIPLES

Right to High-Quality Education

All students have a right to a high-quality education. As such, school disciplinary measures should be used to help them engage in and realize that right, not to exclude students from school or otherwise deprive them of such an education. The District will strive to reserve suspensions solely for those cases in which graduated disciplinary efforts have been employed without success, or circumstances in which the safety of students or staff or the continuance of the educational process is at risk.

General Principles

School discipline policies shall be aimed at creating a positive school climate, supporting the social and emotional development of students, and teaching non-violence and respect for all members of the school community. By viewing social development as a critical aspect of discipline, RCSD schools shall anticipate and respond to school disciplinary matters in a manner that is consistent with students' sense of dignity and self-worth.

The purpose of discipline must be to understand and address the causes of behavior, resolve conflicts, repair the harm done, restore relationships and reintegrate students into the school community. In addition, particular attention and intervention support shall be provided to vulnerable families and youth at risk of being pushed out. School staff must be supported both to develop these skills and to practice them in conjunction with students, families and their own colleagues. In order for this effort to be successful, students and their families must be valued and empowered to work together with District staff to achieve these goals.

RCSD schools shall abide by the following general principles for the implementation of school discipline:

- Principle #1 – Positive Relationships
  School safety and academic success are formed and strengthened when all school staff and personnel build positive relationships with students and are actively engaged in their lives and learning.
- Principle #2 – Fairness and Consistency
  School staff should promote high standards of behavior by teaching, modeling, and monitoring behavior, and by fairly and consistently promoting positive behavior.
- Principle #3 – Engaging Instruction and Effective Classroom Management
  Effective and engaging instruction and classroom management are the foundation of effective discipline.

- Principle #4 – Prevention and Intervention
  School discipline is best accomplished by preventing misbehavior before it occurs, and using effective interventions after it occurs.
- Principle #5 – Discipline with Guidance
  School discipline that is paired with meaningful instruction and guidance offers students an opportunity to learn from their mistakes and contribute to the school community, and is more likely to result in getting the student re-engaged in learning.
- Principle #6 – Maximize Learning and Minimize Removal
  Effective school discipline maximizes the amount of time students spend learning and minimizes the amount of time students are removed from their classrooms while protecting the safety of the school community and the educational process.
- Principle #7 – Exclusionary Discipline as a Last Resort
  Use of In-School Suspensions, Out-of-School Suspensions, Expulsion, and Referrals to Alternative Schools should be minimized and used on a graduated basis wherever possible. The priority shall be to keep students in class whenever school safety and continuance of the educational process allow.
- Principle #8 – Student Supports
  Schools must utilize guidance interventions and other appropriate support services to provide effective discipline and guidance to students, including and especially those returning from exclusionary discipline, to maximize their ability to meet social and academic standards within the school community.
- Principle #9 – Student Responsibilities
  All students have the responsibility to work to the best of their abilities, attend school daily unless they are legally excused, contribute to maintaining a safe and supportive school environment, treat peers and school staff in a respectful manner, accept responsibility for their actions, hold themselves to the highest standards of conduct and demeanor, and promote a climate of mutual respect and dignity toward all in the school community.
- Principle #10 – Limited Role of Law Enforcement
  School Resource Officers (SROs), School Safety Officers (SSOs) and other school safety personnel are important resources in supporting school communities to prevent and resolve conflict in positive ways. The District will support or provide training to SROs and SSOs in restorative practices, youth development, and how to respond to the special needs of young persons. All law enforcement personnel shall use, to the maximum extent possible, techniques to de-escalate conflict and repair harm and that minimize the use of arrests; and shall defer to school personnel on all issues considered to be school disciplinary matters. Every effort shall be made to identify alternatives to arrest when applicable.

- Principle #11 – Address Racial Disparities in School Discipline
  The District must address and respond to racial inequities, institutional racism and other forms of discrimination or bias that present barriers to student success. To do so, a process must be provided whereby members throughout the school community can engage with issues honestly with the goal of healing and strengthening relationships and of uniting resolve to change how we do things and rectify the damage done by institutional racism and implicit bias.
- Principle #12 – Non-Discrimination
  School discipline must be implemented without discrimination based on ethnicity, race, color, religion, religious practice, national origin, ancestry, sex, gender or gender identity, sexual orientation, age, weight/appearance or disability.
- Principle #13 – Due Process
  Effective discipline can only be implemented with profound respect for the due process rights of students' and parents,' consistent with New York State Education Law § 3214 and the U.S. Constitution, and including, but not limited to, the right to notice of the penalty to be imposed and an opportunity to present a student's version of the facts and circumstances that led up to the event.
- Principle #14 – Training
  Teachers, administrators and school staff shall receive training on classroom/school management, conflict resolution, and non-punitive approaches to discipline.
- Principle #15 – School-Level Policy
  Schools-level rules and codes of conduct must be consistent with this Policy, approved by the Superintendent or designee and distributed to students and parents in a manner consistent with this Policy. Schools are also expected to develop plans for improving school climate.
- Principle #16 – Distribution of Policy
  Students, parents, teachers and other school personnel must be well-informed of school discipline policies. The District shall distribute a summary of this Policy to all students and their parents and post the Policy on the District website and in an accessible place within each school.
- Principle #17 – Family Engagement
  Schools exist to support families in the education of their children and all staff should embrace reciprocity and meaningful engagement. School staff will keep parents informed of their children's behavior—both positive and negative, enlist them as partners in addressing areas of concern, and always inform them directly when exclusionary discipline is called for.

- Principle #18 – Shared Accountability
  Schools should collaborate with union, community and agency partners in order that school staff are made aware of resources and supports that will aid in their personal development and maximize their abilities to meet the academic and social needs of students in the Rochester community.

FAMILIES AS PARTNERS

Students, parents, and school personnel all have a role in making schools safe and must cooperate with one another to achieve this goal. Routine outreach to parents can include, but is not limited to, a phone call and/or a written communication. As role models, parents and school staff should exhibit the behaviors that they would like to see students emulate.

To ensure that parents become active and involved partners in promoting safe and supportive school environments, they must be familiar with the Code of Conduct. School officials are responsible for sharing the information in this document with students, parents, and staff. Schools are encouraged to provide workshops for parents on understanding the Code and how best to work with the school to support their children's social-emotional growth. Educators are responsible for informing parents about their children's behavior and for nurturing the skills students need to succeed in school and in society. Parents are encouraged to discuss with their children's teacher and other school staff issues that may affect student behavior and strategies that might be effective in working with the student.

ATTENDANCE

Attendance at school is vital to a student's academic progress and success. School personnel must ensure that appropriate outreach, intervention, and support are provided for students who exhibit attendance problems that may manifest themselves as truancy or patterns of unexcused absence or educational neglect. In cases of truancy, school personnel must meet with the student and parent in order to determine needed supports and an appropriate course of action, which may include, but is not limited to: guidance intervention, referral for counseling, and/or referral to after-school programs.

Each school should review cases of chronic absenteeism, classroom removals, and/or truancy and should involve attendance teachers, administrators, school counselors, teachers, social workers, and other school staff in facilitating a resolution.

It is important that there be robust consultation and communication between the school and the home. Guidance conferences attended by the principal or his/her designee, a school counselor, the student's parent(s), and one or more of the student's teachers are an effective means of encouraging parental input and should be held with students when appropriate. Parents who want to discuss interventions in response to student behavior should contact their

children's school, including the Parent Liaison/Homeschool Assistant, or, if necessary, the Office of Parent Engagement.

In the event a student engages in significant inappropriate behavior, the principal or principal's designee must report the behavior to the student's parent. If a student is believed to have committed a crime and the police are called, the parent must be contacted.

Cross Ref.:
Policy #0100 District Policy Prohibiting Discrimination or Harassment of Students or Employees
Policy #1000 Community Relations Goals
Policy #1200 Community Involvement
Policy #1240 Visitors to the Schools
Policy #1500 Public Use of School Facilities
Policy #1520 Public Conduct on School Property
Policy #1530 Smoking on School Premises
Policy #1950 Acceptable Use of the District Network
Policy #2120.1 Electioneering in Schools
Policy #4311.2 Civic Education
Policy #4526 Internet Acceptable Use
Policy #5100 Student Attendance and Withdrawal
Policy #5305 Eligibility for Extracurricular Activities
Policy #5310 Student Discipline
Policy #5311 Student Rights & Responsibilities
Policy #5312.1 Drug and Alcohol Abuse Policy
#5312.1a Drug Free Schools
Policy 5312.2 Dangerous Weapons in School
Policy #7050 Community Use of Schools
Policy #8100 Health & Safety Program Policy
#8135 Safe Schools
Policy #8414.4 Video Cameras on School Buses
Policy #9320 Drug Free Workplace

DEVELOPMENTAL SUPPORTS FOR SCHOOL PERSONNEL, COMMUNITY MEMBERS, PARENTS, AND STUDENTS

A transformed, intentional school climate and culture must emphasize support for all members of the school community to maintain its vitality. Specifically, school leadership and personnel who hold positions throughout the building must be supported with a variety of resources and approaches that enable them to learn and to foster the changes and growth needed. In addition, students, families, and community members need these supports as well. Among these, everyone involved in our schools needs to be able to count on the following:

- **More opportunity to work in groups**, which reinforces interdependent, collaborative thinking.

- **Professional growth opportunities** (including trainings, professional development, shadowing colleagues or in model schools, etc.) that are aimed at the purposes and goals of transformed school climate. Vital trainings include: how to implement restorative practices; examining multiple layers of internalized, interpersonal and institutional racism that contribute to racial disparities in discipline and achievement; trauma-informed responses; and others identified by educators.

- **Community growth opportunities** that will enable families, students, and other community members to understand--and participate in--the transformation of school climate that is the central aim of this effort.

- Even as we learn from people who are deeply, theoretically grounded in this work, growth and shifting culture must be done *WITH*, not *TO* people. Engagement comes from invitation to do *with* as **co-creators of the new path forward.**

- **Avoid "one and done."** Opportunities and time to design and practice within the context of their group of co-creators, as well as across stakeholders, along with ongoing mentoring and peer support.

- **Specific tools that everyone understands with common language** (i.e., restorative practices, anti-racism, trauma-informed practices, internal motivation).

- Simultaneously, the **recognition that there are multiple approaches** to achieving our goals and encouragement to see one another as resources rather than threats, opportunities to learn from one another for expanded knowledge, skills and tools.

- **Space with equipped support staff**, like a Student Help Zone or other area, where trained staff and/or counselors can help students work through their difficulties with the goal of getting back to the classroom as soon as possible and better able to engage with their peers and school staff.

- A **shared conviction that moral, ethical, and social development are fundamental purposes** of education, along with recognition that current educational constructs and testing regimens are pushing out the ability to focus on building blocks of personal development.

- **Time and incentives to support students' interests**, such as advising, coaching, and developing clubs and activities that boost connectedness and pride in their school.

- **Regular signals that the District is investing in supports** to transform school climate with benefits for everyone. The vision for school climate must be emphasized at all levels of the District's communications, brand, resources, and supports with the frequent message that this humane and powerful approach is worth the ongoing investment of time and effort.

- **Minimize turnover at all levels** as we find ways to institutionalize this commitment.

- **Tools for measuring the impact** of restorative and other practices teachers, schools and families are putting into place.

RCSD commits to working in a collaborative spirit across the district to phase in these supports as we work together to fundamentally transform our schools to become more restorative, problem-solving and welcoming.

SHARED ACCOUNTABILITY

Rationale

The climate of a school—the degree to which people feel safe and valued, experience communication as open, honest and caring, and feel a sense of ownership and also responsibility for one another's well-being—has a profound effect on people's ability to take creative risks, learn, grow and nurture others.

Adults are also capable of making mistakes or poor choices, saying or doing things that can have a hurtful impact, even when that is not the intent. This becomes pronounced within systems where people are placed in oppositional positions, with unreasonable pressures or scarce resources, and within the context of a society that continues to struggle with inequality, racism, sexism, ableism, ageism, heterosexism and other divisive structures.

There are learning opportunities for everyone. We all can learn much when we stop to listen, take stock of what is important to us, give attention to relationships and healing, understand the impact of our actions, and practice effective communication while owning and taking responsibility for our actions. Adults are role models for young people and teach also by the way they respond to being taken to account. Within a supportive, non-punitive, problem-solving environment with a shared vision, everyone benefits from shared accountability.

What is meant by "shared accountability?"

In all school communities, accountability must be equitably shared and reciprocal, rather than hierarchical. All community members should hold themselves, and each other, accountable both to their community and to their shared vision for their community. Members are encouraged to reflect frequently on how their behaviors either support the shared values of the community or fail to do so, and to consider behaviors that would be more supportive of the community's values.

People in the group can look at one another's actions and behaviors against shared values and communicate with others when actions undermine those shared values.

- Optimally, we establish our shared values together for how we want to operate and support one another as a community.

- Our values should be assertive toward changing the conditions that have been damaging or have been holding us back from all of us reaching our full potential as individuals, as a community, and as an institution.

- Members of the school community have an agreement with each other that we need to acknowledge and show appreciation when people are going above the shared standard, and to acknowledge and call upon people to listen, own and address their actions that have had a harmful impact.

- Everyone should know they are safe to RAISE issues, that they will be HEARD, and that something will HAPPEN in response, particularly with a focus on restoring relationships, healing, and problem-solving.

- While recognizing that formal and informal hierarchies are actively in play, shared accountability requires equity in voice *even where* there is disparate positional power. People must consciously resist leaning into our positional power to deflect or to not acknowledge when we have done harm. Shared accountability is first and foremost horizontal, not vertical or hierarchical.

- Shared accountability requires a supportive, non-punitive, problem-solving environment that is actively co-created and nurtured ongoing. As part of this environment, safe spaces allow for transparency and equitable voice among members of the community. The maintenance of the safe space is paramount for this to be effective.

- Accountability is typically not comfortable. Thus, shared accountability requires trust that we are going somewhere real together. School communities are encouraged to establish structures and processes through which such accountability can support community values and the ongoing moral and ethical development of all its members.

Rochester and RCSD have a lot of building blocks that will help pave the road toward shared accountability:

- Educators go into the profession to have an impact and are fed by feeling that impact. Thus, we have win-win reciprocity: when everyone in the school community feels nourish ed by good communication and the liveliness of being with students who are excited to be there:

  è quality of life and work environment is enhanced,
  è learning is improved, and
  è everyone gains more respect for one another, and thus, the ability to work together as a team for students' well-being and success.

- There is a solid community of people who *want* things to be better in Rochester and RCSD, and are working toward this.

- More efforts are happening to be sure that opportunities are at the other end of school when students graduate (i.e., jobs, college access, etc.) so that they feel purpose, hope and investment in their education.

- The WHOLE school experience provides opportunity for learning and growth for all members of the school community.

We aspire to sharing accountability within our District and school communities. We know that significant shifts must be made culturally and structurally to achieve this. Thus, we commit to practicing and stretching ourselves beyond what feels familiar and comfortable to help usher in the school climate that supports continual growth and joy in teaching and learning.

RIGHTS, RESPONSIBILITIES AND EXPECTATIONS

The District commits to creating learning communities in which all members are understood to be growing, caring, respectful people. To that end, all members should have the right to expect:

1. An environment that deeply supports teaching and learning.
2. Fair and respectful treatment throughout the community, with full opportunity to be heard.
3. Non-discrimination and equal treatment with respect to all school activities.
4. Open and transparent communication and explanation of school procedures, rules, and policies.
5. Commitment throughout the school to policies aimed at growth as a learning community and at growth of each individual member of the community.

The **Dignity for All Students Act (Dignity Act)** requires that no student is subject to discrimination or harassment, based on a person's actual or perceived race, color, weight/appearance, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender/gender identity or sex by school employees or students on school property, on a school bus, at a school function or that is initiated off school grounds and has the potential to adversely affect another student's ability to participate in or benefit from a school's education or extracurricular program.

Harassment may include, among other things, the use, both on and off school property, of information technology, including, but not limited to email, instant messaging, blogs, chat

rooms, pages, cell phone, gaming systems and social media websites, to deliberately harass or threaten others. This type of harassment is generally referred to as "cyber-bullying."

School employees who witness harassment, bullying or discrimination or receive an oral or written report of such acts shall promptly notify the principal or Dignity Act Coordinator in accordance with Board Policy 0100 and 0100R. SRO's should be notified in order that they may offer support in an advisory capacity and conflict resolution.

Cross ref: Policy 0100 "District Policy Prohibiting Discrimination or Harassment of Students or Employee; Regulation regarding Reporting Incidents of Discrimination or Harassment"

Students' Rights & Responsibilities

The District is committed to upholding students' rights in accordance with the following. Students are also expected to fulfill their responsibilities to fully participate in their education as outlined below.

RIGHTS	RESPONSIBILITIES
1. To attend school in the District in which one's legal parent or legal guardian resides and receive a free and appropriate public education from age 5 to 21, as provided by law.	**1.** To attend school daily, regularly and on time, perform assignments, strive to do the highest quality work possible, be prepared to learn, and be granted the opportunity to receive a good education.
2. To expect that school will be a safe, orderly and purposeful place for all students to gain an education and to be treated fairly.	**2.** To be aware of all rules and expectations regulating students' behavior and conduct themselves in accordance with these guidelines.
3. To be respected as an individual and treated courteously, fairly and respectfully by other students and school staff.	To respect everyone in the school community and to treat others courteously, fairly and respectfully.
4. To express one's opinion verbally or in writing.	**3.** To express opinions and ideas in a respectful manner so as not to offend, slander, or restrict the right and privileges of others.
5. To dress in such a way as to express one's identity and personality.	**4.** To dress appropriately in accordance with the dress code.
6. To be afforded equal and appropriate educational opportunities, including access to extracurricular and afterschool programs.	**5.** To be aware of available educational programs in order to use and develop one's capabilities to their maximum.
7. To take part in all school activities on an	equal basis regardless of race, color, creed,

religion, religious practices, sex, sexual orientation, gender/gender identity, national

6. To work to the best of one's ability in all academic and extracurricular activities, as well as being fair and supportive of others.

origin, ethnic group, political affiliation, age, marital status, or disability.

8. To have access to relevant and objective information concerning drug and alcohol abuse, as well as access to individuals or agencies capable of providing direct assistance to students with serious personal problems.

9. To be protected from intimidation, harassment, or discrimination based on actual or perceived race, color, weight, national origin, ethnic group, religion, or religious practice, sex, gender/gender identity, sexual orientation, or disability, by employees or students on school property or at a school sponsored event, function or activity.

10. To freedom of speech and of the press and the right to petition and peacefully organize with other students with the purpose of improving the school, classroom, and/or learning environment.

11. To due process, to be considered innocent until proven guilty, and to a fair and impartial grievance process to resolve student concerns.

12. To organize with other students and self-represent in important school decision-making processes.

13. To affordable and nutritious food in the school environment.

7. To be aware of the information and services and to seek assistance in dealing with personal problems, when appropriate.

8. To respect one another and treat others fairly in accordance with the District Code of Conduct and the provisions of the Dignity Act. To conduct oneself in a manner that fosters an environment that is free from intimidation, harassment or discrimination. To report and encourage others to report any incidents of intimidation, harassment or discrimination.

9. To work together with classmates and school staff to maintain a positive school climate.

10. To complete school work abiding by school rules on academic honesty.

Ref: 8 NYCRR 100.2(1)(2)(ii)(o)
Policy #0100 District Policy Prohibiting Discrimination or Harassment of Students or Employees
Policy #5311 "Student Rights and Responsibilities"

Parents' Rights & Responsibilities

The District is committed to working with parents as partners in the education of their children.

RIGHTS	RESPONSIBILITIES
1. Be actively involved in their children's education.	**1.** Make sure their children attend school regularly and on time and, when children are absent, let schools know why.
2. Be treated courteously, fairly and respectfully by all school staff and principal.	**2.** Be respectful and courteous to staff, other parents, guardians and students while on school premises or at school functions, or when communicating with staff regarding District business.
3. Get information about the policies of the Rochester Board of Education and procedures that relate to their children's education.	**3.** Read and become familiar with the policies of the Board of Education, administrative regulations and the Code of Conduct.
4. Get regular reports, written or oral, from school staff regarding their children's academic progress or behavior, including but not limited to report cards, behavior progress reports and conferences.	**4.** Tell school officials about any concerns or complaints in a respectful and timely manner.
5. Receive information and prompt notification of inappropriate or disruptive behaviors by their children and any disciplinary actions taken by principals or school staff.	**5.** Work with principals and school staff to address any academic or behavioral problems their children may experience.
6. Receive information about due process procedures for disciplinary matters concerning their children, including information on conferences and appeals.	**6.** Give updated contact information to the Rochester City School District and their children's individual schools.
7. Receive information from school staff about ways to improve their children's academic or behavioral progress, including but not limited to counseling, tutoring, after school programs, academic programs, and mental health services within the Rochester City School District and the community.	**7.** Give their children a space to complete their homework or allow participation in after-school programs that permit the completion of homework.
8. Receive information about services for	students with disabilities and English language

learners, when applicable.

8. Support the Rochester City School District by talking with their children about school and expected behavior.

9. Receive communication, both orally and in writing, in their native language.

9. Teach their children respect and dignity for themselves, and other students regardless or actual or perceived race, color, weight/appearance, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender/gender identity, or sex, which will strengthen the child's confidence and promote learning in accordance with the Dignity for All Students Act.

Principals' & Staff Expectations

Principals and school staff have unique obligations to students and parents in the educational setting.

1. Maintain safe and orderly schools by using prevention and intervention strategies, and by following the Rochester City School District Code of Conduct.

2. Be respectful, fair and courteous to students, parents and guardians; serve as role models for students.

3. Attend work daily, be punctual and use well-planned, creative and engaging instructional plans every day.

4. Participate in professional development opportunities.

5. Be knowledgeable about the policies of the Board of Education and administrative regulations and rules, and enforce them fairly and consistently.

6. Be knowledgeable about federal and state laws and regulations about the disciplinary process for students with disabilities.

7. Communicate policies, expectations and concerns, and respond to complaints or concerns from students and parents or guardians in a timely manner and in a language they understand.

8. Make sure that students are referred to the appropriate committees, departments, offices, divisions, agencies or organizations when outside support is necessary.

9. Keep parents and guardians informed of student academic progress and behavior, create meaningful opportunities for their participation, and provide regular communication in a language they understand.

10. Provide makeup work for students with lawful absences, including those students who are absent for disciplinary reasons.

11. Maintain and encourage a climate of mutual respect and dignity for all students regardless of actual or perceived race, color, weight/appearance, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender/gender identity, or sex, with an understanding of appropriate appearance, language, and behavior in a school setting, which will strengthen students' self-image and promote confidence to learn.

12. Confront issues of discrimination and harassment in any situation that threatens the emotional or physical health or safety of any students, school employee or any person who is lawfully on school property or at a school function.

13. Address personal biases that may prevent equal treatment of all students in the school or classroom setting

14. Report incidents of discrimination and harassment that are witnessed or otherwise brought to the attention of the teacher, school counselor, student support services personnel or other staff to the building administrator and/or Dignity Act Coordinator (DAC) and/or the Chief of Human Capital Initiatives in a timely manner.

15. Work together with students and parents to maintain a positive school climate.

16. Principal: Meaningfully address in a timely manner any incidents of discrimination and harassment that are witnessed or otherwise brought to the Principal's attention in collaboration with the Dignity Act Coordinator (DAC) or the Chief of Human Capital Initiatives, as applicable.

Dignity Act Coordinator Expectations

Expectations
1. Oversee and coordinate the work of building-level bullying prevention activities.
2. Be thoroughly trained to handle human relations in the areas of race, color, weight/appearance, national origin, ethnic group, religion or religious practice, disability, sexual orientation, gender/gender identity and sex.
3. Identify curricular resources that support infusing civility in classroom instruction and classroom management; and provide guidance to staff as to how to access and implement those resources.
4. Be responsible for monitoring and reporting the effectiveness of the school's bullying prevention practices.
5. Meaningfully address issues of harassment or situations that threaten the emotional or physical health and safety of any student lawfully on school property or at a school function.
6. Be accessible to students, parents and staff members.

Superintendent Expectations

Superintendents play a lead role in supporting school leaders as they strive to establish positive school climates.

Expectations
1. Promote a safe, positive, orderly, respectful and stimulating environment, free from intimidation, discrimination and harassment, supporting active teaching and learning.
2. Provide building level staff with appropriate administrative support.
3. Review with District administrators the policies of the Board of Education and state and federal laws relating to school operations and management.
4. Inform the School Board about educational trends, including student discipline.
5. Work to create instructional programs that reduce instances of misconduct and are sensitive to student and teacher needs.
6. Work with District administrators in enforcing the Code of Conduct and ensuring that all cases are resolved promptly and fairly.
7. Address all areas of school-related safety concerns.

School Board Expectations

The School Board is obligated to ensure that the District has a Code of Conduct that effectively supports positive school climates.

1. Collaborate with students, teachers, administrator and parent organizations, school safety personnel, other school personnel and the community to develop a Code of Conduct that clearly defines expectations for the conduct of students, District personnel and other persons on school property and at school functions.
2. Adopt and review at least annually the Code of Conduct to evaluate its effectiveness and the fairness and consistency of its implementation.
3. Adopt an annual budget that supports effective implementation of the Code of Conduct.
4. Appoint one staff member in each school building who is thoroughly trained to handle human relations in the areas of race, color, weight/appearance, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender/gender identity, and sex (Education Law §13[3]) as the Dignity Act Coordinator (DAC).
5. Lead by example by conducting Board meetings in a professional, respectful, courteous manner.
6. Take appropriate measures where violations of the Code of Conduct occur.

PREVENTION, INTERVENTION & PROGRESSIVE DISCIPLINE

Universal Prevention

A district-wide, whole school approach to promoting positive behavior is the foundation to building and maintaining a positive culture within each school. A universal youth development prevention framework that is consistent, pro-active and builds on the strengths of all students, adopted district-wide and implemented within each school and classroom provides prevention supports to all students. Prevention strategies incorporated into classroom daily activities and integrated into curriculum reinforces and supports relationship-building, strengthening social and emotional skills, developing positive mindsets and self-regulation strategies and forms the foundation for a discipline framework.

Guidance Interventions Contrasted with Disciplinary Responses

Responding to problem behaviors through early, systematic interventions when problems are first identified can prevent escalation and repeat occurrence of problem behaviors. Smaller interventions are attempted and, if unsuccessful, more intensive interventions are brought to bear. All interventions should connect to the norms, principles, expectations and strategies that the district and school-wide prevention framework focuses on so children can reflect on their actions and link back to the universal prevention strategies being developed and taught.

Supportive and guidance interventions are preferred over punitive and exclusionary approaches, yet there will continue to be situations in which students will receive disciplinary and exclusionary consequences. The Code of Conduct uses the term “disciplinary response” to describe warnings, loss of privileges, detentions, suspensions and other disciplines, in contrast to “guidance intervention” which denotes more individualized and supportive responses to problem behaviors.

Progressive Discipline

Understanding discipline as a “teachable moment” is fundamental to RCSD’s approach to discipline. Progressive discipline uses incremental interventions to address inappropriate behavior with the ultimate goal of teaching pro-social behavior. Progressive discipline seeks concurrent accountability, learning, and behavioral change.

Progressive discipline aims at creating recurring learning opportunities around behavioral, moral, and ethical issues. By so doing, it can prevent recurring negative behaviors by helping students learn from their mistakes. Implementing progressive discipline requires that school staff help students who have engaged in misconduct:

- Understand the harm the behavior caused.
- Understand why the behavior occurred and what they could have done differently in the same situation
- Take responsibility for their actions
- Use the opportunity to repair the harm, to rebuild relationships, and to learn strategies and skills to use in the future
- Understand the progression of more stringent consequences if the behavior reoccurs.

This Code of Conduct outlines interventions and consequences that are appropriate to respond to student behaviors.

Restorative Approaches

Restorative practices foster healthy relationships within the school community and promote positive discipline in schools by resolving conflicts, holding individuals and groups accountable, repairing harm, reducing and preventing student misbehavior, and addressing the needs of all parties involved. Restorative practices can precede student misbehavior and be used proactively to prevent conflict and student misbehavior, as well as after conflict or misbehavior has occurred. School staff and partners in the building should take a restorative approach to addressing student misconduct.

Restorative approaches can take many forms, but at their core, restorative approaches seek to find out what happened, who was harmed by the behavior, what needs to be done to make things right or repair the harm, and how people can behave differently in the future. Examples of restorative practices include but are not limited to talking to students about their actions, facilitated circles, and peer mediation.

For more detail, see Appendix B (Restorative Practices).

LEVELS OF INTERVENTION AND DISCIPLINARY RESPONSES

Factors to Consider in Determining Disciplinary Responses

School staff must consider what factors contributed to the problem behavior and whether such behavior could be alleviated by helping the student understand and deal with the factors causing the behavior.

1. Age, health, and disability or special education status of the student.
2. Appropriateness of student's academic placement.
3. Student's prior conduct and record of behavior.

4. Student's understanding of the impact of their behavior.
5. Student's willingness to repair the harm caused by their behavior.
6. Seriousness of the behavioral offense and the degree of harm caused.
7. Whether the behavior constitutes a DASA violation, and if so, what response is required to satisfy the District's obligations under DASA.
8. The circumstances/context in which the conduct occurred.
9. Whether the student was acting in self-defense.
10. Whether the student's offense threatened the safety of any student or staff member.
11. Impact of the incident on overall school community.
12. The likelihood that a lesser intervention would adequately address the violation.
13. Whether the school made any effort to address the student's behavior using positive, preventive methods prior to the incident at issue.
14. Any other mitigating or aggravating circumstances that may be relevant.
15. In the event that a court issues an order of protection for the benefit of a District student or employee, the student against whom the order is issued may be transferred to another school if necessary to comply with the order.

Guidance for Disciplinary Responses

School staff have discretion in choosing which interventions and consequences within the level are appropriate, but their discretion is guided by the following:

- Whenever possible and appropriate, the response to misconduct should begin with the lowest level of disciplinary response and should include appropriate guidance intervention(s).
- Whenever possible and appropriate, prior to imposing exclusionary discipline, school officials should exhaust less severe disciplinary responses and use guidance interventions.
- More severe accountability measures and intensive guidance interventions will be used with students who engage in a pattern of persistent misconduct.

Range of Disciplinary Responses and Delineation of Authority

1. Oral warning – any member of the District staff.
2. Written warning – bus drivers, hall and lunch monitors, coaches, guidance counselors, teachers and other certificated staff, Principal, Assistant Principal, Superintendent.
3. Written notification to parent – bus driver, hall and lunch monitors, coaches, guidance counselors, teachers and other certificated staff, Principal, Assistant Principal, Superintendent or designee.
4. Detention – teachers and other certificated staff, Principal, Superintendent or designee.

5. Suspension from transportation – Director of Transportation, Principal, Superintendent or designee.
6. Suspension from athletic participation – coaches, Principal, Superintendent or designee.
7. Suspension from social or extra-curricular activities – activity director, Principal, Superintendent or designee. Teachers may suspend students from social or extra-curricular events or activities which the particular teacher organizes and supervises.
8. Suspension of other privileges – Principal, Superintendent or designee.
9. Suspension or revocation of student's access to District computers and Internet connections—Principal, Superintendent or designee.
10. In-school suspension – Principal, Superintendent or designee.
11. Removal from classroom by teacher – teachers.
12. Short-term (five days or less) suspension from school – Principal, Superintendent or designee, Board.
13. Long-term (more than five days) suspension from school – Principal (may recommend), Superintendent or designee or Board (may impose long-term suspension).
14. Removal from a regular school program—Superintendent or designee, Board.
15. Permanent suspension from school – Superintendent or designee, Board.
16. Other remedies authorized by law—official designated by applicable statute or regulation.

Matrix for Guidance Interventions and Disciplinary Responses

The Code of Conduct holds students accountable for their behavior. Misconduct is grouped into four levels based on the seriousness of the behavior. Each level contains a variety of interventions and consequences for school staff to use in response to the student behavior. The Code of Conduct provides graduated accountability measures for students who engage in repeated behaviors despite prior interventions or consequences.

Under this Matrix, school staff respond to student behaviors with guidance interventions and, depending on the circumstances, disciplinary responses. School staff can choose one of many guidance interventions to help students improve their behavior. At all levels, students may receive a non-disciplinary referral to support staff in the school building.
The Matrix intentionally limits the behaviors for which a student can receive a disciplinary exclusion, such as classroom removal, short or long term suspension, or expulsion. Except for prolonged or repeated behaviors, students are not suspended for Level 1 or 2 behaviors or removed from a classroom for Level 1 behaviors. Students may be given a classroom removal for Level 2, 3, or 4 behaviors. Students may be given suspension for Level 3 or 4 behaviors. Students who engage in misconduct that is not included in the Matrix are subject to

appropriate disciplinary measures as determined by school administration consistent with the disciplinary levels for similar behaviors set forth in the matrix.

Level 1	Uncooperative / Noncompliant Behavior	Classroom Interventions; Student Support Team Interventions
Level 2	Disorderly / Disruptive Behavior	Intensive Support Staff; Administrator Interventions and Responses
Level 3	Aggressive or Injurious / Harmful Behavior	Referral Interventions; Suspension Responses
Level 4	Seriously Dangerous or Violent Behavior	Referral Interventions; Extended Suspension Responses

How to Use the Behaviors and Responses Matrix

In responding to misconduct, school staff should use the matrix below, in conjunction with the table above, as follows:

1. School staff should locate the behavior on the Matrix.
2. On the first instance of any inappropriate or disruptive behavior, school staff shall utilize one or more guidance interventions, and disciplinary responses, if appropriate, from the lowest level indicated (bulleted) on the Matrix for that behavior (or one or more interventions or disciplinary responses from any lower level). (See table above for interventions and responses.)
3. If the same behavior is repeated during the same school year, school staff may utilize one or more interventions or disciplinary responses from the next higher level on the Matrix for that behavior, or any lower level. If there is only one level indicated for that offense, then any interventions or disciplinary responses utilized must be from that same level or a lower level. Except in cases of **repeated and persistent** violations **of the same or similar nature**, the Matrix's response levels shown for a particular behavior may not be exceeded.
4. Except in cases of repeated and persistent violations of the same or similar nature, school staff may not utilize interventions and disciplinary responses from those boxes that are shaded. In those cases in which the disciplinary response from the shaded boxes are used, restorative practices should still be considered as a component of the response.

   Staff is encouraged to use guidance interventions whenever possible.

EXAMPLE

> If a student displays disrespectful behavior and it is determined that an intervention or disciplinary response is needed, the teacher should utilize one or more interventions from Level One.

> If that student is again disruptive during the same school year, the teacher may utilize one or more interventions from Levels One or Two.

> If the interventions are unsuccessful and the student commits the same infraction a third time, then the teacher may utilize one or more interventions from Levels One and Two.

> In circumstances in which the student has **repeatedly and persistently** engaged in **violations of the same or similar nature,** interventions from Levels Three or Four (shaded in gray) may be utilized.

*The list of guidance interventions is not all-inclusive. Other options that support students in the classroom and in the school without removing them from the school environment may be considered and used.

LEVELS OF INTERVENTIONS AND DISCIPLINARY RESPONSES

Universal Prevention for All Students

The District takes a whole school approach to promoting positive behavior. Social-emotional learning is infused into a culturally responsive curriculum that engages students. Staff meets regularly to ensure that there is a comprehensive student support program in place that includes guidance services, opportunities for social-emotional learning, student engagement opportunities and prevention and intervention behavioral supports to encourage and motivate pro-social student behavior and positive connection to the school community. Restorative circles and other restorative practices are used regularly to build relationships, establish understanding and trust and create community. The school has a system in place for early identification of students in need of intervention and/or support services.

	Type of Intervention	Guidance Interventions	Disciplinary Responses
Level 1	**Classroom Interventions and Responses.** These interventions aim to teach correct and alternative behavior so students can learn and demonstrate safe and respectful behavior. Teachers are encouraged to try a variety of teaching and classroom management strategies. Teachers should use these responses in a graduated fashion.	• Reminders and redirection • Verbal correction • Role play • Parent or guardian contact • Written reflection • Written apology • Seat change • Daily progress sheet on behavior • Teacher/student conference • Buddy teacher system • Teacher/parent conference	• In-class time out • Loss of classroom privileges • Detention
Level 1	**Student Support Team Interventions.** These interventions often involve support staff, both school based and within the broader community, and aim to engage the student's support system to ensure successful learning and consistency of interventions, and change the conditions that contribute to the student's inappropriate or disruptive behavior. Staff should use these responses in a graduated fashion.	• Any of the above interventions • Parent accompanies student to school if parent agrees and as part of contractual requirements • Referral to building-wide support location • Referral to after-school program • Referral to Student Support Team • Referral to mentoring program • Referral to school-based health or mental health clinic • Referral to community-based organization • Referral to substance abuse treatment services • Change in schedule or class if applicable • Functional Behavioral Assessment and creation of a Behavior Intervention Plan • Referral to CSE or 504 team. • Peer mediation • Restorative approaches, including community service or restitution • Conflict resolution • Community mediation • Community conferencing	
Level 2	**Intensive Support Staff and Administrative Interventions and Responses.** These interventions can involve the school administration and aim to correct behavior by stressing the seriousness of the behavior while keeping the student in school. Staff should use these responses in a graduated fashion.		• Any of the above consequences • Reprimand by appropriate administrator • Loss of school privilege • Detention • Classroom removal (up to ½ day)
Level 3	**Suspension and Referral Interventions and Responses.** These interventions may involve the short-term removal of a student from the school environment because of the severity of the behavior. The duration of the short-term suspension, if issued, is to be limited as much as practicable while adequately addressing the behavior. Staff should use these responses in a graduated fashion.		• Any of the above consequences • Short-term suspension (one to five days)
Level 4	**Extended Suspension and Referral Responses.** These interventions involve the removal of a student from the school environment because of the severity of the behavior. They may involve the placement of the student in a safe environment that provides additional structure to address behavior. These interventions focus on monitoring the safety of the school community and ending self-destructive and dangerous behavior. Staff should use these responses in a graduated fashion.		• Any of the above consequences • Long term suspension • Expulsion

KEY: USE LOWEST LEVEL INDICATED FIRST

Level 1: Classroom Support and Student Support Team – may be appropriate when student has no prior incidents and interventions have not been put in place.	**Level 2:** Intensive Support Staff and Appropriate Administration – may be appropriate when supports have been put in place in the classroom to address behavior but the behavior has continued to negatively affect the learning of the students and others.	**Level 3:** Short Term Suspension – may be appropriate when interventions and supports have been put in place but the behavior is escalating (repeated offenses).	**Level 4:** Request for Long Term Suspension – may be appropriate when student's behavior seriously affects the safety of others in the school.

INAPPROPRIATE OR DISRUPTIVE BEHAVIOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	MAY REFER TO LAW ENFORCEMENT FOR ADVICE, DIVERSION OR FURTHER ACTION
Absences					
• Unexcused tardiness or absence from school.	●				
• Persistent or excessive absence from school.	●	**Guidance intervention only** ●			
Academic Dishonesty (i.e., cheating or plagiarizing)					
• Cheating or plagiarism.	●	●			
Alcohol					
• Under the influence* (see special note at end of matrix)		●	●		
• Possessing		●	●		●
• Distributing or selling (includes possession under circumstances evincing intent to sell).			●	●	●
Attack on Student (i.e., hitting, kicking or punching another student without warning or provocation)					
• No injury (no visual, physical injuries; includes incidents of domestic violence or relationship disputes).		●	●		
• Bodily injury K to grade 6.		●	●	●	
• Bodily injury grades 7 to 12.			●	●	●
Bomb Threat					
• **K** to Grade 4.			●	●	
• Grades 5 to 12.				●	●

INAPPROPRIATE AND DISRUPTIVE BEHAVIORS AND LEVELS OF RESPONSE

KEY: USE LOWEST LEVEL INDICATED FIRST

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Level 3: Short Term Suspension – may be appropriate when interventions and supports have been put in place but the behavior is escalating (repeated offenses).

Level 4: Request for Long Term Suspension – may be appropriate when student's behavior seriously affects the safety of others in the school. have

INAPPROPRIATE OR DISRUPTIVE BEHAVIOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4 *	MAY REFER TO LAW ENFORCEMENT FOR ADVICE, DIVERSION OR FURTHER ACTION
Threats, Bullying and Cyber-bullying					
• Intentional conduct (including verbal, or written conduct) or electronic communication that is intended to be offensive, threatening or intimidating and may substantially disrupt the orderly operation of a school.		●	●		●
• Physical contact in a manner intended to be offensive, threatening or intimidating and may substantially disrupt the orderly operation of a school.			●		●
• Serious bullying (i.e., repeatedly over time engaging in intentional negative behaviors that adversely affect another student's ability to participate in or benefit from a school's education or extra-curricular programs or severe isolated instances of bullying, such as threatening behavior that places a student in fear of death or serious injury or conduct that is intended to cause another student to suffer public humiliation).				●	●
Bus Violation					
• Minor disruption on the bus (i.e., eating, drinking, being too loud, standing).	●	●			
• Serious disruption on the bus.		●	●	●	
Class Cutting					
• Failure to appear or attend a scheduled class.	●	●			
Classroom Disruption					
• Talking out in class or talking out of turn; throwing objects; picking on, bothering or teasing other students; and other behavior that distracts from student learning.	●	●			
Defiance of Authority and/or Insubordination					

(nonviolent/nonphysical)					
• Failure to follow directions.	●	●			
• Failure to respond to school staff questions or requests.	●	●			
• Failure to follow directions, leading to a potential threat of harm to another person.	●	●	●		
• Failure to follow directions that directly leads to the harm of others.	●	●	●		
• Refusal to show identification, to be scanned or lying to school personnel.	●	●	●		

INAPPROPRIATE AND DISRUPTIVE BEHAVIORS AND LEVELS OF RESPONSE

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INAPPROPRIATE OR DISRUPTIVE BEHAVIOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4 *	MAY REFER TO LAW ENFORCEMENT FOR ADVICE, DIVERSION OR FURTHER ACTION
Disrespectful Behavior					
• Making inappropriate gestures, symbols or comments, or using profane or offensive language, or indecent exposure.	●	●			
• Using verbal insults or put-downs, or lying to, misleading or giving false information to school staff.	●	●	●		
• Indecent Exposure, K to grade 3.	●	●			
• Indecent Exposure, grade 4 to 12.	●	●	●		●
Dress Code Violation					
Refer to dress code standards listed in Appendix A.	●	**Guidance interventions only** ●			
Drugs or Controlled Substance (at schoc l, school-sponsored activities or when involved in incidents affecting the safety or welfare of the school community)					
• Under the influence* (see special note at end of matrix).		●	●		
• Possessing		●	●		●
• Distributing or selling (includes possession under circumstances evincing intent to sell).				●	●
False Activation of a Fire Alarm					
• K to grade 4.		●	●	●	Fire Department must be notified.

• Grades 5 to 12.			●	●	Fire Department must be notified.

INAPPROPRIATE AND DISRUPTIVE BEHAVIORS AND LEVELS OF RESPONSE

KEY: USE LOWEST LEVEL INDICATED FIRST

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INAPPROPRIATE OR DISRUPTIVE BEHAVIOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4 *	MAY REFER TO LAW ENFORCEMENT FOR ADVICE, DIVERSION OR FURTHER ACTION
Fighting					
• Physical aggression with another student (e.g., shoving or pushing).	●	●			
• Minor fighting (may include incidents resulting in minor injuries)	●	●	●		●
Fire Setting/Arson					
• Starting a fire; destruction of property as result of starting a fire.		●	●	●	MUST BE REPORTED TO FIRE DEPARTMENT NYS Fire Code §401.3
Gambling					
• Requiring the use of money or exchangeable goods.	●	●			
Hallway Misbehavior					
• Running, making excessive noise or loitering.	●	●			
Harassment Based on Race, Ethnicity, Gender/Gender Identity, Sexual Orientation, Disability or Religion, Including Cyber-harassment, Against Members of the School Community					
• Minor harassment (e.g., verbal discriminatory actions).		●	●		

• Physical contact in a manner intended to be offensive, threatening or intimidating.	●	●

• Serious harassment (i.e., persistent or long-term harassment or harassment involving threatening behavior that places a student in fear of death or serious injury, defamation, discrimination, or conduct that is intended to cause another. student to suffer public humiliation).			●	●	●
Inciting or Participating in Disturbance					
• Causing a large disruption to the atmosphere of order and discipline in the school that is necessary for effective learning, outside of general classroom disruption, such as a riot; or obstructing vehicular or pedestrian traffic.		●	●	●	●
• Using a personal communication device to attract others to participate in or witness a disturbance.		●	●	●	●

INAPPROPRIATE AND DISRUPTIVE BEHAVIORS AND LEVELS OF RESPONSE

KEY: USE LOWEST LEVEL INDICATED FIRST

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INAPPROPRIATE OR DISRUPTIVE BEHAVIOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4 *	MAY REFER TO LAW ENFORCEMENT FOR ADVICE, DIVERSION OR FURTHER ACTION
Inhalants					
• Under the influence* Medical personnel must be immediately notified if a student is found to be under the influence or using an inhalant.		●	●		
• Possessing		●	●		●
• Distributing or selling (includes possession under circumstances evincing an intent to sell).				●	●
Physical Contact with School Personnel					
• Unintentional, reckless physical contact with school personnel.	●	●			

• Attack against school personnel; physically attacking an employee of the Rochester City Schools or other adult, including striking a staff member who is intervening in a fight or other disruptive activity (K to grade 6).		●	●	●	
• Attack against school personnel (grades 7 to 12).		●	●	●	●
Portable Electronic Device Use at Unauthorized Times					
• Use of cell phones, PDAs, iPods, electronic games, laser pointers and other portable electronic devices On the first infraction, students must only be given a warning. Only after the first infraction can the student be subject to Level 1 responses. On the second infraction, parent notification must occur.	●	●			
• Gaming and gambling.	●	●	●		
• Use of electronic devices that lead to the threat of harm to another person.		●	●		●
• Use of electronic devices that cause harm to another person			●	●	●

Note: *All students identified with or under the influence of alcohol, drugs, controlled substances or inhalants require an assessment to determine need for prevention, treatment, or medical intervention services and must be connected to appropriate services through identified school support staff such as nurse, social worker, counselor or administrator at the time of the incident.

INAPPROPRIATE AND DISRUPTIVE BEHAVIORS AND LEVELS OF RESPONSE

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INAPPROPRIATE OR DISRUPTIVE BEHAVIOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4 *	MAY REFER TO LAW ENFORCEMENT FOR ADVICE, DIVERSION OR FURTHER ACTION
Property Damage, Including Graffiti					
• Minor or reckless damage (less than $50).	●	●			
• Intentional damage to another person's or school property ($50 to $250).		●	●		
• Intentional damage to another person's or school property (over $250).		●	●	●	●
School Equipment Use without Permission					
• Use of computers, fax machine, phones, etc.	●	●			
Serious Bodily Injury					
• Intentionally causing substantial risk of death or causing permanent or serious disfigurement, loss of function of any part of the body or impairment of the function of any part of the body.				●	● Serious bodily injury must be reported to law enforcement.
Sexual Assault or Offense					
Unwanted sexual contact, including unwanted touching of intimate body parts without use of force • Forced sexual act (use of physical force or express or implied threat of harm to gain compliance).				●	● Sexual assaults must be reported to law enforcement
Sexually-Based Infraction					
• Sexual harassment (i.e., unwelcome sexual advances, requests for sexual favors; other inappropriate verbal, written or physical conduct or gestures of a sexual nature).	●	●	●	●	●
• Sexual activity or sexual misconduct (i.e., indecent exposure, engaging in sexual activity, etc.) (K to grade 4).	●	●	●		

• Sexual activity or sexual misconduct (grades 5 to 12).		●	●	●	●

INAPPROPRIATE AND DISRUPTIVE BEHAVIORS AND LEVELS OF RESPONSE

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INAPPROPRIATE OR DISRUPTIVE BEHAVIOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4 *	MAY REFER TO LAW ENFORCEMENT FOR ADVICE, DIVERSION OR FURTHER ACTION
Theft					
• Taking of property that does not belong to that person.	●	●	●	●	●
Trespassing					
• Being on school property without permission.		●			●
• Being on school property while suspended or expelled.		●	●	●	●
• Breaking and entering.		●	●	●	●
Weapons, Firearms and Explosives (at school, school-sponsored activities or when involved in incidents affecting the safety or welfare of the school community)					
• Firearms (possession of a firearm as defined in 18 USC 921 of the federal code – i.e., handguns, rifles, shotguns and bombs) Expulsion for no less than one calendar year is mandated by state law for firearms violation, but can be modified on a case-by-case basis by Rochester City School District Superintendent. Education Law §3214(3)(d)				●	**MUST BE REPORTED TO POLICE** ● Education Law §3214(3)(d)
• Other guns (possession of any gun, of any kind, loaded or unloaded, operable or inoperable, including any object that looks like a gun – i.e., BB guns, pellet guns, water guns, etc.).		●	●	●	**MUST BE REPORTED TO POLICE** ●
• Other weapons (possession of any implement which could cause bodily harm, for example, a knife with a blade longer than 2½,).			●	●	**MAY BE REPORTED TO POLICE** ●

*The list of guidance interventions is not all-inclusive. Other options that support students in the classroom and in the school without removing them from the school environment may be considered and used.

SCHOOL BASED SAFETY CODES

Every District building has a safety code designed to handle issues of building safety and emergency preparedness, and buildings may have conduct codes supplemental to the District Code of Conduct. All students, District personnel and visitors are expected to comply with building rules, and with any additional rules established to meet alerts issued by the U.S. Department of Homeland Security, law enforcement or other authorized public agencies, and to do their part to create safe environments.

Arrests and Referrals to Law Enforcement

Arrests for school-based behavior should only be used as a last resort when there is a serious, actual threat to safety. Incidents should be resolved without arrests practicable. For actions that could involve a criminal investigation, every effort must be made to contact the student's parent as soon as possible. The matrix notes the circumstances under which reports to law enforcement may be considered or are required.

School officials should use their discretion before notifying law enforcement, and should consider the following factors:

1. Age, health, and disability or special education status of the student;
2. Appropriateness of student's academic placement;
3. Student's prior conduct and record of behavior;
4. Student's understanding of the impact of their behavior;
5. Student's willingness to repair the harm caused by their behavior;
6. Seriousness of the behavioral offense and the degree of harm caused;
7. Whether the behavior constitutes a violation of the Dignity for All Students Act (DASA), and if so, what response is required to satisfy the District's obligations under DASA.
8. The circumstances / context in which the conduct occurred;
9. Whether the student was acting in self-defense;
10. Whether the student's offense threatened the safety of any student or staff member;
11. Impact of the incident on overall school community;
12. The likelihood that a lesser intervention would adequately address the violation.
13. Whether the school made any effort to address the student's behavior using positive, preventive methods prior to the incident at issue.
14. Any other mitigating or aggravating circumstances that are relevant.

The school principal, or designee, will immediately contact the parent/guardian of any student arrested or involved in a criminal investigation on school grounds in all non-emergency situations, or as soon as practicable in emergency situations.

Students and their families are not prohibited from contacting the police if they believe that a student has been the victim of a crime.

See Appendix E (Law Enforcement) for more details.

Student Removals & Due Process

On occasion, a student may engage in behavior that threatens the safety of others in the school community or seriously disrupts the school environment and needs to be removed through a temporary classroom removal, suspension or expulsion. However, written referrals shall not be used to document supports offered to students within the classroom (e.g. timeouts and other informal measures).

There are four ways that schools can remove students for disciplinary reasons:

1. Temporary Classroom Removal by Teacher (up to 1/2 day)
2. Short Term Suspension by Principal (1-5 days), either in or out of school
3. Long Term Suspension by Superintendent (6 days – 365 days)
4. Expulsion by Superintendent

In these cases, students are entitled to due process, which means that the school staff must take steps to investigate the incident and talk to the student before making the decision to remove the student from school. Due process generally includes the right to receive notice of why a person is being removed from school and an opportunity for that person to tell his/her side of the story before a final decision is made. Parents must receive notice of the behavior and the discipline response. The longer the removal, the more steps the school must take before removing a student. Students with disabilities are entitled to additional due process.

For a full list of what steps are required, see Appendices C (Due Process) and D (Students with Disabilities).

Alternative Instruction

The mission of the District is to educate all students to their highest level of performance. The District is committed to meeting or exceeding the performance goals it has established, as well as the performance guidelines established by the State of New York; and to taking all feasible steps to provide that a suspension will not be the reason for any student to fall behind in achieving those goals.

When a student is removed from class by a teacher, or a student of compulsory school age is suspended from school pursuant to Education Law § 3214, the District will take the necessary steps to provide alternative instruction as required by this Code and by applicable law. The method of alternative instruction shall be appropriate to the circumstance (e.g., long-term, short-term, in-school suspension, or removal from class). In all cases, it shall be incumbent upon the building staff to ensure that each student has course assignments available for him or her for the period of removal or suspension; and that upon return to regular classes those assignments are turned in, within the same time frames as provided for make-up opportunities in the case of excused absence. It is the responsibility of each student to complete all such assignments and, where assigned to an alternative site or to a tutor, to attend, and to perform to the best of the student's ability.

Ref.: Education Law §3214(3)(e)
Cross-ref.: Policy 4000 "Instructional Goals" and **Policy 5100 "Attendance and Withdrawal"**

Prohibited and Permitted Physical Force

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, state regulation provides that 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, powers 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.

Ref.: 8 NYCRR §§19.5(a)-(c); 100.2(l)(3)(i).

Student Searches

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 personnel authorized to impose a disciplinary penalty on a student may question a student about an alleged violation of law or the Code of Conduct.

In addition, the Board authorizes the Superintendent, building principals and 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 Code of Conduct. An administrator or security personnel acting under the direction and supervision of an administrator 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 official has a legitimate reason for the limited search. Other school personnel may conduct a search only in a situation where the circumstances do not allow the calling of the Superintendent, building principal or security official.

If practicable, the school official conducting a search shall consult with the School Chief or Law Department concerning the presence of reasonable suspicion and shall have another adult witness the search. Whenever practicable, before searching a student or the student's belongings, the authorized school official should first ask the student if he or she possesses physical evidence that the student violated the law or the Code of Conduct and/or ask the student to voluntarily surrender the evidence and/or consent to the search.

Searches will be limited to the actions necessary to locate the evidence sought. Whenever practicable, searches will be conducted in a private area and students will be present when their possessions are being searched.

The rules in these Standards 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.

Searches may be conducted on school property or at school functions, including searches of lockers, hotel rooms, vehicles or other facilities used by students during school sponsored trips, or athletic or academic events, in which case the staff-member chaperones or coaches involved in such activity shall be deemed to have the same authority to act that applies to a building principal or security official on school property.

In all cases, reports shall be completed regarding the circumstances and results of the search. Any dangerous or illegal items, such as weapons or controlled substances, taken during the course of the search shall be turned over to the Director of Safety and Security or law enforcement authorities.

The authorized school officials conducting the search shall be responsible for promptly recording the following information about each search:

1. Name, age and grade of student searched.
2. Detailed 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 the search.
9. Results of the search (that is, what items(s) were found).
10. Disposition of items found.
11. Time, manner and results of parental notification.

The Principal or the Principal's designee shall be responsible for the custody, control and disposition of any dangerous item taken from a student, and to immediately turn over any illegal item, or item which may constitute evidence of a crime to the Rochester Police Department or other authorized law enforcement agency. The Principal or his or her designee shall clearly label each item taken from the student and retain control of the item(s), until the item is turned over to the police. The Principal or his or her designee shall be responsible for personally delivering dangerous or illegal items to the Director of Safety and Security or to law enforcement.

Computer Identification Systems & Random Metal Detection

At all secondary schools, computer identification systems shall be used to supplement other safety initiatives, and to insure to the extent feasible that unauthorized access to the schools is minimized. All students are required to carry their student identification, and to present it upon request to any District official or employee. Metal detection systems, including hand-held wands, walk-through and x-ray capacity equipment may be used by trained personnel at any school in a random manner, and may be done on a non-random basis premised upon reasonable suspicion. All students are subject to scanning procedures, and to confiscation of any material prohibited by law or school policy or regulations. If a student refuses to cooperate with the scanning or authorized pat down process, support staff shall be called for intervention and mediation. If the student continues to refuse to comply, the student may be referred for disciplinary action.
Ref.: Policy #8135 Safe Schools

Students' Electronic Devices

A student's electronic device may be confiscated by District personnel pursuant to a school building's procedures if the principal determines that the possession of such a device is disruptive or distracting to the school environment or educational process. For purposes of this policy, electronic devices include, but are not limited to: cell phones, smartphones, mp3 players, Ipods, Ipads, Kindles, Nooks, PDAs, laptops, pagers, recording devices, games and other mobile electronic devices. The confiscated electronic device must be properly identified and placed and stored in a locked container or room. Each school shall create storage and return procedures consistent with this policy. Claims related to the loss of a student's electronic device that result from a school's failure to abide by this policy shall be paid through the school's discretionary fund.

District Computer Equipment/Websites/E-mail Used by Any Person

No person using District faxes, computer equipment, software owned, leased or controlled by the District, or websites, e-mail or Internet access provided by the District has a reasonable expectation of privacy with respect to such equipment, software, websites, e-mail or Internet access provided by the District. No person shall knowingly add any program or any hardware attachment (including wireless apparatus) to any such equipment without the express written consent of the District's MIS department; nor shall any person knowingly or intentionally use any proprietary software on District equipment unless a valid license has been issued for such use on such equipment; nor shall any person intentionally expose District equipment to any computer virus, worm or other technological invader. No user shall use District equipment to engage in extensive or abusive non-business or nonacademic projects or Internet searches, since such use tends to slow and/or compromise the system and make it less accessible for District educational and business operations. The District reserves the right to monitor the use of its equipment and software, and to monitor e-mail, websites and Internet access using School District equipment or on school property without prior notice or consent. Any use of District computer equipment or software, or Internet access from District equipment or from school property which violates federal or state law may be reported to appropriate law enforcement officials, and may also result in both disciplinary action and denial of prospective use of such equipment and of Internet access, and in a civil action to recover any judgment, settlement, fine or penalty imposed upon the District because of such statutory violation. Any use of such equipment or facilities which violates provisions of this Code of Conduct may result in both disciplinary action and denial of prospective use of such equipment and of Internet access.

Ref.: Policy #1950 Acceptable Use of the District Network
Policy #4526 Internet

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, including meetings or hearings conducted by the Board of Education. For purposes of this section of the Code, "public" shall mean all persons when on school property or attending any school function wherever located, including visitors, students, parents, teachers and other District personnel.

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.

All persons on school property or attending any school function, meeting, conference or hearing shall conduct themselves in a respectful and orderly manner. Just as parents, guardians and other visitors expect the administrators, teachers and staff to treat them with dignity and civility, those visitors are expected to extend the same courtesy and cooperation to the District's employees. Good sportsmanship and civility are expected of all persons participating in, coaching or attending sports events, or attending public assemblies and programs. In addition, all persons on school property or attending a school function are expected to be properly attired for the purpose for which they are on school property.

This provision is supplemental to other policies of the Board of Education relative to the use of School District property by members of the community, and is directed specifically to assuring to the fullest possible extent that all users of School District property, including visitors, comport themselves in a civil, peaceful and lawful manner.

PROHIIBITED CONDUCT ON SCHOOL PROPERTY

No person, either alone or with others, shall:

1. Intentionally or recklessly injure any person or threaten or attempt to do so.
2. Intentionally or recklessly damage or destroy, or attempt to damage or destroy District property or the personal property of a teacher, administrator, other District employee or any person lawfully on school property, including graffiti or arson.

3. Disrupt the orderly conduct of classes, school programs, sporting events, assemblies, theatrical or musical presentations, meetings, conferences, hearings, Board of Education meetings or other school activities.
4. Distribute or wear materials on school property 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, creed, national origin, religion, age, gender, sexual orientation or disability; or use language or gestures which a reasonable person would find intentionally discriminatory toward any person or group entitled to protection in his or her right to obtain an education under the New York State Executive Law. Such intimidation may be person-to-person, or communicated indirectly by writing, or by any telephonic or electronic means, including use of computers or the Internet.
6. Intimidation or "bullying" on school property or at a school function, which includes harassment that interferes with a student's education or threatens a student's well-being. Harassment includes engaging in actions or making statements that are intended to place an individual in fear or cause emotional harm; threatening, stalking or seeking to coerce or compel a person to do something; or abusive conduct or use of epithets, threats, or slurs based on actual or perceived race/color, weight/appearance, ethnicity, national origin, religion, religious practices, gender/gender identity, sexual orientation, age or disability. Such harassment may be person-to-person, or communicated indirectly by writing, or by any telephonic or electronic means, including use of computers or the Internet.
7. Enter any portion of the school premises without authorization or remain in any building or facility after it is normally closed.
8. Obstruct the free movement of any person in any place to which this code applies.
9. Violate the traffic laws, parking regulations or other restrictions on vehicles.
10. Possess, consume, sell, distribute or exchange alcoholic beverages or controlled substances, or be under the influence of either on school property or at a school function.
11. Possess or use weapons in or on school property or at a school function, except in the case of law enforcement officers while on duty as such, or except as specifically authorized by the Board of Education or by statute.
12. Loiter on or about school property.
13. Gamble on school property or at school functions.
14. Refuse to comply with any reasonable order of identifiable School District officials performing their duties.
15. Willfully incite others to commit any of the acts prohibited by this Code.

16. Violate any federal or state statute, local ordinance or Board policy while on school property or while at a school function.
17. Comport themselves in a manner which violates District rules, particularly with regard to the limited public forum made available by the Board; or which violates the terms of any use permit.
18. Threaten to use any weapon; or brandish or display what appears to be a weapon.
19. Attempt to obtain property or favor from another by threat or by force.
20. Threaten bodily harm to staff or students. A threat exists whenever a reasonable person would interpret the statement as a serious expression of intent to harm or assault.
21. Use language or gestures that are profane, lewd, vulgar or abusive, or uncivil, particularly during meetings, conversation or discussion with any teacher, administrator, staff member or student.
22. Place a bomb, explosive, biological or chemical weapon or incendiary device on District property, whether or not active; or make a telephoned, written or electronic message that a bomb, explosive, biological or chemical weapon or incendiary device has been or will be placed on or near District property.
23. Commit any other act on District property or at a school function which would be prohibited under this Code if committed by a student of this District

Visitors to Schools

The Board encourages parents and other 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 or his or her designee 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 particular school will be considered a visitor (including central office staff).

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. If identification badges are used in the building, they 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, athletic competitions or public gatherings, are not required to wear an identification tag.

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 time to discuss individual matters with visitors during class time.

6. Any unauthorized person on school property will be reported to the principal or his or her designee. Unauthorized persons will be asked to leave. The police may be called if the situation warrants.

7. All visitors must abide by the rules contained in the Code of Conduct.

REPORTING VIOLATIONS

All students have a duty to promptly report violations of the Code of Conduct to a teacher, guidance counselor, the Building Principal or his or her designee. Any student observing a student possessing a weapon, alcohol or illegal substance on school property or at a school function shall report this information immediately to a teacher, the Principal, the Principal's designee, building/program administrator or the Superintendent of Schools. The identity of any person providing information will be protected to the fullest extent practicable.

All District staff who are authorized to impose disciplinary sanctions are expected to do so in a prompt, fair and lawful manner. District staff who are not authorized to impose disciplinary sanctions have a duty to promptly report violations of the Code of Conduct to their supervisor, who shall in turn impose an appropriate disciplinary sanction, if so authorized, or refer the matter to a staff member who is authorized to impose an appropriate sanction.

WEAPONS, ALCOHOL & ILLEGAL SUBSTANCES

The only individuals authorized to possess firearms on District property are law enforcement officers on site in the performance of their official duties, and such other individuals who are permitted to possess firearms on a school campus by express statutory authority or the express consent of the Board of Education.

Any weapon, alcohol or illegal substance found on District property or in the possession of any person on District property shall be confiscated immediately, if possible. Where the material

was possessed by a student, confiscation shall be followed by notification to the parent of the student involved and the appropriate disciplinary sanction, which may include permanent suspension and referral for prosecution. Possession by an employee subjects that person to discipline in accordance with applicable law and any collective bargaining agreement covering such employee, and referral for prosecution.

ENFORCEMENT

The Principal or designee shall be responsible for enforcing the conduct required by this Code. When the Principal or designee sees or is advised by others of an individual engaged in prohibited conduct, which in his or her judgment and discretion does not pose any immediate threat of injury to persons or property, the Principal or designee shall tell the individual that the conduct is prohibited and attempt to persuade the individual to stop. The Principal or designee may also warn the individual of the consequences for failing to stop.

If the person refuses to stop engaging in the prohibited conduct, or if the person's conduct, in the judgment and discretion of the Principal or designee poses an immediate threat of injury to persons or property, or to public order, the Principal or designee shall have the individual removed immediately from school property or the school function and may, if he or she believes it necessary, call the police to assist in removing the person.

The District may initiate disciplinary action against any student or staff member, as appropriate, in accordance with law, and with respect to employees, any applicable collective bargaining agreement. In addition, the District reserves its right to pursue legal action, civil and/or criminal, against any person violating the Code of Conduct.

Cross-ref.: Policy #0100 District Policy Prohibiting Discrimination or Harassment of Students or Employees
Policy 1000 Community Relations Goals
Policy 1200 Community Involvement
Policy 1240 and Regulation 1240-R Visitors to the Schools
Policy 1500 Public Use of School Facilities
Policy 1520 Public Conduct on School Property
Policy 1530 Smoking on School Premises
Policy #1950 Acceptable Use of the District Network
Policy 2120.1 Electioneering in Schools
Policy 4526 Internet
Policy 5312.1 Drug & Alcohol Abuse

Policy 5312.1a Drug Free Schools
Policy 7050 Community Use of Schools
Policy 8100 Health & Safety Program
Policy 8135 Safe Schools
Policy 9320 Drug Free Workplace

DATA COLLECTION

Annual Data Collection & Review

Schools will biannually review their discipline data and submit a written report to the District and the School Board. Schools and the District will make the following data and reports publicly available. Based on the review, schools will make changes to their implementation of the Code of Conduct consistent with the intent of this and other policies.

The District, Superintendent, and School Board will review the following:

- The total enrollment for the school
- Average daily attendance rate at the school
- Dropout rates for grades seven through twelve
- The school's bullying prevention and education program
- Intervention and prevention strategies.
- Number of conduct and discipline code violations, broken down according to the nature of the offenses, disaggregated by school, race, ethnicity, age, grade, disability, ELL status, and gender of the students, where available:
    - Possession of a dangerous weapon;
    - Use or possession of alcohol, drugs or controlled substances;
    - Willful disobedience or open and persistent defiance;
    - Conduct equal to first degree, second degree, third degree, or vehicular assault
    - Behavior that is detrimental to the welfare or safety of other students or of other school personnel;
    - Willful destruction or defacement of school property;
    - Conduct equal to robbery; and
    - Other violations of the code of conduct and discipline that resulted in documentation of the conduct in a student's record.
- The extent to which the policy, including but not limited to disciplinary action, is consistently applied to all students.

School Climate and Discipline Oversight

The District will monitor school climate District-wide by:

- Conducting annual surveys of students and teachers on school climate and safety;
- Reviewing complaints received by school-based committees regarding discipline practices or the conduct of school staff and school resource officers; and
- Developing, monitoring, and evaluating school discipline policies and practices District-wide.
- Reviewing complaints and long term suspension appeals received by the Board of Education.

ANNUAL REVIEW, DISSEMINATION, & REGULATION

Through its Policy Development and Review Committee ("Policy Committee") the Board of Education will review the Code of Conduct annually at or following the close of each academic year.

The President of the Board shall appoint an Advisory Committee to assist the Policy Committee in its review of the Code of Conduct. The Advisory Committee will be comprised of student representatives, teachers, administrators, parents and community-based organizations, school safety personnel and other school staff. The Advisory Committee shall submit its findings and any recommendations to the Board of Education and Superintendent by May 1st of each school year and at such additional times as it deems appropriate.

The Policy Committee and Advisory Committee shall consider school-level data including data aggregated to illustrate any trends, and district-level data. In conducting the review, the Policy Committee and full Board will consider the effectiveness of the Code's provisions and whether the standards have been applied fairly and consistently. Revisions to the Code of Conduct will be made only after at least one public hearing, which shall provide for the participation of school personnel, parents, students and any other interested party.

Dissemination

The District shall post the complete Code of Conduct (with all amendments and annual updates) and a summary of the Code of Conduct on the District website and other applications available to parents when possible; provide a summary of the Code of Conduct to all parents before the beginning of each school year and make copies available thereafter; provide each new teacher with a complete digital or hard copy of the Code; and make complete copies available for review by students, parents, district personnel and community members. The

District shall file a copy of the Code of Conduct and any amendments with the Commissioner, in a manner prescribed by the Commissioner, no later than thirty (30) days after adoption.
Ref.: Education Law §2801(4)(5); 8 NYCRR 100.2(1)(iii)

Promulgation of Administrative Regulations

Consistent with the policy guidelines set forth above, the Superintendent of Schools is authorized to promulgate, revise, maintain and enforce throughout the District administrative guidelines and regulations consistent with constitutional requirements that address particular issues of administration, interpretation and enforcement of any section of this policy.

Resolving Incompatibility with Other Policies or Regulations

If any policy or administrative regulation of this District, at any time, is in whole or in part inconsistent or incompatible with this Policy or with the administrative regulations authorized herein, that such inconsistent or incompatible portion of such policy or regulation shall be deemed to be superseded by the Code of Conduct; provided, however, that to the extent that the provisions or purposes of such policy or regulation are not incompatible, or can be enforced without reference to the incompatible portion, then such provisions and purposes shall be deemed to continue in full force and effect.

Severability

If any provision of this Code or the application of any provision to any person(s) or circumstance(s) is held to be unconstitutional or otherwise unenforceable by any Court, by legislative enactment or amendment or by any Opinion of the Commissioner of Education, it is the intent of the Board of Education that such a ruling shall in no way affect or impair any other provision of this Code or the application of any such provision upon any other person or circumstance.

APPENDIX A

Dress Code

DRESS CODE

Rationale
A dress code and its implementation impact both the constitutional rights of students and the responsibilities of school officials to maintain an environment conducive to learning. As such, the purpose of this dress code is to strike a positive balance between a student's right to free expression and the educational mission of the district.

Students and their parents have the primary responsibility for acceptable student dress and appearance. Teachers and all other District personnel should, at a minimum, adhere to the dress code, as well as exemplify acceptable dress and help students develop an understanding of appropriate appearance in the school setting.

Clothing, accessories or appearance that run contrary to the district's educational mission, cause a material or substantial disruption of the educational process, or infringe upon the rights or safety of others, can be regulated.

It is important to note that mere dislike or offense is not sufficient grounds to restrict speech or expression, including dress or appearance. All such restrictions must stem from something greater than personal preference, beliefs or taste. This means that to be lawfully regulated, the attire or garb must truly be a substantial or material interruption, infringe upon the legitimate rights or safety of others, or be contrary to the school's educational mission.

This dress code applies to both students and adults any time they are on District property, including the school buildings and Central Office, and whenever they are attending any school function, wherever located.

Standards
All persons are expected to give proper attention to personal hygiene and to dress appropriately for school and school functions. When on school property or at a school function, a person's dress, grooming and appearance, including jewelry, make-up and nails, must:

- Cover buttocks, stomach/midriff and chest.
- Not include clothing, headgear or jewelry that is associated with or identifiable as a symbol of gang membership.

- Be void of abusive, suggestive or profane language; symbols of illegal substances; or any other words, symbols or slogans that disrupt the learning environment or deny dignity or respect to others.
- Include shoes, which are to be worn at all times for health and safety reasons.

Guidelines for Further Standards

In addition to the standards above, schools may prescribe reasonable school-level dress standards provided that such standards are rationally related to legitimate objectives, are sufficiently narrowly tailored, are content-neutral, do not unlawfully infringe upon student's constitutional rights related to speech, liberty, religion or other fundamental right, apply to all members of the school community and have been developed in conjunction with students, parents, teachers and other staff and members of the school community. This collaborative development of school-level dress standards is an opportunity for the school community to discuss issues related to dress and appearance, such as culture, religious identity, gender and gender identity, dignity and respect.

School-level dress standards should be justified by a legitimate concern for health or safety or other material or substantial disruption, promote dignity, respect and cultural and religious sensitivity and keep teachers and students focused on teaching and learning, not policing dress.

Any dress standards that a school develops need to be approved by the Superintendent, be published and communicated to the school community and be consistent with the provisions of this Code of Conduct.

Dress Code Violations

Violations of the dress code should be considered opportunities or "teachable moments" to discuss issues around dress and appearance, such as culture, religious identity, gender and gender identity, dignity and respect.

Students who violate the dress code, including school-level standards, will be required to modify their appearance by covering or removing the offending item, and if necessary and/or practicable, replacing it with an acceptable item. Any student who refuses to do so shall be subject to a Level 1 or Level 2 response. <u>Students should not be suspended or otherwise removed from their educational program because of a dress code violation.</u>

Data Collection and Reporting

As noted elsewhere in this Code of Conduct, schools shall collect and submit the following data elements as part of their semi-annual reports to the District and Board:

- Dress code violations resulting in a Level 1 or Level 2 response.
- Suspensions resulting from escalations of conflict relating to dress code violations.

APPENDIX B

Restorative Approaches

Restorative Approaches

Restorative approaches are an integral component of progressive discipline and the direction in which the District is committed to proceed. Restorative approaches originate from indigenous practices that reflect our shared humanity and commonality. Used proactively, they build positive vibrant culture. In the context of justice, restorative approaches use the foundations of relationships and interconnectedness to repair harm and reestablish harmony.

A restorative approach can be used as both a prevention and intervention measure. Restorative processes can help schools build relationships and empower community members to take responsibility for the well-being of others; prevent or deal with conflict before it escalates; address underlying factors that lead youth to engage in inappropriate behavior and build resiliency; increase the skills of those who have harmed others; and provide wrong doers with the opportunity to be accountable to those they have harmed and enable them to repair the harm to the extent possible.

When used as an intervention measure, taking a restorative approach to discipline changes the fundamental questions that are asked when a behavioral incident occurs. Instead of asking who is to blame and how those engaged in the misbehavior will be punished, a restorative approach asks four key questions:

- What happened?
- Who was harmed or affected by the behavior?
- What needs to be done to make things right?
- How can people behave differently in the future?

All parties are encouraged to take responsibility for their part in the occurrence that led to intervention.

Types of Restorative Practices

Circle Process: Circles are effective as both a prevention and intervention strategy. Circles may be used as a regular practice in which a group of students (or faculty or students and faculty) participates. A circle can also be used in response to a particular issue that affects the school. The circle process enables a group to build relationships and establish understanding and trust, create a sense of community, learn how to make decisions together, develop agreements for the mutual good, resolve difficult issues, etc.

Collaborative Negotiation: Using the collaborative negotiation process enables an individual to talk through an issue or conflict directly with the person with whom he/she disagrees to arrive at a mutually satisfactory resolution. Training in collaborative negotiation includes learning active listening and other conflict resolution communication skills.

Peer Mediation: An impartial, third party mediator (in a school, a student who has been trained to serve as a peer mediator) facilitates the negotiation process between conflicting parties so they can come to a mutually satisfactory resolution. Mediation recognizes that there is validity to conflicting points of view that disputants bring to the table and helps disputants work out a solution that meets both sets of needs. Disputants must choose to use mediation and must come to the process willingly. Mediation is not used where one individual has been victimized (for example, in cases of harassment or bullying) by another.

Formal Restorative Conference: A conference is facilitated by an individual who has received specific training in bringing together individuals who have acknowledged causing harm with those who have been harmed. Regardless of the circumstances, the mental, physical health, safety, and welfare of the individual who was harmed is of paramount importance when considering this option in a school setting. Both sides may bring supporters to the circle that have also been affected by the incident. The purpose of the conference is for the harm doer and the harmed to understand each other's perspectives and come to a mutual agreement which will repair the harm as much as it is able to be repaired.

APPENDIX C

Due Process

DUE PROCESS PROTECTIONS

Referral for Disciplinary Action

If school staff believe that a student's conduct warrants a disciplinary intervention, staff should complete a referral for disciplinary action to trigger an investigation of the incident. The purpose for a referral is to track and document the facts and interventions used by staff in order to ascertain the best course of action when a serious infraction occurs that necessitates the removal of a student from the class. However, written referrals shall not be used to document supports offered to students within the classroom (e.g. timeouts and other informal measures).

When the student is removed from a classroom for consideration of short term in school or out of school suspension or long term suspension, the teacher must provide a referral form to accompany the student. This referral must be filled out prior to the Principal making a decision and at the earliest convenience of the teacher when he/she has been able to ensure that his/her classroom is in order.

The form filled out by the teacher shall be a District-wide standardized form that will include the teacher's methods of positive intervention approaches already implemented.

The referrals will be input into a digital system. A computerized program should be able to provide a cumulative report that will be able to track the number of referrals per teacher in regular intervals. Administrators will have a meeting with teachers with high referrals or with high rates of racial disparities in order to provide additional supports and uncover challenges.

The information gathered from the tracking process will be used to inform teachers and administrators with respect to students and staff who are in need of support, as well as to inform teachers and administrators as to the effectiveness of strategies and supports that have been implemented.

INVESTIGATIVE PROCEDURES FOR SCHOOL DISCIPLINE

It is the responsibility of the principal or his/her designee to take the following investigative steps:

1. Question the victim and any other witnesses to the incident and, when possible, obtain their signed written statements.
2. Investigative procedures must seek to understand the entire event including precipitating factors.
3. Review and retain or a reasonable time any documentary, photographic, or video evidence.
4. Whenever practicable, inform the accused student of the misconduct of which he/she is being accused and provide the accused student with an explanation of the evidence.
5. Whenever practicable, provide the accused student an opportunity to present his/her side of the event and identify witnesses.
6. In circumstances where the student has been arrested, the student should be advised that any statement made by the student may be used against the student in a court of law, and the student's parent should be notified immediately.

Classroom Removal

Notice Requirement:

Schools must provide the following notice to parents when a student is removed from the classroom:

- All reasonable efforts must be made to notify the parent of the classroom removal and will occur by telephone, email, or other electronic means on the same day as the classroom removal;
- Written notice will occur within one school day from the classroom removal;
- Written notice will be in writing in the parent's native language if practicable; and will include a description of the incident, length of the classroom removal, and a statement that parents can request a conference to discuss the removal; and
- The school will maintain a record of all classroom removals provided that such record shall not constitute part of the student's cumulative file.

Conference Request:

At the parent's or student's request, the teacher and/or a school administrator will have a conference with parent and/or student.

- The school shall schedule the conference to occur within five school days of the parent's or student's request, unless the parent or student agrees to a later date; and

- Actual notice of the conference date shall be provided to the parent and the student.

  Ref: Education Law §3214(3-a)

Short-Term In School or Out of School Suspension

Short term suspensions are an extreme disciplinary measure to be used for behavior that cannot be dealt with using standard positive interventions. Short term suspensions shall not take effect until a preliminary interview, notice and conference occur, except when a student's presence in school poses an ongoing danger to persons or property or an ongoing threat to the academic process, the student may be suspended prior to the informal conference provided the conference occurs within 2 school days of the start of the suspension.

1. Preliminary Interviews: Where it is suspected that a student has engaged in conduct for which a suspension may be warranted, it is the responsibility of the principal or his/her designee to take the required investigative steps and make a determination of possible discipline, including short term suspension, if warranted under the circumstances. The principal or acting principal shall take into account all of the factors listed in Section ___ when making a preliminary recommendation about a disciplinary action.
2. Notice to Parent:
   a. Principal (or designee) shall make every effort to reach the parent by telephone, email, or other electronic means to inform the parent of the student's referral for a suspension on the same day as the determination to seek a suspension;
   b. Written notice will be delivered to the parent within one school day from the determination to seek a suspension;
   c. Written notice will be in the parent's dominant language whenever practicable. If not practicable, all reasonable steps shall be taken to provide oral translation to the parent or legal guardian;
   d. That notice shall be on an approved RCSD form and contain the following:
      i. a description of the incident including the section of the Code of Conduct the student allegedly violated;
      ii. length of the possible suspension;
      iii. a statement explaining the standard positive interventions and practices used, or if none was used, why this is the case, and explaining why the use of alternative exclusionary discipline may be justified under the circumstances;
      iv. a statement informing the parent of his/her right to request an informal conference with the principal.;
      v. a statement of the student's and parent's rights written in plain language,

including the right to question a complaining witness, to obtain school records, to bring an attorney or advocate, the right to interpretation of the conference by a qualified interpreter or someone of the parent's choosing and the right to appeal;

vi. a statement of the means by which the student will be provided alternative instruction during the period of suspension;

vii. a statement that if the child has been arrested or if a criminal investigation is pending, any statement, written or oral, can be used against the student in a court of law;

viii. a list of free and low-cost attorneys and advocates in the area; and

ix. the procedures for appealing the disciplinary decision.

3. Informal Conference:
   a. The informal conference is an opportunity to assess the facts surrounding the incident for which a suspension is possible, to determine whether a suspension is justified, to collaboratively devise satisfactory solutions for the student's return to his or her program and prevent further disruption of the student's education.
   b. The informal conference shall be scheduled as soon as possible but no later than five school days from the date of the written notice unless the delay is at the parent's request.
   c. Informal Conference Provisions:
      i. Student and parent have the right to call witnesses and present documentary evidence; including audio and video recordings, and question a witness with firsthand knowledge of the incident.
      ii. Student and parent may be represented by an attorney or an advocate.
      iii. Upon request of the parent or student, the school shall provide interpretation services in the parent's and student's dominant languages.
      iv. Student and parent have the right to receive a written decision within one school day of the conference.
      v. If the principal determines short term suspension is warranted, the written decision shall include the length of suspension, and procedures for appealing the decision, including the date by which the appeal must be submitted.
4. Appeal of Short Term Suspension Decision:
   a. Students and parents can appeal a short term suspension to the New York State Commissioner of Education.
   b. Any appeal must be filed within 30 days of the decision following the suspension conference.
5. Exception for emergencies: If a student's presence in school poses an ongoing danger to

persons or property or an ongoing threat of disruption to the academic process, a student may be removed immediately and the informal conference shall follow as soon after the student's removal as practicable, but in no case more than 48 hours after the removal. If immediate emergency removal from school is necessary, the school shall immediately notify the parent to determine the best way to transfer custody of the student to the parent.

Ref.: Education Law §3214(3)(b)

Long Term Suspension and Expulsion

Long term suspension and expulsion are extreme disciplinary alternatives to be used for behavior that cannot be resolved appropriately using standard positive interventions, a classroom removal, or a short term suspension. Long term suspensions and expulsions shall not take effect until an investigation, notice and a hearing occur in accordance with the following:

1. Investigation: When a student engages in conduct for which a long term suspension or expulsion may be warranted, the principal or his/her designee must investigate consistent with the requirements in #1 of Short term in school or out of school suspension, above. The Principal shall take into account all of the factors identified under Levels of Intervention and Disciplinary Responses when making a preliminary recommendation about a disciplinary action. If the Principal determines that an LTS referral is appropriate, s/he shall inform the student of the referral for LTS and the reason for the referral.
2. Notice to Parent:
   Schools must provide the following notice when a long term suspension or expulsion is proposed:
   a. Principal (or designee) shall make every effort to reach the parent by telephone, email, or other electronic means to inform the parent of the student's referral for a suspension on the same day as the determination to seek a suspension;
   b. Written notice will be delivered to the parent within one school day from the determination to seek a suspension or expulsion;
   c. Written notice will be in the parent's dominant language if practicable;
   d. That notice shall contain the following:
      i. a description of the incident including the section of the Code of Conduct the student allegedly violated;
      ii. length of the proposed suspension;
      iii. a statement explaining the standard positive interventions and practices used, or if none was used, why this is the case, and explaining why the

use of alternative exclusionary discipline may be justified under the circumstances;

iv. a statement of the student's and parent's rights written in plain language, including the right to fair hearing, the right to question the district's witnesses and to present testimony and other evidence on behalf of the student, to obtain school records, to bring an attorney or advocate to the hearing, the right to interpretation of the hearing by a qualified interpreter or someone of the parent's choosing, and the right to appeal;

v. A description of the alternative education that will be provided to the student until such time as a determination has been made with respect to whether or not the student is guilty of the charge, and any applicable penalty has been imposed.

e. The Long Term Suspension Hearing Office shall send notice to the parent that includes:

i. a date, time and location for a fact finding hearing;

ii. a statement that if the child has been arrested or if a criminal investigation is pending, any statement, written or oral, can be used against the student in a court of law;

iii. a list of free and low-cost attorneys and advocates in the area; and

iv. the procedures for appealing the disciplinary decision.

3. Hearing:

a. The hearing is an opportunity for an impartial and neutral hearing officer to determine if the school can meet its burden of proof to sustain the charge(s), and if the proposed suspension or expulsion is appropriate.

b. The hearing shall occur within five school days of the date of suspension, unless the parent requests a later date. If the hearing occurs after the fifth day following the suspension without the parent consenting to the delay, the student shall be returned to his/her regular program until such time as the hearing is held and the Superintendent or his/her designee has made a decision regarding the charge(s).

c. **Hearing Provisions:**

i. Hearings shall be conducted by a neutral and impartial hearing officer. Upon appointment, all hearing officers are authorized to administer oaths and issue subpoenas in conjunction with the proceedings before him or her.

ii. School must prove the alleged student behavior by competent and substantial evidence.

iii. School cannot rely exclusively on hearsay evidence to meet its burden of proof.
iv. Student and parent have the right to call witnesses and present documentary evidence including, but not limited to, witness statements, incident reports, and audio and video recordings; and question persons with information related to the incident.
v. Student and parent have the right to request and, upon request, the school district must require, the presence and testimony of witnesses who are school employees.
vi. Student and parent have the right to request the presence and testimony of witnesses who are safety or law enforcement personnel on campus, and the school shall take all reasonable steps to ensure their presence.
vii. Student and parent have the right to request the presence and testimony of other students or witnesses to the event, and the school shall take all reasonable steps to ensure their presence.
viii. Student and parent have the right to representation by an attorney or an advocate.
ix. The hearing officer shall consider only the evidence presented at the hearing and shall make findings of fact and recommendations to the superintendent or his/her designee as to the appropriate measure of discipline. The proposed suspension or expulsion may be dismissed, reduced, or upheld.
x. The hearing officer must dismiss the proposed suspension if he or she determines:
    1. The suspension was imposed for a behavior for which suspension is prohibited under Code of Conduct.
    2. The school did not present sufficient evidence to meet its burden of proof.
    3. The suspension was not appropriate considering the factors listed in this Code.
xi. The hearing officer or superintendent's designee may dismiss or reduce the proposed suspension if he or she determines:
    1. The school did not impose graduated and proportionate discipline, unless the conduct that resulted in the suspension was sufficiently serious that graduated discipline would not have been appropriate.
    2. The suspension was not appropriate given the facts as presented at the hearing.

3. The school did not follow the due process procedures in this subsection.

xii. Upon request of the parent or student, the school shall provide interpretation services in the parent's native language.

xiii. Student and parent have the right to receive written notification of the determination of guilt or lack thereof and penalty, if guilt is determined. If the Superintendent or his/her designee determines a long term suspension or expulsion is warranted, the written decision shall include the length of suspension, the conduct for which the student has been found guilty, and procedures for appealing the decision, including the date by which the appeal must be submitted.

xiv. The written decision shall be sent to the student/parent within three school days after the Superintendent's designee receives the penalty determination.

xv. An accurate and complete record of the hearing shall be maintained by the school, but no stenographic record shall be required and an audio or video recording shall be deemed a satisfactory record. Student and parent shall have a right to request and receive this record at no cost.

4. Appeal Provisions:
   a. Parent or student can appeal the decision to suspend or expel within 20 school days from the date the parent receives the decision;
   b. A written decision on appeal, including the rationale for the decision, will be issued within fifteen school days of the filing of the appeal;
   c. The appeal will consider whether the record demonstrates that the student's rights were violated during the investigation, hearing, or appeal process;
   d. The decision on appeal must be based solely on the hearing record;
   e. The suspension or expulsion can be upheld, overturned or reduced; and
   f. The Board of Education must overturn the suspension if it determines:
      i. The record does not contain sufficient evidence to support the finding.
      ii. The suspension was imposed for a behavior for which suspension is prohibited in the school's Code of Conduct.
      iii. The record demonstrates that the school did not follow the due process procedures in this subsection.
      iv. The suspension was not appropriate considering the factors listed under the Levels of Intervention and Disciplinary Responses.
   g. The Board of Education may overturn or reduce the suspension if it determines:

i. The school did not impose graduated and proportionate discipline, unless the conduct which resulted in the suspension was sufficiently serious that graduated discipline would not have been appropriate.
ii. The suspension was not appropriate given the facts as presented at the hearing.

Ref.: Education Law §3214(c)

Access to Schools

Except in cases of emergency, if a Principal desires to restrict a family member's access to the school, the Principal's supervisor must first authorize such action. The Principal must specify the duration and conditions of any restriction (e.g., must make advance appointment or be escorted within the building).

APPENDIX D

Students with Disabilities

The Board of Education is committed to a policy of inclusion of students with disabilities within the full range of programs offered to students of the District generally, to the fullest extent consistent with the specific needs of individuals. Consistent with the principle of inclusion, to the fullest extent provided by federal or state law, the policy of the District regarding student discipline for students shall be uniform for all students, both with reference to disciplinary proceedings and reporting crimes to appropriate authorities.

The Board 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 by virtue of statute, regulation and/or court order when 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 requirements. In the event of any change or amendment to such federal and state law and regulations, or to any order of a court of competent jurisdiction impacting District students with disabilities, the Superintendent is authorized to issue regulations designed to maintain coordination of our program with such legal requirements; and, where such requirements may affect or override provisions of any consent decree, to apply to the appropriate court for such relief as the Superintendent deems appropriate.

It is the policy of the Board of Education to implement the provisions of the federal “Individuals with Disabilities Education Improvement Act of 2004” P.L. 108-446 (effective July 1, 2005), which defines the current law for addressing discipline for students with disabilities. Students with disabilities who are suspended for not more than ten school days shall be afforded the same rights as their non-disabled peers. When a removal will result in the student accumulating more than ten school days of removals for the school year, a parent and necessary District employees shall review the student's file to determine whether the conduct was caused by or had a direct and substantial relationship to the disability, or was a direct result of a failure to implement the IEP. If the behavior was a manifestation of the student's disability, the CSE shall conduct a functional behavioral assessment and create or modify and implement a behavior plan, and the student shall return to his/her prior (or otherwise agreed-upon) placement, except when the student’s behavior involves serious bodily injury, weapons, illegal drugs or controlled substances, the student may be disciplined in accordance with Part 201.7(e) of the Commissioner’s Regulations. If the behavior was not a manifestation of the student's disability,

then a student with a disability will be treated in the same manner as the student's non-disabled peers, and the District shall continue to implement the student's IEP. In all instances, the District shall consider any unique circumstances when determining whether to change the placement of students with disabilities who violate this Code.

Ref.: P.L. 108-446 "Individuals with Disabilities Education Improvement Act of 2004"
Education Law §3214(3)(g)
8 NYCRR Part 201
Cross-ref: Policy 4202 "Students with Disabilities"

APPENDIX E

Law Enforcement

Roles of School Resource Officers, Law Enforcement and Criminal Investigations

The Board of Education acknowledges the role of law enforcement in contributing to safe and secure schools, and in particular has engaged School Resource Officers, who are officers in the Rochester Police Department, in a number of schools in recent years. SROs and other law enforcement officers who interact with students on school grounds and at school activities are partners in advancing the vision and objectives of the Code of Conduct, and each SRO contract will be aligned with Code policy content. The goal of partnering with law enforcement is to enhance the school environment by assisting staff and students with problems before they negatively affect safety and security or the learning climate and to contribute broadly to our students' education. As such, SROs should be considered valued members of the school security and leadership teams and proactively involved in building a positive school culture.

School District and School Administrators

1. The District will work collaboratively with the City in defining the responsibilities and expectations of SROs.

2. The District will provide training and review where necessary to ensure alignment between Code of Conduct requirements and the responsibilities of SROs and building administrators.

3. The District will provide feedback regarding SRO performance and work cooperatively with the City in the placement of SROs.

4. The school principal or designee will collaborate with the SRO in order to differentiate between disciplinary issues and crimes, and respond accordingly, recognizing that not all incidents that prompt police assistance to ensure safety require classification as crimes. In a non-emergency or post-emergency situation, the principal and SRO should consult to determine whether each student was involved in a disciplinary issue or a crime. If there is disagreement, the SRO supervisor should be consulted for a determination.

5. The school principal, or designee, will immediately contact the parent/guardian of any student arrested or involved in a criminal investigation on school grounds in all non-emergency situations, or as soon as practicable in emergency situations.

6. The school principal, or designee, will immediately notify SROs and other law enforcement agents involved in an arrest or criminal investigation if a student who possesses a disability may require special treatment or accommodations.

School Resource Officers

1. The City of Rochester will manage SROs, who are employed as uniformed Rochester Police Department officers.

2. SROs will appear before Parent Teacher Associations, School Based Planning Teams and other school groups and are encouraged to attend school meetings and training sessions.

3. The City will provide information and reports regarding: students arrested; physical force used on students; issuance of appearance tickets; mental health arrests with police involvement; and SRO/police initiated diversion from court system not reported elsewhere (e.g. not resulting in arrest or referral to family court); or as otherwise required by agreement between the City and School District.

4. The District will support or provide training to SROs in restorative practices and disciplinary responses designed to minimize arrests.

5. SROs will move freely in their assigned building, to develop rapport with students, and in locations requested by the District or school.

6. SROs will collaborate with school principals in order to differentiate between disciplinary issues and crimes, and respond accordingly. Without a warrant or parent/guardian permission, SROs and other law enforcement agents must have reasonable cause to believe that a crime has been committed on school grounds, at a school activity, or while a student is traveling to or from school, prior to involving any student in a crime investigation related to that crime.

7. SROs and other law enforcement agents will immediately inform the Principal or designee prior to involving any student in a crime investigation on school grounds (or at a school activity) in non-emergency situations, or as soon as practicable in emergency situations.

8. SROs will be enabled to participate in a wide range of instructional and supportive activities. They will coordinate activities with the District and school administrators and staff.

9. SROs will ensure that efforts are made to educate and communicate with students who are arrested regarding the criminal charges and Miranda rights, if applicable.

10. SRO competencies should include, but not be limited to: knowledge of District discipline approach and Code of Conduct; cultural competence; age-appropriate interventions, communication and policing techniques; the existence of exclusionary discipline disparities according to race and disability, and the District's legal obligation to eliminate them; and school-specific approaches to restorative and differentiated behavioral responses.

Police Involvement in Searches and Interviews of Students

District officials will cooperate with police officials and other law enforcement authorities, and in particular with the School Resource Officers provided by the Rochester Police Department to many District schools in order 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 criminal investigations. Police officials may enter school property or a school function to question or search a student or to conduct a criminal 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. Been invited by school officials.

If a police officer questions or searches a student on school property in the context of an official criminal investigation, the Principal or designee shall attempt to notify the student's parent. Whenever possible, the Principal or designee will also be present during any police questioning or search of a student on school property or at a school function.

Abuse/Neglect Investigations by Child Protective Services (CPS) and Law Enforcement

Consistent with the District's commitment to keep students safe from harm and the obligation of school officials to report to Child Protective Services (CPS) when they have reasonable cause to suspect that a student has been neglected, abused or maltreated, the District will cooperate with local CPS workers and law enforcement officers who wish to conduct interviews of students on school property relating to allegations of suspected child abuse, and/or neglect, or custody investigations. School District administrators should not contact parents/guardians unless specifically advised to do so by CPS and/or law enforcement officers involved in the investigation.

All requests by CPS and law enforcement to interview a student on school property shall be made directly to the Principal or his/her designee. The Principal or designee shall set the time and place of the interview. All reasonable efforts should be made to assure that such interviews are conducted at the earliest time mutually convenient to the school and to CPS/law enforcement, and are conducted in a place that offers as much privacy and as few interruptions as is feasible, given the physical limitations of individual buildings.

The Principal or his/her designee should reassure the student that he/she (or other appropriate staff member selected by them) is available nearby if the student should decide to have him/her present in the interview. If the student requests a specific staff member's presence, then every effort should be made to secure that person's attendance at the interview. Anyone attending a CPS/law enforcement interview of a student is present solely to support the student emotionally and should not attempt to participate in or influence the interview.

If, after being informed of the availability of staff support, the student does not request a staff member's presence at the interview, the CPS/law enforcement official shall be permitted to interview the child alone.

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 CPS 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 CPS worker or School District official of the opposite sex.

A CPS worker may remove a student from school property without a court order only if the worker reasonably believes that the student would be subject to danger of abuse if he or she were not removed from school before a court order can reasonably be obtained. If the CPS worker believes 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.

District staff are encouraged to contact the Law Department for clarification of any questions related to the foregoing process.

APPENDIX F

Glossary

Academic Dishonesty: Providing, receiving or viewing answers to quiz or test items or independent assignments; having out or using books, notes or notebooks during a test without permission from a staff member.

Administrator: the building/program administrators (such as principals, vice-principals, assistant principals, house administrators, program administrators, and athletic directors), District-wide administrators, the Director of Transportation and security supervisors. When reference is made to a Principal, the term shall be deemed to include a Program Administrator..

Alcohol/Drugs/Controlled Substances: any illegal, intoxicating, addictive, mood altering, or potentially harmful substance including, but not limited to, alcohol, inhalants, controlled substances, marijuana, cocaine/crack, LSD, PCP, "ecstasy," amphetamines, heroin, steroids, look-alikes, and any of those substances commonly referred to as "designer drugs." For purposes of this definition there is also included prescription and over-the-counter drugs when used inappropriately or, in the case of prescription medications, when possessed or used by anyone other than the individual for whom they have been prescribed by a licensed physician. Neither prescription medications nor over the counter medications may be possessed by elementary school students. Parents of elementary school students requiring such medication must personally deliver such medication to the school nurse, for administration to the student in the manner prescribed.

Attack on Student: A student or students set upon another student in a forceful, hostile or aggressive way without warning or provocation; this includes behavior commonly referred to as "banking."

Behavior Intervention Plan: A proactive plan designed by school staff to correct inappropriate or disruptive student behavior through positive behavioral interventions, strategies, and supports. This plan is appropriate for both students with and without disabilities.

Bodily Injury: Any physical or corporeal injury.

Bomb Threat: The making of threats or providing false information about the presence of explosive materials or devices on school property without cause in writing, in person or by phone, text or other electronic means.

Bullying: Any intentional act done willfully, knowingly and with deliberation, by individuals or an individual which harms another person physically or emotionally. Bullying includes intentional conduct (including verbal, physical or written conduct) or electronic communication

that is threatening or seriously intimidating and substantially disrupts the orderly operation of a school. Bullying is characterized by an imbalance of power between two students. If two students are equally engaged in an altercation, this is not a bullying situation, but instead considered a "conflict" between the two students. When an imbalance of power is present; it can be seen in small ways over a long period of time or in a large way all at one time.

Community Service: An unpaid service for the benefit of the public that is performed as part (or all) of the consequence for committing an infraction. Allows the student to participate in some sort of activity to serve and benefit the community. Examples include working at a soup kitchen, cleaning up litter, helping at a facility for the aged, etc.

Conference: A communication that takes place face to face or by telephone. Conferences can involve students, teachers, administrators, and parents/ guardians in discussion about student misbehavior and potential solutions that address social, academic, and personal issues related to the behavior.

Consequence: A result that follows from an action or condition.

Class Cutting: Unlawful absence from a class or school activity.

Cyber-bullying: The use of information and communication technologies -- e-mail, cell phones, pagers, text messages, instant message, personal website or blogs, personal pulling sites or a combination of these – to support deliberate, repeated and hostile behavior by an individual or group with the intention of physically or psychologically intimidating others.

District Personnel: all individuals, wherever assigned, who are employed by the District, or are under contract or assignment to the District, or who volunteer to assist the District in the operation of its programs and/or the delivery of its services. The term “District personnel” includes transportation personnel whether employed by the District or by a contractor. For purposes of this Code, “District personnel” and “school personnel” are synonymous.

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.
Ref.: Education Law §3214(2-a)(b)

ELL: English language learner.

Emergency Situation: A circumstance in, or in close proximity to, a school or school event in which there is a serious, active and/or immediate threat of injury to a person or persons. An emergency usually requires an immediate competently executed response to dissipate or remove the threat.

Functional Behavior Assessment: Involves gathering information about a student's inappropriate or disruptive behavior and determining approaches school staff should take to correct or manage the student's behavior.

Harassment:

- **Ethnicity or National Origin Disability Harassment:** : A negative act or verbal expression toward an individual or group based on an individual's disabling mental or physical condition and includes any unwelcome conduct directed at eh characteristics of an individual's disabling condition, such as imitating manner of speech or movement, or interference with necessary equipment.
- **Ethnicity or National Origin Harassment**: A negative act or verbal expression toward an individual or group of the same race or national origin who share common or similar traits, languages, customs and traditions, based upon race, national origin, customs and traditions.
- **Marital Status**: A negative act or verbal expression toward an individual directed at the characteristics of an individual's marital status, such as derogatory comments regarding being single, divorced, or being a single parent.
- **Racial Harassment***:* A negative act or verbal expression toward an individual or group of persons who possess common physical characteristics (i.e., color of skin, eyes, hair and facial feature genetically transmitted by descent and heredity) that distinguish them as a distinct division of human kind, based on these physical characteristics.
- **Religious Harassment**: A negative act or verbal expression toward an individual or group of persons, who possess common religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being, based on religious beliefs.
- **Sex/Gender Harassment:** A negative act or verbal expression toward an individual's sex/gender, such as derogatory comments regarding pregnancy or individual's participation in a non-traditional job or activity.
- **Sexual Harassment**: Unwelcome sexual advances, requests for sexual favors or other inappropriate verbal, written or physical conduct of a sexual nature, directed toward others.

- **Sexual-Orientation Harassment**: A negative act or verbal expression toward an individual or group of persons based on their sexual attraction toward or responsiveness to members of the opposite or same sex

Ref: Policy #0100 District Policy Prohibiting Discrimination or Harassment of Students or Employees

LGBTQ: Lesbian, Gay, Bisexual, Transgender, or Questioning.

Loss of Privileges: As a consequence of a violation of the Code of Conduct, a student can lose the right to participate in school events and activities, including participation in graduation and senior activities (if the behavior warrants this consequence, only monies paid as senior dues for the missed activity will be refunded).

Makeup Work: When students are removed from class because of inappropriate or disruptive behavior, school staff must provide students with missed assignments and the opportunity to make up these assignments without penalty. Students with Individualized Education Plans (IEPs) and 504 plans have additional protections that may require full IEP implementation, not just homework packets. School staff should refer to their Student Discipline Handbook and Special Education Compliance Manual for more information.

Mentoring Program: A student is paired with a mentor (a counselor, teacher, student, or community member) who helps the student in personal, academic, and social development.

Parent: Parent, guardian or person in parental relation to a student.

Parent Outreach: Parent outreach requires school staff to inform parents of their child's behavior and seek the parents' assistance with correcting inappropriate or disruptive behavior.

Peer Mediation: Peer mediation is a form of conflict resolution in which students help other students deal with, and develop solutions to conflicts. See Appendix B: Restorative Practices.

Possession of Alcohol, Drugs and/or Inhalants: Possession of alcohol, drugs and/or inhalants means to have physical possession or otherwise or exercise dominion or control over.

Pro-Social: Relating to or denoting behavior that is positive, helpful, and intended to promote social acceptance and friendship.

Referral to Substance Abuse Treatment Services: Students with behavior related to substance abuse, and/or when there is reason to believe substance abuse counseling is needed, may be referred to school-based or community-based services.

Referral to Community-Based Organizations: Students can be referred to community-based organizations for a variety of services, including after-school programming, individual or group counseling, leadership development, conflict resolution, and/or tutoring.

Referral to School-Based Health and Mental Health Clinics: These services provide counseling and assessments to students who are in need. Students are allowed to privately share issues or concerns that lead to inappropriate or disruptive behavior or negatively affect academic success.

Restitution: Replacing item(s) that were stolen or damaged by providing fair market value by way of compensation or service.

Restorative Approaches: See Appendix B: Restorative Approaches.

School Day: Any day of required pupil attendance, unless preceded by the word "calendar." "Day" means a school day.

School Function: Any school-sponsored event or activity, including but not limited to extra-curricular and athletic events, meetings, conferences, or hearings.
Ref.: Education Law §2801(1)

School Personnel: all individuals, wherever assigned, who are employed by the District, or are under contract or assignment to the District, or who volunteer to assist the District in the operation of its programs and/or the delivery of its services. The term "District personnel" includes transportation personnel whether employed by the District or by a contractor. For purposes of this Code, "District personnel" and "school personnel" are synonymous.

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, secondary, adult education or post-secondary school or any other property owned or leased by the District, or in or on a school bus, as defined in Vehicle and Traffic Law §142, or other transportation vehicle adopted by/for the District.
Ref.: Education Law §2801(1)

SRO: School Resource Officer.

Serious Bodily Injury: Bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

Sexual Activity: Inappropriate behavior of a sexual nature while on school grounds or during school-sponsored activities, including but not limited to indecent exposure, consensual sexual contact, sexual intercourse, oral sex or possession of sexually explicit material.

Sexual Assault or Offense: unwanted sexual contact or sexual act or sexual contact by force or threat of force or harm against a staff member or another student, including inappropriate touching.

Tardiness: Arriving late to school or class.

Theft: Taking or attempting to take property of another person or institution without permission or knowledge of the owner, with the intent to deprive the owner of its use.

Trespassing: Being on school property without permission, including while suspended or expelled.

Violent Student:
An elementary or secondary student under the age of 21 who:

1. Commits an act of violence, such as intentionally hitting, kicking, punching and/or scratching upon a school employee, or attempts to do so;
2. Commits, while on school property or at a school function, an act of violence, such as intentionally hitting, kicking, punching and/or scratching, upon another student or any other person lawfully on school property or at the school function, or attempts to do so;
3. Possesses, while on school property or at a school function, a weapon;
4. Displays, while on school property or at a school function, what appears to be a weapon;
5. Threatens, while on school property or at a school function, to use a weapon;
6. Knowingly and intentionally damages or destroys the personal property of any school employee or any person lawfully on school property or at a school function; or
7. Knowingly and intentionally damages or destroys school District property

Ref.: Education Law §3214(2-a) (a)

Weapon (including look-alike and ammunition): A firearm as defined in 18 USC §921 for purposes of the Gun-Free Schools Act, any other gun, BB gun, pellet gun, pistol, revolver, shotgun, rifle, machine gun, disguised gun, knife, dagger, dirk, razor, stiletto, switchblade knife, gravity knife, brass knuckles, sling shot, metal knuckle knife, box cutter, cane sword, electronic dart gun, Kung Fu star, electronic stun gun, pepper spray or other noxious spray, explosive or incendiary bomb, or other device, instrument, material or substance (including chemical and biological substances) 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 two and one-half inches in length.

A weapon is, by way of illustration and without limitation, one of the following:

1. Firearm: A firearm as defined in 18 U.S.C. 921 of the federal code. Examples include handguns, rifles, shotguns and bombs. Refer to the federal code for the complete definition.
2. Other guns: Any gun of any kind, loaded or unloaded, operable or inoperable, including any object other than a firearm that looks like a gun. This shall include but is not limited to a pellet gun, paintball gun, stun gun, taser, BB gun, flare gun, nail gun, and airsoft gun.
3. Other weapons: Any implement that could cause or is intended to cause bodily harm, other than a firearm or other gun. This shall include, but is not limited to, a switchblade knife, hunting knife, star knife, razor (including straight or retractable razor), brass knuckles, box cutter, nunchuck, spiked glove, spiked wristband, any mace derivative, tear gas device or pepper spray product.
4. Weapon used to cause bodily harm or injury: Use of a weapon to injury any person on school property or while involved in a school-sponsored activity.

Ref.: Gun-Free Schools Act, 18 USC §§3351, 8921, 8922, 921
Education Law §3214(3) (d)
8 NYCRR 100.2(gg)