



Boston Public Schools Code of Discipline

Approved 1982

Revised and Approved 1992

Revised 1993, 1994, 1995 and 2006

to bring the Code into compliance with

- M.G.L. Chapter 71, Acts of 1993
- M.G.L. Chapter 380, Acts of 1993
- P.L. 103-382 (Gun-Free Schools Act of 1994)
- Individuals with Disabilities Education Act (IDEA)

Revised 1997, 1998, 1999, 2001, 2002, 2005, and 2006

to include revisions required by federal and state laws and regulations, to align the Code with Boston Public Schools organizational structure, and to include policy changes approved by the School Committee of the City of Boston.

September, 2006

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FOREWORD

IT IS THE FIRM CONVICTION OF THE BOSTON PUBLIC SCHOOLS that good school discipline promotes equal educational opportunity and a safe and effective educational environment. The School Committee's school improvement plan for 2001-2006, *Focus on Children 2*, recognizes that accelerated school improvement requires "a climate of safety, civility, respect and collaboration in every school building." As stated in *Focus on Children 2*, this updated edition of the Code of Discipline is part of the BPS's expanded efforts "to ensure that every adult and student in the school community understands and demonstrates appropriate behavior."

The Boston Public Schools strives to develop and to implement programs and approaches to learning and discipline that will:

- ensure parental confidence in the ability of every school to provide a safe and orderly climate;
- help administrators, teachers, and other staff provide effective teaching and learning environments; and
- assure students that they can learn in a non-disruptive atmosphere and can be treated in a fair, consistent, and nondiscriminatory manner.

Every school should provide a learning environment that encourages academic excellence, free exchange of ideas, and maximum personal growth. It should be understood that on entering a school building, students do not divest themselves of their constitutional rights, e.g., the rights to due process, freedom of expression, orderly assembly, privacy of person, freedom from discrimination, and so forth. It also should be understood that students have the responsibility not to disrupt the educational process or impose upon, endanger, or deprive others of their rights to an education.

It is the policy of the Boston Public Schools to attempt to resolve disciplinary problems by every means short of exclusion from school. Fair and reasonable procedures will be followed to assure students of their rights. According to established rules, regulations, and procedures, students may request and receive a fair hearing in any instance in which they believe they have been unfairly treated. In turn, students must recognize that, to maintain an atmosphere conducive to learning, it is necessary for school officials to exercise reasonable authority.

The School Committee and the administration expect all persons connected with the schools to demonstrate mutual respect for the rights of others; and they expect all involved in teaching and learning to fully accept and discharge their responsibilities toward others and toward the school system. The framework for these rights and responsibilities rests with federal and state laws and regulations, local ordinances, School Committee policy, and the goals of *Focus on Children*. The Superintendent and the School Committee intend that the procedures outlined in the Code of Discipline will always be in compliance with and facilitate the implementation of those laws, ordinances, regulations, and policies, as to both their letter and spirit.

The Code of Discipline is in compliance with mandates of St. 93, C. 71, also known as the Educational Reform Act of 1993, as amended by St. 93, C. 380; P.L. 103-382, §14601 (Improving America's Schools Act of 1994); 18 USC, §921 et seq. (United States Code); and the federal Individuals with Disabilities Education Act, Amendments of 1997 (IDEA-97).

PHILOSOPHY

THE BOSTON PUBLIC SCHOOLS recognize that the primary intent of society in establishing public schools is to provide an opportunity for learning which cannot be provided in the home. The BPS further recognizes that students have the full rights of citizenship as delineated in the United States Constitution and its Amendments, and that these rights may not be abridged, obstructed, or altered except in accordance with due process.

This document details the responsibilities and rights of students, teachers, administrators, and parents. The quality of education depends not only upon the responsibilities and rights of students, but also upon the quality of interaction among students, parents, teachers, and administrators.

Parents are vital to the success of the school. Parents have the responsibility to reinforce the learning process at home, to encourage and model civil behavior, to motivate their children to be interested in school, and to see that their children attend school regularly. Parents should expect the highest level of achievement of which their children are capable, and teacher performance which can elicit this level of achievement. Parents are welcomed and encouraged to confer with teachers to find out how their children are progressing. Parents need to be involved to ensure that their children receive a high quality education.

Teachers and all other school personnel should treat students with the same respect and consideration that they expect from students. Teachers need to explain and apply to students in a consistent manner a clear set of ground rules for acceptable behavior, class participation, grades, and assignments. Teachers should communicate with the home about school activities, positive accomplishments and problems, and the ways in which parents can help their children succeed in school.

Principals and headmasters have the responsibility for assuring that the educational needs of students in school are met and that all members of the school community experience fair treatment. Principals and headmasters should communicate to students, parents, and staff the belief that school is a place for learning and teaching, and it is the business of all to see that this happens on a consistent basis every day. They should clearly communicate and fairly and consistently enforce the school disciplinary policies. Principals and headmasters have broad power and broad responsibilities and are the key to balancing the best interests of those concerned about the schools.

If enough people work cooperatively and creatively to resolve the complex and persistent problems we face daily—if students work hard and aim high—if parents provide support and encouragement—if school officials provide quality instructional programs, competent instructional personnel, and strong commitment to high standards—then excellence can be achieved in the Boston Public Schools.

GUIDING PRINCIPLES

*From the School Climate and Behavior Work Group Report
Adopted by the Boston School Committee on June 27, 2001*

THE FOLLOWING GUIDING PRINCIPLES lay the foundation for the Positive School Climate Initiative. These principles are essential beliefs that will guide Boston Public Schools staff, students and families in the shared work of ensuring positive school environments and improved student outcomes. These principles must be discussed, understood and embraced across the city to ensure maximized learning and growth opportunities for all children.

1. Appropriate behavior can be taught, modeled and generalized within and across settings.
2. Civil behavior modeled by adults is a powerful teaching tool for children.
3. Behavioral issues represent a range, and there are different techniques and interventions along that range.
4. Ensuring the safety of all students and staff is the responsibility of all staff.

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5. Attention to adult and student behavior is as essential as other “teachable” educational issues.
6. Students need to feel connected, capable and contributing in the classroom setting. There is a variety of reasons for misbehavior, and an understanding of these reasons can help prevent or address behavior issues.
7. Mental health issues need to be understood in relationship to school behavior and to work with families.
8. Counseling is one intervention for solving behavior issues; but it may have limited impact as a sole intervention.
9. In partnership with public institutions, agencies and the greater Boston community, the Boston Public Schools can expand and improve supports to families and students.
10. Recognition and respect for the diverse population in the schools and community are paramount. All children must be assured that they can learn in a non-disruptive atmosphere and can be treated in a fair, consistent and non-discriminatory manner.

RATIONALE FOR THE CODE OF DISCIPLINE

THE CODE OF DISCIPLINE is that set of policies, rules, and laws, and their concomitant enforcement by which order is established for the benefit of all. Discipline, as defined by the Code, must have the qualities of understanding, fairness, and consistency. It is the responsibility of the school personnel, students, parents, and the community to contribute to a school atmosphere which promotes a climate conducive to learning. Discipline is a shared responsibility for students, administrators, teachers, parents, and the community.

The Code of Discipline is intended to be instructive, not punitive, and is based on the principle of progressive discipline; i.e. minor infractions and first offenses will have less serious consequences than major infractions and repeat offenses. Factors such as age and grade level of the student, the student's social, emotional and intellectual development, and overall student rights and responsibilities should also be considered.

RIGHTS AND RESPONSIBILITIES OF STUDENTS

A. RIGHTS OF STUDENTS

Correspondingly, it is not possible to list all of the rights of students. Therefore, the following list of rights shall not be construed to deny or limit others retained by students in their own schools, in their capacity as members of the student body, or as citizens.

1. In accordance with the United States Constitution and applicable federal and state laws and regulations, students have the right to participate fully in classroom instruction and extracurricular activities regardless of race, color, ethnicity, national origin, religion, sex, marriage, pregnancy, parenthood, sexual orientation, primary language, handicap, disability, age, or economic class.
2. Students have the right to an education of the highest standards.
3. Students have the right to a meaningful curriculum and the right to voice their opinions in the development of such a curriculum.
4. Students have the right to physical safety and protection of personal property.
5. Students have the right to safe and sanitary facilities.
6. Students have the right to consult with teachers, counselors, and administrators and anyone else connected with the school if they so desire at appropriate times.

7. Students have the right to free election by secret ballot of their peers in student government and the right to seek and hold office.
8. Students have the right to participate in the development of rules and regulations to which they are subject and the right to be notified of such rules and regulations.
9. Parents and students (if either 14 years of age or in the 9th grade or above) have various rights under state and federal student records laws, including the right to see all the student's records, to control who outside the school may see them, and to appeal decisions concerning the records. Upon notice of transfer, the complete student record may be forwarded to the receiving district without the parent's permission. However, the parent must be notified that the record has been sent. (A more detailed summary of these rights is distributed annually to all students and parents. Additional information and copies of the actual regulations are available at each school upon request and from the Massachusetts Department of Education's Bureau of Student Services.)
10. Students in their own schools may exercise the rights of free speech, assembly, press, and association, in accordance with the First Amendment of the United States Constitution and Part 1, Article XVI of the Massachusetts Declaration of Rights.

In exercising these rights, students shall refrain from any expression which is libelous or obscene according to current legal definitions, or which is intended to and likely to incite the commission of illegal acts, or which can reasonably be forecast to cause substantial disruption of school or classroom activity, as defined in Section 7.10 of this Code.

Consistent with the foregoing, students have the right to:

- (a) Wear political buttons, armbands, and other badges of symbolic expression.
- (b) Distribute printed materials and to circulate petitions on school property, including inside school buildings, without prior authorization by school administrators, except that:
 - (1) materials distributed and petitions circulated on school property shall bear the name and address of the individual or sponsoring organization (including the name and address of at least one member of the group) distributing or circulating the material or petition; and
 - (2) the person(s) distributing or circulating materials or petitions must be a student in the school involved; and
 - (3) the time for such distribution or circulation shall be limited to periods before school begins, after dismissal, and during lunchtime to prevent interference with the school program; and
 - (4) the places for such distribution or circulation in each school shall be reasonably restricted so as to permit the normal flow of traffic within the school and at exterior doors; and
 - (5) the manner of such distribution or circulation shall be reasonably restricted so as to prevent undue levels of noise; and
 - (6) students shall be subject to reasonable requirements for removing litter resulting from such distribution or circulation.
- (c) Use their own bulletin board(s) without censorship, provided:
 - (1) all materials, notices, and other communications posted shall include the name and address of the individual or sponsoring organization (including the name and address of at least one member of the group) posting the material, notice, or other communication; and
 - (2) all materials, notices, and other communications shall be dated before posting and removed after a reasonable time to assure full access to the bulletin board(s).
- (d) Reasonable use of the public address systems and other school media facilities, except that announcements shall be limited to before school, after dismissal, and other times when classes are not in session.

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- (e) Form political and social organizations and to conduct activities in this connection, provided that group membership shall be open to any student, in accordance with Paragraph B.1 of the Rights and Responsibilities Section of this Code.
- 11. The protections provided by state and federal special education laws if the school had knowledge (as defined by federal and state law) that the students were students with a disability before the behavior that precipitated the disciplinary actions occurred (applies to students who have not been determined to be eligible for special education and related services, and who have engaged in behavior that violated any rule or code of conduct).
- 12. Present petitions, complaints, or grievances to appropriate school authorities regarding disciplinary and other school-related issues except where this Code provides for formal right of appeal.
- 13. Respect from teachers and administrators.
- 14. Personal privacy, including the right to determine their own appearance and select their own style of hair and clothing, subject to reasonable rules necessary for health and safety.
- 15. Not to be searched or to have their lockers, automobiles, or personal belongings subjected to searches and seizures. However, with reasonable cause, designated school administrators may search lockers, automobiles, and personal belongings. [See Superintendent Circular SAF-3 – Student Locker Policy.]

B. RESPONSIBILITIES OF STUDENTS

Responsibilities are not a substitute for rules which are included in the Code of Discipline. However, while it is not possible to list all student responsibilities, students who consistently behave in accordance with the following list of broad responsibilities will be in compliance with the rules of the Code.

Students have the responsibility to:

1. Respect the rights of all persons involved in the educational process.
2. Respect the authority of school staff.
3. Respect the diversity of staff and students in the Boston Public Schools with regard to race, color, ethnicity, national origin, religion, sex, marriage, pregnancy, parenthood, sexual orientation, primary language, handicap, special needs, age, and economic class.
4. Contribute to the maintenance of a safe and positive educational environment.
5. Apply their abilities and interests to the improvement of their education.
6. Exercise the highest degree of self-discipline in observing and adhering to rules and regulations.
7. Recognize that responsibility is inherent in the exercise of every right.
8. Assure that they exercise their voice in student government.

RESPONSIBILITIES OF ADMINISTRATION

Administrators have the responsibility to:

1. Protect the mental and physical well-being of all students and staff.
2. Protect the legal rights of teachers, students, and parents.
3. Support school personnel in the fulfillment of their disciplinary responsibilities as defined by the Code of Discipline and individual school-based rules.
4. Contact and involve parents in dealing with disciplinary matters.
5. Provide a broad-based and varied curriculum to meet individual needs.
6. Develop and implement overall disciplinary policies in cooperation with students, parents, and teachers and in conformance with School Committee policy and the Code of Discipline.

7. Inform the community, students, parents/guardians, and school staff about policies relating to pupil conduct in schools, at school-sponsored activities, and on school-provided transportation.
8. Provide qualified staff to meet the needs of students and to accomplish school goals and objectives.
9. Collaborate with community and government agencies on programs that promote safety and civility.
9. Consistently maintain a humanistic approach with all students.

RESPONSIBILITIES OF TEACHERS

Teachers have the responsibility to:

1. Maintain a good learning atmosphere.
2. Exhibit qualities of competency, creativity, and self-control.
3. Respect each student as a person.
4. Demonstrate understanding and concern for the individual pupil and his or her needs.
5. Inspire in students the desire for personal growth.
6. Guide students toward the development of self-discipline.
7. Keep informed about current rules and policies.
8. Enforce the policies, rules, and regulations of the School Committee.
9. Communicate with students and their parents.
10. Be conscious of professional ethics in relationships with students, fellow teachers, and administrators.

RESPONSIBILITIES OF PARENTS

Parents have the responsibility to:

1. Share the responsibility for the behavior of their child in school, at school-sponsored activities, and on the way to and from school.
2. Prepare the child to assume responsibility for attending school, and for his or her own behavior.
3. Foster in the child positive attitudes toward himself or herself, others, school, and the community.
4. Communicate with school personnel about the child.
5. Attend individual or group conferences.
6. Recognize that the school staff has the right to enforce the policies, rules, and regulations of the Boston School Committee.
7. Behave in a civil and non-disruptive manner when visiting the school.
8. Assure that their child brings to school only those things that are appropriate in a school setting.

RESPONSIBILITIES OF THE COMMUNITY AND SCHOOL SUPPORT AGENCIES

The community has the responsibility to:

1. Help shape school goals.
2. Be informed about school goals and policies.
3. Support an effective school system.

Agencies charged with providing support to students and their families have the responsibility to:

1. Address the needs of their clients that interfere with the learning process.
2. Collaborate with schools to deliver effective support services.

The Code of Discipline

Section 1 EQUAL EDUCATIONAL OPPORTUNITY

- 1.1 In accordance with the United States Constitution and applicable federal and state laws and regulations, no student shall be suspended, excluded, or otherwise disciplined on account of race, color, national origin, ethnicity, religion, sex, marriage, pregnancy, parenthood, sexual orientation, primary language, disability, age, or economic class.

Section 2 LANGUAGE OF NOTICES, CONFERENCES, AND HEARINGS

- 2.1 All written and oral notices required by this Code shall be in English and in the primary language of the home. All notices shall be made in simple and commonly understood words to the extent possible.
- 2.2 At all hearings and conferences, students and parents have a right to an interpreter of their primary language. All notices regarding hearings or conferences required by this Code shall inform students and parents of this right in the primary language of the home.

Section 3 INFORMAL CONFERENCE PROCEDURES

3.1 General Policy

It is the policy of the Boston Public Schools to encourage the use of the procedures described in this Section to discuss and to reach non-punitive solutions to problems of student conduct.

3.2 Academic Employee Conference

Academic employees shall attempt to resolve disciplinary problems prior to referral to the Building Administrator. To this end, academic employees, upon witnessing or being informed of the commission of an offense prohibited under this Code, are encouraged to confer privately with the student at the earliest opportunity, and to confer with a parent by telephone or by letter. An academic employee or a student may invite a parent to a conference with the student and the employee at a mutually convenient time and place.

3.3 Referral by Nonacademic Employees

Nonacademic employees or people servicing our schools who are non-employees, upon witnessing the commission of an offense prohibited under this Code, are encouraged to refer the matter to an academic employee supervising the student or, if none is available or known, to the Building Administrator who may designate an appropriate academic employee to initiate the procedure described in Section 3.2.

3.4 *Referral from Academic Employee Conference*

When resolution at the academic employee conference is not successful, the academic employee shall inform the Building Administrator that the student is being referred for attempted resolution of problems or misbehavior. A written statement of the events leading to the referral, the offense the student is believed to have committed, and efforts of the teacher to resolve the problem shall be placed in the student's temporary record.

3.5 *Building Administrator Informal Conference*

The Building Administrator shall attempt to arrange a time and place for an informal conference convenient to all participants. The Building Administrator may invite the parent to attend the informal conference, but failure of the parent to attend shall not delay the conference nor affect the duration or type of disciplinary action taken. If more than one student participated in the incident for which a referral is made, the Building Administrator may require, or the student may request, the attendance of all students involved.

3.6 *Elementary School Procedures*

It is recognized that elementary schools do not have many of the organizational or programmatic structures which can provide preventive measures or alternative solutions at the secondary level. It is particularly important, therefore, that committees developing School-Based Rules at the elementary level under Section 4 build in support mechanisms within the school and between school staff and parents. Elementary school Building Administrators should work together with staff and parents to develop such resources.

Section 4 PROCEDURES FOR ESTABLISHING SCHOOL-BASED RULES ON DISCIPLINARY PROBLEMS

4.1 This Code establishes uniform rules and procedures to be followed throughout the system in disciplinary actions that could result in suspension, transfer, or expulsion. In addition, the Boston Public Schools requires the establishment of school-based rules and the development and consideration of non-exclusionary solutions to violations of school-based rules and, where possible, violations of Section 7 of this Code. Section 5 describes some non-exclusionary solutions which may be adopted by each school in accordance with the provisions of this section.

4.2 The Building Administrator in each school shall convene each spring a subcommittee of the School-Site Council to review and, if necessary, to revise the School-Based Rules for that school describing *non-suspendable* disciplinary problems and solutions. These School-Based Rules shall not diminish or conflict with any procedures or rights described by this Code, and no rules shall provide for any demeaning, degrading, or physical punishment. However, they may provide for the denial of privileges, such as field trips and extracurricular activities, for limited periods of time.

School-Based Rules shall be written in a simple, clear, and precise style, and undefined terms and educational and legal jargon should be avoided. After review by the School-Site Council, School-Based Rules shall be translated into appropriate home languages for students in the school.

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4.3 All School-Based Rules, at all levels, shall address, but not be limited to, the following areas not addressed by the Code of Discipline:

4.3.1 Searches and seizures

4.3.2 Cheating

4.3.3 Inspection of school lockers

4.3.4 Tardiness

4.3.5 Eating of food in unauthorized areas of the building

4.3.6 Possession of inappropriate but not dangerous property, such as radios, recording equipment, pagers*, and other personal audio and electronic equipment

* Under School-Based Rules, pagers may be permitted on a case-by-case basis on the condition that prior written parental authorization has been given to the Building Administrator, and an inaudible setting is used. See Section 7.10.4 for **cell phone policy** (effective 7/1/05).

4.4 School-Based Rules shall also address the following items addressed by the Code of Discipline and other policies adopted by the Boston School Committee, to assure that parents and students are aware of these policies:

4.4.1 Student records, including forwarding of records when students transfer to another school district

4.4.2 Loss of privileges

4.4.3 Lost, vandalized, defaced and stolen textbooks and property

4.4.4 Transportation, including the parent's responsibility when a student loses bus privileges

4.4.5 Use of tobacco products on school property

4.4.6 School visits and presentations by parents and other third parties

4.4.7 Detention

4.4.8 School uniform policy and/or dress code

4.5 The School-Based Rules Subcommittee shall consist of representatives from all constituencies in the school—administrators, teachers, parents, and others—and shall be reflective of the school population. In middle and high schools, the Subcommittee may also include students.

4.6 The Building Administrator of each school shall set up a mechanism to allow time for the representatives of parents, teachers, and students to involve their constituencies to the maximum in the development of the rules.

- 4.7 After the School-Based Rules have been developed pursuant to this Section, they shall be reviewed and adopted by the School-Site Council.
- 4.8 After adoption, the School-Based Rules and any subsequent changes shall not go into effect until they have been distributed to students, parents, and faculty members. Thereafter, before September 15 of each school year, the School-Based Rules shall be distributed to students, parents, and faculty members with the *Boston Public Schools Policy Handbook for Parents & Students*. The School-Based Rules shall be posted in conspicuous places within the school. The School-Based Rules shall also be presented to staff and students at an orientation/training session by the third Friday in September of each school year.
- 4.9 Any person who believes this Code has not been followed in the establishment of School-Based Rules may file a complaint with the Boston Public Schools Office of Equity which shall investigate and make recommendations to the Superintendent.
- 4.10 The rules and solutions adopted pursuant to this Section shall be re-evaluated in the same manner each year prior to June 1.

Section 5 ALTERNATIVE SOLUTIONS TO DISCIPLINARY PROBLEMS

5.1 Contracting

School staff may design agreements with students to identify target behaviors, define expectations, and describe consequences. Such contracts may be written to manage student behavior while in school, going to and from school, on school-provided transportation, and at school-sponsored activities, during and beyond the regular school day. These contracts may involve other staff, parents, administrators, and other students, when appropriate. It is suggested that these agreements be written and reviewed at specific times. Students and parents shall be informed that agreement to a contract is voluntary.

5.2 Student Support Resources

The student may be referred to school-based or community-based resources such as the school's student support team or other support staff, as appropriate. The student's participation in any counseling, evaluation, or rehabilitation shall be voluntary and shall include written parental approval and involvement where appropriate.

5.3 Detention

After notice to the student and parent, a student may be detained for not more than one hour after school on each of up to three (3) school days or may be required to arrive early for a definite number of days, provided the total detention time does not exceed three (3) hours per offense. If a parent cannot be reached by telephone, the student may be detained the following school day by sending written notice home with the student. Provision must be made for students who receive "yellow bus" transportation.

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5.4 *Loss of School Privileges: Field Trips, After-School Activities, etc.*

After notice to the student and parent, a student may be denied specific school privileges, to be enumerated by each school under Section 4, but not in a manner so as permanently to deny the student the right to participate in a continuing school activity. A student may be denied school privileges for no longer than one week at a time, or a total of three (3) weeks in a marking period, unless a hearing is held as defined in Section 9.5.

For schools which have adopted a mandatory uniform policy, students whose parents have requested a waiver of the policy will not be subject to loss of any school privileges for failure to wear a uniform. In cases where a waiver has not been requested, the child may be subject to loss of school privileges after notice has been given to the parent and a second offer made to the parent to request a waiver from the uniform policy.

5.5 *Long-term Adjustment of Class Schedule*

After notice to the student and parent giving the reasons for the proposed class adjustment, or after a conference among the student, parent, and Building Administrator, a student's class schedule may be adjusted, but only to minimize contact between the student and a teacher or between the student and another student where there is evidence of an ongoing conflict between the two.

Short-term schedule adjustments up to three (3) days may be made without notice to the parent.

5.6 *Probation*

With written notice to, or after a conference with, the student and parent that the commission of an additional offense will lead to a particular disciplinary measure, a student may be placed on probation until the end of the marking period. Any disciplinary measure carried out in connection with probation shall be done in strict adherence to the Code.

5.7 *Restitution*

After written notice to the student and parent, or after a conference with the student and parent, a student may be required to repair, restore, replace, or pay for damaged, vandalized, lost or stolen school property. Payment may be required either in cash or in appropriate, agreed-upon services.

5.8 *Denial of School-Provided Transportation*

5.8.1 School-provided transportation, **including free MBTA bus passes**, may be denied for violations of the Code of Discipline and school-based rules which occur on school **or public** transportation. Transportation may be denied when a student's actions endanger or will continue to endanger his/her own safety and/or the safety of others.

5.8.2 Denial of transportation for specific periods of time shall be consistent with the principle of progressive discipline and with the nature of the violation.

5.8.3 Denial of transportation for fewer than four (4) days does not require a hearing. However, the student shall be given the reasons for denial of transportation and an

opportunity to respond to the charges before the denial is imposed. Denial of transportation for four (4) consecutive days or more and/or for more than six (6) cumulative days in any marking period shall require a hearing in accordance with Section 9.5. In all cases, the parent must be notified before transportation services are denied.

5.9 *Student Planning Centers*

After positive and responsible approaches have been exhausted within the classroom, the disruptive student may be referred to a student planning center. The student remains in the planning center only long enough to be assisted in assessing present behavior and making a plan for more responsible behavior. The planning center provides the opportunity for the student to maintain classroom assignments, follow-up for the student's plan, and support for the staff. Removal to a student planning center shall not constitute a suspension or an in-school suspension.

5.10 *Behavior Management Systems*

Staff and students may design behavior management systems for classes, clusters, programs, and/or schools based on progressive levels of privileges and restrictions. Some examples of alternatives to removing the student from class are: a demerit system, behavior management contract with the student, and peer counseling/conflict resolution.

Section 6 TEMPORARY REMOVAL FROM CLASS

- 6.1 The Building Administrator, upon the request of a teacher, may authorize the removal of a student from class to a supervised area within the school when the student's actions are causing and will continue to cause substantial disruption of classroom activity, as defined in Section 7.10. Removal from class shall last only as long as necessary to ensure that the conditions justifying the removal have ended, and in no case beyond the end of two (2) class periods or 90 minutes, whichever occurs first, except when a student has been sent to a student planning center.
- 6.2 When a student has been removed from the same class more than once, the Building Administrator who authorized the removal shall, within two (2) school days following the removal, mail a written report of the removal and reasons for it, prepared by the teacher, to the student's parent.
- 6.3 No student may be removed from the same class more than two (2) times per week or four (4) times per marking period unless the student is offered a hearing in accordance with Section 9.5.

Section 7 GROUNDS FOR SUSPENSION, LONG-TERM SUSPENSION, INDEFINITE SUSPENSION, DISCIPLINARY TRANSFER, ALTERNATIVE PROGRAM PLACEMENT, OR EXPULSION

The modifications in this edition of the Code of Discipline have been made to bring the Code in compliance with mandates of St. 93, C. 71, also known as the Massachusetts Education Reform Act of 1993, as amended by St. 93, C. 380; P.L. 103-382, §14601 (Improving America's Schools Act of 1994); 8 USC, §921 et seq. (United States Code); and the federal Individuals with Disabilities Education Act, Amendments of 1997 (IDEA-97).

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7.1 This section describes the school-related disciplinary offenses for which a student, in accordance with other sections of this Code, may be subject to suspension, long-term suspension, indefinite suspension, disciplinary transfer, alternative education placement, or expulsion. For the purpose of this Code, “school-related disciplinary offense” refers to a violation of this Code occurring:

- while the student is on school grounds;
- during a school-sponsored activity;
- while on school-provided transportation en route to or from a school or a school-sponsored activity; or
- while walking to or from school, waiting for school-provided transportation, **while riding public transportation and on MBTA property**, or waiting for or riding on public transportation to and from school.

A school-related disciplinary offense may also include circumstances in which evidence exists that serious misconduct *outside* the school—for example, a student's being charged with or convicted of the commission of a felony—will have an adverse effect on the maintenance of discipline *in* the school.

To be effective, discipline should be administered as soon as possible after the violation of the Code has occurred or been documented.

Refer to Section 20 of the Code of Discipline for the definitions of key terms: firearm, dangerous weapon, dangerous object, felony, and others.

A student will, as a last resort, be subject to suspension, long-term suspension, indefinite suspension, disciplinary transfer/alternative program placement, or expulsion for the following offenses:

7.2 ***Assault & Battery/Bodily Harm/Threats***

The following offenses **will result in expulsion**, with the length of expulsion not to exceed one calendar year, to be determined by the Building Administrator:

- 7.2.1 Assault and battery on school staff resulting in physical injury [see Section 20.4].
- 7.2.2 Sexual assault [see Section 20.33].

The following offenses may result in suspension, long-term suspension, disciplinary transfer/alternative program placement, or expulsion:

- 7.2.3 Assault and battery on any person. This offense shall result minimally in a long-term suspension or disciplinary transfer/alternative program placement.
- 7.2.4 Causing physical injury to another person, except when the student's actions are reasonably believed necessary to protect himself or herself as determined by the Building Administrator (or designee) on the evidence presented.
- 7.2.5 Endangering the physical safety or mental health of another by the use of force or threats of force. A threat of force is some overt act, expressed by any means, which reasonably places the victim in fear of imminent bodily injury. This offense includes

hazing, graffiti, and threats communicated by any means: written, spoken, or transmitted by e-mail [see Section 20.26, Hazing].

7.3 *Possession of Firearms, Dangerous Weapons and Dangerous Objects*

The following offenses **will result in expulsion**, with the length of expulsion not to exceed one calendar year, to be determined by the Building Administrator:

- 7.3.1 Possession of any firearm [see Section 20.23].
- 7.3.2 Possession of a dangerous weapon [see Section 20.11], or object of no reasonable use [see Section 20.30], which is used in a threatening manner in school and/or at a school-sponsored activity.

The following offenses may result in suspension, long-term suspension, disciplinary transfer/alternative program placement, or expulsion:

- 7.3.3 Possession of any knife or dangerous weapon prohibited by law, other than a firearm [see Section 20.11], or object of no reasonable use [see Section 20.30]. This offense will result in referral to the Counseling & Intervention Center. A second offense will result in referral to the Counseling & Intervention Center and expulsion.
- 7.3.4 Use of any object in a dangerous or threatening manner [see Section 20.10].
- 7.3.5 Endangering the safety of others by setting or attempting to set a fire on school property, at school-sponsored activities, or while on school-provided transportation.

7.4 *Controlled Substances, Alcohol and Tobacco*

The following offense **will result in expulsion**, with the length of expulsion not to exceed one calendar year, to be determined by the Building Administrator:

- 7.4.1 Sale, distribution, or possession with intent to sell or distribute of any prescribed or non-prescribed controlled substances in school, on school grounds, or while under school jurisdiction.

The following offenses may result in suspension, long-term suspension, disciplinary transfer/alternative program placement, or expulsion:

- 7.4.2 Possession or use of any non-prescribed controlled substance, narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, alcoholic beverage, or intoxicant of any kind.
- 7.4.3 Use of tobacco products on school property, at school-sponsored activities, or while on school-provided transportation.

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7.5 ***Felony or Felony Delinquency Charges or Convictions***

The following offense may result in indefinite suspension pending adjudication of charges [see Attachment 3.4, Notification of Hearing for Indefinite Suspension: Felony Complaint]:

- 7.5.1 Felony charge (or felony delinquency charge for a student under 18); and the Building Administrator, after a hearing, determines and states in writing as part of the decision that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school.

The following offense may result in expulsion [see Attachment 3.5, Notification of Hearing for Expulsion: Felony Conviction]:

- 7.5.2 Felony conviction (or adjudication or admission in court of guilt for a felony or felony delinquency); and the Building Administrator, after a hearing, determines and states in writing as part of the decision that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school.

7.6 ***Harassment and Violations of Civil Rights***

The following offenses may result in suspension, long-term suspension, disciplinary transfer/alternative program placement, or expulsion:

- 7.6.1 Violation of the civil rights of others.
- 7.6.2 Committing acts of sexual harassment which are defined as sexually related physical contacts or offensive sexual insults or comments.
- 7.6.3 Committing acts of harassment related to sexual orientation.
- 7.6.4 Using racial or ethnic slurs in a persistent and/or abusive manner.
- 7.6.5 Using profanity or obscene language in a persistent and/or abusive manner.

7.7 ***Theft and Vandalism***

The following offenses may result in suspension, long-term suspension, disciplinary transfer/alternative program placement, or expulsion:

- 7.7.1 Attempting by force or threat of force to steal private property.
- 7.7.2 Damaging or stealing school or private property, including tampering with school records.

7.8 ***Unacceptable Use of Networks, Including the Internet and Electronic Mail (E-mail)***

The following violations of the Boston Public Schools Acceptable Use Policy will result in loss of Internet and/or e-mail privileges and may result in suspension, long-term suspension, or expulsion:

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- 7.8.1 Use of the network for any illegal or commercial activity.
- 7.8.2 Sending information, or uses language, that others will find offensive.
- 7.8.3 Violation of copyright laws.
- 7.8.4 Revealing personal information about another individual, such as address, telephone number, credit card numbers, social security number, etc.
- 7.8.5 Tampering with the system.
- 7.8.6 Altering, deleting or destroying files or data belonging to another user.

7.9 *Other Disruptions*

The following offenses may result in suspension:

- 7.9.1 Refusal to identify self on the reasonable request of staff or gives false identification.
- 7.9.2 Presence in a part of the school building or grounds off limits to students.
- 7.9.3 Leaving the school building without permission.
- 7.9.4 Excessive cutting of classes.

The penalty of suspension for excessive cutting shall only be assessed after alternatives such as adjustment of class schedule, if appropriate, alternative programs, parental conferences, and detention have been attempted, and documentation maintained at the school. Excessive cutting may then result, at a maximum, in a three-day suspension, preferably in-school, regardless of the student's age.

7.10 *Substantial Disruptions*

Substantial disruption of school or classroom activity in a repeated, aggravated, or flagrant manner may result in suspension, long-term suspension, disciplinary transfer/alternative program placement, or expulsion. Substantial disruption of school or classroom activity is defined as one or more of the following acts:

- 7.10.1 Occupying any school building, school grounds, or part, depriving others of its use.
- 7.10.2 Blocking the entrance or exit of any school building, corridor, or room, depriving others of lawful access to or from, or use of, the building, corridor, or room.
- 7.10.3 Preventing or attempting to prevent by physical act the safe functioning of any part of any school.
- 7.10.4 Continuously and intentionally making noise or otherwise seriously disrupting and/or preventing the normal functioning of the school or the teaching of other students. This

includes repeated, unauthorized use of **cellular phones**. Effective 7/1/05:

- a. Students are permitted to use cell phones *only* during the following times:
 - before school hours outside or inside the school building;
 - after school hours outside or inside the school building;
 - at after-school or sports activities, only with the permission of the coach, instructor or program director;
 - at evening or weekend activities inside the school building.
- b. The use of cell phones for any purpose – including telephone calls, text messaging and other functions – is not permitted at any other time on school grounds.
- c. Cell phones must not be visible during the school day.
- d. Cell phones must be turned completely off (not simply on silent or vibrate mode) during the school day.

Penalties for students found to be in violation of the cell phone policy will be as follows:

- a. First offense: Student’s cell phone will be confiscated and returned to the student at the end of the school day.
- b. Second and subsequent offenses: Student’s cell phone will be confiscated and returned only to the student’s parent or guardian. The student will be prohibited from bringing a cell phone to school for the remainder of the school year.
- c. Students committing repeated violations of this policy may be subject to additional disciplinary action, consistent with the *Code of Discipline*.

7.10.5 Making a bomb threat or pulls/reports a false fire alarm.

7.11 ***Repeated and Flagrant Violations***

Repeated and flagrant violations of one or more of the offenses described in Section 7.2 through 7.10 may result in expulsion if they occur in the same school year.

7.11.1—Consequences for repeated and flagrant violations of the Code shall be consistent with the principle of progressive discipline, with consideration given to the age and the social, emotional and intellectual development of the student.

7.11.2 Students who violate the Code of Discipline at the elementary level (Kindergarten-grade 5) need not be considered “repeat offenders” if the second violation takes place at the secondary level (grades 6-12).

7.12 ***Referrals to the BPS Counseling & Intervention Center***

7.12.1 Students shall be referred to the Counseling & Intervention Center for any expellable offense, as described in Section 7.

7.12.2 The following offenses **will result in expulsion** following a hearing conducted by the Building Administrator of the assigned school:

- a. Failure to attend, or to consistently attend, the Counseling & Intervention Center without reasonable extenuating circumstances.
- b. Violation of the Code of Discipline while attending the Counseling & Intervention Center.

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Section 8 PROCEDURES FOR EMERGENCY SUSPENSION

- 8.1 The Building Administrator may temporarily suspend a student from school until the reason for the emergency suspension has ceased, but in no case for longer than the end of the school day, when:
- 8.1.1 The student has committed a suspendable offense by violating Section 7.2 through 7.10, *and*
 - 8.1.2 The student's presence poses a continuing danger to persons or property or of material interference with the instructional process; *and*
 - 8.1.3 There is no alternative available to alleviate the danger or interference; *and*
 - 8.1.4 It is impossible because of the student's behavior to provide the student with notice and hearing prior to the emergency suspension.

[NOTE: An administrator's unavailability is insufficient cause to suspend a student under this section prior to a hearing.]

- 8.2 *Notice to the Parent.* The Building Administrator authorizing the emergency suspension shall as soon as possible make reasonable efforts to reach by telephone a parent of the student to inform the parent. A student subjected to emergency suspension shall not be put out of the school until adequate provisions have been made for transportation and safety.

Within 24 hours of the beginning of the emergency suspension, the administrator shall notify the student's parent of the emergency suspension and the specific basis for determining that it was necessary under Section 8.1. If the parent is present in the school, the parent shall be given a letter. If the parent is not in the school, the school shall notify the parent by telephone *and/or* by certified mail to the student's home. In addition, if the student is in the school, the student shall also be given a letter. All correspondence regarding the emergency suspension must be in English *and* the language of the home, if different. The letter shall inform the student and parent of the right to a hearing under Section 9.5, and the decision(s) to be considered at that hearing.

- 8.3 *Hearing.* The student is entitled to a hearing under Section 9.5 as soon as possible (but no later than one school day after the emergency suspension began) and to an appeal under Section 9.9. If the hearing or the appeal demonstrates that the emergency suspension was unwarranted because any of the factors in Section 8.1 were not met, then all references to the emergency suspension shall be expunged from the student's records. If it is found that the emergency suspension was warranted, and the continued need for suspension exists, the suspension may be extended up to limits provided by this Code for the particular offense. Time spent out of school during the emergency suspension shall count toward any additional suspension imposed after this hearing.

Section 9 **SUSPENSION: DEFINITION AND PROCEDURES**

9.1 *Definition and Rationale*

- 9.1.1 Suspension means the short-term exclusion of a student from regular school activities. The term “suspension” shall include any “in-school” suspension [see Section 10 for definition of long-term suspension].
- 9.1.2 The Building Administrator may impose suspension if a student has committed a violation of Section 7 and all non-exclusionary alternatives under Sections 3, 4, and 5 have been tried or carefully considered. The term “suspension” shall include any “in-school” suspension.

9.2 *Due Process*

- 9.2.1 No suspension, except emergency suspension, shall be imposed until the parent has been notified and a hearing pursuant to Section 9.5 has been held at the school, unless the parent has waived the right to a hearing in writing [see Section 9.4.6 and Attachment 3.2].
- 9.2.2 The due process obligation in school-based hearings has been upheld by both the Massachusetts Superior Court and the Supreme Court of the United States. It is necessary that due process be followed in conducting a hearing for suspension or the proceedings may be declared invalid.

9.3 *Frequency and Duration of Suspensions*

- 9.3.1 Suspensions may not exceed three (3) school days for a student fifteen years of age or younger or five (5) school days for a student sixteen years of age or older.
- 9.3.2 A student shall not be suspended twice for the same incident.
- 9.3.3 In accordance with Chapter 380, and in consultation with the appropriate Operational Leader, a Building Administrator determines the length of the suspension for students suspended under Section 7.5.1: charged with a felony or felony delinquency.
- 9.3.4 With respect to students with disabilities, cumulative suspensions cannot exceed ten (10) school days in any school year without following the procedures set forth in Section 14.
- 9.3.5 In the event that a student not identified as having disabilities is suspended more than five (5) days in any quarter (45 days) or excluded from school, the Building Administrator or designee must determine within five (5) days of this occurrence whether or not it is appropriate to refer the student to the Student Support Team or for a special education evaluation and inform the parent in writing: 1.) if a referral is being made, and 2.) of the parent’s right to make a referral.

23**9.4** *Procedures Preceding the Suspension Hearing*

- 9.4.1 Prior to holding the hearing for suspension, the Building Administrator shall make all possible efforts to contact the parent and/or parent-appointed representative. If the parent is present in the school, he or she shall be given a letter [see Attachment 3.1]. If he or she is not in the school, the school shall notify the parent by telephone *and/or* by certified mail to the student's home. In addition, if the student is in the school, he or she shall also be given a letter. The Building Administrator or designee shall maintain a log of efforts to contact the parent [see Attachment 9].
- 9.4.2 Correspondence regarding the recommendation for suspension must inform the student and parent of their right to appeal any decision [see Attachments 3.6, 3.7].
- 9.4.3 All correspondence with the student and parent concerning the suspension must be in English *and* the language of the home, if different.
- 9.4.4 If the parent expresses an intent to participate in the hearing, or if the parent cannot be contacted, the hearing may be delayed up to 48 hours to permit the parent to attend. If a hearing for suspension is delayed at the request of the parent, a student may be held out of a particular class or activity if the Building Administrator has a substantial reason, based on discussions with the student and/or the teacher, for believing that the student's presence in the class or activity will lead to disruption.
- 9.4.5 In scheduling a hearing for Limited English Proficiency students, the administrator must refer to Section 2.2 concerning students' and parents' rights to have an interpreter present at hearings and conferences.
- 9.4.6 A parent may waive the right to a hearing. Such waiver must be written, and copies forwarded to the Cluster Office [see Attachment 3.2].

9.5 *Procedures for Conducting the Suspension Hearing*

See Exhibit 1, Suggested Script...to Conduct a Suspension Hearing, page 25-26.

- 9.5.1 *Hearing Officer.* The hearing for suspension will be conducted by the Building Administrator. Whenever there is clear conflict of interest—for example, if the Building Administrator is the alleged victim in an incident—the Building Administrator must remove himself or herself from the case. In such instances, the Building Administrator may refer the case to the Assistant Building Administrator or, if there is none, to the Superintendent's Hearing Officer to schedule a hearing.
- 9.5.2 *Attendance.* In attendance at the hearing for suspension will be the student, the parent (if the parent chooses to attend), and other persons determined by the Building Administrator.
- 9.5.3 *Charges.* The Building Administrator will state the charges and determine that the student understands them.

- 9.5.4 *Witnesses.* If the student disputes the charges, persons with direct knowledge of the alleged incidents shall be summoned. All witnesses presenting testimony for or against the student shall appear in person at the hearing (except in the case of expert testimony such as ballistics evidence or drug analysis), and no statements for or against the student shall be presented unless the persons making the statements are so present.

There are three exceptions to this provision:

- (a) Student witnesses / victims do not have to be summoned if the Building Administrator specifically rules, orally or in writing, at the hearing that identification of the student witness, **or the presence of a known witness / victim at the hearing, would endanger his or her physical safety or cause intimidation.** In these cases, the student witness may submit written or recorded testimony, with signature, to a school official.
- (b) If a criminal case is pending, the District Attorney's office may request that the victim not testify.
- (c) In cases where a witness cannot attend the hearing (e.g. is not able to be released from work or is out of the Boston area), the witness may submit written or recorded testimony, with signature, to a school official.
- 9.5.5 *Records.* A tape recording will be made by the Building Administrator in all hearings which are expected to result in a change of educational placement (e.g. expulsion, disciplinary transfer at the elementary level, or alternative program placement at the secondary level). Upon written request, in a case where a tape is made, a copy of the tape must be made available to the student or parent within five school days of the request for purposes of review.
- 9.5.6 *Decision.* The Building Administrator shall determine if the student committed a suspendable offense as charged. This decision shall be reached impartially and shall be based exclusively on the evidence.

9.6 *Punishment*

- 9.6.1 If it is determined that the student has committed a suspendable offense, and after non-exclusionary alternatives under Sections 3, 4 and 5 have been tried or carefully considered, the student may be suspended or given a disciplinary transfer, in accordance with the limitations described in Sections 9.3, 10 and 11.
- 9.6.2 If suspension is imposed, the Building Administrator shall orally notify the student, and within 24 hours after the hearing shall give written notice to the student and to the parent of the specific acts for which the student is being suspended, the length of the suspension, the date on which the student may return to school, and the right to appeal pursuant to Section 9.9.

The Building Administrator shall make a reasonable effort to communicate directly the information described in the preceding sentence. If the parent is present in the school, the parent shall be given a letter [see Attachment 3.6, 3.7]. If the parent is not in the

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school, the school shall notify the parent by telephone *and/or* by certified mail to the student's home. In addition, if the student is in the school, the student shall also be given a letter. All correspondence regarding the imposition of suspension must be in English *and* the language of the home, if different.

9.7 *Attendance Procedure During Suspension*

A suspension is coded for attendance purposes as "suspended," which is comparable to "constructively present." Suspended students should not be coded as "absent." The Building Administrator will provide an opportunity for the suspended student to maintain academic standing in school by assigning schoolwork.

9.8 *Refusal of In-School Suspension*

A student who is sixteen years of age or older or the parent of a student who is younger than sixteen years of age may refuse in-school suspension if offered and may choose out-of-school suspension.

9.9 *Appeal to Suspension*

Within ten (10) school days of the imposition of a suspension, a student or parent may lodge a request for an appeal with the Superintendent's Hearing Officer [see Exhibit 2, The Appeal Process, Step by Step, page 27]. The procedure used in the appeal shall comply with the following requirements:

9.9.1 *Review of Evidence*

The Building Administrator shall first address the Hearing Officer and may summarize any evidence presented at the hearing for suspension. The student, parent, and/or representative (including an attorney) may then ask questions of the Building Administrator and may address the Hearing Officer on the evidence and the appropriateness of the penalty.

9.9.2 *Decision*

The Hearing Officer shall record findings, copies of which shall be included in the student's records and mailed to the student, the student's parent, and the Building Administrator. If the Hearing Officer determines that no violation of the Code has occurred, that non-exclusionary alternatives were either not tried or carefully considered, or that the student and/or parent were not notified in accordance with the Code *and* that this resulted in a violation of the student's right to due process, then no records and documentation regarding the suspension shall be placed in the student's records or communicated to any person except those entitled to receive a copy under this Section. If the suspension has not already been fully served, the Hearing Officer may determine that the student be readmitted immediately.

EXHIBIT 1. Suggested Script for Building Administrators as Hearing Officers to Conduct a Suspension Hearing – NO Change of Placement

[Tape recording **NOT** required.]

Building Administrator:

Good morning. My name is _____. I am the (Principal) (Headmaster) of the _____ School. I shall be serving as the Hearing Officer for this matter.

The purpose of this hearing is to consider the possible [suspension / long-term suspension of _____ (student) for alleged violation(s) of the Code of Discipline Section(s) _____, namely _____ (describe the alleged offense).

Building Administrator to parent/representative:

Did you receive notification of this hearing? Did you receive notification of your right to representation? [parent replies.]

Building Administrator to parent/representative:

Do you need interpreting services? [parent replies.]

Building Administrator to all present:

Before we begin it is important to go over the ground rules of the hearing. I am the Hearing Officer and as such will be in charge of the conduct of the hearing. The school will state its case first. I will call witnesses into the hearing room one at a time. **[Student witnesses / victims need not be summoned if the administrator has ruled, orally or in writing, that the identification and / or presence of the witnesses / victims would endanger their physical safety.]** The witness will give his or her version of the events. There may be some questions I will have. When I have concluded my questioning, you as parent/representative will have the opportunity to ask questions of the witness. When that witness is finished, he or she will be dismissed, and the next witness will present testimony. We will continue in this fashion until all witnesses have testified.

When the witnesses for the school have concluded, you will have an opportunity to present witnesses. The student will also have an opportunity to state his or her version of the events, [keeping in mind his or her rights under the Miranda law, that this testimony may be subpoenaed for use at a later date in a civil or criminal court]. If the accused chooses not to testify, such refusal is not an indication of guilt. However, it leaves me to make a decision on the testimony presented.

Are there any questions? I will now call the first witness.

The first witness identifies self and presents testimony. At the conclusion, the Building Administrator makes sure the following questions have been answered in the witness's testimony:

- Q. Who was involved in the event?
- Q. When did it take place?
- Q. Where did it take place?
- Q. What occurred?
- Q. What was the motive, if known?

Building Administrator to parent/representative:

Do you have any questions of the witness?

Building Administrator, when witness has concluded:

Thank you. Will you please ask _____ (the next witness) to come in?

Building Administrator to parent/representative, when school has concluded its case:

Do you have any witnesses to present?

If yes, and the parent/representative presents witnesses, the Building Administrator asks pertinent questions as above at testimony conclusion.

Building Administrator to student, when parent's/representative's case is concluded:

Did you wish to testify on your own behalf? Tell us what happened.

Building Administrator must ask student the key questions at conclusion of testimony:

Q. Did you commit the offense?

Q. Why did you do it?

Q. Did you say it?

Q. Why did you say it?

FOR A STUDENT WITH DISABILITIES:

Building Administrator to ETF:

Is _____ (student) subject to the Code of Discipline of the Boston Public Schools?

ETF identifies self and replies:

The Team met and made the appropriate determination for this student who is subject to all provisions of the Code of Discipline.

Building Administrator at conclusion of hearing:

IF EVIDENCE SUPPORTS SUSPENSION/LONG-TERM SUSPENSION:

After listening to the testimony of all the witnesses, I find sufficient evidence that _____ (student) did commit a suspendable violation against the Code of Discipline, Section(s) _____. I am, therefore, suspending _____ (student) for the period beginning _____, 20 _____, and ending on _____, 20_____.

You have the right to appeal this suspension within ten school days. The appeal must be in writing and must be sent to the Superintendent's Hearing Officer, 26 Court St., Boston 02108, or faxed to 617-635-9059.

Are there any questions? If there are no further questions, I will conclude this hearing.

EXHIBIT 2. The Appeal Process, Step by Step:**Suspension, Long-Term Suspension, Indefinite Suspension, and Disciplinary Transfer/Alternative Program Placement**

See Sections 9, 10 and 11 of the Code of Discipline for complete procedures.

- STEP 1** Building Administrator schedules disciplinary hearing and sends or gives parent the Notification of Disciplinary Hearing letter (Attachment 3.1 or 3.4) and Parent Waiver of Disciplinary Hearing (Attachment 3.2)
- STEP 2** Disciplinary hearing takes place (unless parent waives right to hearing).
- STEP 3** Building Administrator informs parent of decision and of parent's right to appeal the decision (Attachment 3.6, 3.7, 3.8, 3.9, 3.10 or 3.11). At the hearing, and/or by letter if parent did not attend the hearing, parent is advised that if s/he wishes to appeal the disciplinary action, s/he must do so within ten (10) school days. This appeal must be in writing and must be sent or faxed to:
- Superintendent's Hearing Officer
Boston Public Schools
26 Court Street
Boston, MA 02108
FAX 617-635-9059
- STEP 4** Within two days of all disciplinary hearings EXCEPT suspension (short-term), Building Administrator submits to the Operational Leader the Request for Review (Attachment 4.1 or 4.2) and all relevant materials.
- STEP 5** If parent submits a written appeal of the disciplinary action, Hearing Officer notifies Building Administrator and Operational Leader of the request.
- STEP 6** Building Administrator sends all documentation of the original suspension hearing to Hearing Officer. School should retain a file copy of all documentation and correspondence.
- STEP 7** Hearing Officer reviews documentation and schedules a time and place for the appeals hearing and notifies participants. Parent may be accompanied by an advocate or attorney. Building Administrator or program director must attend.
- STEP 8** Hearing Officer hears the case, makes a decision and notifies (in writing) all participants of the finding in writing.

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Section 10

LONG-TERM SUSPENSION AND INDEFINITE SUSPENSION: DEFINITION AND PROCEDURES

10.1 *Definition and Rationale*

- 10.1.1 **Long-term suspension** means the exclusion of a student from regular school activities for a longer period of time than a regular (short-term) suspension. Long-term suspension shall include any “in-school” suspension. [See Section 9 for definition and procedures for suspension.]
- 10.1.2 The Building Administrator may impose long-term suspension when the student has repeatedly violated Section 7 of this Code, despite having been subject to action under Sections 3, 4, and 5. A long-term suspension may also be imposed if, in the judgment of the Building Administrator, a single suspendable offense is of such severity that it would constitute an ongoing threat to the physical safety of others.
- 10.1.3 **Indefinite suspension** means the exclusion of a student from regular school activities for an indefinite period of time when the student has been charged with a felony and, in the judgment of the Building Administrator, the student’s presence is having, and will continue to have, a substantial detrimental effect on the school’s general welfare. The suspension will continue until the adjudication of the case. [See Section 7.5.]

10.2 *Due Process*

- 10.2.2 No long-term suspension shall be imposed until the parent has been notified and a hearing pursuant to Section 9.5 has been conducted by the Building Administrator.
- 10.2.1 The due process obligation in school-based hearings has been upheld by both the Massachusetts Superior Court and the Supreme Court of the United States. It is necessary that due process be followed in conducting a hearing for long-term suspension or the proceedings may be declared invalid.

10.3 *Frequency and Duration of Long-Term Suspension*

- 10.3.1 For a student who is fifteen years of age or younger, long-term suspension may be for a period greater than three (3) days, but not to exceed six (6) days. For a student sixteen years of age or older, long-term suspension may be for a period greater than five (5) days, but not to exceed ten (10) days. Long-term suspension shall include any “in-school” suspension.
- 10.3.2 The Building Administrator shall include any time the student has been suspended and out of school as part of the overall long-term suspension penalty.
- 10.3.3 A student shall not be suspended twice for the same incident.
- 10.3.4 In accordance with Chapter 380, and in consultation with the appropriate Operational Leader, a Building Administrator determines the length of the suspension for students suspended under Section 7.5.1: charged with a felony or felony delinquency.

10.3.5 With respect to students with disabilities, cumulative suspensions cannot exceed ten (10) school days in any school year without following the procedures set forth in Section 14.

10.4 In the event that a student not identified as having disabilities is suspended more than five (5) days during any quarter (45 days) or excluded from school, the Building Administrator or designee must determine within five (5) days of this occurrence whether or not it is appropriate to refer the student to the Student Support Team or for a special education evaluation and inform the parent in writing: 1.) if a referral is being made, and 2.) of the parent's right to make a referral.

10.5 *Procedures*

Follow the procedures set forth in Sections 9.4 through 9.7: *Procedures Preceding the Suspension Hearing, Procedures for Conducting the Suspension Hearing, Punishment, and Attendance Procedure During Suspension.*

See Exhibit 1, Suggested Script for Conducting a Suspension Hearing, page 25-26.

10.6 *Request for Review*

10.6.1 No later than two (2) school days after the long-term suspension hearing, the Building Administrator must submit to the Operational Leader the form, Request for Review [Attachment 4], with all relevant materials attached. Those materials include copies of the Notification of Disciplinary Hearing Letter, Long-Term Suspension Notification Letter, a recommendation for the length of the long-term suspension, student records (address, report cards, transcript), and an audio tape of the hearing if one was required under Section 9.5.5, as well as any additional materials related to the incident. The Request for Review must be complete and signed by the Building Administrator.

10.6.2 The Operational Leader will review the case and all materials for procedural and evidentiary compliance with the Code of Discipline. No later than three (3) school days after receiving the Request for Review and all materials, the Operational Leader must decide to either let stand the Building Administrator's decision or to overturn it.

10.6.3 If the Operational Leader supports the long-term suspension, he or she notifies the Building Administrator. The Building Administrator must notify the parent in writing, in the language of the home.

10.6.4 The Operational Leader may overturn the Building Administrator's decision if procedural guidelines, particularly as they apply to due process—e.g., notification and evidentiary requirements—have not been followed.

10.7 *Appeal to Long-Term Suspension*

Follow the procedures set forth in Section 9.9, *Appeal to Suspension*. See Exhibit 2, page 27.

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Section 11 **DISCIPLINARY TRANSFER/ALTERNATIVE PROGRAM PLACEMENT: DEFINITION AND PROCEDURES**

11.1 *Definition and Rationale*

The Building Administrator, at the conclusion of a suspension hearing, may recommend to the Superintendent (or designee) a disciplinary transfer for a student when the student has repeatedly violated Section 7 of this Code, despite having been subject to action under Sections 3, 4, and 5, which prescribe progressive disciplinary action procedures.

The recommendation for a disciplinary transfer shall include statement of the facts in the case and of the reasons for disciplinary transfer, rather than a suspension or expulsion, as required by Section 11.1.3. A disciplinary transfer may also be recommended if, in the judgement of the Building Administrator, at the conclusion of a suspension hearing, a single suspendable offense is of such severity that it would constitute an ongoing threat to the physical safety of others.

- 11.1.1 A student at the **elementary level** may be transferred, on disciplinary grounds, to another Boston public school offering an equivalent academic program. The transfer shall not be ordered when as a direct or indirect result it would cause the student to suffer an academic penalty.
- 11.1.2 A student at the **secondary level** may be assigned, on disciplinary grounds, only to an alternative program for disruptive students.
- 11.1.3 A disciplinary transfer can create a significant disruption to the student's education. As such, it will not be authorized unless the Building Administrator has stated in writing:
 - (1) the serious nature of the offense
 - (2) all previous efforts to address the student's inappropriate behavior
 - (3) the reasons for recommending a disciplinary transfer rather than some other form of discipline
 - (4) confirmation that the parent has been notified, prior to the suspension hearing.

11.2 *Frequency and Duration of Disciplinary Transfer*

- 11.2.1 Disciplinary transfers, other than those to special education alternative programs, shall be limited to one per year per student.
- 11.2.2 The initial assignment of a disruptive student to an alternative program shall be for the balance of the academic year. At the end of the academic year, the assignment shall be reviewed by the Building Administrator of the sending school, the parent, and the Program Director of the alternative program to determine a future assignment for the student that best meets the needs of the student. The options for the future assignment are: 1) return to the sending school; 2) transfer to another school; 3) continuation in the alternative education program. A student who attends an alternative program as a result of having been expelled may return to the sending school only with written permission from the Building Administrator.

**EXHIBIT 3. Suggested Script for Building Administrators as Hearing Officers
to Conduct a Disciplinary Hearing Recommending Change of Placement:
Disciplinary Transfer (K-Grade 5); Alternative Program Placement (Grades 6012);
Indefinite Suspension; or Expulsion**

[Turn on tape recorder.]

Building Administrator:

Good morning. My name is _____. I am the (Principal) (Headmaster) of the _____ School. I shall be serving as the Hearing Officer for this matter. The date is ____, 20___. The time is _____ A.M./P.M. This hearing is being conducted at _____ (site).

The purpose of this hearing is to consider the possible (a) disciplinary transfer (elementary level) / (b) transfer to an alternative program (secondary level) (c) indefinite suspension (d) expulsion of _____ (student) for alleged violation(s) of the Code of Discipline Section(s) _____, namely _____ (describe the alleged offense).

[Pass sign-in sheet for all present to sign.]

Building Administrator:

Will those present please identify themselves for the record.

If the student is charged with a criminal offense, Building Administrator adds:

As Hearing Officer, I must warn you that the records of this hearing may be subpoenaed into court. Therefore, if you (student) wish to remain silent, you may do so, and the fact that you remain silent will not in any way be interpreted as an admission of guilt.

Building Administrator to parent/representative:

Did you receive notification of this hearing to consider [name of penalty, e.g. disciplinary transfer]?
Did you receive notification of your right to representation?

After the parent/representative replies, add:

Let the record show that the parent/guardian _____ [name] has answered affirmatively.

Building Administrator to parent/representative:

Is there a need for you to have interpreting services?

After the parent/representative replies, add:

Let the record show that the parent/guardian _____ [name] has answered _____.

Building Administrator to all present

Before we begin, it is important to go over the ground rules of the hearing. I am the Hearing Officer and as such will be in charge of the conduct of the hearing. The school will state its case first. I will call witnesses into the hearing room one at a time. **[Student witnesses / victims need not be summoned if the administrator has ruled, orally or in writing, that the identification and / or presence of the witnesses / victims would endanger their physical safety.]** The witness will give his or her version of the events. There may be some questions I will have. When I have concluded my questioning, you as parent/representative will have the opportunity to ask questions of the witness. When that witness is finished, he or she will be dismissed, and the next witness will present testimony. We shall continue in this fashion until all witnesses have testified.

When the witnesses for the school have concluded, you will have an opportunity to present witnesses. The student will also have an opportunity to state his or her version of the events.

keeping in mind his or her rights under the Miranda law, that this testimony may be subpoenaed for use at a later date in a civil or criminal court. If the accused chooses not to testify, such refusal is not an indication of guilt. However, it leaves me to make a decision on the testimony presented.

We are taping this hearing for the protection of all parties involved. You will have a right to a copy of this tape within five days of the conclusion of this hearing should you so indicate in writing.

Are there any questions? I will now call the first witness.

The first witness identifies self for tape purposes and presents testimony. At the conclusion, the Building Administrator makes sure the following questions have been answered in the witness's testimony:

- Q. Who was involved in the event?
- Q. When did it take place?
- Q. Where did it take place?
- Q. What occurred?
- Q. What was the motive, if known?

Building Administrator to parent/representative:
Do you have any questions of the witness?

Building Administrator, when witness has concluded:
Thank you. Will you please ask _____ (the next witness) to come in?

Turn off tape until the next witness is ready. Same process occurs for succeeding witnesses.

Building Administrator to parent/representative, when school has concluded its case:
Do you have any witnesses to present?

If yes, and the parent/representative presents witnesses, the Building Administrator asks pertinent questions as above at testimony conclusion.

Building Administrator to student, when parent's/representative's case is concluded:
Did you wish to testify on your own behalf? Tell us what happened.

Building Administrator needs to ask student the pointed questions at conclusion of testimony:

- Q. Did you commit the offense?
- Q. Did you say it? Why?
- Q. Why did you do it?

FOR A STUDENT WITH DISABILITIES:

Building Administrator to ETF:
Is _____ (student) subject to the Code of Discipline of the Boston Public Schools?

ETF identifies self for tape and replies:
The Team met and made the appropriate determination for this student who is subject to all provisions of the Code of Discipline.

Building Administrator at conclusion of hearing:

1. IF EVIDENCE SUPPORTS DISCIPLINARY TRANSFER/ALTERNATIVE PROGRAM PLACEMENT:
After listening to the testimony of all the witnesses, I find sufficient evidence that _____ (name of student) did commit a violation against the Code of Discipline, Section(s) _____. I am, therefore, recommending that (student) be transferred to [K-Grade 5] another elementary school /

[Grade 6-12] an appropriate alternative education program. This decision will be reviewed within five days by the Operational Leader. I will notify you in writing of the outcome of the review.

2. IF EVIDENCE SUPPORTS INDEFINITE SUSPENSION: After listening to the testimony of all the witnesses, I find sufficient evidence that _____ (student) did commit a violation against the Code of Discipline, Section(s) _____. Furthermore, _____ (student) has been charged with a felony complaint/felony delinquency. Therefore, I am recommending an indefinite suspension until the charge is adjudicated. This decision will be reviewed within five days by the Operational Leader. I will notify you in writing of the outcome of the review.

3. IF EVIDENCE SUPPORTS EXPULSION: After listening to the testimony of all the witnesses, I find sufficient evidence that _____ (student) did commit an expellable violation against the Code of Discipline, Section(s) _____. The tape and all reports concerning this case will be reviewed within five days by the Operational Leader. While we await the decision of the Operational Leader, _____ (student) will return to the Counseling and Intervention Center.

I will notify you in writing of my decision whether or not to expel _____ (student) during his/her stay at the Counseling and Intervention Center.

Building Administrator to all present:

You have a right to appeal this disciplinary action within ten school days. The appeal must be in writing and must be sent to the Superintendent's Hearing Officer, 26 Court St., Boston 02108, or faxed to 617-635-9059.

Are there any questions? If there are not further questions, please verify your address and phone number before I conclude this hearing.

The time is _____ A.M./P.M.

[Turn off tape recorder.]

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11.3 *Procedure for Recommending a Disciplinary Transfer*

If the Building Administrator wishes to recommend a disciplinary transfer, that recommendation must be made at the student's disciplinary hearing, pursuant to Section 9 (suspension) or Section 10 (long-term suspension). There is no separate hearing to recommend disciplinary transfer. The recommendation for a disciplinary transfer shall include statement of the facts in the case and of the reasons for disciplinary transfer, rather than a suspension or exclusion, as required by Section 11.1.3.

Hearings to recommend a disciplinary transfer/alternative program placement must be recorded. See Exhibit 4, Suggested Script...for Disciplinary Hearing Recommending a Change of Placement, page 31-33.

All documentation to support the recommendation must be forwarded to the Superintendent's office not more than 24 hours after the suspension hearing, so the Superintendent (or designee) may review it and make a decision in a timely manner.

11.4 *Notice to the Parent*

The Building Administrator shall follow the provisions of Section 9.4 with regard to notifying the parent of the intent to recommend a disciplinary transfer. The Building Administrator may not recommend a disciplinary transfer unless the parent has been notified of that intent prior to the hearing [see Attachment 3.1].

11.5 *Request for Review*

Follow the procedures set forth in Section 10.6, *Request for Review*.

11.6 *Appeal of a Disciplinary Transfer*

Follow the procedures set forth in Section 9.9, *Appeal to Suspension*. See Exhibit 2, page 27.

11.7 *Standard of Review: Disciplinary Transfer*

The Hearing Officer shall specifically determine whether there was sufficient evidence to find that the violation occurred and that the disciplinary transfer is appropriate.

Section 12 CUMULATIVE SUSPENSIONS

- 12.1 After a student has been subjected to suspension or long-term suspension twice in a marking period *or* a total of fifteen (15) school days *or* four (4) times in a school year, whichever occurs first, the Building Administrator (this duty may *not* be delegated) shall conduct a meeting to explore non-punitive solutions to the problems resulting in suspensions. No further suspensions, except emergency suspensions, may be authorized until this meeting is held or refused. The Building Administrator shall invite to the meeting the following: the student, the student's parent, a school counselor or other appropriate professional invited by the student or parent, any teacher or staff member who has recommended the student for suspension more than once, and any other staff member whose presence would be deemed appropriate.

- 12.2 The student and the parent shall be sent a written notice at least five (5) school days prior to the meeting. The student and parent shall be notified of their right to invite to the meeting any persons from within or outside the school system whom they deem helpful in discussing the student's behavior.

At the meeting, the following shall be among the non-punitive solutions discussed:

- 12.2.1 adjustment of class schedule;
 - 12.2.2 professional or peer counseling;
 - 12.2.3 referral to a social service agency;
 - 12.2.4 consideration of referral to the evaluation team for possible classification as a student with special needs;
 - 12.2.5 tutoring and other forms of academic assistance.
- 12.3 No actions shall be taken as a result of this meeting except with the consent of the student and parent. Within 48 hours after the meeting, the Building Administrator shall mail letters to the student and the parent describing solutions, if any, agreed to at the meeting and any actions that the student or parent should take to follow through on those solutions.
- 12.4 In the case of any student for whom suspension beyond five (5) school days in a marking period, disciplinary transfer, or expulsion is recommended, the Building Administrator shall determine whether the student should be referred to the Student Support Team as part of the pre-referral process.
- 12.5 With respect to students with disabilities, cumulative suspensions cannot exceed ten (10) school days in any school year without following the procedures set forth in Section 14.

Section 13 EXPULSION: DEFINITION AND PROCEDURES

13.1 *Definition of Expulsion*

Expulsion means an exclusion from school attendance and school privileges for more than ten (10) consecutive school days and up to one calendar year. However, in the case of students with disabilities, such action may be taken only after a Team determination that the conduct in question was not a manifestation of the student's disability. Moreover, during any period of expulsion, the student must receive a free appropriate public education [see Section 14—Students with Disabilities].

Upon expiration of the expulsion period, a student who has been expelled from his/her school will not be reassigned to that school without a written recommendation from the Building Administrator.

EXHIBIT 4. Suggested Timeline for Expulsion Procedures

TIMELINE	ACTION	CODE OF DISCIPLINE ATTACHMENT #
Day of Incident	<ul style="list-style-type: none"> •Emergency suspension (optional) • Notification of Disciplinary Hearing letter to parent • Parent Waiver or Right to Disciplinary Hearing letter to parent 	3.1 or 3.4 3.2
School Day #1	<ul style="list-style-type: none"> • Suspension hearing takes place (unless parent waives right to hearing) • Letter sent to parent: Notification of Suspension..... • Suspension • Schedule Counseling & Intervention Center (CIC) • If applicable, notify Operational Leader and Safety re. Assay/ballistic test 	3.6 or 3.7
School Day #2	<ul style="list-style-type: none"> • Suspension • If long-term or indefinite suspension or disciplinary transfer/alt. Program placement: send packet to Operational Leader for review..... 	4.1 or 4.2
School Day #3	<ul style="list-style-type: none"> • Suspension (last day for under age 16) • Notification of Expulsion Hearing letter to parent (under age 16)..... 	3.3
School Day #4	<ul style="list-style-type: none"> • CIC assignment begins (under age 16) • If no CIC referral: return to school (under age 16) • Suspension continues (age 16 and over) 	
School Day #5	<ul style="list-style-type: none"> • Suspension: last day (age 16 and over) • Notification of Expulsion Hearing letter to parent (age 16 and over)..... • Expulsion hearing (under age 16); send packet and Request for Review to Operational Leader..... 	3.3 4.1 or 4.2
School Day #6	<ul style="list-style-type: none"> • CIC assignment begins (age 16 and over) • If no CIC assignment: return to school (age 16 and over) • Maximum CIC assignment ends (under age 16) • Review of expulsion (under age 16) by Operational Leader 	
School Day #7	<ul style="list-style-type: none"> • CIC (age 16 and over) • Notification of Expulsion letter to parent (under age 16)..... • If denied: Notification of Expulsion Denial letter..... • If no expulsion: return to school (under age 16) 	3.12 3.13
School Day #8	<ul style="list-style-type: none"> • CIC (age 16 and over) 	
School Day #9	<ul style="list-style-type: none"> • CIC (age 16 and over) 	
School Day #10	<ul style="list-style-type: none"> • CIC (age 16 and over) • Expulsion hearing (age 16 and over); send packet and Request for Review to Operational Leader..... 	4.1 or 4.2
School Day #11	<ul style="list-style-type: none"> • CIC (age 16 and over) 	
School Day #12	<ul style="list-style-type: none"> • CIC (age 16 and over) • Review of expulsion (age 16 and over) by Operational Leader 	
School Day #13	<ul style="list-style-type: none"> • CIC (age 16 and over) • Notification of Expulsion letter to parent (age 16 and over) • If denied: Notification of Expulsion Denial letter..... 	3.12 3.13
School Day #14	<ul style="list-style-type: none"> • CIC (age 16 and over) 	
School Day #15	<ul style="list-style-type: none"> • CIC (age 16 and over): last day 	
School Day #16	<ul style="list-style-type: none"> • If no expulsion: return to school (age 16 and over) 	

13.2 *Due Process*

The due process obligation in school-based hearings has been upheld by both the Massachusetts Superior Court and the Supreme Court of the United States. It is necessary that due process be followed in conducting a hearing for expulsion or the proceedings may be declared invalid.

The responsibility for recommending expulsion and conducting a formal hearing rests with the Building Administrator, with a mandatory due process review by the Operational Leader prior to notifying the student and parent of the decision. That review requires that the Operational Leader apply rigorous standards to ensure the Building Administrator followed all procedures with respect to the letter and spirit of both the law and the Code of Discipline.

Except for specific infractions that warrant expulsion, no student shall be expelled unless all disciplinary measures short of expulsion have been tried and have not corrected the student's behavior. To recommend expulsion, the Building Administrator must find, and the Operational Leader must confirm, that there is a preponderance of the evidence, limited solely to evidence presented at the hearing, that there are sufficient grounds for expulsion under the Code and that the due process rights of the student were respected.

Under the law, the Building Administrator may exercise some discretion relative to expulsion on a case-by-case basis. For example, in cases involving a weapon, the Building Administrator may consider factors such as whether the student exhibited an intent to cause physical injury and whether the student has a history of violent conduct.

At the same time, the Code of Discipline ensures that a student who is accused of an expellable offense is given a fair and prompt formal hearing; is informed of his or her right to be represented by counsel, call witnesses, and present evidence at that hearing; and is made aware of the right to appeal the Building Administrator's decision to the Superintendent (or designee).

13.3 *The Education Reform Act*

The Education Reform Act of 1993, as amended, identifies four particular instances in which a Building Administrator, rather than the Superintendent, may expel a student:

- 13.3.1 possession of dangerous weapons (including but not limited to a gun or a knife);
- 13.3.2 possession of controlled substances on school premises or at school-related events;
- 13.3.3 assault of educational staff on school premises or at school-sponsored events;
- 13.3.4 felony conviction, if the Building Administrator determines the student's continued presence would have a substantial detrimental effect on the general welfare of the school (Chapter 380).

The Education Reform Act, as amended, also allows for the *indefinite suspension* of a student who has been charged with a felony, if the Building Administrator determines that the student's continued presence would have a substantial detrimental effect on the general welfare of the school.

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13.4 *Procedures Preceding the Expulsion Hearing*

13.4.1 In most cases, when a student commits an expellable offense, the Building Administrator will impose an emergency suspension to remove the student from the school for the safety of others. The Building Administrator then must hold a suspension hearing, suspend the student for up to five (5) school days (three days if he or she is 15 years old or younger), and refer the student to the Counseling & Intervention Center for ten (10) school days, to start at the end of the suspension. This sequence may take up to fifteen (15) school days [see Exhibit 4, page 36]. During the period of suspension, school and law enforcement authorities gather evidence, carry out lab and ballistics tests, and prepare the case for the expulsion hearing.

In some cases, a suspension hearing prior to the expulsion hearing is not necessary because the student has already been removed from the school. For example, the student may be incarcerated or hospitalized.

13.4.2 During the period of suspension, and if his or her findings warrant it, the Building Administrator must initiate procedures to conduct a formal expulsion hearing. Especially in cases which involve a firearm or controlled substances, the Building Administrator should also seek assistance at the time of the incident from the Department of Safety Services to expedite ballistics tests and drug analyses.

13.4.3 All students charged with an expellable offense *must* be referred to the Counseling & Intervention Center for counseling purposes, even if a second offense is involved. Students shall be marked constructively present during the period of assignment to the Counseling & Intervention Center. Students with unique needs who may require specialized support services should be identified and brought to the attention of the Director of the Counseling & Intervention Center prior to assignment. The assignment of the student to an alternative setting shall be the responsibility of the Director of Alternative Education.

13.5 *The Expulsion Hearing: Notification*

13.5.1 The expulsion hearing must be held no later than five (5) days before the completion of the student's assignment at the Counseling & Intervention Center. With this timeline, the Building Administrator can ensure that both the formal expulsion hearing and the procedural review by the Operational Leader take place before the student completes his or her assignment to the Counseling & Intervention Center and thus help ensure due process.

Once they are notified of the date of the hearing, the student and parent have the right to one postponement of not more than five (5) additional days. The hearing will be held on the rescheduled date, whether or not the parent attends.

13.5.2 By the end of the suspension, any student charged with an expellable offense, and his/her parent, must be notified in writing of an opportunity for a formal hearing at the school level, including date, time, and place of the hearing.

13.5.3 The Notification of Expulsion Hearing must be in English and in the language of the home, if different [see Attachment 3.3 and translated copies in the Code of Discipline

Procedural Manual]. It must also include specific information:

- (a) a statement that expulsion has been recommended to the Building Administrator; and
- (b) a complete description of the alleged offense requiring expulsion, including a reference to the appropriate section of this Code; and
- (c) a statement of the facts and evidence as known to the Building Administrator; and
- (d) specific notice of all procedural rights, including the student's right to have a private hearing, to have his or her parent present at the hearing, to have an attorney or other representative of his or her choice at the hearing, to present witnesses, to cross-examine witnesses against the student, and to have a tape recording of the hearing made by the Boston Public Schools, and upon written request, to have a tape of the same made available, at no cost, to the student or parent within five (5) school days for the purpose of appeal.

In addition, the following information must be provided to the student and parent:

- (a) a list of Legal Services offices and other advocacy groups [Attachment 5]
- (b) specific reference to the rights of the student and/or parent to have access to the student's school records as required by law [see *BPS Policy Handbook for Parents & Students*]; and
- (c) specific reference to the right of the parent to obtain a referral for special education evaluation, if the parent feels the student may need special education services [see *BPS Policy Handbook for Parents & Students* and Attachment 3.14].

- 13.5.4 If the parent is present in the school, the parent shall be given two copies of the Expulsion Hearing Letter, one for their own use and one to sign and return to the Building Administrator. In addition, if the student is in the school, the student shall also be given the letter. If neither is in the school, two copies of the Notification of Expulsion Hearing letter should be sent to the student's home. Whenever possible, it shall be delivered by School Safety staff. One copy is for the student and parent; the second copy is to be signed by the parent (or student if he or she is 18 years old or older) and returned to the school. Copies of all correspondence must be kept on file and forwarded to the Operational Leader.

Building Administrators are encouraged to make every effort to reach the student and parent, calling the parent at work, for instance, to make arrangements to deliver the letter. In the event School Safety staff is unable to deliver the Notification of Expulsion Hearing letter, the Building Administrator must send the letter by certified mail to the home address and retain the receipt as proof of notification.

- 13.5.5 If the parent does not attend the formal expulsion hearing and has not requested a delay, the hearing should be rescheduled and held within forty-eight (48) hours. The parent should be informed that the hearing will be held on the rescheduled date,

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whether or not the parent attends.

13.6 *The Expulsion Hearing: Procedures*

See Exhibit 3, Suggested Script...for Disciplinary Hearing Recommending a Change of Placement, page 31-33.

A formal hearing to consider expulsion shall be conducted in accordance with the following rules:

- 13.6.1 The expulsion hearing must be conducted by the Building Administrator who serves as Hearing Officer, unless the Building Administrator is a witness or victim and/or is not available to conduct the hearing in accordance with prescribed timelines. In this role, the Building Administrator is obligated to develop and maintain a working knowledge of the Code of Discipline and all pertinent laws and regulations. He/she must follow all procedures outlined in the Code of Discipline without exception, including the taping of the hearing, the inadmissibility of hearsay evidence, and the “preponderance of the evidence” standard for finding the student guilty as charged [see Section 13.2].
- 13.6.2 The hearing shall be private unless the Building Administrator (or other Hearing Officer) agrees with a student’s or parent’s request that it be public.
- 13.6.3 All witnesses presenting testimony for or against the student shall appear in person at the hearing (except in the case of expert testimony such as ballistics evidence or drug analysis), and no statement for or against the student shall be admitted unless the person making the statements is present.

There are three exceptions to this provision:

- (a) Student witnesses / victims do not have to be summoned if the Building Administrator specifically rules, orally or in writing, at the hearing that identification of the student witness **or the presence of a known witness / victim at the hearing, would endanger his or her physical safety or cause intimidation.** In these cases, the student witness may submit written or recorded testimony, with signature, to a school official.
 - (b) If a criminal case is pending, the District Attorney’s office may request that the victim not testify.
 - (c) In cases where a witness cannot attend the hearing (e.g. is not able to be released from work or is out of the Boston area), the witness may submit written or recorded testimony, with signature, to a school official.
- 13.6.5 The student shall have the right to be present during the presentation of evidence. The student, parent, or the student’s representative shall be allowed to question witnesses testifying against the student. After the case against the student has been presented, the student shall be allowed to submit evidence in his or her own defense, including the presentation of witnesses, and to testify in his or her own behalf, but shall not be compelled to do so. The Building Administrator (or other Hearing Officer) should advise the student that any testimony given by the student may be used against him or her in another proceeding [see Section 13.6.8].

- 13.6.6 The student, the parent, or their representative may object to the admission of any testimony or evidence. If the Building Administrator (or other Hearing Officer) determines that evidence has been improperly obtained, is inappropriate, or is undocumented, such evidence shall be inadmissible if in the professional judgment of the Building Administrator (or other Hearing Officer) such a ruling is warranted in light of the totality of the circumstances. An example of inadmissible evidence is any substance that is alleged to be a drug but which has not been confirmed by an official drug analysis. The scope of the hearings shall be confined to the charges contained in the notice.
- 13.6.7 The student is entitled to a presumption of innocence, and the burden of proof rests upon the person(s) presenting the case against the student.
- 13.6.8 An audio tape recording shall be made by the Building Administrator (or other Hearing Officer) and, upon written request, made available at no cost to the student or parent within five (5) school days of the hearing for purposes of appeal. The tape, transcript, evidence, and records of the expulsion hearing shall be held confidential in the offices of the Building Administrator and Cluster Office. The student and parent should be advised, however, that the tape, transcript, records, and evidence may be subject to subpoena and are admissible in court and may be used as evidence against them in a court proceeding.
- 13.6.9 A suggested script for use by the Building Administrator (or other Hearing Officer) in conducting a formal hearing is outlined in Exhibit 3, pages 31-33.

13.7 *Options Following the Expulsion Hearing*

Following the formal hearing, the Building Administrator has several options: to expel a student, not to expel a student, or to recommend a long-term suspension or disciplinary transfer. In making his or her decision, the Building Administrator may take into consideration the full record of the student.

- 13.7.1 If the evidence concerning the incident supports expulsion but the past record of the student does not, the Building Administrator should inform the Operational Leader in the Request for Review [Section 13.8 and Attachment 4] that the decision reached at the hearing was not to expel, but rather (1) to allow the student to continue at the school; (2) to recommend a disciplinary transfer/alternative program placement (see Section 11); or (3) to extend the suspension for five more days before the student returns to the school. In addition, the letter should note that, “in the opinion of the Building Administrator, the continued presence of this student will not pose a threat to the safety, security and welfare of the other students and staff in the school.”
- 13.7.2 If the evidence of the incident supports expulsion, the Building Administrator should inform the Operational Leader in the Request for Review [Attachment 4] that a decision to expel the student has been made and should be reviewed. Copies of all required documentation must be attached to this memorandum as noted below in Section 13.8.

4313.8 *Request for Review*

- 13.8.1 No later than two (2) school days after the formal expulsion hearing, the Building Administrator must submit to the Operational Leader the Request for Review form [Attachment 4.1 or 4.2], with all relevant materials attached. Those materials include copies of the Notification of Expulsion Hearing, Notification of Expulsion, a recommendation for the length of the expulsion, student records (address, report cards, transcript), and an audio tape of the hearing, as well as any additional materials related to the incident: firearm or drug analysis, records from the Counseling & Intervention Center, and other materials. For students with disabilities, additional documentation is required [see Section 14]. The Request for Review must be completed and signed by the Building Administrator.
- 13.8.2 The Operational Leader will review the case and all materials for procedural and evidentiary compliance with the Code of Discipline. No later than three (3) school days after receiving the Request for Review and all materials, the Operational Leader must decide to either let stand the Building Administrator's decision or to overturn it.
- 13.8.3 If the Operational Leader supports the expulsion, he or she notifies the Building Administrator. The Building Administrator must notify the parent in writing, in the language of the home.
- 13.8.4 The Operational Leader may overturn the Building Administrator's decision if procedural guidelines, particularly as they apply to due process—e.g., notification and evidentiary requirements—have not been followed.
- 13.8.5 Expelling a student who is identified as a student with disabilities requires a rigorous review according to both federal and state special education laws. Disciplinary procedures already in place for students with disabilities must be followed. These procedures are based on federal and state laws and regulations and are set forth in Section 14.

13.9 *Issuance of Findings and Notification of Student and Parent*

After this review by the Operational Leader, the student and parent shall be notified by the Building Administrator of the decision to expel the student or not to expel the student.

- 13.9.1 In the event a decision has been made to expel the student and that decision has been supported by the Operational Leader, the Building Administrator must inform the student and parent in writing, in English and the language of the home, if different [see Notification of Expulsion, Attachment 3.12]. That letter must explain the right of the student and parent to appeal the expulsion to the Superintendent within ten (10) days of receiving the letter. Two copies of the Notification of Expulsion letter should be delivered by School Safety staff to the student's home. One copy is for the student and parent; the second copy is to be signed by the parent (or student if he or she is 18 years old or older) and returned to the school by the staff person. Copies of all correspondence should be kept on file by the school and the Cluster Office.

13.9.2 In the event a decision has been made not to expel the student (or that a preponderance of evidence to support an expulsion ruling has not been presented) and that decision has been supported by the Operational Leader, the Building Administrator must inform the student and parent in writing [see Attachment 3.13]. Two copies of the letter should be delivered by School Safety staff to the student's home. One copy is for the student and parent; the second copy is to be signed by the parent (or student if he or she is 18 years old or older) and returned to the school by the staff person. Copies of all correspondence should be kept on file by the school and the Cluster Office.

13.10 *Appeal to Expulsion*

See Exhibit 5, The Appeal Process Step by Step: Expulsion, page 44.

The expelled student and parent shall have ten (10) school days in which to request in writing a private appeal and hearing before the Superintendent (or designee). At that hearing, the student and parent may be represented by an attorney, call witnesses, and hear testimony.

13.10.1 The Superintendent's Hearing Officer shall specifically determine if there was sufficient evidence to find that the violation occurred and that expulsion is appropriate.

13.10.2 The imposition of the expulsion may be stayed by the Hearing Officer pending review.

13.10.3 If the student is expelled during the first marking period, the Superintendent's Hearing Officer will hold an automatic review within the first three weeks of the third marking period.

13.10.4 *Felony Conviction.* In accordance with Chapter 380, a student expelled for conviction of a felony may appeal the expulsion to the Superintendent. The student must request the appeal no later than ten (10) school days following the date of the expulsion. The Superintendent (or designee) must hold a hearing with the student and the student's parent within three (3) school days of the request and render a decision within five (5) school days of the hearing. Standard procedures for conducting a hearing and appeal will be followed.

13.11 *Alternative Education During the Expulsion Period*

13.11.1 Following an expulsion decision, the Director of Alternative Education shall meet with the student and the parent to explore a range of available alternatives that would allow the student to continue his or her education during the expulsion period, including, but not limited to: home study, adult education programs (day, evening, and modified combination), and alternative work-study programs.

13.11.2 A school system is not obligated to provide educational services to a student expelled for conviction of a felony [see Section 7.5.2].

EXHIBIT 5. The Appeal Process, Step by Step:

Expulsion

See Section 13 of the Code of Discipline for complete procedures.

- STEP 1** Building Administrator schedules expulsion hearing and notifies parent in writing (Attachment 3.3 or 3.5).
- STEP 2** Expulsion hearing held at school. If parent does not attend, and does not request that the hearing be rescheduled, Building Administrator reschedules it within 48 hours. The rescheduled hearing takes place whether or not the parent attends.
- STEP 3** Building Administrator advises parent that if s/he wishes to appeal the expulsion, s/he must do so within ten (10) school days. This appeal must be in writing and must be sent or faxed to:
- Superintendent's Hearing Officer
Boston Public Schools
26 Court Street
Boston, MA 02108
FAX 617-635-9059
- STEP 4** Within two days of hearing, Building Administrator sends to Triad office the Request for Review (Attachment 4.1 or 4.2) and all relevant materials.
- STEP 5** If parent appeals the expulsion, Hearing Officer notifies the school and Operational Leader of the request.
- STEP 6** Building Administrator sends all documentation, including tapes of the original expulsion hearing, to the Hearing Officer. The school should retain a file copy of all documentation and correspondence.
- STEP 7** Hearing Officer reviews documentation and schedules a time and place for the appeals hearing and notifies participants. The student and parent may be represented by an advocate or attorney. New witnesses and new testimony may not be introduced. Additional participants may include BPS Legal Services staff.
- STEP 8** Hearing Officer hears the case, makes a decision and notifies (in writing) all participants, including Operational Leader and Director of Student Assignment, of the finding.

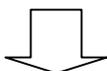
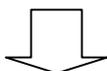
Section 14 STUDENTS WITH DISABILITIES

- 14.1 Students with disabilities, as defined by federal law and regulations, shall be subject to the provisions of this Code, except as otherwise provided by this Section.
- 14.2 Special education staff, including the Team chairperson, shall be involved in all administrative decisions under this Code involving students with disabilities.
- 14.2.1 If the decision will not impact the student's placement and/or not result in a cumulative suspension of more than ten (10) days during a school year, a Team meeting is not required.
- 14.2.2 If the decision will impact the student's placement and/or result in a cumulative suspension of more than ten (10) days during a school year, a Team meeting is required.
- 14.3 Prior to an administrative decision under this Code, the Building Administrator shall determine whether or not the student has been designated a student with disabilities or has been referred for a special education evaluation but not yet determined to have disabilities.
- A student who has not been determined to be eligible for special education, and who has engaged in behavior that violated any rule or code of conduct, may assert any of the protections provided by federal special education laws only if the school had knowledge [see Section 14.4.9.1] that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.
- 14.4 The following provisions shall apply whenever a school proposes one of the following actions: to suspend a student with disabilities for more than ten (10) cumulative school days in a school year; or to expel a student with disabilities. The definition of a student with a disability is found in Section 20.16.
- A free appropriate public education (FAPE) must be provided to students with disabilities during any period of suspension of more than ten (10) cumulative days, alternative placement, or expulsion.
- 14.4.1 In accordance with federal laws and regulations, the Building Administrators of the Boston Public Schools:
- (a) will notify the Director of Special Education, or designee, of the misconduct for which suspension of a student with disabilities for more than ten (10) cumulative school days is proposed so that the procedures required by federal and state laws and regulations can be implemented consistently;
 - (b) will record and maintain the number and duration of suspensions of students with disabilities;
 - (c) will ensure that the Individualized Education Program (IEP) of every student with disabilities will indicate why the student is or is not expected to meet the Code of Discipline, and, if not, what modification of the Code is required. If a modified Code is required, such modifications shall be described in the IEP; and

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EXHIBIT 6. Procedure When Offense Occurs at School That May Result in Expulsion of a Student with Disabilities

- STEP 1** Building Administrator contacts the school-based Evaluation Team Facilitator (EFT) immediately after offense occurs.
- STEP 2** EFT notifies Cluster Assistant Program Director (CAPD) of a potential expulsion of a student with disabilities and seeks technical assistance.
- STEP 3** Within 10 business days of the occurrence of the behavioral incident, the EFT holds a Team meeting to review the IEP, conduct a Manifestation Determination and Functional Behavioral Assessment, and develop a Behavioral Intervention Plan.



If **YES** to Manifestation, process stops.

School-based Team may consider a reevaluation to determine if placement is appropriate.

If **NO** to Manifestation, process continues:

- STEP 4** Building Administrator holds expulsion hearing. The ETF and/or liaison must attend.
- STEP 5** If the Hearing Officer recommends an expulsion, school-based Team develops an alternative IEP identifying (1) services necessary to enable progress in the general curriculum and IEP goals, and (2) site of services.
- STEP 6** Cluster APD reviews alternative IEP and authorizes ETF to obtain parent signatures.
- STEP 7** Copy of expulsion packet forwarded to appropriate Operational Leader. [See Attachment 4.2.] Packet to include:
 - Manifestation form
 - Functional Behavior Assessment
 - Alternative IEP with parent signature.
- STEP 8** Operational Leader reviews for due process and obtains parent signature on expulsion notice via School Police.
- STEP 9** Once parent signature is obtained on expulsion notice, the 625A is completed and forwarded by the Operational Leader to the Chief of Staff for processing.
- STEP 10** Director of Alternative Education, in consultation with Director of Special Education's designee, arranges intake process.

- (d) will ensure that no student with disabilities is suspended for more than ten (10) cumulative school days in the school year except as provided by federal laws and regulations.

14.4.2 *Meeting to review IEP and student's disabilities*

When it is known that the suspension(s) of a student with disabilities will accumulate to more than ten (10) cumulative school days in a school year, due to involvement in a behavioral incident, a review of the IEP must be conducted by the student's Special Education Team.

- (a) At that review, the Team will determine if the student's misconduct was a manifestation of the student's disability. This must take place within ten (10) business days of the occurrence of the behavioral incident. Depending on the result of that determination, the proposed suspension hearing may or may not be held.
- (b) At the same time, the Team, if it has not already done so, must also conduct a Functional Behavioral Assessment (FBA) of the student's behavior, and develop a Behavior Intervention Plan (BIP) to address the targeted behavior.
- (c) If the student has a Behavior Intervention Plan, the Team must review and modify it as necessary to address the targeted behavior.

14.4.3 Circumstances under which the student may not be suspended for more than ten (10) cumulative days:

- (a) If the Team concludes that the student's misconduct is a manifestation of the student's disability, the student shall not be suspended. In making the determination, the Team must decide the following:
 - (i) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including:
 1. Evaluation and diagnostic results, including the results of other relevant information supplied by the parents of the student;
 2. Observations of the student; and
 3. The student's IEP and placement.
 - (ii) Then determine that:
 1. In relationship to the behavior subject to disciplinary action, the student's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies provided were consistent with the student's IEP and placement;
 2. The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.

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- (b) If the Team and other qualified personnel determine that any of the standards in 14.4.3(a)(ii) were not met, the behavior must be considered a manifestation of the student's disability.
- (c) The review described in 14.4.3 (a, b) may be conducted at the same Team meeting that is convened under 14.4.2.
- (d) If a new program or placement is designed for the student as a result of the review, the new program or placement shall be implemented immediately following parental approval of the IEP. If the parent rejects the IEP, the school or parent may request either mediation or a hearing before the Bureau of Special Education Appeals (BSEA) of the State Department of Education to determine the appropriateness of the program. Pending mediation or a hearing, the student shall remain in the placement in effect when the dispute arose, unless another placement is agreed to by the school and the student's parent, or a court order, or a BSEA Hearing Officer permits the school to change the student's placement based on a showing that the student's continued presence in school presents a substantial likelihood of injury to the student or to others. If a court order is sought, the provisions of Section 14.4.5 shall apply.

14.4.4 *Circumstances under which suspension may be imposed for more than ten (10) cumulative school days:*

- (a) If the school proposes to impose a suspension which will result in more than ten (10) cumulative school days of suspension in the school year, and the Team concludes that the student's misconduct is not a manifestation of the student's disability, the school shall:
 - (i) Ensure that the Team members develop an alternative plan that provides a free appropriate public education to the student during the period of suspension, which shall be referred to as "the alternative plan";
 - (ii) Present the interim alternative plan to the student's parent along with the written notice required by federal and state laws and regulations [*Parent's Rights Brochure*]. The failure or refusal of the parent to consent to the provision of services under the alternative plan shall not prevent implementation of the suspension. Nevertheless, if the parent requests a hearing to contest the manifestation determination, the provisions of Section 14.4.4 (b) shall apply.
- (b) If the parent requests a hearing, the student shall continue in the last agreed upon educational placement (the placement in effect when the dispute arose) pending the hearing unless another placement is agreed to by the parties, or a court order, or a BSEA Hearing Officer permits the school to change the student's placement based on a showing that the student's continued presence in school presents a substantial likelihood of injury to the student or to others. If a court order is sought, the provisions of Section 14.4.6 shall apply.

14.4.5 *Circumstances under which suspension may be imposed for up to forty-five (45) calendar days without permission of the parent:*

A change in placement, determined by the Team, may be made with or without the parent's permission to an interim alternative education setting for a period of up to but not exceeding forty-five (45) calendar days, as long as a free appropriate public education (FAPE) is provided, if one or more of the following apply:

- (a) A student carries or possesses a weapon at school or to a school function;
- (b) A student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or at a school function.
- (c) A student has inflicted serious bodily injury upon another person while at school or at a school function. "Serious bodily injury" is defined as that involving a substantial risk of death or extreme physical pain.
- (d) The system has demonstrated by *substantial* evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or others. In this case, the change of placement may be ordered by a State Department of Education hearing officer.

14.4.6 *Free Appropriate Public Education (FAPE)*

In all cases in which a suspension of more than ten (10) cumulative school days or change in placement is imposed, a free appropriate public education (FAPE) must be provided.

14.4.7 *Notice to and Review by the Director of Special Education or Designee*

- (a) Whenever a proposed suspension will result in exclusion of a student with disabilities from school for more than ten (10) cumulative school days in the school year, the school shall immediately send written notice of the proposed suspension to the Director of Special Education (or designee) for review and comment.
- (b) Such written notice shall demonstrate that:
 - The school has provided due process as required by *Goss v. Lopez* and by the Code of Discipline;
 - The Team has determined that the behavior resulting in the violation of the Code was not a manifestation of the student's disability;
 - A functional behavior assessment or review of an existing behavior plan has been completed;
 - The disciplinary action is for a stated and limited number of days;
 - The action is necessary in light of the needs of the student and other students in the school;

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- The administrators have conferred with appropriate special education staff as to the disciplinary action and have followed all the procedures outlined in this paragraph, including notice to the parent or guardian of the right of appeal.

- (c) The Director of Special Education (or designee) will review all the information presented by the school officials and, within an appropriate period of time after receipt, inform the school and Operational Leader or designee that the plan and process comply with state and federal laws and regulations.

14.4.8 *Court Order Necessary to Authorize Suspension*

A school shall not suspend or exclude a student for more than ten (10) cumulative school days during the pendency of a Bureau of Special Education Appeals hearing or judicial proceeding brought to challenge a suspension, proposed suspension, or any determination under this paragraph unless the school obtains a court order, or order of a BSEA Hearing Officer, authorizing a temporary change of the student's educational placement based on a showing that the student's continued presence in school presents a substantial likelihood of injury to the student or to others.

14.4.9 *Students Not Yet Eligible for Special Education*

Under state and federal laws and regulations, a student who has not been determined to be eligible for special education and related services, and who has engaged in behavior that violated any rule or code of conduct, may assert any of the protections provided to students with disabilities if the school had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

- 14.4.9.1 The school department is deemed to have knowledge the student is a student with a disability if prior to the incident:

- (a) The parent of the student has expressed concern in writing to school department staff that the student is in need of special education services;
- (b) The parent has requested an evaluation of the student; or
- (c) The teacher of the child or other school personnel has expressed specific concerns about the pattern of behavior of the child to the Director of Special Education or other special education personnel.

- 14.4.9.2 If there is no prior knowledge of disability, the student may be subject to the same disciplinary measures as those applied to students without disabilities with the following limitations:

- (a) If a request is made for an evaluation during the time period in which the student is subjected to disciplinary measures, the evaluation should be conducted in an expedited manner; and

- (b) Until the evaluation is completed, the student remains in the educational placement determined by school authorities.

Section 15 DISCIPLINE AND SCHOOLWORK

- 15.1 A student who misses any class because of disciplinary penalties except expulsion shall be given a reasonable opportunity to make up all assignments and tests and shall receive academic credit for such work completed. (See Section 13.11 for procedures regarding education of expelled students.)
- 15.2 In no case shall punishment for violation of this Code or for violation of school rules established pursuant to Section 4 of this Code include any mandated reduction of grades.

Section 16 EXPUNGING RECORDS

Whenever it is determined by a hearing, appeal, or informal administrative decision that a student did not commit a violation with which he or she has been charged, all references to the incident and the disciplinary proceedings shall be expunged immediately from the student's record. The hearing officer shall inform parents and students in writing that records will be expunged.

Section 17 TEACHER AND ADMINISTRATOR APPEAL

Any teacher or administrator who is involved in a disciplinary action and who is not satisfied with the action taken by the Building Administrator in a disciplinary case may appeal the decision in writing within five (5) school days of the decision to the Building Administrator and the Superintendent (or designee) in the proper order. If the Building Administrator or Superintendent's designee decides on appeal that an improper decision was made, the person hearing the appeal shall send a letter so stating to the teacher or administrator within two (2) school days with copies to the student and the parent.

Section 18 PHYSICAL FORCE

A student shall not be subject to corporal punishment. School employees may use reasonable and prudent physical force to restrain a student whose actions it is reasonably believed are likely to result in any physical injury to any person including the student. Any school employee who uses plainly unreasonable or unjustified force will be subject to discipline. **Any use of physical restraints must be in accordance with Mass. Department of Education regulations.**

Section 19 PROMULGATION AND DISTRIBUTION

19.1 Uniformity

This Code, together with any additional rules and alternative measures established under Sections 4 and 5, shall constitute the sole rules and regulations of the Boston Public Schools governing the behavior of students and procedures for discipline and shall be in effect in all Boston Public Schools.

19.2 *Effective Date*

This Code and a statement highlighting its major provisions shall be effective upon approval by the Boston School Committee and filing with the Commissioner of Education in accordance with Massachusetts General Laws Chapter 71, Section 37H. Additional rules and alternative measures established under Sections 4 and 5 of this Code shall become effective upon the distribution required under those sections and filing with the Commissioner under M.G.L. Chapter 71, Section 37H.

19.3 *Notice and Distribution*

Subsequent to the approval of this Code and within two weeks of the beginning of each school year thereafter, a summary of this Code shall be distributed to all staff, to students at the secondary level, and to parents. It shall be disseminated to parents in English and in the primary language of the home of the student.

The Code will be published and disseminated to administrators, Building Administrators, teachers, and other staff in the school system; and a copy will be made available to any person upon request and without cost.

This Code and a statement highlighting the major provisions, which shall be prepared prior to the effective date of the Code, shall also be permanently posted in conspicuous places in each Boston Public School; shall be orally presented to students attending each school within one month of its effective date and, thereafter, within two weeks of the first day of school each school year. Such oral presentation may be made at an assembly conducted for that purpose, by homeroom teachers, administrators, the student government, or in any other manner calculated to provide effective oral notice to all students.

Section 20 **DEFINITIONS**

As used in this Code, the following words shall have the meanings set forth below:

- 20.1** **ACADEMIC SCHOOL EMPLOYEE:** includes only building administrators, assistant building administrators, directors, assistant directors, supervisors, teachers, substitute teachers, librarians, guidance counselors and guidance advisors, and such other persons as may be actively engaged in the teaching process.
- 20.2** **ACCEPTABLE USE POLICY FOR NETWORKS, INCLUDING THE INTERNET:** a BPS policy to assure that BPS students and staff use school-owned technology to access the network in a responsible, legal and ethical manner.
- 20.3** **ALTERNATIVE PROGRAM PLACEMENT:** When a student at the secondary level has repeatedly violated Section 7 of the Code and the Building Administrator decides the student's presence is a threat to the safety of others in the school, the Building Administrator may recommend placing the student in one of the BPS's alternative education programs for the balance of the school year [see Section 11.1]. Students in grades 6-12 may not be given a disciplinary transfer to another regular school. NOTE: Students may be assigned to alternative education programs for reasons other than disciplinary action.

- 20.4 **ASSAULT AND BATTERY:** “Assault” is an attempt or threat to physically harm another person with the apparent present ability to do so, and the victim has reason to fear or expect immediate bodily harm. Assault is committed without physical contact.
- “Battery” is any unlawful touching of another person. Battery includes such offenses as causing bodily injury to another person and offensive touching.
- 20.5 **BEHAVIORAL INTERVENTION PLAN (BIP):** a plan developed by a special education Team based on information obtained from the Functional Behavioral Assessment to address the student’s behavior.
- 20.6 **BOSTON PUBLIC SCHOOLS COUNSELING & INTERVENTION CENTER** (previously named the Barron Assessment & Counseling Center): a program that provides counseling services to students who have committed expellable offenses. Counseling is provided prior to the student being formally expelled, as required by law.
- 20.7 **BUILDING ADMINISTRATOR:** the person primarily responsible for carrying out the administration of school policy in the school building: the principal, headmaster, or program director.
- 20.8 **CIVIL RIGHTS VIOLATION:** any action taken or derisive statement made regarding a person’s race, color, national origin, sexual orientation, religious beliefs, disability or age, including statements made in person or by telephone, posted, or electronic mail, or any other means of communication, if sufficiently severe, pervasive, or persistent that they (a) interfere with or limit an individual’s ability to participate in or obtain the advantages, privileges or course of study in the Boston Public Schools or from any Boston Public School program or activity; or (b) create an intimidating, threatening, or abusive educational environment.
- 20.9 **CONTROLLED SUBSTANCE:** any drug or substance listed in Massachusetts General Laws Chapter 94C.
- 20.10 **DANGEROUS OBJECT:** any object used in a dangerous or threatening manner, such as pencils, rulers, hair picks, etc.
- 20.11 **DANGEROUS WEAPON:** as defined in 18 USC, Section 930, a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade less than 2 1/2 inches.

As further defined by Massachusetts General Law Chapter 269, §10, a dangerous weapon includes any of the following, without limitation:

- BB gun or air rifle
- stiletto, dagger, or a device or case which enables a knife with a locking blade to be drawn at a locked position
- ballistic knife or knife with a detachable blade capable of being propelled by any mechanism
- dirk knife, knife having a double-edged blade, or a switch knife
- knife having an automatic spring release device by which the blade is released from the handle, having a blade of over 1 1/2 inches

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- a sling shot, blowgun, blackjack, metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles, nunchaku, zoobow, also known as klackers or kung fu sticks
 - similar weapon consisting of two sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather
 - a shuriken or any similar pointed starlike object intended to injure a person when thrown
 - armband, made with leather which has metallic spikes, points, or studs
 - similar device made from any other substance or a cestus or similar material weighted with metal or other substance and worn on the hand
 - a manrikigusari or similar length of chain having weighted ends.
- 20.12 **DAY, BUSINESS:** any day when Boston School Dept. administrative offices are open, i.e. Monday through Friday, excluding federal, state and county holidays.
- 20.13 **DAY, CALENDAR:** any day.
- 20.14 **DAY, SCHOOL:** any day on which school is in session and students are required to be present. Unless otherwise specified, references to “day” or “days” in this Code shall mean “school day” or “school days.”
- 20.15 **DESIGNEE:** a person specifically assigned by the Building Administrator, Cluster Leader, or Superintendent to act in his or her place in fulfilling the requirements of this Code.
- 20.16 **DISABILITY, STUDENT WITH A:** a student determined by a Team to be eligible for services and who displays one or more of the impairments listed in 603 CMR 28:00.
- 20.17 **DISCIPLINARY TRANSFER:** The transfer of a student to another school or program when, following a hearing, the Building Administrator decides the student's presence is a threat to the safety of others in the school. Students at the *elementary* level may receive disciplinary transfers to other schools. Students at the *secondary* level may receive disciplinary transfers *only* to alternative programs for disruptive students.
- 20.18 **DUE PROCESS:** the provision of proper notice to all parties of the charges, the opportunity to present evidence and, in the case of expulsions, the right to representation and to the cross-examination of witnesses **notwithstanding those exceptions articulated in sections 9.5.4 and 13.6.3,** and the obligation to inform the accused of the right to appeal.
- 20.19 **EVIDENCE, PREPONDERANCE OF THE:** evidence of greater weight or more convincing than the evidence which is offered in opposition to it. Such evidence shall be clear and unambiguous.
- 20.20 **EVIDENCE, SUBSTANTIAL:** beyond a preponderance of the evidence.
- 20.21 **EXPULSION:** an exclusion from school attendance and school privileges for more than ten consecutive school days and up to one calendar year. [See Section 13 of the Code for further explanation and required procedures; and Section 14 for details and procedures for students with disabilities.]
- 20.22 **FELONY:** any crime punishable by death or imprisonment in the state prison. All other crimes

are misdemeanors. Examples of felonies include:

- unnatural and lascivious acts with children under 16
- breaking and entering and stealing property
- breaking and entering with intent to commit a felony
- forging a check with intent to defraud
- manslaughter
- possession or sale of narcotic drugs (also intent to sell narcotic drugs)
- receiving stolen goods
- possession of firearms
- murder
- indecent assault and robbery
- mayhem
- armed robbery
- unarmed robbery but with force and violence
- rape
- arson
- larceny of a firearm
- larceny over \$250
- theft of a motor vehicle *
- carrying firearms
- carrying knives or other dangerous weapons *
- subsequent weapons offenses
- selling or distributing silencers *
- use of tear gas in commission of a crime

* *These crimes may be considered misdemeanors.*

20.23 **FIREARM:** any of the following, as defined by the federal Gun-Free Schools Act [Section 921 of Title 18 of the United States Code]:

- any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive
- the frame or receiver of any weapon described above
- any firearm muffler or firearm silencer
- any explosive, incendiary, or poison gas:
 - (1) bomb
 - (2) grenade
 - (3) rocket having a propellant charge of more than four ounces
 - (4) missile having an explosive or incendiary charge of more than one-quarter ounce
 - (5) mine or
 - (6) similar device
- any weapon which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter
- any combination of parts either designed or intended for use in converting any device into any destructive device described in the two immediately preceding examples, and from which a destructive device may be readily assembled.

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- 20.24 **FUNCTIONAL BEHAVIORAL ASSESSMENT (FBA):** an assessment of behavior conducted by members of a special education Team which assists them in developing appropriate behavioral strategies to address the student's behavior in the future. This should be held within 10 business days.
- 20.25 **GOSS V. LOPEZ:** a United States Supreme Court case which recognizes that students are due some form of process in the suspension/expulsion context.
- 20.26 **HAZING:** any conduct or method of initiation into any student organization, whether on public or private property, which willfully or recklessly endangers the physical or mental health of any student or other person [M.G.L. Chapter 269, Section 17-19].
- 20.27 **MANIFESTATION DETERMINATION (MD):** a meeting conducted within 10 business days by a student's Team to determine if the misconduct which occurred was directly related to the student's disability.
- 20.28 **MOCK GUN:** any device which looks reasonably like a firearm and is intended to put the victim in fear.
- 20.29 **NONACADEMIC SCHOOL EMPLOYEES:** school secretaries, custodians, cafeteria workers, lunchroom monitors, transitional aides, bus monitors, instructional aides, security aides, student teachers or interns, and such other school employees as are not actively engaged in the teaching process.
- 20.30 **OBJECT OF NO REASONABLE USE:** Any object that is of no reasonable use to a student in school, including but not limited to: any knife not defined as a dangerous weapon, a rock, brick, mock gun, fireworks, or laser pointer. Note that under a City Ordinance, laser pointers are not permitted in school buildings.
- 20.31 **PARENT:** a student's mother or father or both or guardian, or a person or agency legally authorized by court order to act on behalf of the child in place of or in conjunction with the mother, father, or guardian.
- 20.32 **SECTION 504:** refers to Section 504 of the Rehabilitation Act of 1973. Its purpose is to ensure that no individual is excluded from participation in, or denied the benefits of, or denied access to, any program or activity based solely on their disability. Certain students who may not be eligible for services under Chapter 766 may still be determined to have a disability within the definition of Section 504. A group of persons knowledgeable about a student in this category must develop an Accommodation Plan for the student which the school must implement.
- 20.33 **SEXUAL ASSAULT:** any sexual act against another person either by force, against their will, or by threat of bodily injury. It also includes any sexual act against another person who is incapable of giving consent either because of her/his temporary or permanent mental or physical incapacity or because s/he is a minor. Such crimes as indecent assault and battery, rape, rape with force, rape and abuse, assault with intent to rape and unnatural and lascivious acts constitute a sexual assault.

Indecent assault and battery includes, but is not limited to, inappropriate and unwanted touching of private parts of the body. A person under the age of 14 is legally unable to consent to this type of sexual activity.

Sexual assault can occur adult to adult, adult to student, student to adult, male to female, female to male, female to female and male to male.

- 20.34 **STUDENT RECORDS:** all information concerning a student maintained in any form by the Boston Public Schools that is organized on the basis of the student's name or in a way that the student can be individually identified.
- 20.35 **SUBSTANTIAL EVIDENCE:** beyond a preponderance of the evidence.
- 20.36 **SUSPENSION:** an exclusion from school activities and school privileges for a limited period of time. Suspension shall include exclusion from the school building as well as any "in-school" suspension.
- A regular or short-term suspension may not exceed three (3) school days for a student age 15 or younger or five (5) school days for a student age 16 or older. A long-term suspension may not exceed six (6) school days for a student age 15 or younger or ten (10) school days for a student age 16 or older.
- 20.37 **SUSPENSION, EMERGENCY:** a temporary suspension imposed for not longer than the end of the school day. It may be imposed when the student has committed a suspendable offense, *and* his/her presence poses a continuing danger to persons or property or of interference with the instructional process, *and* there is no alternative available to alleviate the danger or interference, *and* it is impossible because of the student's behavior to provide the student with notice and hearing prior to the emergency suspension.
- 20.38 **SUSPENSION, INDEFINITE:** a suspension imposed, following a hearing, when a student has been charged with a felony (age 18 and older) or felony delinquency (under age 18). The suspension remains in effect until the charge is adjudicated.
- 20.39 **SUSPENSION OF A STUDENT WITH DISABILITIES:** any action which results in the removal of a student from the program prescribed in his or her IEP. The term includes in school suspension as well as any exclusion from transportation services which prohibits the student's participation in his or her prescribed program.
- 20.40 **TEAM:** in reference to special education, the group of individuals responsible for creating and implementing a student's Individualized Education Program (IEP). Team membership can and should vary depending upon the educational needs of individual students. Participants usually include:
- the classroom teacher(s)
 - the school administrator or designee (Evaluation Team Facilitator/ETF)
 - parents or legal guardians and, if appropriate, the student
 - other school-based and district support staff if they have been involved in assessing the student's strengths and needs, or are going to be involved in the delivery of the IEP.
- 20.41 **WEAPON:** see 20.11, Dangerous Weapon; and 20.23, Firearm. ■

