Regulation of the Chancellor

Category:	**STUDENTS**	**Number:**	A-443
Subject:	Student Discipline Procedures	**Page:**	1of 2
		Issued:	03/05/04

SUMMARY OF CHANGES

A-443 contains disciplinary procedures for all students, whether in general or special education, grades K-12.

This version of A-443 supersedes A-443 issued on July 1, 2001.

Changes in 2004 version:

- The Regulation clarifies the alternative instruction required for students on suspension. For a student who is awaiting his/her Regional Superintendent suspension hearing, the minimum requirement of alternative instruction is a full-time instructional program for elementary students (grades K-8) and two hours per day for high school students (grades 9-12) pending the suspension hearing. For students on continued or extended suspension, the alternative instruction must be a full-time instructional program. For a student who is on Principal's suspension, the minimum requirement of alternative instruction is a full-time instructional program for elementary students (grades K-8) and two hours per day of instruction for high school students (grades 9-12).
- The Regulation continues to allow principals to suspend for a maximum period of one to five days. However, all limitation on the number of aggregate principal's suspension days in one school year for a student has been removed.
- The Regional Superintendents have the authority to suspend students for more than five (5) school days for all students in general education and special education, grades K-12. In order to ensure consistency among the Regions, the form due process notices attached hereto as Appendices must be used. Once a suspension is authorized, the Regional Superintendent/designee must notify the principal of the suspending school, the appropriate Local Instructional Superintendent and the Suspension Hearing Office.
- Suspension hearings of multiple students involved in the same incident will be scheduled separately, however, upon request of the witness/victim or school official, the hearing officer will determine whether or not the hearings will be consolidated into one hearing. To inform witnesses and their parents of this and other hearing procedures, a Student Witness Information Sheet will be provided by the school to any student witness who is asked to testify.
- Reputation or opinion evidence regarding sexual behavior of the alleged victim and evidence of the alleged victim's sexual history (except when the sexual conduct was with the accused or the victim misstates facts regarding his/her own sexual history or lack thereof) are not admissible in a suspension hearing.

- A certified copy of the minutes of a guilty plea or a certificate of conviction from a criminal or juvenile delinquency proceeding regarding the same charge for which the student was suspended is admissible non-hearsay evidence.
- A staff advisor may present the school's case whether or not the parent is represented at the hearing by an attorney or advocate. The staff advisor may also testify as a witness at the hearing where he/she is presenting the school's case.
- The dispositional options for a Regional Superintendent's suspension have been modified to include a Regional Superintendent's suspension for fixed period of 30-90 school days. In addition, the Regional Superintendent's suspension that results in an extended suspension for one year now provides that the student may petition for early reinstatement after 90 school days. The Regional Superintendent also must send a copy of the suspension decision letter to the appropriate Local Instructional Superintendent.

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ABSTRACT

This Regulation governs the intervention and discipline procedures for all students. It supersedes Chancellor's Regulation A-443 issued July 1, 2001. The Chancellor may change this Regulation consistent with applicable federal and state laws without further public hearings.

Procedures governing the involuntary transfer of students in general education (those without an IEP) are provided separately in Chancellor's Regulation A-450, Involuntary Transfer Procedures.

INTRODUCTION

The Chancellor is committed to ensuring that school is a safe and secure environment for all students and staff. Toward that end, students must be taught that they are responsible for their behavior, that there are standards of behavior with which they must comply and that there are consequences when they do not meet those standards.

This Regulation and the relevant Discipline Code apply to prohibited actions of students in school or on school property before, during, or after school hours; while traveling on vehicles funded by the Department of Education; and to misbehavior that occurs off school premises when it negatively affects the educational process or endangers the health, safety, morals or welfare of the school community.

This Regulation defines the school officials who may authorize suspensions, updates suspension procedures, and includes the protocol for removal of students from classrooms by teachers. It sets forth the due process rights of students, as required by Federal and State law, including the recently enacted New York State discipline legislation entitled *SAVE* ("Safe Schools Against Violence in Education Act"). This Regulation also describes the range of dispositional options that are available where a student has been suspended by the Regional Superintendent. [Student discipline procedures for summer school vary from those used during the regular school year and are issued separately.]

Guidance considerations and alternative techniques that should be used by school personnel are also addressed herein. School officials must consult the Discipline Code in determining what level of discipline to impose. School officials are responsible for sharing the information contained herein with students, staff, and parents.

I. EARLY INTERVENTION AND PREVENTIVE TECHNIQUES

I.A. General Considerations

School personnel are responsible for developing and utilizing techniques and measures that promote optimal learning and address behaviors which negatively impact upon the education process. Toward that end, school personnel should develop plans and explore techniques for addressing a student's behavioral problems and discuss these alternatives with the student and his/her parent.[1] These plans might include the use of alternative instructional materials and/or approaches, alternative classroom management techniques, remedial services, alternative class placement, guidance support, and services to address personal and family circumstances.

For students with disabilities, functional behavioral assessments and behavioral intervention plans[2] should be developed and/or reviewed as an early intervention strategy. Positive behavioral strategies are a necessary part of a child's Individualized Education Program ("IEP") where behavior issues impact on his/her educational needs. If, at any time, school officials suspect that a student's difficulties may be the result of a disability which may require special education services, the student shall be referred immediately to the Committee on Special Education ("CSE"). All efforts to address the academic or behavioral issues in general

[1] The term "parent," whenever used in this Regulation, means the student's parent(s) or guardian(s), or any person(s) in a parental or custodial relationship to the student, or the student, if he/she is an emancipated minor or has reached 18 years of age. For a student with a disability, consult the standard operating procedures established for assigning a surrogate parent, if applicable.

[2] Functional Behavioral Assessments and Behavioral Intervention Plans are discussed in greater detail in Section II.D.

education should be described in the student's records and on the CSE referral.

I.B. Principal's Guidance Conference

I.B.1. Guidance conferences attended by the principal or his/her designee, a guidance counselor, the student's parent, and one or more of the student's teachers, are an effective means of encouraging parental input and should be held with students where appropriate. The conference should be conducted as a guidance session to assist in resolving the problem. Parents should be advised of their right to bring advisors to these conferences.

I.B.2. The guidance conference may not be used as a vehicle for determining whether a student should be suspended or as a substitute for the pre-suspension conference described in Section III.B.2(l). The possible outcomes of a guidance conference include the following:

a) The student will remain in the current class (and special education program, if applicable), with the implementation of classroom and/or other strategies to ameliorate the disciplinary problem.

b) The student will be referred to the on-site Pupil Personnel Team where a variety of appropriate intervention and prevention strategies may be considered and implemented.

c) The student will be transferred to another class at the same site (in the same special education program, where applicable).

d) The student will be referred to the CSE for evaluation or re-evaluation without interruption of the student's education. Written notice of this referral and the appropriate due process notices shall be sent to the student's parent and his/her consent obtained.

e) The student may be transferred to a different school with the consent of the parent and Regional Superintendent.

I.B.3. The principal should notify the parent by letter[3] that he/she should attend the guidance conference. The following is a suggested format:

> I need to meet with you to discuss a serious matter involving your child (Name). Would you please come in to see me on (Date-Time-Place) so that we can plan ways to resolve this matter. You may bring an advisor to this conference.
>
> I must stress the urgency of our arriving at a joint solution so that we may avoid future disciplinary measures.

II. INDIVIDUALS WITH DISABILITIES EDUCATION ACT ("IDEA") PROTECTIONS

The provisions contained in this Regulation are not designed or intended to afford students with disabilities subject to disciplinary action any greater or lesser rights than those provided by applicable state or federal laws or regulations.

II.A. Definition of "Student with a Disability"

A "student with a disability" is one who has been formally designated by a CSE/Subcommittee[4] as having a disability.

II.B. IDEA Protections for Non-Disabled Students

Under certain circumstances, the *Individuals with Disabilities Education Act* ("IDEA") provides protections for children not yet

[3] Any letter sent in connection with this Regulation should be sent, where feasible, in the parent's preferred language or mode of communication. In those cases where it is not possible to obtain a full translation of the letter, it should be sent in English with an attached notice in the parent's preferred language or mode of communication stating the following: "The attached letter contains important information about your child. Please have it translated as soon as possible."

[4] A "subcommittee" includes the parent, the student's general education teacher if applicable, the student's special education teacher or service provider, a district representative, a psychologist if a new psychological evaluation is reviewed, and a person able to interpret the student's evaluation (who may also be the special education teacher, psychologist or district representative).

eligible for special education services. A student who has not yet been determined to be eligible for special education services who has engaged in behavior that violates any school rules or the Discipline Code *may* be entitled to the protections provided for in the IDEA if school officials had knowledge (defined below) that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. Notice of the opportunity to assert IDEA protections must be provided to a parent of a non-disabled student when the student is suspended by the principal or Regional Superintendent. (See sample Notice of IDEA Protections, Appendix A and sample General Education Suspension Notice (K – 12), Appendix E.)

II.B.1. In the event that a parent asserts the protections of the IDEA, the Regional Superintendent or, in the case of school-based discipline, the principal must make a determination as to whether the student is entitled to the protections of the IDEA. School officials shall be deemed to have knowledge that a student is a student with a disability if prior to the occurrence of the misbehavior:

a) the parent of the student has expressed concern in writing (unless the parent is incapable of writing, i.e., does not know how to write or has a disability that prevents writing) to appropriate school officials that the student is in need of special education services;

b) the behavior or performance of the student demonstrates the need for special education services;

c) the parent of the student has made a written request for an evaluation (unless the parent is incapable of writing); or

d) the teacher of the student, or other school personnel, has expressed concern about the behavior or performance of the student to appropriate school officials and initiated a special education referral.

II.B.2. A school will not be deemed to have such knowledge if, prior to the misbehavior, the CSE/Subcommittee either:

(a) conducted an evaluation and determined that the student was not a student with a disability; or

(b) determined that an evaluation was not necessary; and

(c) provided notice to the student's parent of its determination.

II.B.3. If the Regional Superintendent or principal decides that the student is entitled to the protections of the IDEA, then any disciplinary action taken against the student must be carried out in accordance with the procedures governing the discipline of students with disabilities contained in this Regulation. An expedited evaluation (within fifteen (15) school days) of the student must be conducted in order to determine whether the student is in fact disabled and, if necessary, the services the student requires. For assistance in making this determination or for clarification on how to proceed, the Regional Superintendent or principal or designee of either may contact the Office of Youth Development and School-Community Services or the Office of Legal Services at (212) 374-6888.

II.B.4. If the Regional Superintendent or principal has determined that the student is not entitled to the protections of the IDEA or, after referral, the CSE/Subcommittee has determined the student does not have a disability or that an evaluation is unnecessary, the student is subject to the same disciplinary measures as applied to students without disabilities who engaged in comparable behaviors, in accordance with this Regulation and the Discipline Code.

II.B.5. If a request is made for an evaluation of a student at any time during the time period in which he/she is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner (within fifteen (15) school days).

II.C **General Considerations**

In addition to providing protections for students not yet determined to be eligible for special education services, the IDEA contains

several provisions concerning the discipline of students with disabilities.

II.C.1. A student with a disability may be removed from the classroom by a teacher or suspended and excluded from his/her current educational program. The current educational program is the program that provides the student's IEP-mandated services including the opportunity to progress in the general education curriculum and participate with non-disabled students to the maximum extent appropriate.

II.C.2 During the first ten (10) school days of exclusion from his/her current educational program as a result of disciplinary action (i.e., suspension, removal), the student with a disability must be provided with alternative instruction (See Section III.B.1.) to the same extent as students in general education.

II.C.3 Beginning with the eleventh school day of exclusion from the current educational program as a result of disciplinary action, the student with a disability must be provided educational services that enable him/her to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

II.C.4 At the appropriate time in the disciplinary process, school officials must conduct a functional behavioral assessment and implement a behavioral intervention plan or review the plan that had been developed previously. (See Section II.D.)

II.C.5. Any disciplinary change in placement of a student with a disability must be effectuated in accordance with legal mandates and procedural safeguards. A *disciplinary change of placement* occurs if:

a) As a result of a disciplinary action, the student is excluded from his/her current educational program for more than ten (10) consecutive school days or the student is placed at an interim alternative educational setting ("IAES") (See Section II.F.); or

b) A student is subjected to a series of classroom removals or suspensions that constitute a pattern[5] because they result in the student being excluded from his/her current educational program for more than ten (10) school days in a school year and because of such factors as the length of each exclusion, the total amount of time the student is excluded, and the proximity of the exclusions to one another.

II.C.6. For every student with a disability who is removed or suspended, a tally of the number of days of disciplinary exclusions from the current educational program that year must be maintained by the principal. In addition, the number and types of all removals/suspensions for the student, the length of each removal/suspension, the proximity of the removals/suspensions to one another and whether they constitute a pattern or disciplinary change of placement must be maintained.

II.C.7. If a student with a disability is removed from the classroom or suspended and placed at an alternative instructional site that does not provide all of the IEP-mandated services, including the opportunity to progress in the general education curriculum and participate with non-disabled students to the maximum extent appropriate, the days spent in the alternative site count towards the days of exclusion from the student's current educational program. A partial day spent in such an alternative setting shall count as a full day in determining the number of days of exclusion.

II.C.8. When a student with a disability is subject to a disciplinary change of placement, a manifestation determination review ("MDR") must be conducted to determine the relationship between the student's disability and the behavior precipitating the disciplinary action (See Section II.E.).

[5] Multiple short-term classroom removals or suspensions for separate incidents of misconduct that do not constitute a pattern are not disciplinary changes of placement.

II.D. **The Functional Behavioral Assessment ("FBA") and Behavioral Intervention Plan ("BIP")[6] for Students with Disabilities**

A *functional behavioral assessment* is the process of determining why a student engages in behaviors that impede learning and how the student's behavior relates to the environment. A *behavioral intervention plan* is a plan that is based on the results of the FBA and, at a minimum, includes a description of the problem behavior, hypotheses as to why the problem behavior occurs and intervention strategies to address the behavior.

II.D.1. For the student with a disability who does not have a BIP, an FBA must be conducted within ten (10) business days of any of the following events:

a) classroom removal or suspension which results in the student being excluded from his/her current educational program for more than ten (10) school days that school year; or

b) placement of the student in an IAES for up to 45 days by the Regional Superintendent or impartial hearing officer.

II.D.2. The CSE/Subcommittee shall convene an IEP meeting to develop an assessment plan. As soon as practicable after developing the assessment plan and completing the assessment(s), an IEP meeting shall be convened to develop a BIP to address the problem behavior and to implement appropriate behavioral interventions.

II.D.3. If the student with a disability already has a BIP, the CSE/Subcommittee shall meet within ten (10) days of any of the events listed in II.D.1 to review the plan and its implementation and modify either or both, as necessary.

II.D.4. If a student with a disability who has a BIP and who has been removed or suspended from the current educational

[6] Detailed information on both of these concepts has been provided in the Program Workbook entitled *Staff Development, Functional Behavioral Assessments and Behavioral Intervention Plans, September 2000-June 2001*.

program as a result of a classroom removal or suspension for more than ten (10) school days in a school year is subjected to another suspension or removal that does not constitute a disciplinary change of placement [e.g., because the removal is not part of a pattern as described in Section II.C.5.(b)], the members of the CSE/Subcommittee need not meet but shall review the BIP and its implementation to determine if modifications are necessary. If one or more of the team members determine that modifications are needed, the IEP team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

II.E. **Manifestation Determination Review for Students with Disabilities**

II.E.1. Students with disabilities must be referred immediately to the CSE/Subcommittee for a manifestation determination review ("MDR") if

(a) the student's classroom removal or suspension constitutes a disciplinary change of placement (See Section II.C.5.); or

(b) the Regional Superintendent is considering placement of a student in an IAES for up to 45 days or requesting that an Impartial Hearing Officer ("IHO") place a student in an Interim Alternative Educational Setting ("IAES") (See Section II.F.); or

(c) the Regional Superintendent sustains the suspension and considers imposing a continued suspension for more than ten (10) school days or extended suspension.

II.E.2. On the same day as the referral, the parent must be notified and provided the Procedural Safeguards Notice. As soon as possible, but in no case later than ten (10) school days after the date of the referral, the CSE/Subcommittee must conduct an MDR to determine the relationship, if any, between the student's disability and the behavior subject to the disciplinary action.

II.E.3. The MDR must be conducted by the CSE/Subcommittee and other qualified personnel in a meeting. In carrying out the review, these individuals may determine that the behavior of the student was not a manifestation of the student's disability only if they first consider, in connection with the behavior subject to disciplinary action, all relevant information, including:

(a) evaluation and diagnostic results, including the results or other information supplied by the parent of the student;

(b) observations of the student; and

(c) the student's IEP and placement;

and then determine that:

(i) in relationship to the behavior subject to the disciplinary action, the student's IEP and placement were appropriate and the special education services, supplementary aids and services and behavioral intervention strategies were provided consistent with the student's IEP and placement;

(ii) the student's disability did not impair his/her ability to understand the impact and consequences of the behavior subject to disciplinary action; and

(iii) the student's disability did not impair his/her ability to control the behavior subject to disciplinary action.

II.E.4. The CSE/Subcommittee must notify the principal and Regional Superintendent of the results of the manifestation review within ten (10) school days of the referral. The MDR may be conducted at the same IEP meeting that is convened for developing/reviewing an FBA or BIP.

II.E.5. If the CSE/Subcommittee determines that any of the standards set forth in (i)-(iii) above were not met, the behavior must be considered a manifestation of the student's disability. If, in the course of the MDR, school officials identify deficiencies in the student's IEP or placement or in

their implementation, they must take immediate steps to remedy those deficiencies.

II.E.6. If the result of the review is that the misconduct was not a manifestation of the student's disabling condition, the student may be disciplined.

II.E.7. If the result of the review is that the misconduct was a manifestation of the student's disability, the student may not be disciplined except as provided in Section II.F. below.

II.E.8. While awaiting the MDR:

a) For students who have already been excluded from their current educational program for at least ten (10) school days during the school year due to disciplinary action, the principal or Regional Superintendent must reinstate the student, assign the student to another appropriate setting or arrange for a change in placement with informed parental consent.

b) Students who have not yet been excluded for ten (10) school days due to disciplinary action must be provided with alternative instruction (See Section III.B.1.).

II.F. **Placement of a Student with a Disability at an Interim Alternative Educational Setting ("IAES")**

II.F.1. Authority of Impartial Hearing Officer to Place a Student with a Disability at an IAES

a) A Regional Superintendent may request that an Impartial Hearing Officer ("IHO") order a change in the placement of a student with a disability to an appropriate IAES for not more than 45 days if the Regional Superintendent believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others. There is no limit to the number of times such a request or placement may be made provided all required procedures in this Regulation are followed.

b) An IHO may order such placement if, in an expedited due process hearing, he/she

(i) determines that school officials have demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or others;

(ii) considers the appropriateness of the student's current placement;

(iii) considers whether school officials have made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and

(iv) determines that the IAES that is proposed by school personnel who have consulted with the student's special education teacher meets the requirements set forth in Section II.F.3. below.

c) When the Regional Superintendent requests an Impartial Hearing for the purpose of changing the student's placement to an IAES, he/she must notify the parent of the request and provide the parent with the Procedural Safeguards Notice. School officials may request the hearing prior to the completion of the suspension hearing and/or MDR.

II.F.2. Authority of a Regional Superintendent to Place a Student with a Disability in an IAES

In cases where a student with a disability is found to have brought/possessed a weapon[7] to/in school or to/at a school function or knowingly possessed or used illegal drugs or sold or solicited the sale of a controlled substance while at school or a school function, the Regional Superintendent may place the student in an IAES for up to 45 days and may do so prior to the completion of the MDR. If the MDR finds that the

[7] For purposes of this placement, a weapon does not include a pocket knife with a blade of less than two and one-half inches.

behavior was not a manifestation of the student's disability, then the same discipline that would be imposed upon a general education student may be imposed. If the MDR finds that the behavior was a manifestation of the disability, the student may remain in the IAES for up to 45 days.

II.F.3. Determination of IAES

(a) If the student is placed in the IAES by the Regional Superintendent for weapon or drug possession as set forth in II.F.2. above, the CSE/Subcommittee shall determine the setting.

(b) If the student is placed in an IAES because of the likelihood of injury, the Impartial Hearing Officer will determine the setting based on recommendations from school personnel who have consulted with the student's special education teacher.

(c) Any IAES in which a student with a disability is placed for up to 45 days must:

(i) be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP; and

(ii) include services and modifications that are designed to address the behavior and prevent the behavior from recurring.

II.G. **Authority of Regional Superintendent to Seek Injunctive Relief in Court**

If, at any time, the principal believes that maintaining the student in the current educational program is substantially likely to result in injury to either the student or to others, the principal immediately shall consult with the appropriate Regional Superintendent. If the Regional Superintendent determines that the student cannot be

maintained in the current educational program, the Regional Superintendent promptly shall consult with the Office of Legal Services to discuss the possibility of seeking injunctive relief to exclude the student. At the same time, the Regional Superintendent shall give notice to the Office of School Safety and Planning.

III. DISCIPLINARY PROCEDURES

The Discipline Code sets forth a comprehensive description of unacceptable behavior and the range of permissible disciplinary and intervention measures that may be used when students engage in such behavior. In addition to consulting the Discipline Code, prior to determining the appropriate disciplinary and/or intervention measures, the following must be considered: the student's age, maturity and previous disciplinary record (including the nature of the prior misconduct, the number of prior instances of misconduct, and the discipline imposed for each); the circumstances surrounding the incident leading to the discipline; and the student's IEP, BIP and 504 Accommodation Plan, if applicable. Moreover, consideration should be given to what, if any, alternative measures have been or should be explored.

In order to promote a secure and orderly environment, teachers must immediately report to the principal conduct that poses a danger to the health and/or safety of the school community (See Chancellor's Regulation A-412).

This section sets forth procedures for the removal of students from classrooms by teachers and the suspension of students by principals or Regional Superintendents. As noted previously, students with disabilities are entitled to the IDEA protections set forth in Section II.

III.A. Removal of Students from Classrooms by Teachers

III.A.1. When a student engages in behavior which is *substantially disruptive of the educational process or substantially interferes with a teacher's authority over the classroom*, the student may be removed from the classroom by the teacher. (Consult the Discipline Code for behavior infractions subject to teacher removal.)

III.A.2. Prior to removing the student, the teacher must provide the student with an explanation of the basis for the removal and allow the student to informally present his/her version of the events. If the student's presence in that classroom poses a continuing danger and presents an ongoing threat of disruption to the academic process, the student may be removed immediately, and such notification to the student and opportunity to be heard must be provided within one school day of the removal.

III.A.3. The teacher must inform the principal/designee of the removal and complete and submit a student removal form (See Appendix B) no later than the end of the school day. As soon as possible, the principal/designee should confer with the teacher to review the circumstances leading to the removal and determine the professional, pedagogical and classroom management criteria and standards that were used in deciding that a removal was to be imposed.

III.A.4. The student may be removed from the class for a period of one to four days to be determined by the principal/designee in consultation with the teacher. In determining the number of days, consideration must be given to the student's age, maturity, previous disciplinary record, the circumstances surrounding the incident and, if applicable, the student's IEP, BIP, or 504 Accommodation Plan. In addition, consideration shall also be given to whether, because of the student's grade, the removal will result in the student being removed from the classroom for a single class period or for the entire day.

III.A.5. For a student with a disability, the principal also shall determine the number of days of exclusion from the student's current educational program due to disciplinary action (See Sections II.C.6. and II.C.7) in order to determine the additional IDEA requirements concerning:

(a) the type of educational services to be provided during the removal for a student with a disability (See Sections II.C.2. and II.C.3.);

(b) whether an FBA must be conducted and/or a BIP developed/reviewed for a student with a disability (See Section II.D.); and

(c) whether an MDR must be conducted for a student with a disability (See Section II.E).

III.A.6. Utilizing the ATS system, the principal/designee must track the number of days and number of removals for each student.

III.A.7. Removed students shall be directed to an appropriate site for continued educational services for the period of removal in accordance with established *school* policies and procedures. Such services shall be provided in accordance with the requirements set forth in Section III.B.1. entitled "Alternative Instruction". If the removed student is absent from school or from the continued educational program setting, he/she shall be marked absent or cutting, as appropriate.

III.A.8. The principal/designee must make every reasonable effort to notify the parent of the removal by phone by the end of the school day. In any event, the parent must be notified of the removal no later than 24 hours from the time of removal. The parent must be informed of:

- the reason(s) for the removal;
- the length of the removal; and
- the right to request an informal conference regarding the removal.

III.A.9. Absent extenuating circumstances, if the parent requests an informal conference, it must be held within two (2) school days of the removal. At the conference, the principal/designee shall provide an explanation of the basis for the removal and allow the student/parent to present his/her version of the events. Where deemed appropriate by the principal, the teacher and other staff will participate

in the conference to discuss the incident and to recommend appropriate intervention strategies.

III.A.10. Written summaries of the conference, including recommendations for follow-up action, should be prepared and made available to the parent.

III.A.11. The principal/designee shall not set aside the removal unless he/she determines that: (1) the facts do not support a conclusion that the student committed the act or that the act substantially disrupted the class or substantially interfered with the teacher's authority over the classroom; (2) the removal violates the law; or (3) the behavior warrants a suspension and a suspension will be imposed. The determination to set aside the removal may be made at any point following notification to the principal/designee of the removal. In no event shall the determination be made later than the third school day following the removal.

III.A.12. If the principal/designee sets aside the removal, he/she shall advise the teacher and parent of the reason(s) the removal has been set aside, and the student shall be returned to the class.

III.A.13. The teacher may appeal to the Chancellor or his/her designee the length of the removal or the principal/designee's determination to set aside the removal. Such appeal must be made within three school days of the principal's decision and may be filed by facsimile. The Chancellor/designee will make a determination within four school days of receipt of the appeal and appropriate records and arrange for notification to the principal, teacher and the student's parent. The decision of the Chancellor/designee is final. Regardless of the outcome of the appeal, the student shall remain in the classroom and shall not be subject to additional days of removal for the precipitating incident.

III.A.14. After a student is removed from any classroom by any teacher three times or more during a semester, or two times or more in a trimester, a principal's suspension must be sought if the student engages in subsequent misbehavior that would otherwise result in a removal by the teacher within the semester or trimester. After a student has been suspended by a principal under this section, the student may be subject to an additional principal's suspension, in accordance with the provisions noted above.

III.A.15. If a removal is set aside by the principal, it does not count toward the three or two instances of removal referred to above. If the set-aside of the removal is overturned by the Chancellor/designee, the removal will count toward this calculation.

III.B. **Suspension Procedures**

Suspension is the temporary removal of a student from the regular school program because his/her behavior negatively affects the health, safety, welfare and/or morals of others. Suspensions fall into two categories: principal's suspensions and Regional Superintendent's suspensions. Suspension is a serious step and school officials must use appropriate alternative measures to avoid it, if possible.

III.B.1 **Alternative Instruction**

(a) Students may not be penalized[8] academically during the suspension or removal period. Students must be permitted to take any Citywide or State examinations that are administered during the period of their removals or suspensions for which no make-up examination is permitted by the testing authority, as well as to make up school examinations, such as midterms or finals, which may affect their academic records.

[8] An academic penalty, such as reduction of grade, may only be imposed as a disciplinary measure if the conduct for which a student was suspended is directly related to an academic activity (e.g., plagiarism or cheating on an examination).

(b) During the period of their removal or suspension, students must be provided with alternative instruction, which includes, but is not limited to, class work and homework assignments. The instruction must provide the student with an opportunity to continue to earn academic credit and must be appropriate to the individual needs of the student.

(c) Alternative instruction for a student who is on a principal's suspension or a superintendent's suspension may be provided at the suspending school or at another school location[9]. If necessary, appropriate transportation arrangements must be made for the student.

(d) In determining the alternative instruction for a student with a disability and for a student who has a 504 Accommodation Plan, consideration must be given to the student's IEP and behavioral intervention plan, or 504 Accommodation Plan. In addition, if a student with a disability (i.e., a student who has an IEP) has been suspended for more than an aggregate of (10) school days during the school year, the student must be reinstated or assigned to an appropriate setting that enables the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

Additional Requirements for Superintendent's Suspensions

(e) An elementary or middle school student (grades K-8), who is awaiting his/her superintendent's suspension hearing, must be provided with a full-time instructional program. A high school student (grades 9-12), who is awaiting his/her superintendent's suspension hearing, must be provided with a minimum of two hours per day of instruction. The instruction may be provided before school hours, after school hours or during school hours.

[9] Principals must seek authorization from the Regional Director of Student placement, Youth and Family Support Services prior to providing alternative instruction in another school location.

(f) Once a superintendent's suspension hearing has been held and if the student is thereafter placed on continued or extended suspension (See Section III.B.3.(w)), the student must be provided with a full-time instructional program.

Additional Requirements for Principal's Suspensions

(g) An elementary or middle school student (grades K-8) who is on a principal's suspension for one (1) to five (5) school days must be provide with a full-time instructional program. A high school student (grades 9-12) who is on a principal's suspension for one (1) to five (5) school days must be provided with a minimum of two hours per day of instruction. For high school students, the instruction may be provided before school hours, after school hours or during school hours.

III.B.2. **Principal's Suspensions**

(a) The principal shall have authority to suspend a student when the principal determines the student's behavior presents a clear and present danger of physical injury to the student, other students or school personnel, or prevents the orderly operation of classes or other school activities. Suspensions must be carried out in accordance with the mandates provided herein. Prior to suspending a student, the principal shall consult the Discipline Code, IEP, BIP, and 504 Accommodation Plan, where applicable, to determine if a principal's suspension is an appropriate disciplinary option.

(b) For students in grades 4-12, only the principal, or in the principal's absence, the school official designated as "acting principal," may authorize a principal's suspension.

(c) A principal must seek the authorization of the Regional Superintendent prior to seeking a proposed principal's suspension of a student in grades K-3. Before authorizing the suspension, the Regional

Superintendent must consider what other disciplinary, guidance and intervention measures the school has utilized.

(d) A principal may suspend a student for one to five school days, but in no case in excess of five school days. Not all misbehavior warrants a full five-day suspension; all relevant factors must be considered in the determination of the length of a suspension. A student may not be suspended more than once for the same incident.

(e) When a principal believes that suspension may be warranted, the student shall be informed of the charges against him/her. The principal shall give the student an explanation of the evidence and an opportunity to present his/her side of the event, unless it is not feasible to do so.

(f) If the principal (or Regional Superintendent, for a student in grades K-3) decides that suspension is not warranted, the student shall remain in class.

(g) If the principal decides that the proposed suspension is warranted (and the Regional Superintendent authorizes the proposed suspension for students in grades K-3), the student shall remain in class pending completion of the principal's suspension conference as described in Section III.B.2.(l) below.

(h) If the principal decides that the proposed suspension is warranted (and the Regional Superintendent authorizes the proposed suspension for students in grades K-3) and that the student's presence in the school poses a continuing danger or presents an ongoing threat of disruption to the academic process, the student shall be suspended immediately for a period of one (1) to five (5) school days. Thereafter, the principal's suspension conference as described in Section III.B.2.(l) shall be conducted. The principal shall detain the student in school under supervision until either the

arrival of the student's parent or until the close of the student's school day. The principal must inform the parent of the location at the school where the student can be picked up.

(i) For a student with a disability, the principal also shall determine the number of days of exclusion from the student's current educational program due to disciplinary action (See Sections II.C.6. and II.C.7.) in order to determine the additional requirements concerning:

(1) the type of educational services to be provided during the removal for a student with a disability (See Sections II.C.2. and II.C.3.);

(2) whether an FBA must be conducted and/or a BIP developed/reviewed for a student with a disability (See Section II.D.); and

(3) whether an MDR must be conducted for a student with a disability (See Section II.E.).

(j) The principal shall give immediate written notice of the decision[10] to seek a suspension or suspend the student who poses a continuing danger or presents an ongoing threat of disruption to the academic process to the student's parent. Such notice shall be provided by personal delivery, express mail delivery, mailgram or any other equivalent form of communication reasonably calculated to assure receipt of such notice within 24 hours of the decision (e.g., via facsimile or e-mail). (See sample 24-hour Notice of Suspension, Appendix C.) The principal also shall give immediate notice of the decision to the parent and Regional Superintendent by telephone. Every effort shall be made to arrange a suspension conference with the parent at a mutually

[10] For paragraphs j-l, the "decision" shall mean the decision to seek a suspension or to suspend a student immediately because his/her presence is a continuing danger or presents an ongoing threat of disruption to the academic process.

acceptable date and time. The suspension conference shall be scheduled as soon as possible, but in no event later than five school days from the date of the written notice.

(k) A copy of the letter must be forwarded to the Regional Superintendent. The letter must inform the parent: (a) that the principal is seeking to suspend the student or, in those cases where the student has been suspended already, that the student is suspended, the period of suspension, and the alternative instruction arrangements that have been made pending completion of the suspension conference; (b) the specific reason(s) for the decision including the date, time and place of the misbehavior giving rise to the suspension; (c) that the parent's presence is required at a suspension conference to discuss the suspension; (d) the date, time, and place (no more than five school days from the notice of the suspension) of the conference; and (e) that if the parent's preferred language or mode of communication is not English, the parent may bring a translator or interpreter to assist him/her with the conference. For non-disabled students, the notice of the principal's suspension also shall include information about IDEA protections. (See Appendix A.) In addition, the principal's suspension letter must provide a statement of the student's rights, including the right to: (a) question persons involved in the incident leading to the decision; (b) present witnesses and documentary evidence; (c) be accompanied by up to two advisors who may be attorneys or advocates; (d) be returned to his/her program at the end of the suspension period; and (e) appeal the suspension decision. The parent has a right to obtain a copy of the Bill of Student Rights and Responsibilities, K-12. For students with disabilities, the letter must inform the parent that the parent and student have certain protections under the law; that he/she should refer to the Procedural Safeguards

Notice; and that if the parent has any questions, he/she should contact the principal or special education supervisor. (The letter must provide the name, title and telephone number of the designated contact person in the letter.).

(l) Principal's Suspension Conference

The suspension conference presents an opportunity to assess the facts surrounding the incident for which a suspension is being sought; determine whether or not a suspension is justified; devise collaboratively satisfactory solutions for the student's return to his/her program; and prevent further disruption of the student's education.

Suspension conferences shall be conducted in accordance with the following procedures:

(1) The school principal shall conduct the conference and may not delegate the responsibility to attend even if he/she was not present at the time of the decision to suspend.

(2) If the parent's preferred language or mode of communication is not English, the parent may bring a translator or interpreter to assist him/her.

(3) The conference will be held on the scheduled date unless the parent requests that it be rescheduled. Every effort shall be made to secure the student and parent's attendance. However, if the student and/or parent, after appropriate notice, do not appear at the conference, the principal may hold the conference in their absence on the scheduled date.[11]

[11] If the student and/or parent is absent, the principal shall so state in his/her conference notes, describe efforts by school officials to ensure their presence, and proceed with the conference. The parent shall be informed in writing that the conference was conducted on the scheduled date and of any decisions reached at the conference.

(4) The conference is not a formal hearing and should not become adversarial. All persons shall participate in the conference in a manner consistent with its informal nature.

(5) The parent and the principal each may bring no more than two persons to assist them in the conference unless both parties agree to the participation of additional persons. Those brought by the parent may be attorneys or advocates. Both parties may also present witnesses and offer statements and other documentary evidence.

(6) A written summary of the conference must be prepared and maintained by the school.

(m) If the student receives door-to-door school bus transportation, the principal will notify the Office of Pupil Transportation of any scheduling changes resulting from the suspension.

(n) If the principal determines that a suspension is not warranted, all records relating to the suspension must be expunged. If the student was already suspended from school, the student must be returned immediately.

(o) If the principal determines that a suspension is warranted, the student will be suspended for a period of one to five days, as determined by the principal. During the suspension period, the student must be provided with alternative instruction (See Section III.B.1.). If the student has already been suspended, the student shall remain on suspension until the end of the suspension period. All students who are suspended must be reinstated immediately following the suspension period but in no event later than the sixth school day following the suspension.

(p) The suspended student is to remain on the register of his/her school and shall not be marked absent during the period of suspension unless he/she is absent from an alternative instruction program (See Section III.B.1.) to which he/she has been assigned. Appropriate notation of the suspension should be recorded in a manner that will permit expungement, when necessary. However, notation of a principal's suspension may not be placed on the student's permanent record.

(q) A student must be reinstated at the end of the principal's suspension period. However, a student may be transferred to another school following a principal's suspension only with the consent of the parent and Regional Superintendent. (Involuntary transfers for non-disabled students must be effectuated in accordance with *Chancellor's Regulation* A-450.)

(r) The principal shall notify the parent in writing of his/her decision within ten (10) school days of the conference. This letter shall state whether the suspension will be imposed or whether the suspension was justified, the basis for the decision and, where necessary, make further recommendations. If one of the recommendations is to refer the student to the CSE for an evaluation or re-evaluation, the principal also shall submit a written referral. If the student has not already been removed, the letter must indicate the alternate instruction arrangements that have been made during the suspension period. (Please note this letter is different from the Principal's Suspension Letters, Appendix C.)

III.B.3. **Regional Superintendent's Suspensions**

A Regional Superintendent's suspension may result in a period of suspension that exceeds five days. Prior to requesting such a suspension, the principal shall consult the Discipline Code, IEP, BIP and 504 Accommodation

Plan, where applicable, in order to determine if a Regional Superintendent's suspension is an appropriate disciplinary option.

(a) A Regional Superintendent's suspension must be sought when a student engages in any of the following behavior:

(1) Using any weapon, as defined below in Categories I and II, to inflict injury or to attempt to inflict injury upon school personnel, students or others:

Category I Weapons

- Firearm, including pistol and handgun, silencers and electronic dart and stun gun;
- Shotgun, rifle, machine gun, or any other weapon which simulates or is adaptable for use as a machine gun;
- Air gun, spring gun, or other instrument or weapon in which the propelling force is a spring or air, and any weapon in which any loaded or blank cartridge may be used (such as a BB gun);
- Switchblade knife, gravity knife, pilum ballistic knife, and cane sword (a cane that conceals a knife or sword);
- Dagger, stiletto, dirk, razor, box cutter, case cutter, utility knife, and other dangerous knives;
- Billy club, blackjack, bludgeon, chucka sticks, and metal knuckles;
- Sandbag and sandclub;
- Sling shot (small, heavy weights attached to or propelled by a thong) and slung shot;

- Martial arts objects including kung fu stars, ninja stars, nin chucks, and shirkens;
- Explosives, including bombs, firecrackers and bombshells.

Category II Weapons

- acid or deadly or dangerous chemicals;
- imitation gun;
- loaded or blank cartridges and other ammunition;
- stink bombs;
- stun pens;
- any deadly, dangerous, or sharp-pointed instrument, which can be used or is intended for use as a weapon (such as scissors, nail file, broken glass, chains and laser beam pointers).

(2) Possessing any weapon, as defined in Category I above.

(3) Selling or distributing illegal drugs or controlled substances.

(4) Using extreme force against or inflicting or attempting to inflict serious injury upon students or others.

(5) Using force against or inflicting or attempting to inflict serious injury against school personnel or school safety agents.

(b) A Regional Superintendent's suspension should also be sought when a student engages in behavior not listed above but which presents a clear and present danger to the student, other students or school personnel or which is so disruptive as to prevent the orderly operation of the school. (See Discipline Code

for additional behaviors which may warrant suspension.)

(c) Police Notification,[12] Arrest and Vouchering of Contraband

The police must be summoned when a student is believed to have committed a school-related crime. School-related crimes are those which occur on or near school property (e.g., in front of the building) or off school property but which have a nexus to the school (e.g., involving students or staff from the same school). The school shall obtain the name, shield number and command of the responding police officer(s).

Where a student is arrested, the principal shall notify the parent immediately. If the parent cannot be reached, the principal shall request of the arresting officer that a member of the school staff accompany the student. If permission to accompany the student is denied, a member of the staff shall follow immediately to the place the student is taken. The staff member who accompanies or follows the student to the precinct must be someone who was not involved in the incident leading to the arrest and must remain at the precinct for a reasonable amount of time, until the parent arrives or until he/she is no longer needed.

If an arrest is made for possession of a weapon, controlled substance or illegal drugs, the police will voucher the item. The school must obtain a copy of the Police Department voucher (property clerk's invoice). If the police do not take custody of the item of contraband, the principal or his/her designee must voucher the item using a Department of Education voucher form, and contact the Department of

[12] See also Chancellor's Regulation A-412, *Security in the Schools*.

Education, Office of School Safety and Planning to arrange for removal of the contraband.

(d) Notice to Emergency Information Center

When a serious school-related criminal, non-criminal or medical incident occurs which may have public health and safety implications or is newsworthy (e.g., a shooting, bomb scare, attempted suicide), the principal shall inform the Regional Superintendent/designee of the incident. The Regional Superintendent/designee must then contact the Department of Education's Emergency Information Center (EIC) at (718) 935-3210 to report the incident.

(e) Pre-suspension Procedures

Where a student engages in conduct for which a Regional Superintendent's suspension may be warranted, it is the responsibility of the principal or his/her designee to take the following investigative steps:

(1) Question the victim and any other witnesses to the incident and obtain their signed written statements.

(2) Question the accused student and inform him/her of the misconduct of which he/she is being accused.

(3) Provide the accused student with an explanation of the evidence and an opportunity to present his/her side of the event, unless it is not feasible to do so.

(4) Provide the accused student with an opportunity to prepare a signed, written statement.

(f) When a principal believes that a Regional Superintendent's suspension is warranted, he/she shall notify the appropriate Regional

Superintendent/designee, provide complete details of the student's behavior, including mitigating circumstances, if any, and the investigative steps that were taken and request a suspension.

(g) A Regional Superintendent's suspension should be sought on the same day as the alleged misbehavior, whenever possible, or within a reasonable time thereafter.

(h) A Regional Superintendent/designee may not authorize a suspension until he/she has been assured that the principal has conducted the preliminary investigation described above or is provided with an explanation as to why it was not feasible to do so.

(i) The suspension becomes effective only when the suspending school receives authorization from the Regional Superintendent/designee. When a suspension is authorized, the Regional Superintendent/designee shall immediately notify the principal of the suspending school, the appropriate Local Instructional Superintendent and the Suspension Hearing Office of the authorization of the suspension. A student shall not be told that he/she has been suspended until the principal or his/her designee has received such notification, which shall include the date, time and place of the suspension hearing and of the alternative instruction assignment.

(j) The Regional Superintendent/designee must ensure that a suspended student is provided with alternative instruction during the period of suspension. (See Section III.B.1.)

(k) For students with disabilities, the principal shall provide the Regional Superintendent/designee with the total number of days the student has been excluded from the current educational program during the school year as a result of all prior classroom removals and principal's and Regional

Superintendent's suspensions, as well as the length of each removal/suspension and the proximity of the removals/suspensions to one another in order to determine whether the suspension constitutes a disciplinary change in placement.

Based on the information provided above, the Regional Superintendent/designee also must determine the educational services that must be provided to the student with a disability and Section 504 student and the need for an FBA/BIP or MDR. If the principal believes that maintaining the student in the current placement is substantially likely to result in injury to the child or others, he/she may consult with the Regional Superintendent about the possibility of (1) requesting an expedited Impartial Hearing to seek an order that the student be placed in an interim alternative educational setting ("IAES") for up to 45 days for a student with a disability (See Section II.F.), or (2) obtaining injunctive relief in court for a student with a disability. (See Section II.G.)

(l) The suspended student shall remain in school, under supervision, until either the arrival of the student's parent or until the close of the student's school day.

(m) Once a suspension is authorized, the principal shall give the alleged victim an opportunity to express how the incident affected him/her personally by allowing him/her to prepare a victim impact statement which may be considered by the Regional Superintendent if the charges are sustained. The alleged victim should also be given a copy of the "Student Witness Information Sheet" if he/she is being asked to be a witness at the suspension hearing. (See Appendix H.)

(n) Notice

The school shall give immediate written notice of the suspension to the student's parent. Such notice shall be provided by personal delivery, express mail

delivery, mailgram or any other equivalent form of communication reasonably calculated to assure receipt of such notice within 24 hours of the suspension (e.g., via facsimile or e-mail). (See sample 24-hour Notice in Appendix D.) The notice shall provide a description of the incident which resulted in the suspension and advise the parent of the alternative instruction site to which the student must report and that a suspension hearing will be scheduled within five (5) school days of the date of the suspension. The school also shall give immediate notice of the suspension to the parent by telephone.

On the same day as the suspension, the Regional Superintendent/designee also must send a letter by first class mail informing the parent of:

(1) the fact that the student has been suspended and the duration of the suspension;

(2) the specific reasons for the suspension including the date, time and place of the behavior giving rise to the suspension;

(3) the alternative education arrangements that have been made; the fact that if the student with a disability has been excluded from the current educational program for ten (10) school days during the school year due to disciplinary action either the student will be reinstated or the parent will be notified of another setting to which the student must report;

(4) the date, time, and place (not more than five school days from the date of the suspension) of the hearing;

(5) the fact that the parent may plead no contest to the charges and that such plea will result in waiving the suspension hearing; and the right to subsequently withdraw a plea within three (3)

days from receipt of the mailgram/letter confirming the plea and containing the Regional Superintendent's decision or seven (7) days of the date of the mailgram/letter, whichever is later from the date of the suspension notice.

(6) the right to view and obtain in person at the school a copy of the student's records, including the IEP and other special education records, if applicable, the anecdotal, permanent and guidance records, report card, transcript and all written statements relating to the incident which led to the suspension;

(7) the fact that the student's records, including written statements about the incident leading to the suspension, may be introduced into evidence;

(8) the fact that the student's records (e.g., permanent, cumulative, guidance anecdotal) may only be considered in determining the student's placement where the charges are upheld; for such purposes, the records may not contain material relating to the underlying incident unless such material has otherwise been introduced into evidence;

(9) the fact that, pursuant to Chancellor's Regulation A-820, a parent has the right to challenge an entry in the student's records that is inaccurate, misleading or otherwise in violation of the student's privacy rights; and that if a parent seeks to challenge an entry in his/her child's records and the entry may be used by the Regional Superintendent in making a dispositional decision, the Regional Superintendent will make a preliminary decision with respect to the contested entry as part of the suspension decision. (This is not intended to substitute for the full appeal

procedure outlined in Chancellor's Regulation A-820.);

(10) the right to request an adjournment of the hearing and have it scheduled to occur within five (5) school days of the request but that such adjournment will result in the student's continued suspension. For a student with a disability, if such an adjournment will result in the student's exclusion from the current educational program for more than ten (10) days during the school year, the student must be reinstated or assigned to another appropriate setting;

(11) the fact that if the parent's preferred language or mode of communication is not English, the parent may bring a translator or interpreter to assist him/her at the hearing;

(12) the right to, and the advisability of, representation by an advisor or counsel;

(13) the fact that if the parent intends to bring an advisor or attorney to the hearing, the parent must notify the Suspension Hearing Office at least 24 hours (one school day) prior to the hearing;

(14) the names of adult and student witnesses who may be expected to testify on behalf of the school and a statement to the effect that this list is non-binding;

(15) the right to question witnesses, present witnesses and documentary evidence on the student's behalf and obtain subpoenas from the hearing officer;

(16) the student's right to reinstatement or, with the consent of his/her parent, the right to transfer to an equivalent instructional program on the sixth school day following the suspension if the hearing is not originally scheduled to be held within five

school days of the suspension or if the hearing is originally scheduled within five school days of the suspension but is continued or postponed by an employee of the Department of Education;

(17) the range of possible dispositions if the charges are upheld;

(18) the fact that, for students with disabilities, if the disposition constitutes a "disciplinary change of placement," is a continued suspension for more than ten (10) school days or an extended suspension a manifestation determination review will be conducted;

(19) the right to class work and homework;

(20) the right to obtain a copy of the Bill of Student Rights and Responsibilities, K-12;

(21) the right to obtain a copy of the record of the hearing, including the tape and/or transcript;

(22) the fact that the Regional Superintendent will issue a written decision within five (5) school days of the Regional Superintendent's suspension hearing; and

(23) the right to appeal the suspension decision and an explanation of the appeal procedures;[13]

A list of community agencies offering free or low-cost legal assistance must be enclosed with this letter. (See Appendix G.)

(o) The suspended student will remain on the register of the school and shall not be marked absent during the period of suspension unless the student is absent from his/her assignment at the in-house suspension or other alternative instruction program. Appropriate notation of the

[13] Appeals shall be taken in accordance with Section IV.B. of this Regulation.

suspension should be recorded in a manner that will permit expungement, when necessary.

(p) A suspended student who moves to another Region within the City during his/her suspension shall have his/her suspension continued for the specified time. The suspending authority will hold the hearing and render an appropriate disposition in consultation with the Regional Superintendent of the Region to which the student has relocated, and the CSE in the case of a student with a disability.

(q) No Contest Plea

The parent of a suspended student may decide to waive his/her right to a suspension hearing and plead no contest to the charges by telephone. Parents who want to do so must contact the Suspension Hearing Office. Parents may also plead no contest to the charges in person when they appear for the hearing. The effect of a plea is that the charges are sustained. Therefore, all the dispositional options available to the Regional Superintendent in sustaining the charges after a full hearing apply to cases where pleas are entered. A plea of no contest may be withdrawn within three (3) days of receipt of the mailgram/letter confirming the plea and containing the Regional Superintendent's decision or seven (7) days of the date of the mailgram/letter, whichever is later.

(r) Early Resolution Conference

Furthermore, parents may request an Early Resolution Conference (“ERC”) on the day of the hearing. The ERC is a guidance conference held with the Regional Superintendent’s designee to discuss the educational options available to the student after the suspension as well as to assist in expediting the suspension process and the student’s assignment in school. If the suspension is resolved at an ERC, the result is that the charges are sustained.

(s) The Hearing

(1) A suspension hearing must be scheduled to occur within five school days of the suspension. The hearing officer shall make findings of fact and recommendations as to the appropriate measure of discipline to the Regional Superintendent/designee. A hearing may not be conducted without a complaining witness, and the complaining witness need not be the alleged victim.

(2) If any witnesses are reluctant to appear, the hearing officer is authorized to issue subpoenas requiring them to do so. In determining whether to authorize the issuance of a subpoena, the hearing officer has discretion to require a showing of relevancy. Witnesses with direct and personal knowledge of the incident and suspension procedures that were followed should appear at the hearing.

(3) Witnesses may be apprehensive about testifying because they are unfamiliar with the process and do not know what to expect. The school must help witnesses, and their parents when appropriate, to understand why they have been called to testify and what is expected of them. Schools must provide a copy of the Student Witness Information Sheet (See Appendix H) to witnesses asked to testify at a suspension hearing.

(4) While written statements and affidavits are admissible, oral testimony on the same matter must be given greater weight unless the hearing officer determines, based on all the evidence presented at the hearing, that the oral testimony is not entitled to such weight. If oral testimony is not given greater weight, the decision shall specify the reasons for this finding.

(5) The suspended student and/or his/her parent/representative may present witnesses, offer statements and question or cross-examine the

school's witnesses. Each witness will be questioned separately and with no other witness present. The principal must permit school personnel wishing to testify on behalf of the student to attend the hearing.

(6) The hearing officer is responsible for making rulings on the admissibility of evidence and the appropriateness of questioning witnesses. The questioning of witnesses must be relevant to the incident(s) charged. Particular care must be taken regarding the questioning of the alleged victim's prior sexual behavior. Therefore, the scope of questioning of the alleged victim shall be limited as follows:

(a) Reputation or opinion evidence regarding the sexual behavior of the alleged victim will not be admitted for any purpose.

(b) Evidence of an alleged victim's sexual history and/or sexual conduct will not be admitted unless such evidence:

(i) proves or tends to prove specific instances of the alleged victim's prior sexual conduct with the accused; or

(ii) the alleged victim, on his/her own accord opens the door to such questioning by misstating facts of his/her own sexual history or lack thereof.

(7) In the course of the hearing, and at the discretion of the hearing officer, the seating of individuals in the hearing room shall be arranged in a manner that will facilitate the free flow of testimony and minimize any intimidation of the witness. Witnesses shall be granted brief periods of recess, where appropriate.

(8) Suspension hearings of multiple students involved in the same incident will be scheduled separately. However, upon request of an alleged victim or school official, the hearing officer will determine whether or

not the hearings will be consolidated. In deciding such requests, the hearing officer will consider several factors including whether consolidation would be unduly prejudicial to the student or affect his/her ability to defend himself/herself, the complexity of the case, and the impact upon the alleged victim of having to testify on multiple occasions. As part of the notice sent to witnesses (See Appendix H, Witness Information Sheet), the witness who is also an alleged victim of the incident involving multiple students will be informed of his/her right to request consolidation of the hearings.

(9) In cases where multiple suspensions have been consolidated into one hearing, only the fact-finding portion of the hearing will be combined. In order to ensure the confidentiality of student records in accordance with Family Educational Rights and Privacy Act (FERPA), the dispositional phase will be held separately for each suspended student. Regardless of whether a consolidated hearing is held, separate decision letters shall be issued for each suspended student.

(10) School officials are responsible for proving by direct or circumstantial evidence the student's involvement in the incident(s) charged. A finding that the student committed the act(s) charged may not be based exclusively on hearsay evidence.

(11) If the suspended student pleads guilty in a criminal or juvenile delinquency proceeding to the same offense for which he/she was suspended, a certified copy of the plea minutes or certificate of conviction may be admitted into evidence. This evidence is non-hearsay and the hearing officer shall give it appropriate weight in light of the other evidence in the case.

(12) If the student is not offered an opportunity to have a hearing within five (5) school days of the

suspension,[14] or if the hearing is continued or postponed at the request of an employee of the Department of Education, the student shall be reinstated on the sixth school day to his/her regular school program pending the rescheduled hearing or, with the consent of the parent, transferred to an equivalent instructional program. If the student/parent requests an adjournment, he/she shall be offered an opportunity for a hearing within five (5) school days of the request, unless a longer period is requested. When a request for an adjournment is granted, and the adjournment results in the student with a disability being excluded from the current educational program for more than ten (10) days during the school year, the student must be reinstated or assigned to another appropriate setting.

(13) Adjournments shall be granted for good cause shown (e.g., due to illness, to obtain counsel). The number of adjournments as well as the scheduling of the new hearing date shall be at the discretion of the hearing officer consistent with paragraph (6) above.

(14) The school has the option of having a staff advisor present the school's case whether or not the student is represented at the hearing by an attorney or advocate. The staff advisor may also testify as a witness in cases where they are presenting the school's case. The staff advisor will prepare and coordinate the school's case, have the opportunity to make opening and closing statements, question the school's witnesses and cross-examine the student's

[14] If the student and/or parent, after appropriate notice, do not appear at the hearing, the hearing officer may exercise the option to hold the hearing on the scheduled date. If the student and/or parent are absent, the hearing officer shall note their absence on the record, describe efforts by school officials to ensure their presence, and proceed with the hearing. The parent shall be informed in writing that the hearing was conducted on the scheduled date and of any decisions reached at the hearing.

witnesses, if any, offer other evidence, and make appropriate objections during the proceeding.

(15) A copy of the student's records (i.e., permanent, cumulative guidance and attendance records, transcript and/or report card and anecdotal records and IEP and other special education records, if applicable) as well as all other written material relating to the incident for which the student was charged (including witness statements) shall be made available to the parent or representative prior to the date of the hearing upon request of the parent or his/her representative in person at the school. At the beginning of the hearing, the parent or representative shall be provided with a complete set of the student's records for review and comparison with records previously obtained from the school, if any, and advised that records not made available may not be offered into evidence by the school on that date. If the school requests an adjournment and the student is reinstated and the records are provided to the parent prior to the adjourned date, the records may be offered into evidence on the adjourned date.

(16) The student's IEP and other special education records, if applicable, may be introduced into evidence for dispositional purposes only. These records may not contain information relating to the incident for which the student was suspended unless such material has otherwise been admitted into evidence.

(17) School officials shall not interfere with a suspended student's efforts to carry out his/her due process rights, including access to records and subpoenaing of witnesses and shall not discuss or recommend entering a plea of no contest with the student and/or his/her parent(s).

(18) The principal must permit school personnel wishing to testify on behalf of the student to attend the hearing. If the hearing officer subpoenas or requests on behalf of a student that a Department of Education employee attend the hearing and that employee fails to appear, the hearing officer shall determine whether the employee's presence can be obtained after a short recess. If it cannot, the parent shall be given the opportunity to request an adjournment, which shall not exceed two days unless the student is reinstated. A request for an adjournment shall be granted, and the hearing shall not proceed unless the hearing officer finds that the missing witness' testimony would be immaterial or irrelevant. Such a finding and the reasons therefore shall be stated on the record. Prior to requesting an adjournment, the parent shall be informed whether the student will be reinstated pending completion of the hearing and issuance of the decision of the Regional Superintendent. In exercising his/her discretion whether to reinstate the student, the hearing officer shall take into account several factors, including the nature of the charges against the student and the reason for the unavailability of the witness.

(19) Notwithstanding the provisions of subparagraph (12) above, if the hearing officer determines that it is not possible to obtain the witness' attendance after a two-day adjournment, the hearing shall proceed as originally scheduled unless the student is reinstated or the parent requests an adjournment; in either case, the hearing shall be held within two weeks. The hearing officer shall inform the parent that, in the event the suspension is upheld, the parent will be advised in writing if and when the witness becomes available and that the parent may have the hearing reopened and witnesses recalled. The Regional Superintendent's decision after the initial hearing, as

well as the decision after a reconvened hearing, may be administratively appealed.

(20) Parental consent must be obtained by school officials or the hearing officer before a student witness is permitted to testify. If parental consent is not obtained, a subpoena may be issued. However, even if a subpoena is issued, the student may not appear without his/her parent's consent. The Suspension Hearing Office shall also notify the parent that the student will be called to testify at the hearing.

(21) If the parent's preferred language or mode of communication is not English, the parent may bring a translator or interpreter to assist him/her at the hearing.

(22) A tape recorded or verbatim stenographic record of the hearing must be kept.

(t) Procedures for Subpoenaing Witnesses

Witness subpoenas must be requested at least two days in advance of the hearing. In determining whether to issue a subpoena, the hearing officer has discretion to require a showing of relevancy prior to issuing the subpoena. If a parent or his/her representative contacts the school to request that a witness be served with a subpoena, he/she shall be advised to call the Suspension Hearing Office. Parents are responsible for serving subpoenas on persons they wish to have testify on behalf of the student except Department of Education employees and students. If the hearing officer issues a subpoena for a Department employee or student, the subpoena will be served by the principal or his/her designee. The following procedures shall be used when subpoenas are issued:

(1) Student Witnesses

(a) Subpoenas Issued at School's Request

Where the testimony of a student is necessary to prove the school's case, the school must attempt to contact the parent of the student by telephone and inform the parent that:

(i) his/her child is being asked to appear at the suspension hearing of a particular student and will be receiving a consent form for his/her appearance; and

(ii) if the consent form is not signed and returned within two days of the scheduled date of the hearing, the student will be served with a subpoena.

(b) The school also should notify the student that he/she is being asked to testify at a suspension hearing as a witness for the school and prepare the student for the proceeding.

(c) Every effort should be made to obtain parental cooperation and consent for the student's appearance. However, where the consent form has not been signed and returned within two days of the scheduled date of the hearing, a subpoena should be obtained from the hearing officer and served on the student. The school shall attempt to notify the parent that his/her child was or will be served with a subpoena. The subpoena should be served regardless of whether the parent has been reached. Notwithstanding the subpoena, parental consent is needed for the student witness to appear.

(d) Only the hearing officer can issue a subpoena. The school must provide the name and address of the student and his/her parent.

(e) The hearing officer will send a mailgram or any other equivalent form of communication reasonably calculated to assure receipt before the hearing date (e.g., via facsimile or e-mail) to the student's parent, advising the parent that his/her child has been subpoenaed to testify at the Regional Superintendent's suspension hearing on behalf of the school, and of the date, time and place of the hearing.

(2) Subpoenas Issued at Request of Suspended Student/Parent

(a) Based on the information provided by the student/parent, the hearing officer will inform school officials of the name(s) of the student(s) who will be called to testify and the name of the party subpoenaing the witness(es).

(b) School officials immediately must contact the parent of each student witness by telephone to inform him/her that the child has been subpoenaed to testify at the Regional Superintendent's suspension hearing and the name of the party subpoenaing his/her child as a witness. In addition, the parent shall be informed that his/her child will be served with a subpoena, that the parent will receive a mailgram or any other equivalent form of communication reasonably calculated to assure receipt before the hearing date (e.g., via facsimile or e-mail) from the hearing officer and that the child will not be permitted to testify without parental consent even if a subpoena has been issued.

(c) School officials shall make every effort to obtain parental cooperation and consent. However, the subpoena must be served by the school whether or not the parent has been reached or has given

consent. In addition, school officials must notify the student that he/she will be called to testify as a witness at the Regional Superintendent's suspension hearing and the name of the party subpoenaing him/her as a witness.

(d) Once the subpoena has been served, the school is to telephone the Suspension Hearing Office with the name and address of the parent(s) of each student witness subpoenaed.

(e) The Suspension Hearing Office will send a mailgram or any other equivalent form of communication reasonably calculated to assure receipt before the hearing date (e.g., via facsimile or e-mail) to the student's parent advising the parent that his/her child has been subpoenaed to testify at another student's suspension hearing, the name of the party subpoenaing the child as a witness and the date, time and place of the hearing.

(3) Other Witnesses

The hearing officer will also issue subpoenas for non-Department of Education persons on behalf of the suspended student or the school. Each party is responsible for serving subpoenas issued on its behalf.

(u) Regional Superintendent's Decision

(1) Once findings of fact have been made as to whether the student committed the act(s) charged, it is the responsibility of the Regional Superintendent to make a dispositional decision. This decision will include a determination regarding the following: (1) whether to overturn or sustain the suspension; (2) the appropriate assignment of the student; and (3) the appropriate disposition relating to the student's records. In the case of a hearing conducted by a hearing officer, the

Regional Superintendent is bound by the hearing officer's findings of fact unless the Regional Superintendent has reviewed the tape and record of the hearing. Mitigating circumstances, if they exist, must be considered in making a dispositional decision.

(2) If the school fails to substantiate the charges, the suspension must be overturned. The suspended student has the right to be reinstated immediately and to have all records relating to the suspension immediately expunged. Where the hearing officer's findings of fact conclude that the student engaged in the conduct charged, the Regional Superintendent may elect to sustain or overturn the suspension.

(3) Within two (2) school days of the suspension hearing, the Regional Superintendent must notify the parent either by telephone or by mailgram or any other equivalent form of communication reasonably calculated to assure receipt within two (2) school days as to whether or not the charges are sustained, where the student is to be assigned, and how the student's records will reflect the suspension. Additionally, a full report of the findings and disposition of the Regional Superintendent must be mailed to the student's parent(s) within five (5) school days of the hearing. A copy of the decision must be sent to the appropriate Local Instructional Superintendent at the same time.

(4) The decision of the Regional Superintendent shall be implemented as soon as feasible but no later than two (2) school days after the hearing.

(v) Dispositional Options

The following dispositional options are available to the Regional Superintendent within the parameters set forth below and in the Discipline Code. In addition to consulting the Discipline Code, prior to determining the appropriate disciplinary and/or intervention measures, the following

must be considered: the student's age, maturity and previous disciplinary record (including the nature of the prior misconduct, the number of prior instances of misconduct, and the discipline imposed for each); the circumstances surrounding the incident leading to the discipline; and the child's IEP and BIP and 504 Accommodation Plan, if applicable. (For students with disabilities, FBAs and BIPs may need to be conducted or implemented when utilizing the dispositional options set forth in 2–4 below. See Section II.D.)

(1) **Expulsion from the New York City Public School System**

This dispositional option is available only for students in general education who turned 17 prior to the beginning of the school year (July 1st) and who have not been given or are not entitled to IDEA protections.

(a) If the Regional Superintendent upholds the suspension of a student in general education who was charged with possession or use of a firearm[15] or use of any other Category I or II weapon to inflict injury or Category I weapon to attempt to inflict injury upon school personnel, students or others, and the suspended student turned 17 prior to the beginning of the school year, the Regional Superintendent must expel the student.

(b) This disposition may be modified on a case-by-case basis in consultation with the Senior Executive of the Office of Youth Development and School-Community Services. In determining whether to modify this disposition, the Regional

[15] For purposes of this disposition, a firearm is defined as any weapon, including a starter gun, which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive; the frame or receiver of such weapon; any firearm muffler or silencer; any destructive device; or any explosive, incendiary or poisonous gas. The term does not include antique firearms.

Superintendent shall consider the age and maturity of the student, the student's prior record and the totality of circumstances surrounding the offense, including the results of the MDR (See (f) below) and Section 504 Accommodation Plan.

(c) If it is determined that the circumstances warrant a modification of the mandatory expulsion disposition, the Regional Superintendent may select any of the dispositional options set forth in subsections (2) to (6) below.

(d) Expulsion may also be utilized for other serious infractions. Prior to utilizing this option, the Regional Superintendent must consult with the Senior Executive of the Office of Youth Development and School-Community Services.

(e) Expelled students are not eligible to enroll in Department of Education adult education programs for one year after the effective date of the expulsion and will be referred for educational and career counseling.

Section 504 Students

(f) Prior to expelling a Section 504 student, a manifestation determination review must be conducted in accordance with the procedures set forth in Section II. E.

(g) Regardless of the results of the MDR, if the Regional Superintendent upholds the suspension of a Section 504 student who turned 17 prior to the beginning of the school year for possession or use of a firearm or use of any other Category I or II weapon to inflict injury or Category I weapon to attempt to inflict injury upon school personnel, students or others, the Regional Superintendent must expel the student subject to (b) above.

(h) Regardless of the results of the MDR, the Regional Superintendent may expel a Section 504 student who turned 17 prior to the beginning of the school year if the Regional Superintendent upholds a suspension for selling or distributing illegal drugs or controlled substances, possessing or using illegal drugs or alcohol, possessing a Category I weapon, or using a Category II weapon to attempt to inflict injury upon school personnel, students, or others.

(i) If the Regional Superintendent upholds the suspension of a Section 504 student for other behavior not listed in (g) and (h) above for which the Discipline Code authorizes expulsion, and the MDR results in a determination that the student's behavior was not related to his/her disability, the student may be expelled. However, if the MDR results in a determination that the student's behavior was related to his/her disability, the student may not be expelled.

(2) **Extended Suspension for One (1) Year and Assignment to a Second Opportunity School ("SOS") Program/Alternative Instruction Site**

(a) Under this option, all students in grades 6-12 who are placed on extended suspension for one year must be placed at SOS. Students in grades K-5 must be placed at an appropriate alternative instruction site for the year.

(b) At the end of the suspension period, the student will be reinstated to the school from which he/she was suspended.

(c) Prior to placing a student with a disability or a Section 504 on extended suspension, an MDR must be conducted in accordance with the procedures set forth in Sections II.E.

(d) Possession or Use of a Firearm[16]

(i) With respect to this behavior, if the Regional Superintendent upholds the suspension of a general education student who did not turn 17 prior to the beginning of the school year, the Regional Superintendent must place the student on extended suspension.

(ii) If the Regional Superintendent upholds the suspension of a Section 504 student who did not turn 17 prior to the beginning of the school year, the Regional Superintendent must place the student on an extended suspension, regardless of the results of the MDR.

(iii) If the Regional Superintendent upholds the suspension of a student with a disability for this behavior:

(a) the Regional Superintendent must place the student on extended suspension if the MDR results in a determination that the student's behavior was not related to his/her disability.

(b) the Regional Superintendent may not place the student on extended suspension if the MDR results in a determination that the misconduct was a manifestation of the disability (Except See Note in Section III.B.3(v)(4)).

(e) Use of a Category I or Category II weapon (other than a firearm) to inflict injury or a Category I weapon to attempt to inflict injury.

[16] See Footnote 15 for definition of "firearm".

(i) With respect to this behavior, if the Regional Superintendent upholds a suspension of any general education student in grades 6-12 who did not turn 17 prior to the beginning of the school year, the Regional Superintendent must place the student on an extended suspension subject to (f) below.

(ii) If the Regional Superintendent upholds a suspension of any general education student in grades K-5 for this conduct, the Regional Superintendent may place the student on an extended suspension.

(iii) If the Regional Superintendent upholds the suspension of a Section 504 student for this conduct, regardless of the results of the MDR, the Regional Superintendent:

(a) must place the student in grades 6-12 who did not turn 17 prior to the beginning of the school year on extended suspension subject to (f) below.

(b) may place the student in grades K-5 on extended suspension.

(iv) If the Regional Superintendent upholds the suspension of a student with a disability for this behavior, the Regional Superintendent:

(a) must place the student in grades 6-12 on an extended suspension if the MDR results in a determination that the conduct was not related to the student's disability subject to (f) below.

(b) may place the student in grades K-5 on an extended suspension if the MDR results in a determination that the conduct was not related to the student's disability.

(c) cannot place the student in grades K-12 on an extended suspension if the MDR results in a determination that the conduct was related to the student's disability (Except See Note in Section III.B.3(v)(4)).

(f) In cases where the Regional Superintendent must place a student on extended suspension, the disposition may be modified on a case-by-case basis. In determining whether or not to modify the disposition, the Regional Superintendent and Senior Executive of the Office of Youth Development and School-Community Services shall consider the age and maturity of the student, the student's prior record, the IEP, BIP and/or Section 504 Accommodation Plan, if any, and the totality of circumstances surrounding the offense, including the results of the manifestation determination review for Section 504 students.

(g) If the Regional Superintendent determines that the circumstances warrant a modification of the mandatory one-year suspension, he/she may select any dispositional option set forth in subsections (3) to (6) below.

(h) This dispositional option may also be utilized for other serious infractions, as specified in the Discipline Code.

(i) Regardless of the results of the MDR, the Regional Superintendent may utilize this dispositional option for a Section 504 student in grades 6-12 if the Regional Superintendent upholds a suspension for selling or distributing illegal drugs or controlled substances, possessing or using illegal drugs or alcohol, possessing a Category I weapon, or using a Category I

weapon to attempt to inflict injury upon school personnel, students or others or using a Category I or II weapon to inflict injury upon school personnel, students or others.

(j) If the Regional Superintendent upholds the suspension of a Section 504 student for other behavior not listed in (d), (e) and (i) above, for which the Discipline Code authorizes extended suspension, and the MDR results in a determination that the student's behavior was not related to his/her disability, this dispositional option may be used. However, if the MDR results in a determination that the student's behavior was related to his/her disability, this dispositional option may not be used.

(3) **Extended Suspension for One (1) Year with the Opportunity to Petition for Early Reinstatement**

(a) For other serious offenses specified in the Discipline Code, the Regional Superintendent may order extended suspension for one calendar year and reassignment to an alternative instructional site with the opportunity to petition for early reinstatement after 90 school days.

(b) If this option is utilized, an appropriate placement must be provided at an alternative site during the period of extended suspension.

(c) For students with disabilities, and for Section 504 students, this disposition may be utilized only if the determination of the MDR was that the student's behavior was not related to his/her disability, except as specified in (d) below.

(d) Regardless of the results of the MDR, the Regional Superintendent may utilize this dispositional option for a Section 504 student if

the Regional Superintendent upholds a suspension for:

- using any Category I or II weapon, other than a firearm, to inflict injury or a Category I weapon to attempt to inflict injury;
- selling or distributing illegal drugs or controlled substances;
- possessing any Category I weapon;
- using any Category II weapon to inflict injury; or
- using illegal drugs or alcohol or controlled substance without authorization.

(e) At the end of the suspension period, the student will be reinstated to the school from which he/she was suspended.

(4) **Continued Suspension for a fixed period of Six (6) to Thirty (30) School Days or for a fixed period of Thirty (30) to Ninety (90) school days**

(a) The Regional Superintendent may order continued suspension for a fixed period of six (6) to thirty (30) school days or for a fixed period of thirty (30) to ninety (90) school days, at the expiration of which the student is reinstated. Whenever possible the student should be reinstated at the beginning of a new marking period, term or cycle. This disposition may be utilized only if appropriate alternative education is provided at an alternative instruction site. For students with disabilities, if placing the student on a continued suspension will constitute a disciplinary change in placement, or if the continued suspension is for more than ten (10) school days, this disposition may be utilized only if the determination of the MDR was that the student's misbehavior was <u>not</u> related to his/her disability.

(b) At the end of the continued suspension period, the student will be reinstated to the school from which he/she was suspended.

Note: For students with disabilities, if the MDR determines that the student's behavior is related to his/her disability, the Regional Superintendent may not order extended or continued suspension. However, in cases where a student with a disability is found to have brought a weapon to school or to a school function or knowingly possessed or used illegal drugs or sold or solicited the sale of a controlled substance while at a school or school function, the Regional Superintendent may place the student in an IAES for up to 45 days. Further, if the student engaged in any other serious offense, the Regional Superintendent may request an Impartial Hearing. If school officials can demonstrate that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, the IHO may place the child in an IAES for up to 45 days (and for additional periods of up to 45 days). (See Section II.F.)

(5) **Reinstatement**

The Regional Superintendent may reinstate the student to the school from which he/she was suspended.

(6) **Transfer Options**

(a) The Regional Superintendent may transfer the student to another school if the parent consents.

(b) At any point in the suspension process, if a principal believes that the reinstatement of a student in general education would not be appropriate because of the student's academic or behavioral difficulties and that the student would benefit from a transfer or receive an

appropriate education elsewhere, the principal may initiate involuntary transfer proceedings in accordance with Chancellor's Regulation A-450.

(c) At any point in the suspension process, if the principal believes that the student with a disability will not benefit from reinstatement, the principal may initiate a referral to the CSE for purposes of holding a meeting to discuss placement with the parent. In addition, the parent has the right to bring an impartial hearing to contest the outcome of the placement meeting. During the pendency of those proceedings, the student shall remain in the current school. (See also Sections II.F. & G. regarding placement in an IAES and seeking injunctive relief.)

(d) If a principal believes that maintaining a student in the current educational setting is substantially likely to result in injury to either the student or others, the principal immediately shall consult with the Regional Superintendent to request injunctive relief in court. (See Section II.G.)

(w) Records Disposition

The decision of the Regional Superintendent also must contain a disposition with respect to the student's records. In cases where the charges are sustained, the Regional Superintendent must select one of the following dispositions:

(1) Notation of the suspension on the student's permanent record.

(2) Notation of the suspension on the student's record and expungement of the record of suspension upon graduation, permanent departure from the New York City public school system or at some event in the future (e.g., the end of the current school year) with

the provision that the record be sealed and kept separate from the student's school record and be used solely for dispositional purposes if the student is subsequently suspended by the Regional Superintendent and the charges are sustained.

(3) Notation on the student's record and expungement of the record of the suspension from the student's record upon the student's graduation, permanent departure from the New York City public school system or at some event in the future (e.g., the end of the current school year), provided there are no further disciplinary problems resulting in a Regional Superintendent's or principal's suspension that is ultimately sustained.

(4) Expungement of the record of the suspension. However, if the charges against the student are not sustained, all records relating to the suspension must be expunged immediately.

(x) Suspension Decision Letter

(1) In cases where the Regional Superintendent imposes a continued suspension for a fixed period of 6 to 30 days or for a fixed period of 30 to 90 days, the letter following the suspension hearing must specify the length of the suspension, the school to which the student is assigned during the suspension period and the fact that the student will be reinstated at the termination of the suspension period.

(2) In all cases where the Regional Superintendent imposes a one-year extended suspension without the opportunity to petition for reinstatement, the letter must specify the school to which the student is assigned during the suspension period and the fact that the student will be reinstated at the termination of the suspension period.

(3) In all cases where the Regional Superintendent imposes a one-year extended suspension with the opportunity to petition for reinstatement, the letter must specify the setting to which the student is assigned or provide the date, time and place of the conference to determine the setting, the date after which the student may petition for reinstatement and the fact that if the petition is not filed or granted, at the termination of the suspension period, the student will be reinstated.

(y) Petitions for Early Reinstatement for Students Placed on Extended Suspension for One Year

Any student placed on extended suspension for one year with an opportunity to petition for reinstatement may petition the Regional Superintendent for early reinstatement after the date specified in the suspension decision letter. The date specified in the Regional Superintendent's decision letter may fall no less than 90 school days following the effective date of the one year extended suspension. Note that the months of July and August are excluded from the calculation of the 90 day period.

(1) Student's Responsibilities

(a) All petitions for early reinstatement must be in writing and must be filed with the Regional Superintendent. The petition should include evidence indicating that the student no longer poses a danger to the safety, health, or welfare of the school community. The petition should include the following information:

- The reasons the student is seeking early reinstatement.
- A description of the student's activities during the suspension period.

- The student's educational plans if readmitted.
- A written statement from the student explaining what he/she has learned from the experience of being suspended.
- Character references from non-family members.
- A written assurance from the student that he/she has read the Discipline Code and that he/she will not violate it.

(b) Upon receipt of the petition, the Regional Superintendent shall notify the student of the date, time and place of the reinstatement conference. This conference must be scheduled no later than ten (10) school days following receipt of the petition.

(c) The reinstatement conference is not a formal proceeding. It is an opportunity for the student to demonstrate his/her readiness to be reinstated.

(d) The student and/or parent may bring any additional material to the conference that will better enable the Regional Superintendent to determine the student's readiness for reinstatement. The parent may be accompanied by an advisor.

(2) Regional Superintendent's Decision on Petition

(a) In making his/her decision, the Regional Superintendent may also review the student's records and, where applicable, consult with school officials at the alternative instruction site to determine the student's progress since the time of the suspension.

(b) The Regional Superintendent shall issue a written decision specifying the basis for his/her decision within ten (10) school days of the conference. If the petition is denied, the Regional Superintendent shall specify a new date after which another petition for reinstatement may be filed. Arrangements shall be made for students who are reinstated to report to their schools as soon as possible.

(c) Petitions for reinstatement granted after December 1 or May 1 will not necessarily result in immediate reinstatement. The Regional Superintendent, in his/her discretion, will determine whether it is educationally appropriate for the student to be readmitted immediately or whether the student should be readmitted at the beginning of the following semester.

(3) Reinstatement Following One-Year Suspension

Students who are not given an opportunity to petition for reinstatement or who are not reinstated on petition or who do not file a petition will be reinstated by the Regional Superintendent at the termination of the one-year extended suspension period. The Regional Superintendent must advise the student of his/her placement within seven (7) days of the termination of the suspension period.

IV. SUSPENSION APPEAL PROCEDURES

Appeals of suspensions may be filed by a student, a parent or by a representative acting on his/her/their behalf. All appeals must be in writing and must set forth the grounds for the appeal and the relief requested.

A. Appeals of Principal's Suspensions

1. Filing the Appeal

An appeal of a principal's suspension must be filed in writing and set forth the grounds for appeal and the relief requested. An

appeal of a principal's suspension shall be taken in the following sequence:

(a) to the Regional Superintendent, within ten (10) school days of the effective date of the suspension; and

(b) to the Chancellor,[17] within twenty (20) school days from the Regional Superintendent's decision.

Where a student files an appeal of a principal's suspension with the Regional Superintendent, the principal must file a statement which sets forth the grounds for his/her suspension decision within five school days of the filing of the appeal and include any relevant records. (The suspension decision prepared in accordance with Section III.B.2.(r) may suffice as the principal's statement.)

2. Decisions on Appeal

The reviewing authority shall decide an appeal of a principal's suspension on the basis of the appellant's written statement, the statement filed by the principal and the written decision of and any additional written statements from the preceding reviewing authority, if any.

The reviewing authority shall issue a written statement of the basis for the decision within the time period specified below:

(a) the Regional Superintendent--within five (5) school days following the filing of the principal's statement of the grounds for his/her decision.

(b) the Chancellor--within fifteen (15) working days following the completed filing of the appeal record.

B. Appeals of Regional Superintendent's Suspensions

1. Interim Relief

Pending determination of the appeal, the student or his/her parent or representative may request a temporary decision from the Chancellor concerning the student's suspension.

[17] Appeals to the Chancellor shall be filed simultaneously with the Office of Legal Services, 52 Chambers Street, Room 308, New York, New York 10007.

Such a request for interim relief must be filed in writing with the Chancellor and also with the Office of Legal Services, Room 308, 52 Chambers Street, New York, New York 10007.

2. Time for Filing Appeal

An appeal of a Regional Superintendent's suspension must be filed within twenty (20) school days of the date of the decision or ten (10) school days from receipt of the tape recording or hearing transcript, whichever is later. The reviewing authority may grant an extension of time for filing the appeal for good cause shown. When a student/parent/representative requests a copy of the tape/transcript/record of the hearing, the Suspension Hearing Office shall provide these materials expeditiously.

3. Procedure

An appeal of a Regional Superintendent's suspension decision shall be taken to the Chancellor.[18]

4. Decisions on Appeal

The Chancellor shall decide an appeal of a suspension on the basis of the student/parent's written statement, the record of the hearing and the written decision of and any additional written statements from the preceding reviewing authority.

The Chancellor shall issue a written statement of the basis for the appeal decision within fifteen (15) working days following the completed filing of the appeal record.

If the reviewing authority finds that the suspension was not justified, the student must be returned to the school from which he/she was suspended, unless otherwise agreed to by the parent, and all records pertaining to the suspension and the proceedings related to it expunged from the student's record.

[18] Appeals to the Chancellor shall be filed simultaneously with the Office of Legal Services, 52 Chambers Street, Room 308, New York, New York 10007.

C. Appeals to the Impartial Hearing Office and Student Placement during Appeals

1. The parent of a child with a disability may request an expedited Impartial Hearing if, in connection with disciplinary action, he/she disagrees with a determination:

   (a) that the child's behavior was not a manifestation of the child's disability; or

   (b) that a removal or suspension does not constitute a disciplinary change of placement; or

   (c) to place the child in an IAES.

2. The parent of a child who has not been classified by a CSE as having a disability but who asserts IDEA protections may request an expedited Impartial Hearing to challenge a determination that the child is not entitled to such protections.

3. The parent may request an impartial hearing by writing to the Impartial Hearing Office, 131 Livingston Street, Room 201, Brooklyn, New York 11201.

4. The expedited Impartial Hearing shall be conducted within fifteen (15) business days of the request, unless an extension has been granted by the IHO.

5. In reviewing a decision with respect to the manifestation determination, the IHO shall determine whether school officials have demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of Section II.E.

6. In reviewing a decision of school officials to place a child in an IAES for up to 45 days, the IHO shall apply the standards set forth in Section II.F.

7. Where the student has been placed in an IAES:

   (a) If the parent requests a hearing or files an appeal with the State Review Officer regarding a disciplinary action to challenge an IAES or the manifestation determination related to the IAES placement, the child must remain in

the IAES pending the decision of the IHO or until the expiration of the time period provided for (no longer than 45 days), whichever occurs first, unless the parent and school officials agree otherwise.

(b) If school personnel propose to change the child's placement after expiration of the designated period, during the pendency of any proceeding to challenge the proposed change in program, the child must remain in the current program (the child's program prior to the IAES) except as noted below.

If school personnel maintain that it is dangerous for the child to return to the current program (prior to removal to the IAES), school personnel may request that the IHO order placement of the child in accordance with the school's request. This may occur during the pendency of the parent's challenge to the program that is proposed to take effect at the conclusion of the period the student is assigned to the IAES.

8. Where the parent requests an impartial hearing to challenge a determination unrelated to IAES placement, a child with a disability shall remain in his/her current educational program during the pendency of such impartial hearing.

V. REPORTING AND RECORDING PROCEDURES

At the end of each attendance-reporting period, the principal shall ensure that complete data concerning removals from the classroom and suspensions is entered onto the ATS ("Automate the Schools") system in accordance with procedures issued under separate cover by the Division of Instructional and Information Technology.

VI. INQUIRIES

Inquiries regarding this Regulation should be addressed to:

Telephone (212) 374-6784	*Office of Youth Development and School-Community Services* NYC Department of Education 52 Chambers Street – Room 219 NY, NY 10007	Fax (212) 374-5599
Telephone (212) 374-6888	*Office of Legal Services* NYC Department of Education 52 Chambers Street – Room 308 NY, NY 10007	Fax (212) 374-5596

ACRONYMS

ATS	AUTOMATE THE SCHOOLS
BIP	BEHAVIORAL INTERVENTION PLAN
CSE	COMMITTEE ON SPECIAL EDUCATION
EIC	EMERGENCY INFORMATION CENTER
ERC	EARLY RESOLUTION CONFERENCE
FBA	FUNCTIONAL BEHAVIORAL ASSESSMENT
IAES	INTERIM ALTERNATIVE EDUCATIONAL SETTING
IDEA	INDIVIDUALS WITH DISABILITIES EDUCATION ACT
IEP	INDIVIDUALIZED EDUCATION PROGRAM
IHO	IMPARTIAL HEARING OFFICER
MDR	MANIFESTATION DETERMINATION REVIEW
NYPD	NEW YORK CITY POLICE DEPARTMENT
SAVE	SAFE SCHOOLS AGAINST VIOLENCE IN EDUCATION
SOS	SECOND OPPORTUNITY SCHOOLS

NOTICE OF IDEA PROTECTIONS

(To be included in/with each notice of a principal's suspension for students in general education.)

Dear Parent:

Under certain circumstances, federal law (the Individuals with Disabilities Education Act, or "IDEA") provides protections for children not yet determined to be eligible for special education and related services. A parent may ask for the protections that IDEA provides if school officials had knowledge that the child was a child with a disability before the misbehavior that resulted in the disciplinary action occurred.

The determination as to whether the child is entitled to IDEA protections will be made by the principal for a principal's suspension in accordance with the law.

If you would like more information about these IDEA protections including a copy of the Procedural Safeguards Notice, or if you wish to request the protections for your child, please contact (name and telephone number of contact person at school or Hearing Office- preferably the Special Education supervisor) for more information.

STUDENT REMOVAL FORM

***Event Date: _____ / _____ / _____ (mm/dd/yy) *Student-ID (SID) #: _____ _____ _____**

***Student's Last Name: _____ *First Name: _____**

***Official or Subject Class: _____ *Grade: _____**

Special Education Classification and IEP; BIP; or 504 Accommodation Plan:

*Teacher Measures Previously Taken:

	Date(s):		Date(s):
☐ **Warnings to Student**	_____	☐ **Classroom Measures**	_____
☐ **Student Conference**	_____	☐ **Parent Contact**	_____
☐ **Guidance Referral**	_____	☐ **Prior Removal(s)**	_____

Description of event: Time: _____ Location: _____

(Give factual account and indicate how the student's behavior substantially disrupted the class or substantially interfered with the teacher's authority.)

_____

_____

_____

_____

Teacher's educational plan for student during period of removal (class work, homework, etc.):

_____

_____

_____

Teacher's Name: _____

Signature:_____Date:_____

***No. of days of removal:_____ *Set aside (circle one): yes no**

Date: _____

Principal's Name: _____

Principal's Signature: _____

Comments: _____

_____

_____

*The information designated with an asterisk is required for ATS entry.

06/01

Attachment #1 **SAMPLE FORMAT FOR PRINCIPAL'S LETTER — SEEKING SUSPENSION**

24 HOURS NOTICE OF PRINCIPAL'S SUSPENSION

(school letterhead)

(date)

(inside address)

Dear (parent):

I regret that it has become necessary to seek the suspension of your child, (name of student) of class _____, for the following reason:

> On (date), at approximately (time) a.m./p.m. in the (place) at (school), (name of student) (incident: e.g., pushed Ms. Smith, teacher). *(Principals - please note: a reason for suspension such as "assaulting a staff member," "possession of a Category II weapon," or merely "fighting" is insufficient; you should include the date, time and place of the incident; briefly and specifically describe what occurred; and identify the alleged victim(s) and/or co-participants, as appropriate. Do not merely utilize the generalized language contained in the discipline code.)*

A Principal's Suspension Conference has been scheduled for (date, time, and place) *(must be by the fifth school day)*. Your presence is required in order to discuss the incident, devise collaboratively satisfactory solutions to address this behavior and determine whether a suspension is justified and will be imposed. Please arrive promptly and bring your child with you. If you are unable to keep this appointment, please call the school to arrange for a mutually convenient time. If your preferred language or mode of communication is not English and a translator is required, you should bring a translator to the conference.

At the conference, you and your child have the right to question persons involved in the incident described above, to present witnesses and documentary evidence; and to be accompanied by up to two advisors. These advisors may be attorneys or advocates. All participants may act in accordance with the informal nature of the conference.

If you believe your child has a disability and school officials had knowledge that your child was a child with a disability before the misbehavior that resulted in the disciplinary action occurred, you may ask for the protections that the Individuals with Disabilities Education Act provide. If your child is a child with a disability receiving special education services and/or related services, you have certain protections under the law. You should refer to the Procedural Safeguards Notice. If you do not have a copy, you may request a copy from the school by contacting (name, title and telephone number of contact person at school).

Very truly yours,

_____
Principal

APPEAL PROCEDURE: Following the conference, you may appeal the suspension decision by writing to (__name__), Regional Superintendent, at (address) within ten (10) days of the suspension, setting forth the grounds for appeal and the relief requested.

Attachment: Foreign Language Notice

c: ___(name)____, Regional Superintendent

Attachment #2 **SAMPLE FORMAT FOR PRINCIPAL'S LETTER - IMMEDIATE SUSPENSION**

24 HOURS NOTICE OF PRINCIPAL'S SUSPENSION

(school letterhead)

(date)

(inside address)

Dear (parent):

I regret that it has become necessary to suspend your child, (name of student), of class _____, for (time period) for the following reason. During the suspension period, your child is to attend (alternate instruction site).

> On (date), at approximately (time) a.m./p.m. in the (place) at (school), (student's name) (incident: e.g., pushed Ms. Smith, teacher). (*Principals—please note: a reason for suspension such as "assaulting a staff member," "possession of a Category II weapon," or merely "fighting" is insufficient; you should include the date, time and place of the incident; briefly and specifically describe what occurred; and identify the alleged victim(s) and/or co-participants, as appropriate. Do not merely utilize the generalized language contained in the discipline code.)*

A Principal's Suspension Conference has been scheduled for (date, time, place) (*must be by the fifth school day).* Your presence is required to discuss the incident and devise collaboratively satisfactory solutions to address this behavior. Please arrive promptly and bring your child with you. If you are unable to keep this appointment, please call the school to arrange for a mutually convenient time. If your preferred language or mode of communication is not English and a translator is required, you should bring a translator to the conference.

At the conference, you and your child have the right to question persons involved in the incident for which your child was suspended; to present witnesses and documentary evidence; and to be accompanied by up to two advisors. These advisors may be attorneys or advocates. All participants may act in accordance with the informal nature of the conference.

If you believe your child has a disability and school officials had knowledge that your child was a child with a disability before the misbehavior that resulted in the disciplinary action occurred, you may ask for the protections that the Individuals with Disabilities Education Act provide. If your child is a child with a disability receiving special education services and/or related services, you have certain protections under the law. You should refer to the Procedural Safeguards Notice. If you do not have a copy, you may request a copy from the school by contacting (name, title and telephone number of contact person at school).

Very truly yours,

_____
Principal

APPEAL PROCEDURE: Following the conference, you may appeal the suspension decision by writing to ___(name)____, Regional Superintendent, at (address) within ten (10) days of the suspension, setting forth the grounds for appeal and the relief requested.

Attachments: Notice of IDEA Protections
Foreign Language Notice

c: __(name)___, Regional Superintendent

24-HOUR NOTICE OF SUPERINTENDENT'S SUSPENSION

(Immediate written notice of a Regional Superintendent's suspension must be provided to the parent by any means reasonably calculated to assure receipt of such notice within 24 hours of the suspension (e.g., by personal delivery or express mail delivery). This notice may be dispensed with only if the parent receives the complete and detailed suspension letter within 24 hours of the suspension. Otherwise, this notice must be given in addition to that detailed notice which must be sent by first class mail.)

Dear Parent:

Your child (name) has been suspended from school by the Regional Superintendent from (date) to (date) (*must be no more than five school days)* for the following reason: (give charges, obtain from suspension intake officer). During the suspension period, your child is to attend (alternative instruction site). A Regional Superintendent's Suspension hearing has been scheduled for (date-time-place). You will be receiving a more detailed letter about the suspension that also explains the rights you and your child have.

GENERAL EDUCATION SUSPENSION NOTICE (K-12)

(on letterhead)

(date)

(parents' address)

Dear (parents' name):

This is to inform you that at the request of the Principal, your child, _____, has been
(name)
suspended from school for five school days by the Regional Superintendent starting on _____.
(date)

Your child has been suspended because of the charges listed on the attached sheet titled "Charges." A suspension hearing has been scheduled for:

DATE:

TIME:

PLACE:

TELEPHONE NUMBER:

PLEASE BE ADVISED THAT HEARINGS MAY LAST FROM 9 A.M. – 5 P.M.

DURING THE SUSPENSION YOUR CHILD IS TO (INSERT APPROPRIATE ALTERNATIVE INSTRUCTION ARRANGEMENTS AND ATTACH DIRECTIONS, WHERE APPROPRIATE).

During the suspension, your child has the right to receive homework and class work assignments. Furthermore, your child will be permitted to take any Citywide or State examinations that are administered during the suspension period for which no make up examination is permitted by the testing authority, as well as to make up school examinations that may affect your child's academic record. Please contact the Dean(s)/Assistant Principal at your child's school to arrange to do so.

Suspension is a serious step which may significantly affect your child's educational future. It is important that you and your child attend the hearing. If you fail to appear at the hearing, the hearing may be held in your absence.

If you do not wish to contest the charges, and want to waive your right to a hearing, you may do so by calling the Hearing Office at (telephone number). You may withdraw your no contest plea within three (3) days from receipt of or seven (7) days from the date of the mailgram/letter confirming the plea and containing the Regional Superintendent's decision, whichever is later.

You have the right to be represented by counsel at the hearing. Because of the seriousness of this matter, it is advisable that you seek the assistance of an attorney or advisor. A list of free and low cost legal advocacy services that you may contact is included with this letter. You also have the right to have an interpreter present at the hearing. Please note that you must supply your own interpreter.

If you choose to be represented by counsel or an advisor, you must notify _____ at _____ at least twenty-four (24) hours
(office name) (telephone number)
(one school day) prior to the hearing.

If your child has not yet been determined to be eligible for Special Education and related services, your child may be entitled to the protection of federal law (the Individuals with Disabilities Education Act, "IDEA"). Your child may be entitled to the protections that the IDEA provides if school officials had knowledge that your child was a child with a disability before the misbehavior that resulted in the disciplinary action occurred.

It is your responsibility to request IDEA protections if you think your child is entitled to them. The determination as to whether your child is entitled to IDEA protections will be made by the Regional Superintendent in accordance with the law.

If you would like more information about these IDEA protections or if you wish to request the protections for your child, please contact _____.
(name/phone number)

PLEASE READ THE FOLLOWING POINTS (1-11) VERY CAREFULLY IN ORDER TO FULLY UNDERSTAND THE SUSPENSION PROCESS, YOUR RIGHTS AND WHAT IS EXPECTED OF YOU.

1. Your child must be offered a hearing within five (5) school days of the date of the suspension. If a hearing is not scheduled within five (5) school days after the suspension began, your child has the right to return to his/her school on the sixth (6th) day of the suspension, or, with your consent, to transfer to an equivalent school program. If the hearing is postponed at the request of the Hearing Office or a Department of Education employee, your child has the right to be reinstated, or to be transferred to an equivalent program with your consent.

2. You have the right to ask for an adjournment of the hearing and to have it rescheduled within five (5) school days of your request. During this period, your child's suspension will continue, and the same alternative instruction arrangements noted above will remain. If you wish to ask for an adjournment, please contact _____
(office/name)
immediately at _____. If you are unable to attend the hearing with your
(telephone number)
child, you may designate an adult to represent you. This designation must be in writing and signed by you. It must be brought to the hearing by your representative.

3. Prior to the hearing, you or your representative have the right to go to the school to view and obtain a copy of your child's school records including the anecdotal, permanent and guidance records, report card, transcript and all written statements relating to the incident which led to the suspension. It is recommended that you obtain these records to prepare for the hearing. Your representative must have your written permission to obtain your child's records. You also have the right to obtain a copy of the Bill of Student Rights and Responsibilities, K-12.

4. Your child's records, including written statements about the incident leading to the suspension, may be introduced as evidence at the hearing. Your child's permanent, guidance and anecdotal records may not be used as evidence to prove the charges. If the charges are upheld, however, these records may be considered in determining the outcome of the suspension. You may bring to the hearing any material (letters of reference/recommendation) that you would like the Regional Superintendent to review.

5. Pursuant to Chancellor's Regulation A-820, you have the right to challenge any information contained in your child's records that is inaccurate, misleading, or otherwise in violation of his/her privacy rights. If you seek to challenge an entry that may be used by the Regional Superintendent in making his/her decision, the Regional Superintendent will make a preliminary decision with respect to the contested entry as part of the suspension decision. This process is not intended to substitute for the full appeal procedures outlined in Chancellor's Regulation A-820.

6. A list of witnesses the school may ask to testify at the hearing is attached (see attached witness list). THIS LIST IS NOT BINDING. The school may choose not to call all those individuals, or to call other witnesses to testify. At the hearing, you or your representative will have the right to question the school's witnesses, introduce evidence, and present your own witnesses. IF YOU WISH TO CALL A WITNESS AND YOU ARE UNABLE TO ARRANGE FOR THAT PERSON TO ATTEND THE HEARING, YOU MAY CONTACT THE HEARING OFFICE TO HAVE A SUBPOENA ISSUED. Any requests for students or other witnesses to be subpoenaed must be made at least two (2) school days before the hearing.

7. If the suspension is not upheld by the Regional Superintendent, your child has the right to be reinstated. If the suspension is upheld, or if you plead no contest to the charges, the following dispositional options are available to the Regional Superintendent, depending upon the charges sustained and your child's age:

   - reinstatement;
   - continued suspension for a fixed period of six (6) to thirty (30) school days or a fixed period of thirty (30) to ninety (90) school days with placement in an alternative setting;
   - extended suspension for one (1) calendar year with placement in an alternative setting, with the right to petition after ninety (90) school days for early reinstatement to the suspending school;
   - extended suspension for one (1) calendar year, without the opportunity to petition for reinstatement, and placement at a Second Opportunity School; and
   - expulsion (only for general education students who turned 17 prior to the beginning of the school year).

Further, the suspension may be noted permanently on your child's school records, or the Regional Superintendent may decide to seal that notation and/or expunge it upon your child's graduation or permanent departure from the New York City public school system, or at some event in the future (e.g., the end of the school year) if your child has no further suspensions that are ultimately sustained.

8. If your child is receiving a Section 504 accommodation and the Regional Superintendent's proposed disposition constitutes an extended suspension for one (1) year or expulsion, a manifestation determination review will be conducted to determine whether the reason for the accommodation is related to the reason for the suspension.

9. You have the right to obtain a copy of the tape or transcript of the hearing.

10. You have the right to be informed of the outcome of the suspension within two (2) days of the completion of the hearing. You also have the right to have a written decision issued within five (5) school days of the suspension hearing.

11. Further, you have the right to appeal the suspension decision. The following is an explanation of the appeal procedure.

AN APPEAL FROM THE FINDINGS AND THE DECISION OF THE REGIONAL SUPERINTENDENT MAY BE MADE TO THE CHANCELLOR, c/o THE OFFICE OF LEGAL SERVICES, 52 CHAMBERS STREET, NEW YORK, NEW YORK 10007, ROOM 308. THE APPEAL MUST BE MADE WITHIN 20 DAYS AFTER THE REGIONAL SUPERINTENDENT'S WRITTEN DECISION IS RECEIVED BY YOU, OR WITHIN 10 DAYS OF RECEIPT OF THE RECORD OF THE HEARING, WHICHEVER IS LATER. THE APPEAL SHOULD EXPLAIN THE GROUNDS FOR APPEAL AND THE RELIEF YOU REQUEST. YOU MAY REQUEST A TEMPORARY DECISION FROM THE CHANCELLOR CONCERNING YOUR CHILD'S SUSPENSION AT ANY TIME PENDING DETERMINATION OF AN APPEAL. THIS REQUEST MUST BE IN WRITING.

Sincerely,

_____
Regional Superintendent

Enc. Foreign Language Notice
Charges
Witness List
Legal Advocacy Services List
Travel Directions

c: Regional Director of Student Placement, Youth and Family Support Services
Local Instructional Superintendent
Principal of Suspending School
Principal of Alternative Instruction Site

SPECIAL EDUCATION SUSPENSION NOTICE (K-12)

(on letterhead)

(date)

(parents' address)

Dear (parents' name):

This is to inform you that at the request of the principal, your child, _____,
(name)
has been suspended from school for five school days by the Regional Superintendent starting on _____.
(date)

Your child has been suspended because of the charges listed on the attached sheet titled "Charges." A suspension hearing has been scheduled for:

DATE:

TIME:

PLACE:

TELEPHONE NUMBER:

PLEASE BE ADVISED THAT HEARINGS MAY LAST FROM 9 A.M. – 5 P.M.

DURING THE SUSPENSION, YOUR CHILD IS TO (INSERT APPROPRIATE ALTERNATIVE INSTRUCTION ARRANGEMENTS AND ATTACH DIRECTIONS, WHERE APPROPRIATE).

During the suspension, your child has the right to receive homework and class work assignments. Furthermore, your child will be permitted to take any Citywide or State examinations that are administered during the suspension period for which no make up examination is permitted by the testing authority, as well as to make up school examinations that may affect your child's academic record. Please contact the Dean(s)/Assistant Principal at your child's school to arrange to do so.

Suspension is a serious step which may significantly affect your child's educational future. It is important that you and your child attend the hearing. If you fail to appear at the hearing, the hearing may be held in your absence.

If you do not wish to contest the charges, and want to waive your right to a hearing, you may do so by calling the Hearing Office at (telephone number). You may withdraw your no contest plea within three (3) days from receipt of or seven (7) days from the date of the mailgram/letter confirming the plea and containing the Regional Superintendent's decision, whichever is later.

You have the right to be represented by counsel at the hearing. Because of the seriousness of this matter, it is advisable that you seek the assistance of an attorney or advisor. A list of free and low cost legal advocacy services that you may contact is included with this letter. You also have the right to have an interpreter present at the hearing. Please note that you must supply your own interpreter.

If you choose to be represented by counsel or an advisor, you must notify _____
(office name)
at _____ at least twenty-four (24) hours (one school day) prior to the hearing.
(telephone number)

PLEASE READ THE FOLLOWING POINTS (1-11) VERY CAREFULLY IN ORDER TO FULLY UNDERSTAND THE SUSPENSION PROCESS, YOUR RIGHTS AND WHAT IS EXPECTED OF YOU.

1. Your child must be offered a hearing within five (5) school days of the date of the suspension. If a hearing is not scheduled within five (5) school days after the suspension began, your child has the right to return to his/her school on the sixth (6th) day of the suspension, or, with your consent, to transfer to an equivalent school program. If the hearing is postponed at the request of the Hearing Office or a Department of Education employee, your child has the right to be reinstated, or to be transferred to an equivalent program with your consent.

2. You have the right to ask for an adjournment of the hearing and to have it rescheduled within five (5) school days of your request. During this period, your child's suspension will continue, and the same alternative instruction arrangements noted above will remain. If the adjournment will result in your child's exclusion from his/her current educational program for more than ten (10) school days during the school year, your child will be reinstated or assigned to an appropriate setting pending the hearing.

   If you wish to ask for an adjournment, please contact _____
   (office or name)
   immediately at _____. If you are unable to attend the hearing with your
   (telephone number)
   child, you may designate an adult to represent you. This designation must be in writing and signed by you. It must be brought to the hearing by your representative.

3. Prior to the hearing, you or your representative have the right to go to the school to view and obtain a copy of your child's school records including the IEP and other Special Education records, the anecdotal, permanent and guidance records, report card, transcript and all written statements relating to the incident which led to the suspension. It is recommended that you obtain these records to prepare for the hearing. Your representative must have your written permission to obtain your child's records. You also have the right to obtain a copy of the Bill of Student Rights and Responsibilities, K-12.

4. Your child's records, including written statements about the incident leading to the suspension, may be introduced as evidence at the hearing. Your child's permanent, guidance and anecdotal records may not be used as evidence to prove the charges. If the charges are upheld, however, these records may be considered in determining the outcome of the suspension. You may bring to the hearing any material (letters of reference/recommendation) that you would like the Regional Superintendent to review.

5. Pursuant to Chancellor's Regulation A-820, you have the right to challenge any information contained in your child's records that is inaccurate, misleading, or otherwise in violation of his/her privacy rights. If you seek to challenge an entry that may be used by the Regional Superintendent in making his/her decision, the Regional Superintendent will make a preliminary decision with respect to the contested entry, as part of the suspension decision. This process is not intended to substitute for the full appeal procedures outlined in Chancellor's Regulation A-820.

6. A list of witnesses the school may ask to testify at the hearing is attached (see attached witness list). THIS LIST IS NOT BINDING. The school may choose not to call all those individuals, or to call other witnesses to testify. At the hearing you or your representative will have the right to question the school's witnesses, introduce evidence, and present your own witnesses. IF YOU WISH TO CALL A WITNESS AND YOU ARE UNABLE TO ARRANGE FOR THAT PERSON TO ATTEND THE HEARING, YOU MAY CONTACT THE HEARING OFFICE TO HAVE A SUBPOENA ISSUED. Any requests for students or other witnesses to be subpoenaed must be made at least two (2) school days before the hearing.

7. If the suspension is not upheld by the Regional Superintendent, your child has the right to be reinstated. If the suspension is upheld, or if you plead no contest to the charges, the following dispositional options are available to the Regional Superintendent, depending upon the charges sustained and your child's grade:

   - reinstatement;
   - continued suspension for a fixed period of six (6) to thirty (30) school days or fixed period of thirty (30) to ninety (90) school days with placement in an alternative setting;
   - extended suspension for one (1) year with placement in an alternative setting, with the right to petition after ninety (90) school days for early reinstatement to the suspending school;
   - extended suspension for one (1) year, without the opportunity to petition for reinstatement, and placement at a Second Opportunity School; and

   Further, the suspension may be noted permanently on your child's school records, or the Regional Superintendent may decide to seal that notation and/or expunge it upon your child's graduation or permanent departure from the New York City public school system, or at some event in the future (e.g., the end of the school year), if your child has no further suspensions that are ultimately sustained.

8. If the disposition constitutes a disciplinary change in placement (e.g., a continued suspension for more than ten (10) school days or extended suspension for one (1) year), a manifestation determination review will be conducted to determine whether the behavior which resulted in your child's suspension is related to your child's disability. For more information regarding the protections provided children with disabilities, please refer to your copy of the Procedural Safeguards Notice. If you do not have a copy, you may obtain one by contacting the following person, _____.
(office or name/telephone number)

9. You have the right to obtain a copy of the tape or transcript of the hearing.

10. You have the right to be informed of the outcome of the suspension within two (2) days of the completion of the hearing. You also have the right to have a written decision issued within five (5) school days of the suspension hearing.

11. Further, you have the right to appeal the suspension decision. The following is an explanation of the appeal procedure.

AN APPEAL FROM THE FINDINGS AND THE DECISION OF THE REGIONAL SUPERINTENDENT MAY BE MADE TO THE CHANCELLOR, c/o THE OFFICE OF LEGAL SERVICES, 52 CHAMBERS STREET, NEW YORK, NEW YORK 10007, ROOM 308. THE APPEAL MUST BE MADE WITHIN 20 DAYS AFTER THE REGIONAL SUPERINTENDENT'S WRITTEN DECISION IS RECEIVED BY YOU, OR WITHIN 10 DAYS OF RECEIPT OF THE RECORD OF THE HEARING, WHICHEVER IS LATER. THE APPEAL SHOULD EXPLAIN THE GROUNDS FOR APPEAL AND THE RELIEF YOU REQUEST. YOU MAY REQUEST A TEMPORARY DECISION FROM THE CHANCELLOR CONCERNING YOUR CHILD'S SUSPENSION AT ANY TIME PENDING DETERMINATION OF AN APPEAL. THIS REQUEST MUST BE IN WRITING.

Sincerely,

_____
Regional Superintendent

Enc. Foreign Language Notice
Charges
Witness List
Legal Advocacy Services List
Travel Directions

c: Regional Director of Student Placement, Youth and Family Support Services
Local Instructional Superintendent
Principal of Suspending School
Principal of Alternative Instruction Site

ATTACHMENTS TO GENERAL EDUCATION AND SPECIAL EDUCATION SUSPENSION NOTICES

Attachment #1 **FOREIGN LANGUAGE NOTICE**

[Please obtain a copy of this notice from the Office of Legal Services or Office of School Safety and Planning.]

Attachment #2 **SAMPLE CHARGE(S)**

RE: __(student's name)__

On ___(date)___ at approximately __(time)___ in __(place)___ at __(school name)__,

School, __(name of student)__ __(occurrence, e.g. struck Ms. Smith, teacher)_____ .

This behavior constitutes a danger to the health, safety, welfare and morals of your child and others at the school.

Attachment #3 **WITNESS LIST**

THE FOLLOWING WITNESS(ES) MAY BE CALLED BY THE SCHOOL TO GIVE TESTIMONY AT YOUR CHILD'S HEARING:

1. _____(name)_____
2. _____(name)_____

Attachment #4 **COMMUNITY/LEGAL SERVICES**

[Please obtain a current copy of this notice from the Office of Legal Services or Office of School Safety and Planning.]

Attachment #5

DIRECTIONS TO THE HEARING OFFICE

(ADDRESS)

BY BUS

BY TRAIN

BY CAR

YOUR CHILD WILL BE PERMITTED TO TAKE CITYWIDE OR STATE EXAMINATIONS THAT ARE ADMINISTERED DURING THE PERIOD OF HIS/HER SUSPENSION AS WELL AS TO MAKE UP SCHOOL EXAMINATIONS SUCH AS FINAL EXAMS WHICH MAY AFFECT HIS/HER ACADEMIC RECORDS. PLEASE CONTACT (NAME) AT YOUR CHILD'S SCHOOL TO ARRANGE TO DO SO.

STUDENT WITNESS INFORMATION SHEET

(on letterhead)

Date: _____

Dear_____:

You have been asked to be a witness for the school and testify at a superintendent's suspension hearing because you may have information about the incident leading to the suspension. You should speak to your parent or another responsible adult about this.

Hearings are held during school hours. Your absence from school to testify at this hearing is excused. Please speak with [the dean/assistant principal, PROVIDE TITLE AND NAME] prior to the hearing so that he/she can explain the process to you, answer any questions, and let you know which staff members from the school will also be attending the hearing. If you feel that you would like to be accompanied to the hearing by an adult family member or adult friend, please let the dean/assistant principal know.

If you are a victim of an incident which involved more than one student and you have been asked to testify in more than one hearing about the same incident, you may request that the hearings be consolidated into one hearing. If the hearings are consolidated, you may have to testify only once. If you want to make such a request, please let the dean/assistant principal know immediately and your request will be considered.

The following is a brief overview of what takes place at a suspension hearing:

- The hearing will be held at [GIVE NAME AND ADDRESS OF HEARING OFFICE LOCATION]. The telephone number at the hearing office is [GIVE PHONE #].

- Please arrive before the scheduled time. Hearings are sometimes held until 5:00 p.m. and, in some cases, continue on another date. If you will be late or unable to attend the hearing, please call the hearing office to let someone know. If you cannot stay at the hearing office until 5 p.m., please tell an adult from the school.

- When you arrive, notify the receptionist that you are there (give your name, school and the name of the case/suspended student), sign in and go to the designated waiting area.

- Before the hearing begins, the hearing officer will conduct a hearing conference with the suspended student and his/her parent(s) and representative. At this conference, the student might decide to plead no contest to the charges. If so, a hearing will not be necessary, and you will not have to testify. We are sorry for any inconvenience this might cause, but we have no way to avoid this or know in advance that this will happen.

- If the suspended student wants to go forward with a hearing, you and all the participants in the hearing will be called into the hearing room. You will be asked to state and spell your full name and to state your role in the hearing (for example, "student witness"). The hearing officer will explain the process. If you have any questions, ask the hearing officer at that time. Unless you will be the first witness to testify, you will then return to the waiting area and wait to be called. (You might be in the waiting area for a while; so you may wish to bring something to read.)

- When it is your turn to testify, you will be called back to the hearing room. The hearing is not open to the public. The hearing officer will be in the hearing room. The suspended student, his/her parent(s), and attorney, representative and/or translator will be in the hearing room also. A school staff advisor may also be in the hearing room. No other witnesses will be present when you testify.

- You will be asked to swear or affirm to testify truthfully. Your testimony will be recorded.

- You will be asked questions by the hearing officer, a school staff advisor, if one is present, and the suspended student's parent and lawyer or representative, if one is present.

- Answer all the questions truthfully. Please try to be as clear as possible and to identify people using their names.

- If you do not know the answer to a question or do not remember something, do not guess; just say that you do not know or remember. There is absolutely nothing wrong with this response.

- If you are unclear about a question or anything about the hearing, ask the hearing officer for clarification.

- When you have finished testifying, you will be asked to return to the waiting area. Please do not discuss your testimony with other witnesses. You or another witness may be called back to the hearing room for additional testimony. When the entire hearing is completed, you will be notified, and you will be permitted to leave the hearing office.

Thank you for your participation in the hearing. Your contribution is important, and your cooperation is appreciated. If your parent has any questions about these procedures, he/she may call me at [GIVE PHONE #].

_____
Principal or Assistant Principal