

STUDENT DUE PROCESS

Policies & Procedures

Revised May 2021



WAKE COUNTY
PUBLIC SCHOOL SYSTEM

Student Due Process
919-533-7761
studentdueprocess@wcpss.net

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Please direct questions first to your school principal, then contact:

Office of Student Due Process
Wake County Public School System
110 Corning Rd. Suite 2100
Cary, North Carolina 27518
Phone: 919-533-7761
Fax: 919-694-7754

Email: studentdueprocess@wcpss.net

Please direct complaints or concerns about any School Resource Officer (SRO) to Senior Director for Security Russ Smith at rsmith1@wcpss.net or 5625 Dillard Drive, Cary NC 27518.

This manual is intended to assist parents/guardians, students and school administrators in understanding the student due process policies and procedures. Policies have been abbreviated in this manual.

Disclaimer: *While every effort was made to ensure the accuracy of the policies, regulations and procedures within this booklet, the Wake County Public School System and Board of Education are not responsible for any errors or omissions in this document. Please notify studentdueprocess@wcpss.net if you find any errors in this document.*

Regulations and Procedures (R&P) are supplemental information to accompany and support Board Policies. The pertinent sections of R&P are integrated into this document in proximity to the Policies to which they refer. R&P is in italics and outlined as seen here.

SCHOOL CLOSINGS OR DELAYED OPENING

If school is closed due to weather or other occurrences, the end date of an active suspension will be extended by the number of days the school is closed.

An Appeal Hearing that is scheduled on a day when schools are unexpectedly closed or delayed due to weather or other occurrences will be rescheduled. The office of Student Due Process will notify the student, parent/guardian and school of the new date and time.

Authorization for Release of Disciplinary Record

Many colleges/universities and businesses may request information from applicants regarding their prior suspension history. If the application requires the student's suspension history, the "Authorization for Release of Disciplinary Record" form must be completed and submitted to the Student Due Process office. The student must also: (1) inform the colleges/universities or businesses that requests for verification must be submitted to the Student Due Process office, not the high school, and (2) provide them with the Student Due Process fax number (919-694-7754) and address (110 Corning Rd, Cary NC 27518). The "Authorization for Release of Disciplinary Record" form is available online at <https://www.wcpss.net/dueprocess>

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POLICY CODE: 4309 STUDENT BEHAVIOR - CODE OF STUDENT CONDUCT

C. APPLICABILITY OF CODE

All students shall comply with this Code as well as all state and federal laws, school board policies, and local school rules governing student behavior and conduct. This Code applies to any student who is on school property (including school transportation), who is in attendance at school or at any school-sponsored activity, or whose conduct at any time, place, or cyberspace, on or off campus, has or is reasonably expected to have a direct and immediate impact on the orderly and efficient operation of the schools or the safety of individuals in the school environment.

Notification to Parents

When a significant behavioral intervention (beyond mere redirection or warning) is imposed, the school will attempt to notify the parent or legal custodian in a reasonably prompt manner. The school will also attempt to notify the parent or legal custodian of any in-school disciplinary consequence that results in removal from normal classroom or school activities. This includes lunch or after-school detention, in-school suspension, or suspensions from school-sponsored extracurricular activities. For out-of-school suspensions, the administration will provide formal written notice to parents or legal custodians as required by the Board's "Due Process" policy.

After-school detention may preclude a student from using bus transportation or create other transportation difficulties. If a school principal deems it appropriate to require a student to stay after school for detention for a disciplinary reason, the principal may authorize such detention only if the parent or guardian has received at least one days' notice and has agreed to assume responsibility for transportation home.

F. SPECIAL REQUIREMENTS FOR OUT-OF-SCHOOL SUSPENSION AND EXPULSION

Out-of-school suspension and expulsion are allowed only if specifically authorized by this Code and the Board’s “Due Process” policy. Except to the extent that North Carolina law requires school administrators to recommend a 365-day suspension for any student who violates Rule IV-1 Firearm/Destructive Device K-12, this Code authorizes, but does not require, the use of out-of-school suspensions.

In addition to the notice and due process requirements set out in the ‘Due Process’ policy, administrators must adhere to the following requirements before imposing or recommending any out-of-school suspensions or expulsion:

- When deciding whether to recommend a long-term suspension (suspension of more than ten [10] days) or determining the specific length of any short-term suspension or long-term suspension recommendation, principals may consider any relevant “aggravating” or “mitigating” factors of which they are aware. “Aggravating” factors are factors that tend to increase the seriousness of a disciplinary infraction. “Mitigating” factors are factors that tend to decrease the seriousness of a disciplinary infraction. Aggravating and mitigating factors are “relevant” when, in the judgement of responsible school officials, they have a bearing on the student’s level of responsibility for the behaviors in question. When both aggravating and mitigating factors are present, principals should exercise their discretion in weighing and balancing them.
- Suspensions of more than ten (10) days may be imposed only if they have been approved by the Superintendent or designee and the student has been offered the opportunity for a hearing under the Board’s “Due Process” policy. Expulsion from school based on a recommendation of both the principal and the Superintendent must be approved by the Board.
- In determining the length of a suspension, the principal should consider that the duration of a suspension has a disproportionate impact on students attending a school on block schedules.
- Nothing in this policy shall be interpreted to conflict with state and federal laws governing students with disabilities.
- Students in grades K-5 shall not be subject to long-term suspension except as required by law or in cases involving serious injury to students or staff or serious threat to safety or welfare of members of the school community.

G. LEVELS OF CODE

The Code of Student Conduct rules are leveled according to the seriousness of the behaviors and range of potential disciplinary consequences.

Level 1: Level 1 rule violations can generally be addressed with non-disciplinary interventions or non-exclusionary discipline consequences. Except in the very limited circumstances described in Rule II-20, Level 1 rule violations may not result in out-of-school suspension.

Level 2: Level 2 rule violations involve more serious misconduct that may warrant short-term suspension of up to five (5) school days when, in the judgement of the principal or designee, non-disciplinary interventions and non-exclusionary discipline consequences are insufficient to address the behavior and prevent its recurrence. Principals may impose a short-term suspension of six (6) to ten (10) days or recommend a long-term suspension of eleven (11) days or more based on one or more aggravating factor(s) regarding the severity of the violation and/or safety concerns, provided such aggravating factor(s) are listed in the written suspension notice.

Level 3: Level 3 rule violations are more severe in nature and may support long-term suspension. The principal may impose a short-term suspension of ten (10) days or less or decline to impose any suspension based on mitigating factors.

Level 4: The only rule in Level 4 is one that reflects a statutory prohibition on the possession of a “firearm” or “destructive device” (as defined in the rule) on school property or at a school-sponsored event. State law requires principals to recommend a 365-day suspension for all violations of this rule. Only the Superintendent or Board of Education may modify this outcome. A Level 4 violation is always extremely serious and is treated as such.

Level 5: Level 5 allows for permanent expulsion of a student from the Wake County Public School System for violation of one or more Level 2, 3, or 4 rules in this Code if the following criteria are met: (1) the student is fourteen (14) years old or older; (2) both the principal and the superintendent/designee recommend expulsion; (3) the Superintendent and Board determine, consistent with the Board’s “Due Process” policy, that there is a significant or important reason not to offer the student alternative educational services; and (4) the Board determines, by clear and convincing evidence, that the student’s continued presence in school constitutes a clear threat to the safety of other students or school staff. Additionally, any student who is registered as a sex offender under Article 27A of Chapter 14 of the North Carolina General Statutes may be expelled in accordance with these procedures. If such a student is offered alternative education services on school property, the student must be under the supervision of school personnel at all times.

H. RULES OF CONDUCT

LEVEL 1

- 1-1 Compliance with Directives:** Students shall comply with all lawful and reasonable directives of school employees, including but not limited to directives to identify oneself, to remove oneself from a dangerous or disruptive situation, or to report to a designated person or location.
- 1-2 Mutual Respect:** Mutual respect is expected between students and staff. Students will refrain from words (written or oral) and/or gestures that demean, degrade, antagonize, or humiliate a school employee, volunteer, visitor, or other student(s). Examples may include ridiculing, cursing at, or aggressively or angrily shouting at an employee, volunteer, visitor, or other student(s).
- 1-3 School/Class Attendance:** Students will attend school each school day except in the case of excused absences. Students will be on time to school and on time to class, will refrain from entering unauthorized areas, and will remain at school and in the designated locations for the duration of each school day unless excused.
- 1-4 Appropriate Language:** Cursing or use of vulgar, profane, or obscene language, oral or written, is prohibited. If such language is directed at a school employee, volunteer, visitor, or other student(s), such conduct should be treated under Rule 1-2.
- 1-5 Student Dress Code:** Student dress will adhere to the standards set out in the Student Dress Code policy.
- 1-6 Electronic Devices:** Personal technology devices (including, but not limited to smart phones, tablets, and laptops) may be used by students for instructional purposes with the permission and under the supervision of the teachers in compliance with the Technology Responsible Use policy. The use of personal technology devices to engage in misconduct (e.g. bullying, harassment, or threats) may result in consequences under rules in this Code. Malicious or intentionally destructive use of technology devices or resources (e.g. hacking, password theft, or introduction of viruses) may result in consequences under Rule II-3. The school system assumes no responsibility for personal technology devices brought to school.
- 1-7 Trespassing:** Students shall not be on the campus of any school except the one to which the student is assigned without the knowledge and consent of the officials of that school. Students who remain at school after the close of the school day or come onto school grounds when school is not in session without permission will be considered trespassers. If the student does not leave when instructed to do so, he/she may be prosecuted. A student under suspension from school is trespassing if he/she appears on the property of any school or at any school sponsored activity during the

suspension period without the express permission of the principal. Students who trespass on school property to engage in other forms of misconduct (e.g. fighting/physical aggression or theft) may be subject to consequences under other applicable rules in this Code, and the act of trespassing may be considered an aggravating factor.

- 1-8 Tobacco, Vaporizers, and Nicotine Products:** Student health and well-being is of the highest priority. For this reason, no student shall violate the Board’s “Use of Tobacco and Nicotine Products” policy. Students are specifically advised that this policy prohibits vaporizers and liquids used in vaporizers even if they do not contain tobacco or nicotine.
- 1-9 Gambling:** Students shall not participate in any unauthorized games of chance in which money or items of value may be won or lost.
- 1-10 Integrity:** Students are expected to be honest and forthright with school staff and volunteers. Lying, intentionally misleading, and actively concealing the truth from staff and volunteers are prohibited. Dishonest acts or statements that violate other rules in this Code may result in consequences under those other rules. Integrity may also be considered as an aggravating factor in connection with other forms of misconduct.
- 1-11 Honor Code:** All students are expected to adhere to the academic Honor Code policy. Disciplinary consequences for violations of this policy will typically be consistent with Level 1 violations. However, serious violations of the Honor Code may be addressed under Rule II-1 Falsification or Deceit.

NOTES

LEVEL 2

- 2-1 Falsification or Deceit:** Intentional acts of falsification or serious deceitful misconduct that threaten the health, safety, or welfare of others, or that cause a substantial detrimental impact on school operations or other individuals, are prohibited.
- 2-2 Inappropriate Illustrations, Images or Other Materials:** The possession of illustrations, audio or video recordings, written materials, graphics, or other print or digital documents, media, or files which significantly disrupts the educational process, or which are profane, pornographic, or obscene is prohibited.
- 2-3 Hacking and Unauthorized Computer Access:** will comply with all state and federal laws and regulations governing access to computers, computer networks, stored data, passwords, and other technology systems and resources and will refrain from all forms of computer or network “hacking”, whether criminal or not. Any willful or knowing effort to obtain unauthorized access; to steal; to maliciously alter, modify, or destroy; to introduce viruses; or otherwise to cause harm to any such computer, computer network, stored data, or other technology resource is a violation of this rule.
- 2-4 Substantially Disruptive or Dangerous Behavior:** Students will not make oral or written statements or intentionally engage in conduct that, despite efforts by staff to intervene or redirect the behavior, (1) substantially disrupts the educational environment or (2) threatens the health, safety, or welfare of staff or students. Statements or conduct that “substantially disrupt” the educational environment may include, for example, intentionally blocking entrances or exits or obstructing the flow of traffic within or outside of the school building, intentionally interfering with or interrupting school activities such that teaching and learning are compromised, or engaging in loud or boisterous conduct that significantly distracts others from peaceable and orderly school activities.

Words or conduct that would otherwise be a Level 1 violation (e.g. failure to comply with directives or unacceptable language) may also constitute a violation of this Level 2 rule if they (1) persist directly following attempts by staff to intervene or redirect the behavior and substantially disrupt teaching, learning, or the orderly conduct of school activities or (2) inherently threaten the health, safety, or welfare of staff or students. Examples include, but are not limited to, continuing to shout or use profanity directly after intervention or redirection, continuing to engage in disruptive rough-housing or horseplay directly after intervention or redirection or in a manner that is reasonably likely to cause injury, or throwing objects directly after intervention or redirection or in a manner that is reasonably likely to cause injury.

- 2-5 School Transportation Disturbance:** Disturbances on school buses or other transportation vehicles or near streets at school bus stops can put many students at risk. Any physical or verbal disturbance which occurs on a school transportation vehicle or at a bus stop and which interrupts or interferes with the safe and orderly operation of the vehicle or otherwise puts others at risk of harm is prohibited.
- 2-6 False Fire Alarm or Reported Emergency:** Smoke and fire alarms and other emergency systems are vital for the safe operation of schools and must not be tampered with. No student shall set off, attempt to set off, or aid and abet anyone in giving a false fire alarm. No student shall interfere with or damage any part of a fire alarm, fire detection, smoke detection, fire extinguishing system, or emergency escape system.
- 2-7 Fire Setting/Incendiary Material:** Fires and fire-setting materials pose a risk of harm to everyone in the school environment. The possession of any incendiary material (including but not limited to matches, lighters, or lighter fluid) or the use of any material reasonably likely to result in a fire on school property is prohibited.
- 2-8 Property Damage:** Students shall not intentionally damage or deface or attempt to damage or deface any school property, or the personal property of another.
- 2-9 Theft:** Students shall not steal, attempt to steal, or knowingly be in possession of stolen property.
- 2-10 Extortion:** Students shall not obtain or attempt to obtain money, property, or other items of value or compel another person to take action or refrain from action against that person's will by means of force, intimidation, or threat.
- 2-11 Indecent Exposure/Sexual Behavior:** Students shall not engage in behavior, whether consensual or non-consensual, which is lewd, indecent, or of a sexual nature.
- 2-12 Harassment/Bullying:** Students shall not engage in conduct prohibited by the Board's "Prohibition Against Discrimination, Harassment, and Bullying" policy (Refer to pages 31).
- 2-13 Sexual Harassment:** Students shall not engage in conduct prohibited by the Board's "Prohibition Against Discrimination, Harassment, and Bullying" policy (Refer to pages 32-33).
- 2-14 Threat/False Threat:** Student shall not make any threat through written or verbal language, sign, or act which conveys a serious expression of intent to cause harm or violence. Furthermore, no student shall make a false threat of harm or violence, even jokingly, which causes or is reasonably likely to cause fear or a disruption to school activities.

2-15 Physical Aggression/Fighting: Physical aggression toward or fighting with student, staff, or visitors are prohibited. A student who is attacked may use reasonable force in self-defense, but only to the extent necessary to get free from the attack and notify proper school authorities. A student who exceeds reasonable force may be disciplined even though someone else provoked or initiated the fight.

The prohibition on fighting and physical aggression includes, but is not limited to:

- a. Choking, hitting, slapping, shoving, scratching, spitting, biting, blocking the passage of, or throwing objects at another person in an aggressive, confrontational or dangerous manner.
- b. Taking any action or making comments or writing messages that might reasonably be expected to result in a fight or physical aggression.

2-16 Report Firearm or Destructive Device: Any student who has reason to believe that another student possesses or intends to bring a “firearm” or “destructive device” as defined in Rule IV-1, onto any school campus or to any school activity shall report this information to school or law enforcement authorities immediately.

2-17 Hazing: No group or individual shall require a student to wear abnormal dress; play abusive or ridiculous tricks on him or her; or frighten, scold, beat, harass, or otherwise subject him or her to personal indignity as a condition of inclusion in a group or as a ritual associated with group membership. Hazing is prohibited even if the person hazed consents to the conduct.

2-18 Search and Seizure: Students may not refuse to allow and may not seek to impede any search or seizure of their person or belongings that is authorized under the Board’s “Student Searches” policy.

2-19 Aiding and Abetting: Students shall not assist or facilitate others in violating any Level 2, 3 or 4 rule in this Code.

2-20 Repeated / Willful Violations of Level I Rules: A student may be subject to out-of-school suspension of up to two (2) days under this Rule for repeated, willful violations of any Level 1 rules, but only if (1) the school has documented at least three prior violations of the same Level 1 rule prior within the same academic semester; (2) appropriate MTSS non-disciplinary interventions have been attempted and documented with each of those last three violations; and (3) school administrators have contacted the student and parent to warn them of the possibility of out-of-school suspension before the final incident that leads to the suspension.

LEVEL 3

3-1 Narcotics, Alcoholic Beverages, Controlled Substances, Chemicals, and Drug Paraphernalia: Drugs and alcohol present serious risks of harm to all persons, especially adolescents, and drugs and alcohol overdoses and abuse result in well over 100,000 deaths each year in the United States alone. Addiction can start slowly and take hold before a person realizes he or she is addicted. It can destroy relationships, shatter dreams and ambitions, and lead to imprisonment, brain damage, disfiguring injury, and death. Student who are struggling with addiction or who are tempted or feeling pressured to use intoxicating drugs or alcohol are urged to seek help immediately from a parent, teacher, counselor, administrator, or other trusted adult. No student will face disciplinary consequences for coming forward, proactively, to seek help while not in possession of or under the influence of contraband.

That said, the Board has a solemn duty to adopt policies that are reasonably designed to keep its school and students safe. To that end, the Board strictly prohibits all narcotics, alcoholic beverages, unauthorized prescription drugs, and similar substances at schools and school-sponsored activities. Specifically, no student shall possess, use, distribute, sell, possess with intent to distribute or sell, conspire or attempt to distribute or sell, purchase, or be under the influence of any narcotic drug, opioid, hallucinogen, amphetamine, barbiturate, marijuana or cannabis product, anabolic steroid, controlled substance, alcoholic beverage, drug paraphernalia, counterfeit substance, unauthorized prescription drug, or any other chemicals or product with the intention of bringing about a state of exhilaration, euphoria, or of otherwise altering the student's mood or behavior. The proper use of a drug authorized by valid medical prescription from a legally authorized health care provider shall not be considered a violation of this rule when the drug is taken by the person for whom the drug was prescribed.

The following definitions apply to this rule:

- a. Possession:** Having the prohibited substance on the student's person or in another place where the student, either alone or jointly with others, has control over it. This may include, but is not limited to, possession of a prohibited substance in an automobile, locker, book bag, or desk.
- b. Use:** The consumption, injection, inhalation or absorption of a prohibited substance into a student's body by any means.
- c. Under the Influence:** Having used a prohibited substance such that it continues to influence a student's mood, behavior, or learning to any degree.
- d. Counterfeit Substance:** Any substance that is described or presented with the intention of deceiving another into believing that it is a substance prohibited under this rule.

- e. **Unauthorized Prescription Drug:** Any prescription drug or medication that is used or possessed by someone other than the person for whom the prescription was written.
- f. **Drug Paraphernalia:** Objects that are used or intended to be used for ingesting, injecting, inhaling, or otherwise introducing a substance prohibited by this rule into the body, including but not limited to: pipes, vaporizers, rolling papers and syringes. Relevant evidence may be considered in determining whether an object is drug paraphernalia.
- g. **Conspiracy:** An agreement by two or more persons to commit an unlawful act in violation of this rule.
- h. **Sell:** To exchange a substance prohibited by this rule for money, property, or any other benefit or item of value.
- i. **Possess with Intent to Distribute/Sell:** Intent to distribute or sell may be determined from relevant evidence such as the amount of the prohibited substance found; the manner in which it was packaged; the presence of packaging materials such as scales, baggies or other containers; and the statements or actions of students.
- j. **Distribute:** To transmit a prohibited substance to one or more other students, with or without compensation. For purposes of this definition, a student has not “distributed” a prohibited substance (but may be guilty of “possession” or “use”) if the student’s sole involvement is to share or pass a prohibited substance with other students in the course of using it, so long as the student was not the one who brought the prohibited substance onto school property or otherwise made it available to other students.

When a first infraction of this rule involves solely possession, use, conspiracy to possess or use, and/or being under the influence of a substance prohibited by this rule, and a long-term suspension recommendation for violation of this rule is not supported by any other rule violations that independently support long-term suspension, an alternative to long-term suspension shall be offered.

The alternative shall consist of a short-term suspension of five (5) days on condition that the student participates in and completes an approved Alternative Counseling and Education (ACE) program. The program shall be designed by the superintendent and agreed to in writing by the parent, guardian, student, and school principal. Parents, guardians, and students shall be provided information by school authorities concerning approved ACE programs. Declining this opportunity or failing to meet any requirements of the ACE program reactivates the underlying long-term suspension or alternative education assignment.

3-2 Gang and Gang-Related Activity: The Board believes that gangs and gang-related activities pose a serious safety threat to students and staff members of the Wake County Public School System and can significantly disrupt the educational environment. Even actions that are not innately dangerous, such as displaying hand signs, wearing items of particular colors, and speaking with special jargon can substantially increase the risks of criminal activity and physical injury when those signs and signals are used to support, signal, promote, or encourage gang activity or affiliation. Student who feel pressured to participate in or condone gang activities are urged to seek help from teachers, administrators, parents and law enforcement officers.

- a.** No student shall participate in any gang-related activities. For purposes of this rule:
 - i.** A gang is any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of criminal acts, and having a common name or common identifying sign, colors or symbols.
 - ii.** Gang-related activities are any activities engaged in by a student on behalf of an identified gang; to perpetuate the existence of an identified gang; to promote the common purpose and design of an identified gang; or to represent gang affiliation, loyalty, or solidarity.
- b.** Conduct prohibited by this rule includes:
 - i.** Wearing, possessing, using, distributing, displaying, or selling any clothing, jewelry, emblems, badges, symbols, signs, visible tattoos and body markings, or other items, with the intent to convey or promote membership or affiliation in any gang;
 - ii.** Communicating either verbally or non-verbally (gestures, handshakes, slogans, drawings, etc.), with the intent to convey or promote membership or affiliation in any gang;
 - iii.** Tagging, or otherwise defacing school or personal property with symbols or slogans intended to convey or promote membership or affiliation in any gang;
 - iv.** Requiring payment of protection, money or insurance, or otherwise intimidating or threatening any person in connection with gang-related activity;
 - v.** Inciting other students to intimidate or to act with physical violence upon any other person in connection with gang-related activity;
 - vi.** Soliciting others for gang membership;
 - vii.** Committing or conspiring to commit an illegal act in connection with gang-related activity.

- c. When a first infraction involves only the wearing of gang-related attire, the student shall receive a warning and be allowed to immediately change or remove the attire as an alternative to disciplinary action.
- d. The Superintendent or Superintendent's designee shall regularly consult with law enforcement officials to identify examples of gang-related items, symbols and behaviors and shall provide each principal with this information. Parents and students shall be notified that such information is maintained in the principal's office, that it is subject to change, and that the principal's office may be consulted for updates. In providing this information for parents and students, the school system acknowledges that not all potential gang indicators connote actual membership in a gang.

3-3 Weapons/Dangerous Instruments/Substances: No student shall possess, handle, or transmit any weapon, facsimile of a weapon/dangerous instrument/substance or other object that can reasonably be considered or used as a weapon or dangerous instrument/substance. This does not apply to any student who finds a weapon or dangerous instrument/substance on school property or receives it from another person on school property and who immediately reports the weapon or dangerous instrument/substance to school or law enforcement authorities.

The following definitions apply to this rule:

- a. **Weapon:** Any firearm, BB gun, stun gun, air rifle, air pistol, ammunition, power loads, fireworks, knife, slingshot, leaded cane, blackjack, metallic knuckles, razors, razor blades except cartridge razors used solely for personal shaving, box cutter, mace, pepper spray, and other personal defense sprays, and any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance.
- b. **Dangerous Instruments/Substances:** Any object or substance that is possessed, handled, transmitted, or used for the purpose of causing or attempting to cause physical injury.
- c. **Facsimile of a Weapon:** Any copy of a weapon that could reasonably be perceived to be a real weapon.

Note: Refer to Level 4: Rule 4-1 for violations involving Firearms/Destructive Devices.

3-4 Assault on a Student: No student shall cause or attempt to cause serious physical injury to another student. For the purposes of this rule, serious physical injury shall refer to any significant or aggravated bodily injury, including but not limited to broken bone(s), loss or chipping of teeth, loss

or impairment of vision, loss of consciousness, internal injuries, scarring or other disfigurement, significant bleeding, lacerations resulting in sutures, significant bruising, severe or prolonged pain, any injury requiring hospitalization for any period of time, and/or any injury resulting in medical treatment beyond simple first aid procedures.

3-5 Assault on School Personnel or Other Adult: No student shall cause or attempt to cause physical injury to any school employee or other adult.

Note: If a teacher is assaulted or injured by a student and as a result the student is reassigned to alternative education services, long-term suspended, or expelled, the student shall not be returned to that teacher's classroom unless the teacher consents.

3-6 Assault Involving Weapon/Dangerous Instrument/Substances: No student shall assault another using a weapon, dangerous instrument, or dangerous substances.

Note: Refer to Level 4: Rule 4-1 for violations involving Firearms/Destructive Devices.

3-7 Bomb Threats: No student shall make a bomb threat or hoax by making a false report that a device designed to cause damage or destruction by explosion, blasting, or burning is located on the school premises or at the site of school activities, or by placing or concealing an object or artifact on school property or the site of school activities so as to cause any person to reasonably believe the object or artifact to be a bomb or other destructive device.

3-8 Threats of Mass Violence: No student shall, by means of communication to any person or group, threaten to commit an act of mass violence on educational property or at a curricular or extracurricular activity sponsored by a school. For purposes of this rule, "mass violence" is physical injury that a reasonable person would conclude could lead to permanent injury (including mental or emotional health) or death to two or more people.

LEVEL 4

4-1 Firearm/Destructive Device K-12: As required by state law, any student in grades K-12 shall be recommended for suspension for 365 calendar days for bringing a “firearm” or “destructive device” onto school property or to a school-sponsored event off school property, or for possessing a “firearm” or “destructive device” on school property or at a school-sponsored event off school property. School property includes any property owned, used or leased by the Board, including school buses, other vehicles, and school bus stops. Principals are required to refer to the law enforcement system any student who brings a firearm or weapon to school.

The following definitions apply to this rule:

- a. **Firearm:** A 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 any such weapon; or any firearm muffler or firearm silencer. The term does not include an inoperable antique firearm, BB gun, stun gun, air rifle, or air pistol.
- b. **Destructive Device:** An explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or device similar to any of the devices listed in this definition.

Violation of this rule shall result in suspension from school for 365 days unless modified by the Superintendent or Board on a case-by-case basis.

The 365-day suspension does not apply to any student who finds the firearm on school property or receives it from another person on school property and who delivers the weapon, immediately, to school or law enforcement authorities.

LEVEL 5

Level 5 is the most serious Level in this code. While there are no separate Level 5 rules, the violation of one or more Level 2, 3, or 4 rules in this Code becomes subject to Level 5 sanctions – meaning that a student may be permanently expelled from the Wake County Public School System - if all of the following criteria are met: (1) the student is fourteen (14) years old or older; (2) both the principal and the superintendent/designee recommend expulsion; (3) the superintendent and Board determine, consistent with the Board’s “Due Process” policy, that there is a significant or important reason not to offer the student alternative educational services; and (4) the Board determines, by clear and convincing evidence, that the student’s continued presence in school constitutes a clear threat to the safety of other students or school staff.

Additionally, any student who is registered as a sex offender under Article 27A of Chapter 14 of the North Carolina General Statutes may be expelled in accordance with these procedures. If such a student is offered alternative education services on school property, the student must be under the supervision of school personnel at all times. This is a consequence of last resort. Principals are urged to consult with their area superintendent before recommending a student for permanent expulsion.

NOTES

Regulation Code: 4309 R&P Student Behavior - Code of Student Conduct

B. MITIGATING AND AGGRAVATING FACTORS

When considering the appropriate consequence for specific student misconduct, administrators may consider any relevant mitigating or aggravating factors, including, but not limited to, the student's intent, disciplinary and academic history, and the potential benefits to the student of alternatives to suspension.

1. Mitigating Factors may include, but are not limited to:

- a. The student's age, maturity level, developmental level,*
- b. No recent disciplinary history,*
- c. Being a passive participant or playing a minor role in the offense,*
- d. Making appropriate restitution,*
- e. Reasonably believing the conduct was allowed,*
- f. Acting under strong provocation,*
- g. Aiding in the investigation,*
- h. Making a full and truthful statement admitting guilt at an early stage in the investigation of the offense,*
- i. Displaying an appropriate attitude and giving respectful cooperation during the investigation and discipline process.*

2. Aggravating Factors may include, but are not limited to:

- a. Inducing others to take part in the prohibited behavior or occupying a position of leadership or dominance of other participants,*
- b. Attempting to flee or conceal guilt,*
- c. Falsely blaming another individual,*
- d. Receiving money or something of value from the misbehavior,*
- e. A pattern or history of disciplinary infractions,*
- f. School based interventions were implemented but student's behavior did not improve,*
- g. The misconduct was associated with gang activity,*
- h. The victim of the misconduct is a teacher or other staff member,*
- i. Victimizing a significantly younger or smaller student or a student with a known or obvious mental or physical disability,*
- j. Repetitive blatant disrespect for authority,*
- k. Taking advantage of a position of trust or confidence to commit the offense,*
- l. Committing an offense on other school system property.*

C. REDUCTION OF DRUG OR ALCOHOL RELATED SUSPENSIONS BASED ON PARTICIPATION IN AN APPROVED COUNSELING PROGRAM

1. Student Eligibility

Students are eligible for an offer to reduce the length of a suspension for violation of the drug and alcohol policy (Policy 4309, Level 3-1) based on their participation in an approved Alternative Counseling and Education (ACE) program under the following circumstances:

- a. ACE 1 - When a first infraction of this policy involves only possession, use, conspiracy to possess or use, and/or being under the influence of a substance prohibited by this policy, a student shall be offered the opportunity to participate in a school system approved ACE 1 program.*
- b. ACE 2 - For second or subsequent offenses, or for first infractions that involve sale, possession with intent to sell/distribute, distribution, and/or conspiracy to sell or distribute, a student may be offered the opportunity to participate in an approved ACE 2 program. The principal may offer the ACE 2 program based on mitigating factors documented within the suspension notice.*

3. Required Program Components

b. Requirements for ACE 1 opportunity:

- i. A comprehensive screening instrument developed and implemented to assess the needs of students with regards to drug or alcohol involvement, self-control and communication skills, and decision-making strategies.*
- ii. A minimum of nine (9) contact hours for student.*
- iii. Program to be completed within ten (10) weeks of enrollment.*
- iv. An opportunity for parent/guardian to receive drug and alcohol education in conjunction with student counseling.*
- v. Education in the areas of:*
 - (a.) The path of chemical dependency, including experimentation, use, heavy use, and addiction.*
 - (b.) The signs, symptoms, and consequences of use of mind-altering substances.*
 - (c.) The meaning of addiction.*
 - (d.) Physical and psychological addiction.*
 - (e.) Alcohol and marijuana addictive drugs.*
 - (f.) Refusal skills training.*
 - (g.) The role of the family and the impact of chemical dependency on the family and on children in the family*

c. Requirements for ACE 2 opportunity:

- i.** A minimum of twelve (12) contact hours for both the student and parent/guardian.
- ii.** The parent/guardian will incur the cost of the ACE 2 program.
- iii.** Expanded coverage of the educational areas covered during the ACE 1 offer.
- iv.** An initial drug screen as part of the assessment and at least one (1) additional drug screen during the course of the program. Verification of negative results of an additional random drug screen.
- v.** Program to be completed within fourteen (14) weeks of enrollment.

5. Process for Enrollment

To receive a reduction in suspension length, students must be enrolled in an approved ACE program as follows:

A completed Student/Parent/Guardian Participation Agreement Form must be submitted to the school within the first ten (10) days of the suspension. The form will be included in the ACE packet given to the parent/guardian at the time of the ACE offer. It must be fully completed and signed by the student, parent/guardian, and authorized representative of the ACE provider and submitted to the school.

6. Additional Requirements for the Student and Parent/Guardian

In order for the student to qualify for a reduction in suspension length, the parent/guardian must ensure that the referring school receives written notification from the ACE provider of enrollment in the ACE program, satisfactory completion of the ACE program, and/or any failure on the part of the student to comply with or complete the program.

7. Effect on Length of Suspension

- a. Once a student has successfully enrolled in an approved ACE program and the short term suspension imposed by the Principal has expired, the long-term suspension recommendation will automatically be inactivated, and the student will be allowed to return to school. When the student successfully completes the ACE program, the length of the suspension reflected in the student's records will be the number of days the student was out- of- school before being authorized to return to school. For first infractions not involving sale or distribution, the period of short-term suspension imposed by the principal shall be five (5) school days. For second or subsequent infractions or for first infractions involving sale or distribution, the period of short-term suspension imposed by the principal shall be ten (10) school days.*
- b. If a student fails to participate in or successfully complete the approved ACE program or if the student violates the drug and alcohol policy (Policy 4309, Level 3-1) while enrolled in or participating in the program, the principal's original recommended length to the superintendent for long-term suspension will be reinstated immediately. If the long-term suspension recommendation is reinstated, the student will be placed in an alternative education program for the remaining length of the suspension unless the superintendent identifies a significant or important reason for denying such access.*
- c. If a student does not enroll in an approved ACE program within ten (10) school days of the ACE offer, or if the parent/guardian declines the ACE offer, the right to participate in the ACE program is waived.*
- d. Students enrolled in ACE over the summer are expected to continue participating in the approved ACE program and complete the program before the beginning of the next school year.*

8. Appealing the Suspension

The student has the right to appeal the long-term suspension recommendation while also accepting the ACE offer and participating in the ACE program. If the long-term suspension recommendation is overturned on appeal, the student will be excused from participating in or completing the ACE program.

Policy Code: 4300 Due Process

Under state and federal law, students are entitled to due process before being removed from school for misconduct. The procedures that follow are required to provide a fair and thorough process for disciplinary suspensions from school.

Regulation Code: 4300 R&P Due Process

Removal from School

- 1. When a student is suspended, the principal shall attempt to reach the parent/guardian by telephone to inform them of the school's action and, if necessary, to request that they come to the school or make arrangements for the student to leave. If the parents/guardians are available to receive the student but cannot make transportation arrangements, the school may provide transportation for the student. If the principal cannot reach the parent/guardian, the student must remain on school property until the close of the school day, unless circumstances make that unacceptable to the principal.*
- 2. Notwithstanding the above requirements that a suspended student be released only to a parent/guardian, the principal may order students to leave the school premises immediately when faced with mass violations of school rules or when it is not possible to keep the students on school grounds and restore or maintain order, protect school property, or people on school grounds.*

B. SHORT-TERM SUSPENSION

- 1.** A short-term suspension is a removal from school for a period of ten (10) school days or less.
- 2.** Except in situations provided in Section A above, the principal may invoke a short-term suspension only after investigating the misconduct, confronting the student with the charges and the basis for those charges, and allowing the student to respond in his/her own defense and/or to offer mitigating circumstances. Once a principal decides to invoke short-term suspension, procedures promulgated by the superintendent shall be followed.
- 3.** The principal shall notify the student and parent/guardian of any short-term suspension, including the reason for the suspension and a description of the alleged conduct upon which the suspension is based. The official notice shall be given by the end of the workday on which the suspension was imposed when reasonably possible but in no event more than two days after the suspension was imposed. The notice shall be given by certified mail,

electronic communication or any other method reasonably designed to achieve actual notice.

4. If English is the second language of the parent, the notice shall be provided in the parent's primary language, when the appropriate foreign language resources are readily available, and in English and both versions shall be in plain language and easily understandable.
5. The principal shall notify the student and parent/guardian that during a short-term suspension a student shall be provided:
 - a. The opportunity to take textbooks or other appropriate learning resources home for the duration of the suspension.
 - b. The opportunity to obtain homework assignments for the duration of the suspension.
 - c. The opportunity to take any quarterly, semester, or grading period examinations missed during the suspension period.
6. A student is not entitled to appeal the principal's decision to impose a short-term suspension to the Superintendent or Board of Education. A student or parent who objects to the short-term suspension may access the Board's general complaint policy.
7. If the principal recommends a short-term suspension, in lieu of long-term suspension, for a violation of a "Level 3" rule in the Student Behavior Policy 4309, the recommendation must be based on mitigating factors documented in the suspension notice.

C. SUSPENSIONS EXCEEDING TEN DAYS

1. A long-term suspension is a suspension for a period of time in excess of ten (10) school days. If the offense leading to the long-term suspension occurs before the final quarter of the school year, the suspension may not be longer than the remainder of the school year. If the offense occurs during the final quarter of the school year, the suspension may continue through the first semester of the following school year.
2. A 365-day suspension is a suspension for 365 calendar days.
3. An expulsion is an indefinite removal from the school enrollment for disciplinary purposes.
4. If the principal, following an investigation, determines that long-term suspension, 365-day suspension or expulsion is appropriate, she/he shall invoke a short-term suspension of ten (10) school days, following the procedures in 4300B above, and inform the student, parent, and

superintendent of the recommendation for long-term suspension/expulsion according to the notice procedures contained in 4300 R&P.

5. The student shall be provided the same opportunities as stated in 4300B 5(a)-(c) during the long-term suspension appeal process.
6. The principal may recommend a long-term suspension for violation of a "Level 2" rule in the Student Behavior Policy 4309 only if there are aggravating factors documented in the suspension notice and approved by the Superintendent or designee. Any such long-term suspension recommendation may be appealed pursuant to Section E of this policy.
7. Recommendations for long-term suspension that are properly appealed may be imposed only if they have been approved by a Hearing Panel following a formal hearing held pursuant to Section E in this policy.
8. Recommendations for long-term suspension that are not properly appealed shall be reviewed by the Superintendent or designee. Following such review, the Superintendent or designee may:
 - a. impose the recommended suspension if it is consistent with Board policy and otherwise appropriate under the circumstances,
 - b. impose another consequence authorized by Board policy, or
 - c. decline to impose any penalty.

D. REVIEW TO CONSIDER ALTERNATIVE EDUCATION IN LIEU OF LONG-TERM SUSPENSION

1. Students who are recommended for long-term suspension shall be assigned to an alternative education program unless the Superintendent or designee identifies a significant or important reason for denying such access. Depending on the circumstances, significant or important reasons for denying alternative education may include, but are not limited to, the following:
 - a. The student exhibited violent behavior;
 - b. The student threatened staff or other students;
 - c. The student substantially disrupted the learning process;
 - d. The student otherwise engaged in serious misconduct that makes the provision of alternative educational services not feasible;
 - e. Educationally appropriate alternative education services are not available due to limited resources; or
 - f. The student failed to comply with reasonable conditions for admittance into an alternative education program.
2. If the Superintendent or designee denies a student alternative education services, the decision may be appealed to the Board of Education.
3. The Superintendent or designee may assign a student to a full-time alternative education program in lieu of long-term suspension. Assignment

to a full-time alternative education program that meets the academic requirements of the standard course of study established by the State Board of Education and provides the student with the opportunity to make timely progress toward graduation and grade promotion is not considered a long-term suspension and will not be reflected as a long-term suspension in the student's academic records. The student's record will reflect a short-term suspension.

4. A student who is assigned to a full-time alternative education program in lieu of long-term suspension may appeal the underlying long-term suspension recommendation as provided in Section E of this policy. If the underlying suspension recommendation is overturned on appeal, the student will be allowed to return to his or her regularly assigned school. If the panel finds that the student did engage in the alleged conduct, it shall also decide the length of the alternative education assignment, not to exceed the original recommended suspension length. The student will remain assigned to the alternative education program while any such appeal is pending.
5. A student who is assigned to a full-time alternative education program in lieu of long-term suspension is not permitted to participate in or attend school activities such as athletic, music, or drama events or graduation ceremonies without the express permission of the school principal.

E. LONG-TERM SUSPENSION APPEAL

The Superintendent shall develop procedures, consistent with state and federal law, for the appeal of a long-term suspension, 365-day suspension or expulsion and a copy of these procedures shall be provided to a student/parent/guardian at the time the student is recommended for long-term suspension/365-day suspension/expulsion. The procedures shall include, but not be limited to the following:

1. **Suspension Appeal Hearing:** A student shall be given an opportunity for a hearing before an impartial Hearing Panel prior to the imposition of a long-term suspension/365 suspension or the recommendation of expulsion. The panel shall not include any person who is under the direct supervision of the administrator recommending the suspension.
 - a. If the student/parent/guardian requests a delay in the hearing or requests a hearing after the deadline, the student is not entitled to return to school pending the hearing.
 - b. If neither the student nor parent/guardian appears for the hearing after being given reasonable notice, the parent/guardian and student are deemed to have waived the right to a hearing, and the Superintendent

- or designee shall review the long-term suspension recommendation under Section C.8 of this policy.
- c.** For matters involving a recommendation for long-term suspension, the Hearing Panel will make findings regarding guilt or innocence and make a decision regarding the length of the suspension as appropriate. For matters involving a recommendation for a long-term 365-day suspension, the Hearing Panel will determine whether the student violated Rule IV-1 of the Student Code of Conduct and make a non-binding recommendation to the Superintendent as to whether and to what extent the 365-day suspension should be modified. For matters involving a recommendation for long-term suspension and expulsion, the Hearing Panel will determine whether a long-term suspension is warranted and make a non-binding recommendation to the Board as to whether the expulsion should be upheld. In matters where the Hearing Panel makes a non-binding recommendation to the Superintendent, the Superintendent shall make the final decision regarding the consequence to impose but the Superintendent shall adopt the Hearing Panel's factual determinations unless they are not supported by substantial evidence in the record.
 - d.** The Superintendent or designee shall issue a written decision that shall contain:
 - i.** the basis for the decision, including a reference to any policy violated;
 - ii.** notice of what information will be included in the student's official record pursuant to G.S. 115C-402; and
 - iii.** notice of the student's right to appeal the decision to the Board of Education and the procedure for the appeal.

Regulation Code: 4300 R&P Due Process

E. Appeal Hearing

- 1. To appeal a recommendation for long-term suspension or disciplinary reassignment, the student or parent/guardian must complete and submit the "Request for Appeal Hearing" form or otherwise provide written notice of appeal to the school principal within five (5) school days following receipt of the notice of suspension. If a student will be represented by an attorney, or representative from an attorney's office at the hearing, the Request for Appeal Hearing form or written appeal notice must so indicate. If the student, parent, or guardian does not initially indicate that an attorney will be present but later decides to obtain legal representation for the hearing, the hearing may be rescheduled so that the school administration will also be able to obtain legal representation.*
- 2. If a hearing is requested, the principal will notify the office of Student Due Process, which will schedule the hearing. The principal shall indicate the estimated number of witnesses to be called by the school and submit the Request for Appeal Hearing form or other written appeal notice to the Student Due Process office. If the appeal request is timely received by Student Due Process, the school will be notified, and an appeal hearing will be scheduled.*
- 3. It is recommended that the student requesting the hearing be present at the appeal hearing to share information related to the incident. While attending the hearing the student will not be trespassing.*
- 4. At the suspension appeal hearing, the student has the following rights:*
 - a. To be represented at the hearing by an attorney, or representative from an attorney's office, or a non-attorney advocate. When the student is represented by an attorney, or representative from an attorney's office, the principal will also be represented by an attorney.*
 - b. To be present at the hearing accompanied by his/her parent(s)/guardian(s).*
 - c. To review before the hearing any audio or video recordings of the incident and, consistent with federal and state student records law, any tangible or documentary evidence that will be submitted by the school administration at the hearing, including written statements. School officials shall not be required to release names or other information that could reveal the identity of a witness when this could pose a safety risk for the witness.*
 - d. To question witnesses appearing at the hearing.*

Regulation Code: 4300 R&P Due Process

- e. To present evidence on his/her own behalf, including written statements or oral testimony, relating to the incident leading to the suspension. If the student intends to call another student as a witness, the student witness must have written permission from his/her parent/guardian to appear during the hearing. The parent/guardian must make arrangements for the student's witnesses to attend the hearing.*
 - f. To have a record made of the hearing.*
 - g. To make his/her own recording of the hearing.*
 - h. To receive a written decision, based on substantial evidence presented at the hearing, either upholding, modifying, or rejecting the underlying long-term suspension recommendation and containing at least the following information:
 - i. The basis for the decision, including a reference to any policy or rule that the student is determined to have violated.*
 - ii. Notice of what information will be included in the student's official record pursuant to G.S. 115C-402.*
 - iii. The student's right to appeal the decision and notice of the procedures for such appeal.**
- 5. The hearing will be informal in nature and conducted by an impartial representative from the office of Student Due Process and heard by a Hearing Panel.*
 - 6. The panel will be comprised of retired educators and/or certified staff not under the direct supervision of the principal making the suspension recommendation and selected from a list approved by the Superintendent or designee.*
 - 7. The student has a right to be accompanied at the hearing only by his/her parent(s)/guardian(s) and an attorney or representative from an attorney's office, or non-attorney advocate, if applicable. With prior approval from the office of Student Due Process, a second attorney or non-attorney advocate may also attend the hearing in an observational capacity. Any requests to bring a second attorney or advocate must be made three (3) school days prior to the hearing*
 - 8. Both sides may bring fact witnesses to the hearing, and the student may also bring character witnesses. With the exception of the parent(s)/guardian(s) and the school administrator(s) representing the school, any such witnesses will remain outside the hearing room until called to testify by the Student Due Process representative.*
 - 9. Formal rules of evidence for court proceedings do not apply. A Hearing Panel may consider any relevant evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious matters.*

Regulation Code: 4300 R&P Due Process

- 10. Hearings are timed, and each side will be given up to one (1) hour to present their case, including presentation of all evidence and questioning of any witnesses. The Student Due Process representative facilitating the hearing may allow additional time in extenuating circumstances.*
- 11. An official recording will be made of the proceedings.*
- 12. The school administration will present its evidence first, followed by the student. Both sides will then be offered the opportunity to provide closing statements, beginning with the student or student's representative.*
- 13. At the conclusion of the hearing the Hearing Panel shall deliberate in private to determine, based on the evidence presented at the hearing, whether the student did or did not violate each of the disciplinary rules charged. If the panel finds that the student did engage in the alleged misconduct, it shall also decide the length of the long-term suspension or alternative education assignment, not to exceed the recommendation of the principal. In the matters involving recommendations for 365-day suspensions or recommendations for expulsion, the Hearing Panel shall make a non-binding recommendation to the Superintendent regarding whether the principal's recommendation should be upheld, modified, or rejected, and the Superintendent shall issue the written decision.*
- 14. After reaching its decision, the Hearing Panel shall issue a written decision as outlined above. The "Board Hearing Request" form will be enclosed.*

E. LONG-TERM SUSPENSION APPEAL (Continued)

- 2. Board Level Appeal:** A student may appeal this decision to the Board of Education.
 - a.** In an appeal to the Board, the Hearing Panel's factual findings shall be adopted unless they are not supported by substantial evidence in the record.
 - b.** If, at any level of investigation or appeal, the student is determined not guilty of the misconduct in question, the student's absences will be considered excused and the student shall have the right to make up missed work for credit.
 - c.** In considering the appeal, the Board Panel will review and consider the entire record of the proceedings from the Hearing Panel, including all of the evidence offered by the school administration and the student. Ordinarily, the Board Panel will not hear witnesses or consider new or additional evidence beyond what was presented at the earlier hearing. However, in extraordinary circumstances and in the exercise of its discretion, the Board Panel by majority vote may permit either party to call witnesses or offer new or additional evidence. A request by either party to call witnesses or provide new or additional evidence at a Board hearing must be received by the Office of Student Due Process, no less than 48 hours prior to the scheduled hearing.

F. EXPULSIONS

- 1.** The Board of Education, upon the recommendation of the principal and Superintendent/designee, may expel from school a student fourteen (14) years of age or older whose continued presence in school constitutes a clear threat to the safety of other students or employees. Additionally, any student who is a registered sex offender under N.C. General Statutes 14-208 may be expelled.
- 2.** A student that is recommended for expulsion shall be entitled to an appeal following the provisions of section 4300E. Prior to the expulsion of any student, the Board shall determine whether the student's continued presence in school constitutes a clear threat to the safety of other students or school personnel. In the event a student is expelled, the student shall be given notice of the right to petition for readmission as provided by state law.

Regulation Code: 4300 R&P Due Process

F. Board Level Appeal

1. *If the student/parent(s)/guardian(s) wish to appeal the decision of the Hearing Panel or Superintendent, they must complete the "Board Hearing Request" form and submit it to the office of Student Due Process within five (5) school days following receipt of the Hearing Panel's decision. If there is no timely appeal, the prior decision will stand.*
2. *If the decision is timely appealed, a Board Panel consisting of three (3) or more members of the Board of Education shall hold an appeal hearing as soon as practicable.*
3. *The hearing will be informal in nature and based solely on the record unless the Board Panel agrees, by majority vote and based on extraordinary circumstances, to accept new witnesses or evidence as provided in Policy 4300.E.2. Requests to submit new facts or evidence or to call new witnesses must be made in writing at least two (2) school days prior to the hearing.*
4. *Each side will have fifteen (15) minutes to present oral arguments in support of its position, beginning with the student. Written submissions are optional and must not introduce new facts or evidence. Any written submission on behalf of the student must be submitted at least five (5) days prior to the hearing. The administration will have three (3) days to respond.*
5. *The student has a right to be accompanied at the hearing only by his/her parent(s)/guardian(s) and an attorney, or representative from an attorney's office, or non-attorney advocate, if applicable. With prior approval from the Office of Student Due Process, a second attorney or non-attorney advocate may also attend the hearing in an observational capacity. Any requests to bring a second attorney or advocate must be made three (3) school days prior to the hearing.*
6. *At the conclusion of the hearing, the Board Panel will deliberate in private to determine whether the long-term suspension or disciplinary reassignment will be upheld, overturned, or modified. The Board Panel will accept the Hearing Panel's factual findings unless it concludes they are not supported by "substantial evidence" in the record. "Substantial evidence" is defined by law as "relevant evidence a reasonable person might accept as adequate to support a conclusion; it is more than a scintilla or permissible inference."*
7. *The Board Panel shall issue its written decision to the student/parent(s)/guardian(s) and to the school principal no more than thirty (30) calendar days following receipt of the appeal request. The decision of the Board Panel shall be final.*

POLICY CODE: 1710/4021/7230 PROHIBITION AGAINST DISCRIMINATION, HARASSMENT, AND BULLYING

The Wake County Board of Education acknowledges the dignity and worth of all students and employees and strives to create a safe, orderly, caring, and inviting school environment to facilitate student learning and achievement. The Board prohibits discrimination on the basis of race, color, national origin, sex, sexual orientation, disability, or age and will provide equal access to designated youth groups as required by law. Any form of unlawful discrimination, harassment, or bullying in any educational or employment activities or programs is against Board policy.

A. Prohibited Behaviors

1. Discrimination

The Board prohibits all forms of unlawful discrimination. For purposes of this policy, discrimination means any act or failure to act that unreasonably and unfavorably differentiates treatment of others based solely on their membership in a socially distinct group or category, such as race, ethnicity, sex, sexual orientation, pregnancy, religion, age, or disability.

2. Harassment and Bullying

The Board prohibits all forms of unlawful harassment and bullying. For purposes of this policy, harassment or bullying behavior is any pattern of gestures or written, electronic, or verbal communications, or any physical act or any threatening communication that:

- a)** places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or
- b)** creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities, or benefits or by adversely altering the conditions of an employee's employment.

"Hostile environment" means that the victim subjectively views the conduct as harassment or bullying and that the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is harassment or bullying. A hostile environment may be created through pervasive or persistent misbehavior or a single incident, if sufficiently severe.

Harassment and bullying include, but are not limited to, behavior described above that is reasonably perceived as being motivated by any actual or perceived differentiating characteristic or motivated by an individual's association with a person who has or is perceived to have a differentiating characteristic, such as race, color, religion, ancestry, national origin, gender, socioeconomic status, academic status, gender identity, physical appearance, sexual orientation, or mental, physical, developmental,

or sensory disability. Examples of behavior that may constitute bullying or harassment include, but are not limited to, verbal taunts, name-calling and put-downs, epithets, derogatory comments or slurs, lewd propositions, extortion of money or possessions, implied or stated threats, assault, impeding or blocking movement, offensive touching, and visual insults such as derogatory posters or cartoons. Legitimate age-appropriate pedagogical techniques are not considered harassment or bullying.

Harassment, including sexual or gender-based harassment, is not limited to specific situations or relationships. It may occur between fellow students or co-workers, between supervisors and subordinates, between employees and students, or between non-employees, including visitors, and employees or students. Harassment may occur between members of the opposite sex or the same sex.

3. Cyber-Bullying and Cyber-Harassment

The Board prohibits cyber-bullying and cyber-harassment. Cyber-bullying and cyber-harassment are any words, actions, or conduct that meet the definitions of bullying or harassing behavior described in this policy, and are conveyed via e-mail, text message, Internet message boards, interactions on social media, or other electronic media.

4. Sexual Harassment

The Board prohibits unlawful sexual harassment. Sexual harassment is one type of harassment.

Sexual harassment prohibited under Title IX and by this policy is conduct on the basis of sex occurring in a school system education program or activity that satisfies one or more of the following:

1. an employee of the school system conditioning the provision of an aid, benefit, or service of the school system on an individual's participation in unwelcome sexual conduct;
2. unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school system's education program or activities. This determination requires consideration of all the facts and circumstances, including, but not limited to, the ages and disability statuses of the harasser and the victim and the number of individuals involved and their authority;
3. sexual assault including rape, statutory rape, fondling, and incest
4. dating violence;
5. domestic violence; or

6. stalking.

Sexual assault, dating violence, domestic violence, and stalking will be defined in accordance with applicable law and the definitions will be incorporated into an administrative regulation developed by the superintendent.

Conduct that satisfies this standard but that occurred outside the United States is not sexual harassment for purposes of this policy.

Sexual harassment in the employment context is prohibited. In addition to the definition above, prohibited employment sexual harassment includes unwelcome conduct, which is either of a sexual nature, or is directed at a person because of the person's sex, when:

1. submission to the conduct is made either explicitly or implicitly a term or condition of a person's employment;
2. submission to or rejection of such conduct is made the basis for decisions affecting a person's employment; or
3. the conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive work environment.

Sexual harassment may be committed by members of the same sex or by members of the opposite sex. Romantic or sexual advances toward students by employees or romantic or sexual relationships between school system employees and students are never appropriate, whether they are consensual or otherwise outside the definition of sexual harassment. Such relationships are prohibited. Employees engaging in inappropriate relationships with students will be subject to disciplinary action, up to and including dismissal.

5. Gender-Based Harassment

The Board prohibits unlawful gender-based harassment. Gender-based harassment is also a type of harassment. Gender-based harassment may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping but not involving conduct of a sexual nature.

6. Retaliation

The Board prohibits reprisal or retaliation against any person for reporting or intending to report violations of this policy, supporting someone for reporting or intending to report a violation of this policy, or participating in the investigation of reported violations of this policy.

B. Application of Policy

This policy applies to students, employees, volunteers, and visitors. "Visitors" includes persons, agencies, vendors, contractors, and organizations doing business with or performing services for the school system.

This policy applies to behavior that takes place:

1. in any school building or on any school premises before, during or after school hours;
2. on any bus or other vehicle as part of any school activity;
3. at any bus stop;
4. during any school-sponsored activity or extracurricular activity;
5. at any time or place when the individual is subject to the authority of school personnel; and
6. at any time or place when the behavior has a direct and immediate effect on maintaining order and discipline in the schools.

This policy shall not be construed to allow school officials to punish student expression or speech based on an undifferentiated fear or apprehension of a disturbance or out of a desire to avoid the discomfort and unpleasantness that may accompany an unpopular viewpoint.

C. Reporting and Investigating Complaints of Discrimination, Harassment, or Bullying

Employees are required to report any actual or suspected violations of this policy. Students, parents, volunteers, visitors, or others are also strongly encouraged to report any actual or suspected incidents of discrimination, harassment, or bullying. All reports should be made in accordance with policy [1720/4015/7225](#), Discrimination, Harassment, and Bullying Complaint Procedure, and reported to one of the school officials identified in that policy. Reports may be made anonymously, and all reports shall be investigated in accordance with that policy.

D. Consequences

Any violation of this policy is serious and shall result in prompt and appropriate action. Students who violate this policy will be disciplined in accordance with applicable policies and procedures governing student conduct and discipline. Based on the nature and severity of the offense and the circumstances surrounding the incident, the student will be subject to

appropriate consequences and/or remedial actions ranging from positive behavioral interventions up to, and including, expulsion.

Employees who violate this policy will be subject to disciplinary action, up to, and including, dismissal.

Volunteers and visitors who violate this policy will be directed to leave school property and/or reported to law enforcement, as appropriate, in accordance with Visitors to the Schools policy.

The actions taken in response to harassment or bullying behavior shall be reasonably calculated to end any harassment or bullying, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. When considering if a response beyond the individual level is appropriate, school administrators should consider the nature and severity of the misconduct to determine whether a classroom, school-wide, or school system-wide response is necessary. Such classroom, school-wide, or school system-wide responses may include staff training, harassment and bullying prevention programs, and/or other measures deemed appropriate by the Superintendent or designee.

Nothing in this policy precludes the school system from taking disciplinary action against a student or employee where the evidence does not establish discrimination, harassment, or bullying but the conduct otherwise violates the Code of Conduct.

E. Training and Programs

The Board directs the Superintendent to establish training and other programs that are designed to help eliminate unlawful discrimination, harassment, and bullying and to foster an environment of understanding and respect for all members of the school community. The training or programs should (1) provide examples of behavior that constitutes discrimination, harassment, or bullying; (2) teach employees to identify groups that may be the target of discrimination, harassment, or bullying; and (3) train school employees to be alert to locations where such behavior may occur, including locations within school buildings, at school bus stops, on cell phones, and on the Internet. Information about this policy and the related complaint procedure must be included in the training plan.

As funds are available, the Superintendent is also authorized to provide additional training for students, employees, and volunteers who have significant contact with students regarding the Board's efforts to address discrimination, harassment, and bullying, and to create programs to address these issues.

F. Notice

The Superintendent is responsible for providing effective notice to students, parents, and employees of this policy and of the procedures for reporting and investigating complaints of discrimination, harassment, and bullying established in policy 1720/4015/7225, Discrimination, Harassment, and Bullying Complaint Procedure. The Superintendent or designee must ensure that students, employees, and parents or other responsible care givers are provided effective notice of this policy at the beginning of each school year. In addition, both policies must be posted on the school system website, and copies of the policies must be readily available in the principal's office, the media center at each school, and the Superintendent's office. Notice of the policies must appear in all student and employee handbooks and in any school or school system publication that sets forth the comprehensive rules, procedures, and standards of conduct for students and employees.

G. Coordinators

The Superintendent shall appoint one or more individuals to coordinate the school system's efforts to comply with and carry out its responsibilities under federal non-discrimination laws. These responsibilities include investigating complaints communicated to school officials alleging noncompliance with Title VI or Title IX of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), the Age Discrimination Act, and/or the Boy Scouts Act, or alleging actions which would be prohibited by those laws. The names, titles, and contact information for these individuals will be posted on the district's website and otherwise made publicly available.

H. Records and Reporting

The Superintendent or designee shall maintain confidential records of complaints or reports of discrimination, harassment, or bullying. The records must identify the names of all individuals accused of such offenses and the resolution of such complaints or reports. The Superintendent or designee also shall maintain records of training conducted and corrective action(s) or other steps taken by the school system to provide an environment free of discrimination, harassment, and bullying.

The Superintendent or designee shall report to the State Board of Education all verified cases of discrimination, harassment, or bullying. The report must be made through the Discipline Data Collection Report or through other means required by the State Board.

I. Evaluation

The Superintendent or designee shall evaluate the effectiveness of efforts to correct or prevent discrimination, harassment, and bullying and shall share these evaluations periodically with the Board.

NOTES

SUSPENSION APPEAL HEARING PROCESS

Note: The identity of students other than the student appealing the suspension shall be protected to the extent required by the Family Education Rights and Privacy Act.

Present in the appeal hearing:

1. Student Due Process Representative
2. Hearing Panel
3. School Administrator(s)
4. Parent/Guardian(s) and Student
5. Student's Advocate (*when applicable*)
6. Attorneys for all parties (*when applicable*)

Note: The office of Student Due Process must be notified three (3) days in advance of an appeal hearing if the student is to be represented by an advocate or legal counsel.

The Student Due Process representative will meet separately with all parties prior to the hearing. The panel will convene separately in the hearing room, and all other parties, except witnesses, will enter the hearing room together just prior to beginning the hearing.

The appeal hearing process will follow this outline:

1. Introductions
2. Focus of Hearing
3. Hearing Procedures & Instructions to the Panel
4. Reading of Incident Description & Rules of Conduct
5. Student Response to Charges
6. Presentation for the School (*to include any witnesses*)
7. Questions from the Student Representative and Panel
8. Presentation for the Student (*to include any witnesses*)
9. Questions from the School Representative and Panel
10. Student Representative Closing Statement
11. School Representative Closing Statement
12. Adjourn for Hearing Panel Deliberation

BOARD HEARING PROCESS

Note: The identity of students other than the student appealing the suspension shall be protected to the extent required by the Family Education Rights and Privacy Act.

Present in the Board hearing:

1. Board Panel
2. Student Due Process Representative
3. Area Assistant Superintendent
4. School Administrator(s)
5. Student and Parent/Guardian(s)
6. Student's Advocate (*when applicable*)
7. Attorneys for all parties (*when applicable*)
8. Special Education Representative (*when applicable*)

Note: The office of Student Due Process must be notified three (3) days in advance of a Board hearing if the student is to be represented by an advocate or legal counsel.

The Student Due Process representative will meet separately with all parties prior to the hearing. The panel will convene separately in the hearing room, and all other parties, except witnesses, will enter the hearing room together just prior to beginning the hearing.

The process will follow this outline:

1. Introductions
2. Focus of Hearing
3. Hearing Procedures
4. Identification of Student Charge(s)
5. Reading of Policy
6. Presentation of Information
 - a. Student and/or Parent/Guardian (15 minutes to present basis for appeal)
 - b. Questions from Board
 - c. School (15 minutes to present case)
 - d. Questions from Board
7. Final questions from Board
8. Adjourn for Board Deliberation

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