



LEGAL SERVICES MEMORANDUM

Date: September 23, 2010
To: School Board Members
From: Matthew W. Bell, Legal Counsel *MWB*
cc: Daniel Nerad, Pam Nash, Nancy Yoder, Jennifer Allen, Susan Abplanalp
Subject: **Changes to Student Conduct and Discipline Plan**

APPENDIX MMM-3-22
September 27, 2010

Attached please find a proposed DRAFT of the Student Conduct and Discipline Plan. The revisions noted in the DRAFT are for the following purposes:

- 1) Correct a reference to Madison City Ordinance 39.03(2)(t)
- 2) Add a reference to the Phoenix Program as an alternative to proceeding to an expulsion hearing

Specifically, on page 1 please note that the reference to former Madison City Ordinance 3.23(2)(t) has been amended to Madison City Ordinance 39.03(2)(t). This was necessitated by alterations in the numbering associated with Madison City Ordinances.

On pages 4-5 please note that language was added in order to allow the Superintendent or appropriate instructional Assistant Superintendent to consider and implement an "abeyance option" as an approved method of modifying a recommendation for possible expulsion.

Also on page 5 please note that language has been added detailing specific violations of the code of conduct which, if committed, would preclude a pupil from being eligible to participate in the abeyance option. The added language also indicates that a student's participation in an abeyance option is not a guaranteed right and is within the discretion of the Superintendent or instructional Assistant Superintendent. Finally, the added language also provides a brief explanation of the "abeyance program."

With the exceptions of the proposed amendments noted above, the current DRAFT maintains intact the entirety of the current Student Conduct and Discipline Plan, including the suspension codes, description of prohibited behaviors and procedures related to implementing the Code.

MADISON METROPOLITAN SCHOOL DISTRICT
II. STUDENT CONDUCT AND DISCIPLINE PLAN

THE RIGHTS AND RESPONSIBILITIES OF STUDENTS AND PARENTS

Students and parents have rights that schools must observe, but they must also understand that personal responsibilities accompany individual rights. Furthermore, the rights of students must be viewed in relationship to the safety and welfare of the majority of students in the schools. Above all, schools must maintain adequate discipline to conduct a quality educational program.

STUDENT AND PARENT RIGHTS

1. The Right to an Education: Every citizen in the State of Wisconsin has a right to a free, public education, regardless of race, creed, color, sex, or national origin.
2. The Right to Due Process of Law: A student has the right to due process whenever disciplinary actions that deny the right to an education are imposed. These disciplinary actions are suspension or expulsion. Due process in a suspension case includes notice to the student of the reason for the suspension and the opportunity for the student to respond. Written notice to the parent or guardian of the suspension and the reason therefor will follow. Procedural due process, in cases of expulsion, includes a notice of charges, a hearing, and an opportunity to challenge or otherwise explain conduct.
3. The Right to Free Speech and Expression: All citizens are guaranteed self-expression by the First and Fourteenth Amendments of the United States Constitution.
4. The Right to Privacy - Property of Students: Students shall have privacy of personal possessions unless appropriate school personnel have reasonable cause to believe a student possesses any object or material which is or could be disruptive or are prohibited by law or school policy. Guarantees of freedom from search and seizure of property are not unlimited, but must be balanced by the responsibility of the school to protect the safety and welfare of students. Lockers are the property of the school system on temporary loan and the principal may inspect student lockers per Board of Education policy 4132.
5. The Right Not to be Discriminated Against: Students shall have the right not to be discriminated against on the basis of the students' sex, race, religion, origin, creed, pregnancy, marital or parental status, sexual orientation, gender identity, gender expression or physical, mental, or learning disability. If a student or his/her parents feel that the student has been treated in a discriminatory manner, the student or his/her parents can contact the District's Affirmative Action Officer to file a complaint or take other action.

NOTE: The City of Madison defines gender expression in Madison City Ordinance Sec. 39.03 3-23(2)(t) as follows:
Gender Identity is the actual or perceived condition, status or acts of 1) identifying emotionally or psychologically with the sex other than one's biological or legal sex at birth, whether or not there has been a physical change of the organs of sex; 2) presenting and/or holding oneself out to the public as a member of the biological sex that was not one's biological or legal sex at birth;

This means that gender identity refers to an individual's fundamental sense of themselves as being male or female, masculine or feminine. Gender identity does not always correspond to biological sex.

The City of Madison's Ordinance Sec. 39.03 3-23(2)(t) continues its definition of gender identity with an explanation of what is referred to as gender expression.

3) lawfully displaying physical characteristics and/or behavioral characteristics and/or expressions which are widely perceived as being more appropriate to the biological or legal sex that was not one's biological or legal sex at birth, as when a male is perceived as feminine or a female is perceived as masculine; and/or 4) being physically and/or behaviorally androgynous.

This means that gender expression refers to the things like clothing and behavior that manifest a person's fundamental sense of themselves as masculine or feminine, and male or female. This can include but not be limited to dress, posture, hairstyle, jewelry, and vocal inflection.]

It should be noted that, depending upon the nature of the offense, the police may be involved. An example of certain offenses for which the police may be involved include possession of a firearm, physical attacks, sexual assaults, bomb threats, arson, etc.

STUDENT RESPONSIBILITIES

Students also have certain responsibilities, both as citizens and as members of the school community. These responsibilities are present, for example, when the student is on school property, at a school-sponsored activity, under supervision by a school authority, or traveling to or from school via transportation provided by the school system. In order to guarantee these rights, each person must assume responsibility for his or her own behavior and refrain from infringing upon the rights of others.

1. Active Participation: Students have the responsibility of actively engaging in the serious business of learning. For example, they must attend school regularly and be on time. They must remain in class until excused, pay attention to instructions, complete assignments to the best of their ability, and exert every effort to achieve mastery of the lessons.
2. Obedience to Laws and Rules: The laws of society and school rules have been created to guarantee every person's rights. Students must assume personal responsibility for obedience to these laws and rules.
3. Responsible Exercise of Free Speech and Expression: While students have rights according to the First Amendment to express themselves they should express opinions in a manner which is not offensive, illegal, obscene, or inconsistent with the rules or the educational goals of the school. The rights of others should be respected, and there can be no disruption to the educational process.
4. Avoidance of Illegal or Dangerous Items: Students must not bring materials or objects to school or to school-sponsored or school-supervised activities that are or could be disruptive or that are prohibited by law or school policy.

PARENT RESPONSIBILITIES

1. Support school officials in their efforts to develop and maintain well-disciplined schools.
2. Teach the child socially acceptable standards of behavior.
3. Teach the child to have respect for law, authority, and the rights and property of others.
4. Teach the child to be accountable for his/her own actions and help the child to grow and develop into a self-controlled, self-disciplined citizen.
5. Share the responsibility for student conduct with the school.
6. Maintain an active interest in the student's school work and activities.
7. Advocate for quality education for the child.
8. Require prompt and regular attendance at school.

*BOE Revised: 5/19/2008*DATE

STUDENT CONDUCT AND DISCIPLINE PLAN

Schools must be places where effective learning can occur. Schools must maintain standards of conduct and discipline because students and school personnel have a right to a safe and orderly learning environment. Therefore, students are prohibited from engaging in behaviors which are illegal, life or health threatening, or which impede the orderly operation of the classroom or school. Prompt and effective disciplinary action must be taken to correct these behaviors.

Fairness requires that all students be treated in a consistent, objective, and non-discriminatory manner. However, the student's grade, maturity, performance in school, and his/her contrition, as well as the gravity of the offense, prior infractions, deterrence, protection of the school community, effectiveness of prior disciplinary intervention strategies, etc., may be factors that are considered that could warrant the use of a certain option including the penalty for a particular offense. Depending upon the above referenced factors and other factors, the minimum penalties for certain offenses set forth in this plan may be exceeded.

Behavioral interventions which may be used by local schools to correct misbehavior include, but are not limited to: verbal reprimand, special assignments (constructive), notifying parent by phone or letter of student's misbehavior, student mediation, behavioral contracts, "fix-it" plans and other restorative measures, detention, conference with student and/or parents, loss of class or school privileges, restitution and merits/demerits.

The following are examples of disciplinary options which may be used when other interventions have been unsuccessful:

1. **Time Out - Including Detention:** (Temporary removal of the student from the classroom to another supervised setting within the school.)
2. **In-School Suspension:** (Reassignment of the student from the classroom to in-house suspension.)
3. **Program Adjustment:** a) Reduction/revision of schedule; b) Assignment of a student to another school or program; c) Homebound instruction; etc.)
4. **Out-of-School Suspension:** (Removal of a student from school for a period of up to five days, except that if an expulsion hearing has been scheduled, the suspension may be extended up to an additional 10 days. While the student is suspended from school, homework assignments may be completed for credit.)
5. **Expulsion:** (Removal of a student from school for a period of one day up to a permanent expulsion. Generally, an expulsion results in loss of educational services for the period of expulsion.)

The Student Conduct and Discipline Plan defines four levels of behaviors with potential consequences to the student:

- I. Level One Misconduct. (Disciplinary options 1, 2, 3 and potentially 4 listed above).
- II. Level Two Misconduct. (Disciplinary options 1, 2, 3 and potentially 4 listed above).
- III. Level Three Misconduct. (Primarily disciplinary option 4, and potentially option 5 listed above, with variations among elementary, middle and high school levels and with other options and interventions secondary).
- IV. Level Four Misconduct. (Primarily disciplinary options 4 and 5, listed above, with variations among elementary, middle and high school levels and with other options and interventions secondary).

ALTERNATIVES TO SUSPENSION: Particularly for violations of rules set forth in Level One or Level Two, alternatives to suspension, including various classroom-level and in-school interventions, may be used when appropriate.

STATUTORY JURISDICTION FOR SUSPENSION:

A pupil may be suspended from school for any of the following reasons: (1) Noncompliance with established school rules, including School Board rules; (2) Knowingly conveying any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives; (3) Conduct by the pupil while at school or while under the supervision of a school authority that endangers the property, health or safety of others—including the making of a threat to the health or safety of a person or the making a threat to damage property; or (4) Conduct while not at school or while not under the supervision of a school authority that endangers the property, health or safety of others at school or under the supervision of a school authority or endangers the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled—including the making of a threat to the health or safety of a person or the making a threat to damage property.

STATUTORY JURISDICTION FOR EXPULSION:

1. The SCHOOL BOARD may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey the rules, or finds that a pupil knowingly conveyed or caused to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives, or finds that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others, or finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school, or under the supervision of a school authority or endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled, and is satisfied that the interest of the school demands the pupil's expulsion.
2. In addition to the grounds set forth in paragraph 1 above, and for any other reason provided by law, the school board may expel from school a pupil who is at least 16 years old if the school board finds that the pupil repeatedly engaged in conduct while at school or while under the supervision of a school authority that disrupted the ability of school authorities to maintain order or an educational atmosphere at school or at an activity supervised by a school authority and that such conduct does not constitute grounds for expulsion under paragraph 1, and is satisfied that the interest of the school demands the pupil's expulsion.

APPLICATION OF THE PLAN:

This Plan applies to all schools, alternative educational programs and alternative school sites in the District and shall be published and made available to parents and students. Consequences for conduct may be imposed in connection with behaviors that occur within the scope of the District's disciplinary jurisdiction, including but not limited to behavior that occurs in connection with any school-sponsored activity or while using school-provided transportation. Individual schools may develop and publish rules governing conduct that is not otherwise covered by the Student Conduct and Discipline Plan, and such additional school-based rules shall be considered "Level One" conduct rules.

Nothing in the Student Conduct and Discipline Plan shall be construed to require a disciplinary removal pending expulsion, an expulsion recommendation and/or an expulsion hearing when a specific incident involves a student with a disability and where it is determined through a formal administrative process that the interests of the school do not demand expulsion; or through a formal IDEA manifestation determination that (1) the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or (2) the conduct was a direct result of the school's failure to implement the IEP. In such circumstances, consistent with the IDEA and state law, there shall be appropriate and timely follow-up to review the student's IEP and/or Behavior Intervention Plan in response to the incident. The actual days of suspension for a student with a disability, in all cases, shall be consistent with the IDEA requirements regarding "removals" and changes in educational placement.

When a student is referred for possible expulsion at the school level, the Superintendent or an instructional Assistant Superintendent may, upon review of the totality of the circumstances involved in the referral and consideration of the interests of the school, withdraw, modify or implement the recommendation for possible expulsion. Under this paragraph, conditional abeyance of a recommendation for expulsion is an approved method of modifying such proposed disciplinary consequences (except in those limited cases where the Plan expressly provides that abeyance shall not be available). The Superintendents' authority to withdraw a recommendation for expulsion (including withdrawing or modifying any associated period of suspension) includes withdrawals for procedural concerns, due to concerns about adequate proof of the conduct or other grounds for expulsion, or due to the conclusion that the interests of the school do not demand expulsion and/or other restrictive consequence. In cases where an expulsion recommendation proceeds to a hearing, the Superintendent or designee shall also consider the totality of the circumstances involved in the conduct when making a specific recommendation as to the length of the proposed expulsion and the proposed timing and conditions of any opportunity for early readmission that may be recommended.

A student who is under an expulsion Order but who has been readmitted to school under early reinstatement conditions specified in the Order may have his/her early reinstatement revoked by the Superintendent of Schools, or the appropriate instructional Assistant Superintendent acting as designee, for violating any early reinstatement condition using. The Superintendent or

designee shall use procedures consistent with the requirements found in Wis. Stat. § 120.13(1)(h) when (1) considering revocation of early reinstatement; or (2) considering declaring a student in violation of terms of a agreement to hold disciplinary action in abeyance and moving forward with the possible disciplinary action.

When a student is referred for possible expulsion at the school level, the Superintendent or an instructional Assistant Superintendent may, upon review of the totality of the circumstances involved in the referral and consideration of the interests of the school, withdraw, modify or implement the recommendation for possible expulsion. The superintendents' authority to withdraw a recommendation for expulsion (including any associated period of suspension) includes withdrawals for procedural concerns, due to concerns about adequate proof of grounds for expulsion, or due to the conclusion that the interests of the school do not demand expulsion. In cases where an expulsion recommendation proceeds to a hearing, the Superintendent or designee shall also consider the totality of the circumstances involved in the conduct when making a specific recommendation as to the length of the proposed expulsion and the proposed timing and conditions of any opportunity for early readmission that may be recommended.

SURRENDER FOR SAFETY:

A pupil who possesses a knife or other cutting instrument, weapon or object that may be used as a weapon, or other inappropriate item/material, and surrenders it to a school staff member, before being discovered in possession of said object may or may not be subject to discipline. An investigation will occur into the circumstances involving the possession and surrender of the knife or other cutting instrument, weapon or object that may be used as a weapon, or other inappropriate item/material, and a decision will be made whether to discipline the pupil, or not, after a consultation between the Principal and the appropriate Assistant Superintendent.

ABEYANCE PROGRAM FOR POSSIBLE EXPULSIONS:

An abeyance program is an educational program that is an alternative to proceeding to an expulsion hearing. Students who are eligible to participate in an abeyance program will have their expulsion case placed on a conditional hold (abeyance) once they begin their participation in the abeyance program. In the event that a student does not remain in compliance with all of his/her conditions associated with his/her participation in an abeyance program, the Superintendent or instructional Assistant Superintendent may terminate the student's participation in the abeyance program. If a student's privilege of participating in an abeyance program is terminated, the expulsion hearing that was "on hold" will proceed and the student may be expelled.

To the extent that the District offers and implements an abeyance program option for students that allows for the conditional abeyance of possible expulsion, the decision to offer expulsion abeyance to a student in a specific case prior to an expulsion hearing shall be at the discretion of the Superintendent of Schools or the appropriate instructional Assistant Superintendent acting as the designee. No student shall have a right to insist that the District offer or agree to abeyance as an alternative to possible expulsion. The decision to offer abeyance in any specific instance shall include an assessment of the specific nature of the conduct giving rise to the expulsion recommendation, as well as an assessment of any ongoing threat to health, safety, property and/or the District's ability to provide a functional educational environment. However, conditional abeyance of possible expulsion shall not be offered by the Superintendent (or his/her designee) in any case involving the following offenses:

- (1) serious sexual assault (suspension code 407);
- (2) the possession of a firearm (suspension code 401d);
- (3) possession of any weapon combined with any threat to use, attempt to use or actual use to cause harm (suspension code 401c; or
- (4) the possession of a bomb or other significant explosive device combined with the actual or attempted detonation of the bomb/device (suspension code 405).

DEFINITIONS: As used in the Student Conduct and Discipline Plan, the following terms or phrases shall be defined as follows:

1. Under all Rules specified within “Level Four” that involve the “**intentional use of force**” against a staff member or other non-staff adult (i.e., Rules 403, 431, and 432):
 - a. These Rules cover the “**intentional use of force**” in situations, for example, where a student (1) deliberately initiates a use of force (using one’s body or any object) directly against a staff member or non-staff member adult for any reason; (2) in a situation involving physical contact, intentionally provides active physical resistance to the direction of the adult to the point where the adult is injured or a reasonable person would conclude there was a direct and substantial risk of bodily injury to the adult; or (3) uses force against a staff member or other non-staff adult by an act done with the intent to use force against another person, in circumstances where it could have been reasonably anticipated that the intentional use of force may affect a staff member or other non-staff member adult. For example, striking a staff member while intentionally attempting to strike another student who is being restrained by that staff member constitutes a violation of these Rules.
 - b. These Rules shall not be applied by an Asst. Principal, Principal, Asst. Superintendent, or Superintendent who determines after an investigation that a student’s use of force was inappropriately provoked by actions of the staff member or non-staff member adult that were unreasonable under the circumstances and that would be reasonably likely to incite a response that includes the type of intentional use of force that is at issue.
2. The phrase “**party to the prohibited behavior(s)**” means a student who willfully (i.e., not under compelling duress or coercion) participates in or otherwise actively plans or facilitates any of the behaviors prohibited by the Student Conduct and Discipline Plan. A student who is a “party to prohibited behavior(s)” may be charged with any of the prohibited behaviors that occur in connection with the student’s participation, planning or facilitation. For example, if a student acts as a “lookout” for two other students who violate Rule 401.c and who are recommended for expulsion, the “lookout” may also be charged with a violation of Rule 401.c and recommended for expulsion as a party to the prohibited behaviors, even if the “lookout” did not specifically know that others involved in the conduct were going to threaten a separate student with a weapon.
3. The phrase “**possession of a weapon**” for purposes of applying Rule 401.a and Rule 411, shall not be construed to include the possession of a knife, cutting instrument, or other similar object that has been authorized by and/or provided to students by the school for a legitimate educational purpose (e.g., cutting instruments used for science labs or art projects) provided that the student uses the object solely for its limited and authorized purpose(s).
4. The term “**property damage**” shall mean the destruction, defacement or damaging of school property or equipment; staff property or equipment; student property or equipment; or the property or equipment of others who are on the premises of the school or who have left their property or equipment on school premises. The term “property damage” shall not be applied to accidental property damage so long as the property damage was not a reasonably foreseeable consequence of a student’s reckless conduct or intentional misconduct. For purposes of the Rules prohibiting property damage, the value of property that is damaged may be measured at its repair or replacement costs.
5. The phrase “**protected status**” means sex, race, national origin, ancestry, creed/religion, pregnancy, marital or parental status, sexual orientation, gender identity, gender expression, or physical, mental, emotional or learning disability and also includes any other protected status expressly defined in any state, federal or local law, regulation or ordinance as may be applicable under the specific circumstances. A “protected status” may apply to other students, staff, school visitors or other persons.
6. Whenever a student is recommended for expulsion, in addition to imposing a suspension, solely for a violation of **Rule 401.a.i**, the decision to recommend expulsion shall be based on an assessment of at least the following factors:
 - a. the nature and type of the weapon;
 - b. the circumstances under which the weapon was discovered;
 - c. the extent to which there is evidence that the possession was (or was not) inadvertent;
 - d. the extent to which there is evidence that the student held a sincere and good-faith belief that the object was possessed for some legitimate purpose, even where that belief is incorrect; and
 - e. the degree of the threat to the health and safety of persons within the MMSD’s jurisdiction under all of the facts and circumstances.

In the event that a Principal recommends expulsion solely for a violation of Rule 401.a.i, the Principal’s report shall include an assessment of each of the factors above, and the Assistant Superintendent for Middle Schools and High

Schools (or, in his/her absence, another central-office administrator designated by the Superintendent), shall review the report and approve the recommendation.

7. The term “**school**” when used as a noun to denote a place or property, shall be inclusive of all MMSD properties and other places or properties legitimately within the MMSD’s disciplinary jurisdiction.
8. The term “**staff**”, whenever used in the Student Conduct and Discipline Plan, shall be interpreted to encompass, among others, all MMSD employees and the members of the School Board.
9. The term “**weapon**,” means a device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury. (e.g. pistols, rifles, shotguns, regardless of whether exploding powder or air is used to propel its ammunition; bow and arrows; BB guns; paint-ball guns; pellet guns; brass knuckles; knife (“**knife**” refers to knives of all types, without regard to blade length); and cutting instrument (“**cutting instrument**” refers to all objects that have as their primary intended purpose being an object utilized to cut something (e.g. box cutter, carpet cutter, razor blades, straight razor, is an illustrative but not exhaustive list))).

NOTE: Where sequential numbers are skipped in the list of “MMSD Suspension Codes” (the Level I through Level IV conduct rules specified below), the gaps reflect changes to rules that have occurred over time. Rules are not always renumbered in order to help with comparison of year-to-year data.

BOE Revised: 6/08/2009 DATE

MMSD SUSPENSION CODES

I. LEVEL ONE MISCONDUCT: A student who engages in any of the behaviors listed below may be subject to discipline, including possible suspension for up to one day.

Behaviors which can be addressed by school regulations include, but are not limited to, the following:

105. Littering-Throwing of paper, trash, or other materials on the floor inside school buildings or grounds.
106. Profanity-Swearing, cursing, or making obscene gestures, excluding profanity directed toward a staff member or other adult.
107. Dress Code - Dressing or grooming in a manner which disrupts or may disrupt teaching or learning or which poses a risk to security, health or safety.

Examples include, but are not limited to, the following: Wearing items such as heavy chains, items with studs, or other items with similar characteristics. Unless otherwise approved by the principal, hats, other articles worn on the head, and coats must be kept in lockers during school hours.
108. Possessing any tobacco product, or igniter (e.g., cigarette lighter).
109. Tardiness-Arriving at school or class after the designated time, or failure to attend a scheduled class or activity, while at school, without permission (to include not being in the location of the scheduled class or activity, without permission).
110. Verbal insults or verbal put-downs of others.
112. Disruption-Acting in a disorderly manner that disrupts the school or any school-sponsored or school-supervised activity.
113. Intentionally throwing or otherwise releasing any non-authorized object (including a snowball) that is reasonably capable of causing a disturbance, injury, or property damage, but without intent to cause and without actually causing a disturbance, injury or property damage.
114. Participation in any gang activities, or activities of any anti-social group of two or more persons that disrupt, or that reasonably may disrupt, the school environment (e.g., using symbols or signals, flashing signs, wearing gang colors or apparel, etc.).
116. Possession of any legal but non-essential (1) cellular phone, personal digital assistant, personal music/video/gaming device, camera, or other personal electronic device with communications functions or the capability to capture/record voice or image information, including any related equipment for such devices, that is not stored, powered off, and unused as provided by Board Policy 4403; or (2) item or object that a student brings to school, that is not directly covered by any more-specific code section, and that either causes an actual disruption within the school, could reasonably be expected to cause a disruption, or has been prohibited by any school rule, order or other directive. The term "non-essential" shall be interpreted to exclude any item, device, object, or material that the school determines is needed to enable the student to benefit from his/her education.

BOE Revised: 6/08/2009

II. LEVEL TWO MISCONDUCT: A student who engages in any of the behaviors listed below, or who the school has brought forward as a party to the prohibited behavior(s), may be suspended from school for up to three days.

201. Use of tobacco.
202. Non-physical acts of harassment/bullying/extortion/coercion by any individual – Examples include (1) limiting another person’s freedom of movement; (2) intimidating another person; (3) verbally abusing another person; (4) obtaining or attempting to obtain money or property from an unwilling person; (5) forcing or attempting to force an unwilling individual to act; or (6) non-physical acts of harassment based on a person’s protected status (as defined in the definitions section) that are not determined to constitute a serious threat.
203. Trespassing-Being in a school building or on school grounds without permission or refusing to comply with a request to leave school premises.
204. Insubordination-Knowingly refusing to comply with school rules or with instructions of school authorities, including lying to a staff member or other school authority.
205. Profanity/verbal abuse/obscene gestures - profane or obscene language, written or verbal, or obscene gestures, directed toward school personnel or any other adult member of the school community.
206. Verbal, written and non-verbal threats to a student, staff member, or other individual who is present or acting within the school’s jurisdiction where there is no imminent danger or reasonable apprehension of bodily harm.
209. Hitting, slapping, pushing, tripping, shoving, kicking, spitting, “play fighting” or any other inappropriate physical act of aggression by one student directed at another student for any reason (not involving group or gang activity) and that does not rise to the level of a fight, physical attack or serious threat.
210. Possession of a toy weapon other than a toy or imitation gun/firearm, where the toy weapon is not used to threaten, intimidate, harm or cause a disruption.
213. Theft - Stealing the money or property of another that is valued at no more than \$200.
214. Pornography – Possessing pornographic material or observing pornographic material.
215. Engaging in or participating in any way in a non-violent and non-physical act of harassment, bullying, intimidation, coercion, or extortion, as part of gang activity or as part of a group of two or more persons.
216. Indecent Exposure (i.e., publicly displaying one’s private parts).
217. Inappropriate use of the School District’s Computerized Communication System (System) includes, but is not limited to: sending or attempting to send a message that threatens to harm any person or any person’s property; sending or attempting to send an annoying, abusive, frightening, threatening, defamatory, intimidating, offensive, harassing, etc., message or a discriminatory message based upon a protected status (e.g., race, gender, sexual orientation); sending or attempting to send a message that contains obscene, lewd, vulgar, profane language, etc.; sending a message anonymously or using someone else’s name to send a message; using the System to plagiarize by downloading information and submitting, claiming or using it as one’s own work; using the System to engage in unauthorized non-school related correspondence or activities; accessing, reviewing, uploading, downloading, storing, printing, posting, distributing, or attempting to distribute sexually explicit, lewd, obscene material, etc.; using the System for political or commercial purposes; sending a message in which the student falsely indicates that he/she is representing an individual school or the School District. This section covers the inappropriate use of non-District computer resources where the inappropriate use invokes the disciplinary jurisdiction of the District.
218. Cheating - Using, submitting, obtaining or attempting to obtain data, questions, or answers dishonestly, by deceit, or by means other than those authorized by the teacher. Submitting the work of others as your own and plagiarism are forms of cheating.
219. Forgery-Writing the name of another person to be represented as a writing or original signature of that other person or

altering without authority any written record or document (such as times, dates, grades, passes or permits).

- 220. Gambling-Playing any game of chance or skill for money or items of value.
- 221. Taunting, baiting, inciting and/or encouraging a fight, a disruption, or other violation of school rules.
- 222. Property Damage: Property damage where the total value of the property affected is no more than \$200.
- 223. Throwing or otherwise intentionally releasing any non-authorized object as defined in Rule 113, and the object makes or causes physical contact with any person but does not cause any injury or property damage.
- 224. Making, transmitting or distributing any recording that has not been approved by or authorized by the school (excluding any secret or hidden recording) of the voice or image of any other student, staff member or other person in any non-emergency situation and without the consent of the person(s) so recorded.

BOE Revised: 6/08/2009 DATE

III. LEVEL THREE MISCONDUCT: A student who engages in any of the behaviors listed below, or who the school has brought forward as a party to the prohibited behavior(s), may be suspended from school for up to five days and a school-level administrator or designee may recommend that the student be expelled. If a recommendation for expulsion occurs at the school level, the pupil shall be suspended for five days; and if notice of expulsion proceedings has been issued, the pupil may be suspended for longer than five days:

- 301. Volatile Acts – Disorderly, violent, or threatening conduct of a serious nature that disrupts school, a school-sponsored activity, or a school-supervised activity held off school premises.
- 303. Non-Consensual Sexual Contact / Sexual Assault – Intentionally and with the specific purpose of (1) touching, either directly or through clothing, the intimate parts of another person by the use of any body part or object; (2) forcing a person to touch the intimate parts of another person, either directly or through clothing; or (3) initiating other non-consensual physical contact that is done for the purpose of sexually degrading the other person, or sexually arousing or satisfying the pupil initiating the physical contact.
- 304. Arson – Setting fire, or attempting to set fire.
- 305. False Alarms – Activating the school’s fire and/or other alarm systems, reporting a fire when no fire exists, or making a false alarm call to 911.
- 306. Possession of fireworks, a smoke bomb, or any inherently dangerous substance/object, or any illegal device, illegal product or illegal material that is not specifically covered elsewhere within the Student Conduct and Discipline Plan.
- 307. Physical attack against a student or other person(s), other than a staff member or non-staff member adult who is legitimately exercising supervisory authority at school or during any school activity.
- 308. Engaging in or participating in any way in any physical or violent act of harassment, bullying, intimidation, coercion, or extortion, as part of gang activity or as part of a group of two or more persons.
- 309. Fighting.
- 310. Serious threats to a student, staff member, or other individual who is present or acting within the school’s jurisdiction. Serious threats include intentionally engaging in conduct that places another person in reasonable apprehension of bodily harm, and such threats may involve non-verbal aggression/intimidation or verbal or written statements and may or may not involve physical contact or an attempt to cause bodily harm. Very serious acts of non-physical bullying/harassment, due to their nature and/or repetition, may be determined to constitute a “serious threat.”
- 311. Repeatedly engaging in conduct by a student at least 16 years old who disrupts the ability of school administrators to maintain order or an educational atmosphere (as provided under state law).

312. Repeated refusal or neglect to obey school rules (i.e., more than one violation of any single rule or combination of rules set forth in categories I, II, III, or IV of this Plan.).
313. “Major Property Damage” – Property damage where the total value of the property affected is more than \$200;
- or
- property damage, regardless of value, where either (1) the property that is damaged is selected in whole or in part based on the actor’s belief or perception regarding the race, religion, color, disability, sexual orientation, national origin, or ancestry of the owner of the property; or (2) the manner in which the property is damaged is selected in whole or in part with intent to demean, intimidate, or communicate animosity toward any person or group of persons based upon the actor’s belief or perception regarding the person(s) race, religion, color, disability, sexual orientation, national origin, or ancestry.
314. Possession of an imitation controlled substance.
315. Possession of any toy or imitation gun/firearm that is not otherwise defined as a “weapon” within the Student Conduct and Discipline Plan, or possession of any toy weapon that is used to threaten, intimidate, harm or cause a disruption.
316. Any other inappropriate or illegal act which directly or indirectly jeopardizes the health, safety or property of a school, the school district, school personnel, other students, one’s self, or other individuals who are present or acting within the school’s jurisdiction.
317. Possession of alcohol or being under the influence of any alcoholic beverage.
318. Possession of drugs (defined to include all illegal drugs, controlled substances, mind-altering substances/chemicals, narcotics and over-the-counter and prescription medications), other than alcohol, unless (1) legally possessed or possessed while under the supervision of a licensed health care provider who prescribed the drug, and (2) possessed and used in conformance with school district policies regarding the administration of medication at school; possession of drug paraphernalia; or being under the influence of any drug.
319. “Major Theft” – Stealing the money or property of another that is valued at more than \$200.
320. Making a bomb threat, or threatening to set off an explosive device when the pupil does not actually have a bomb or explosive device, and where there was no significant safety risk or loss of instructional time.
321. Consensual Sexual Activity – Participation in consensual sexual conduct, or other inappropriate consensual sexual contact.
322. Using an object to threaten to cause harm to another, intending to use an object to cause harm to another, attempting to use an object in an effort to cause harm to another, or using an object to cause harm to another. This includes the intentional or reckless throwing/releasing of any object that is reasonably capable of causing injury either at or in the immediate vicinity of another person where there is also evidence that the behavior took place in the course of otherwise disorderly, defiant, or threatening behavior.
323. Serious misuse of the District’s Computerized Communication System (System) includes, but is not limited to: disrupting or attempting to disrupt the operation of the System; interfering or attempting to interfere with the ability of other users to effectively use the System; damaging, destroying, modifying or attempting to damage, destroy or modify computer data or programs, including the hardware and software components of a computer or computer system, etc.; accessing and/or posting or attempting to access and/or post restricted confidential information such as a person’s social security number, student records, passwords, data, messages, etc.; disclosing or attempting to disclose restricted access codes or other restricted access information to unauthorized persons; placing a virus or keylogging software application on the System; hacking or attempting to hack, into the System to, for example, change a student’s grade, an employee’s salary, etc.; using or attempting to use the System to engage in any illegal conduct. This section also covers the serious misuse of non-District computer resources where the use invokes the disciplinary jurisdiction of the District.
324. Making, transmitting or distributing any secret or hidden recording of the voice or image of any other student, staff member or other person in any non-emergency situation.
325. Possessing, making, transmitting or disclosing any image of any student, minor, staff member, parent, school volunteer

or other adult with supervisory authority in a nude or partially nude state, regardless of consent.

326. Removing or adjusting, or attempting to remove or adjust, the clothing of another person (including, for example, pulling down another students pants) in a manner that causes, or was an attempt to cause, the exposure of the other person's undergarments and/or intimate parts.

BOE Revised: 6/08/2009

IV. LEVEL FOUR MISCONDUCT:

A. **MIDDLE AND HIGH SCHOOLS:** Except as noted, a school-level administrator or designee shall suspend a student who engages in any of the behaviors listed below, or who the school has brought forward as a party to the prohibited behavior(s), for an initial period of five days, and with the exception of 401.a.i., shall recommend the student for possible expulsion. If notice of expulsion proceedings has been issued, the pupil may be suspended for longer than five days.

401. Weapon Violations

- a. i. A middle or high school student who is determined to be in possession of a weapon, except a firearm, pellet gun, or BB gun, where there was no intent to cause harm to another with the weapon, and who has not threatened to cause harm to another with the weapon, and who has not attempted to or caused harm to another with the weapon, and whose weapon, that he/she possessed, has not been transferred or made available to another person per Section 401.e, shall be suspended for five days and may be recommended for expulsion.
- ii. 2nd or Subsequent Offenses: The pupil shall be recommended for expulsion.
- b. Possession of a BB gun or pellet gun; recommend for expulsion.
- c. Possession of a weapon, coupled with a student's intent to use, threat to use, attempt to use, or actual use of the weapon to cause harm to another, recommend for expulsion.
- d. Possession or use of a firearm; recommend for expulsion.
- e. Possession of a weapon by a student who knowingly transfers or intentionally provides access to the weapon to another person (other than giving the weapon to an adult for safety); recommend for expulsion.

402. Possession of alcohol or any drug (as defined in Rule 318) coupled with (1) actual distribution of the alcohol/drug, or (2) evidence of intent to distribute the alcohol/drug to another person or to participate in any portion of a transaction. An example of "distribution" under this rule includes a student who brings the alcohol/drug into the school environment and then transfers possession of the contraband (temporarily or permanently) to one or more other persons.

403. Intentional use of force directly against or affecting a staff member of MMSD or any non-staff member adult who is legitimately exercising authority at school or during any school activity.

405. Possession of munitions, tear gas, pepper gas, a bomb or other explosive device not covered elsewhere in the Suspension Codes; attempting to, or actually detonating any explosive device (including fireworks or smoke bombs); making a bomb threat, or threatening to set off any explosive device, while in actual possession of a bomb, or any explosive device;; or making a bomb threat or similar threat regarding an explosive device which causes significant safety risk or loss of instructional time even if student is not in possession of such device.

406. Participating in a transaction, or any portion of a transaction, involving alcohol or drugs (as defined in Rule 318), whether as the seller, purchaser, or intermediary facilitating the transaction.

407. Serious sexual assault, e.g., by use of a weapon, force, threat, or coercion.

BOE Revised: 6/08/2009

B. **ELEMENTARY SCHOOLS:** Elementary school students who violate this Section are subject to the disciplinary action that has been set forth below (NOTE: suspensions issued pending expulsion may be extended after a notice of expulsion is issued):

1) **WEAPONS**

411. Student in possession of a knife, or other cutting instrument, or other weapon, except a firearm, and the student neither uses or threatens to use such knife, or other cutting instrument, or other weapon to cause harm to another:
 1. 1st Offense:
 - a) Preschool-2nd grade: Principal will take the item from the student, call parent/guardian and issue a written warning to the parent/guardian and a warning to the student;
 - b) 3rd-5th grade: Principal will take the item from the student, call parent/guardian and the student may be suspended for up to three days.
 2. 2nd Offense: Principal shall take the item from the student and the student shall be suspended for three days.
 3. 3rd & Subsequent Offenses: Principal shall take the item from the student and the student shall be suspended for at least three to five days, and may be recommended for expulsion. If there is a recommendation for expulsion, the student shall be suspended for at least five days.
412. Student possesses a knife, or other cutting instrument, or a weapon, other than a firearm, and intends to cause harm to another, threatens to cause harm to another, or attempts to cause harm to another with the knife, or other cutting instrument, or weapon, other than a firearm:
 1. 1st Offense:
 - a) Pre-school-2nd Grade: Principal will take the knife or other cutting instrument, weapon, other than a firearm, call the parent/guardian. The student shall be suspended for up to three days, after consultation with the Assistant Superintendent for Elementary Schools.
 - b) 3rd-5th Grade: Principal will take the knife or other cutting instrument, weapon, other than a firearm, and call the parent/guardian; and the student shall be suspended for three days.
 2. 2nd and Subsequent Offenses: Regardless of the grade level, the student shall be suspended for five days and may be recommended for expulsion.
413. Student at any elementary grade level possesses a firearm, the student shall be suspended for an initial period of five days and shall be recommended for expulsion, regardless of whether there was a threat to use, attempt to use, or actual use of the firearm.
414. Student possesses a knife or other cutting instrument, a weapon, other than a firearm, and actually causes harm to another with the knife, or other cutting instrument, weapon, other than a firearm:
 1. 1st Offense:
 - a) Pre-school-2nd Grade: Principal will take the item and consult with the Assistant Superintendent for Elementary Schools and the student shall be suspended for up to five days and may be recommended for expulsion. If there is a recommendation for expulsion, the student shall be suspended for an initial period of five days.
 - b) 3rd-5th Grade: Principal will take the item and consult with the Assistant Superintendent for Elementary Schools; and the student shall be suspended for five days and may be recommended for expulsion.
 2. 2nd & Subsequent Offenses:
 - a) Pre-school-2nd Grade: Principal will take the item and consult with the Assistant Superintendent for Elementary Schools; and the student shall be suspended for five days and may be recommended for expulsion.
 - b) 3rd-5th Grade: Principal will take the item and consult with the Assistant Superintendent for Elementary Schools; and the student shall be suspended for an initial period of five days and shall be recommended for expulsion.

2) **ALCOHOL AND DRUGS:**

420. Participating in a transaction, or any portion of a transaction, involving alcohol or drugs (as defined in Rule 318), whether as the seller, purchaser, or intermediary facilitating the transaction. OR possession of alcohol or drugs coupled with (1) actual distribution, or (2) evidence of intent to distribute or to participate in any portion of a transaction. The student shall be suspended for five days and may be recommended for expulsion.

3) **INTENTIONAL USE OF FORCE DIRECTLY AGAINST OR AFFECTING A STAFF MEMBER OF MMSD OR A NON-STAFF MEMBER ADULT WHO IS LEGITIMATELY EXERCISING AUTHORITY AT SCHOOL OR DURING ANY SCHOOL ACTIVITY:**

431. Preschool-2nd Grade: Discretion of the Principal shall be used for the first offense in which the Principal may have a parent conference, suspend the student, provide counseling to the student, etc. For 2nd and subsequent offenses, the Principal may suspend the student and may recommend expulsion. If there is a recommendation for expulsion, the student shall be suspended for an initial period of five days.

432. Third-5th Grade: Automatic suspension up to three (3) days. The Principal may recommend expulsion for 2nd and subsequent offenses. If there is a recommendation for expulsion, the student shall be suspended for an initial period of five days.

4) **BOMB THREAT/EXPLOSIVE DEVICE:**

441. Making a bomb threat, or threatening to set off an explosive device, when the pupil does not actually have a bomb or explosive device, and where there was no significant safety risk or loss of instructional time. Student may be subject to a suspension for up to five days.

442. Possession of munitions, tear gas, pepper gas, a bomb or other explosive device not covered elsewhere in the Suspension Code; attempting to, or actually detonating any bomb or any explosive device (including fireworks or smoke bombs); making a bomb threat, or threatening to set off any explosive device, while in actual possession of a bomb or any explosive device; or making a bomb threat or similar threat regarding an explosive device which causes significant safety risk or loss of instructional time even if student is not in possession of such device. Student shall be suspended for an initial period of five days and recommended for expulsion.

*BOE Revised: 6/08/2009*DATE