

## 6.313 Student Behavior

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### I. PURPOSE

To support positive student behavior and, when appropriate, apply reasoned discipline.

### II. SCOPE

This policy applies to students in all programs of the Memphis City Schools and shall be in force for all school facilities, school property, school buses and school-sponsored activities.

### III. DEFINITIONS

School Support Team (S-Team) – The S-Team is the school-level team which is designed to address the overall behavioral and academic needs of students at the school. The S-Team supports students who have severe and/or continuing academic and behavioral problems; and may recommend services regarding regular attendance to help students be successful in school. The S-Team has two major sub-functions. First, the S-Team or a subgroup of its members facilitates academic and grade placement referrals designed to keep students on track for regular and timely academic progression (This sub-function of the S-Team has been known as the Assessment Team (A-Team)). Second, the S-Team may identify and/or recommend supports and interventions for any student who has severe and/or continuing behavior problems. As part of this sub-function, the S-Team also forms the general education team which provides pre-referral intervention services to students who may need special education services. When special education services are thought to be needed the appropriate membership of the S-Team must be involved.

### IV. POLICY STATEMENT

The Board of Commissioners is responsible for taking reasonable steps to promote a positive learning environment by protecting the right of each student to be taught in an environment conducive to learning. The Board supports effective prevention and intervention strategies that prevent the development of or support the reduction of negative behaviors in students. The Board also endorses a policy of reasoned discipline that is implemented fairly and consistently throughout the district with no exceptions.

Memphis City Schools advocates student behavior programs in its schools that teach, model, encourage, reward, and support positive behaviors in students as well as programs that provide services needed to correct behaviors that are detrimental to the growth and well-being of students. To that end, the district shall hold staff and schools accountable for establishing and implementing behavior programs that are supported by research and data and that are reinforced by documentation of students' behavioral needs and progress.



Each school shall develop and submit for approval a School-wide Behavior Plan to foster appropriate behavior at the school. The school must outline in its plan the classroom and school-wide behavioral intervention strategies available to students and the disciplinary measures that may be imposed for inappropriate conduct, based on the district-wide Code of Conduct.

### **A. Student Code of Conduct**

The Memphis City Schools Student Code of Conduct includes a sample of unacceptable student behaviors and a related sample of disciplinary actions and intervention strategies. The Code of Conduct serves as a system-wide guide for the consistent and fair administration of disciplinary actions, while allowing for consideration of case-specific variables such as the student's age, level of participation in the unacceptable activity, and history of misconduct. The Code of Conduct and any revisions shall be approved and adopted by the MCS Board of Commissioners.

Students and their parents/guardians are expected to become familiar with, and abide by, the Code of Conduct and all policies, rules and regulations that affect them. The Code also contains a parent/guardian contract that requires parents to acknowledge that they have received the Code and agree to abide by the items stipulated therein.

The Code of Conduct shall be distributed and communicated annually to all students, teachers, administrative staff and parents/guardians. Teachers and counselors shall be supplied copies of the Code to teach and discuss with students. It shall be referenced in all school handbooks. It shall also be attached to the administrative rules and regulations.

The Code of Conduct shall be posted prominently throughout the school. In addition, principals may publish and distribute further school-specific clarification related to student misconduct, such as parking regulations that are consistent with the Code of Conduct.

### **B. District Jurisdiction over Student Conduct**

The grounds for disciplinary action apply at school, at school-sponsored/approved athletic or extra-curricular events and whenever the student's conduct is reasonably related to school or school activities, including, but not limited to:

1. On school grounds before, during, or after school hours and at any other time when the school is being used by a school group;
2. Off school grounds at a school activity, function, or event; or in a capacity representing the school;
3. On a school bus, a school-sponsored vehicle (including personal vehicles when ridership is related to a school-approved activity), or on a MATA bus when traveling to/from school;
4. Traveling to or from school, a school activity, or a school-related function; and

5. Any location, if the conduct may reasonably be considered to be a threat or an attempted intimidation of a staff member or an interference with school purposes or an education function.

In addition, disciplinary actions apply when off-campus criminal behavior results in the student being legally charged with a felony and the student's continued presence in school poses a danger to persons or property and/or disrupts the educational process.

### **C. Suspensions, Expulsions, and Remands/Alternative Placements**

MCS advocates school behavior programs that use prevention, early intervention and intervention strategies and that continue to provide instruction to students while addressing their behavioral needs. Principals shall ensure that minimal learning time is lost to students who are disciplined. Principals shall also ensure that minimal instructional time is taken away from the general student population as staff and administrators address the behavioral needs of individual students. Schools shall use interventions and/or disciplinary measures to address student behavior. Disciplinary measures shall include district-determined measures such as confiscation of items, loss of privileges, detention, and adjustment transfers as well as disciplinary measures prescribed in state law such as in school suspension, suspension, expulsion, and remand/alternative placement. In most instances, disciplinary measures should be used only after classroom and other intervention strategies have been exhausted or when the immediate (same day) removal of the student is necessary to prevent the student from harming himself/herself or others present. Additionally, suspensions and expulsions are applicable to any remedial instruction program that is required by the student's school, including but not limited to, programs conducted during the summer and after the conclusion of the regular school day.

#### **1. In School Suspensions and Suspensions**

Principals and assistant principals may issue in school suspensions to students, requiring them to leave their class and complete their academic requirements at school while on suspension. Students given in school suspensions of more than one day shall attend special classes attended by students engaging in misconduct or be placed in an isolated area appropriate for study.

Principals and assistant principals shall have the authority to suspend students for up to ten (10) consecutive school days. Suspensions must be accompanied by notice to the parent/guardian and student of the right to appeal the decision, when applicable. If the suspension occurs during the last ten (10) days of any term or semester, the student shall be permitted to take such final examinations or submit such required work as necessary to complete the course of instruction for that semester, subject to conditions prescribed by the principal.

Suspensions must be accompanied by a parent conference with the principal to discuss behavior planning for the student. A behavioral intervention plan shall be developed for students who accumulate more than five days of suspensions during the school year.

## **2. Expulsion**

Principals and assistant principals may remove a student from school attendance for more than ten (10) consecutive school days or 15 school days in a school month, both of which are considered as expulsions under state law. Expulsions must be accompanied by notice to the parents/guardians and student of the right to appeal the decision. Any student expelled must have an academic and behavioral re-entry plan before returning to school. The re-entry plan should, at minimum, consist of a meeting to discuss the needs of the child, a parent conference and a plan for the child to make-up his/her coursework.

Under Tennessee state law, the following student behaviors shall result in the student being expelled for a period of not less than one (1) calendar year:

1. possession of a firearm or explosive
2. possession of illegal drugs or unauthorized prescription drugs
3. assault (injury)/aggravated assault (serious injury) against school personnel

The Superintendent may modify the expulsion on a case-by-case basis.

The Board also may expel students for up to one academic year for other offenses (e.g., aggravated assault) that will be included in the Student Code of Conduct. Expulsions for these offenses include removal of the student from his/her regular school program at the location where the violation occurred or removal of the student from school attendance altogether, as determined by the Disciplinary Hearing Authority.

## **3. Remand/Alternative Educational Placement**

At the system level, Memphis City Schools is committed to maintaining alternative educational placements for students who have significant conduct problems and/or who have been expelled. Students expelled or otherwise disciplined under this policy may be considered for admission to the alternative school or other similar alternative educational programs, depending upon such factors as age, seriousness of the offense, history of aggressive/violent behavior and available space.

The Disciplinary Hearing Authority decides issues of remand/alternative placement when students are expelled. Parents/guardians can appeal the remand/alternative placement with the expulsion. Remands/alternative placements must be accompanied by notice to the parent/guardian. If a Hearing Officer or a principal recommends moving a suspended student from his/her home school to another school, the Chief of School Security will make the final decision on the issue. Alternative placements following a suspension must be



accompanied by notice to the parents/guardians; and they may discuss the remand/alternative placement with the principal.

Students who qualify for special education services determined to have violated this policy may be suspended, expelled, or remanded or otherwise disciplined only in accordance with special education laws and policies. For zero tolerance offenses, remand of students who qualify for special education services must be based on the recommendation of the IEP team.

#### **D. Due Process and Appeals**

In order to ensure due process, no student shall be disciplined for, and no school rules or policies shall prohibit, impede or discourage the exercise of constitutionally protected rights of any student. Policies and administrative rules and regulations governing student behavior shall be enforced in a firm, fair, and consistent manner in all schools across the district. Disciplinary measures imposed on a student shall be based on his/her behavior and each student shall be held responsible only for his/her level of involvement in a violation of the Code of Conduct.

##### **1. In School Suspensions and Suspensions (0-10 days)**

Principals shall have final authority to issue in-school suspensions and suspensions for up to three (3) days. Parents/guardians may discuss in-school suspensions and suspensions for up to three (3) days with the principal. The parents/guardians or the student can appeal suspensions ranging from four to ten (4 – 10) days to a Hearing Officer. The purpose of the hearing is to determine whether the suspension is supported by the evidence and/or is consistent with the Student Code of Conduct or state and federal law. The decision of the Hearing Officer is final.

Notice of any suspension must be provided to the student and the parent/guardian, including notice of an option to appeal suspensions of 4-10 days.

##### **2. Expulsions**

State law affords the Memphis City Schools Board of Commissioners the authority to appoint a Disciplinary Hearing Authority to hear appeals from expulsions. The Board delegates this authority to the Superintendent. Parents/guardians may appeal an expulsion to the district's Disciplinary Hearing Authority. The principal, the parents/guardians, the student and a teacher requested by the student have the right to appeal the Disciplinary Hearing Authority's ruling and disposition on the expulsion to the Superintendent (or designee) and the Board of Commissioners.

Notice of any suspension/expulsion must be provided to parents/guardians along with information on the parent's/guardian's option to appeal.

### **3. Appeals to and Appearances before the Board**

Any matter relating to the operation of the school system may be presented to the Board of Commissioners, in accordance with MCS Board Policy #1.400 School Board Meetings.

### **4. Retaliation**

Students who have been exonerated through the appeals process shall not be retaliated against or otherwise disciplined for the alleged offense or violation and shall be permitted to make up all assignments and coursework without a grade reduction or penalty.

## **V. RESPONSIBILITY**

A. The Department of Academic Operation, Technology, and Innovation is responsible for implementing this policy.

B. The principal shall be responsible for complying with the provisions of this policy and all laws pertaining to student conduct.

C. The student and parent/guardian are responsible for keeping themselves informed about acceptable/unacceptable student conduct, and abiding by it.

D. Questions concerning the interpretation and administration of this policy should be directed to the Director of Pupil Services.

E. The Department of School Safety, Security and Emergency Management Office of Gang Awareness and Intervention is responsible for establishing and interpreting protocols regarding gang awareness, prevention, intervention, and enforcement and protocols regarding identifying school gang activity.

F. The Superintendent is responsible for determining if this policy is followed.

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#### Legal References:

1. TCA 39-17-1309 (Carrying Weapons on School Property)
2. TCA 49-2-203 (Powers and Duties)
3. TCA 49-2-303 (School Principals)
4. TCA 49-6-3103 (Factors in Determining Assignment)
5. TCA 49-6-3401 (Suspension and/or Expulsion of Students)
6. TCA 49-6-3402 (Alternative Schools)
7. TCA 49-6-4011 (Student and Employee

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#### Cross References:

1. MCS Code of Conduct
2. 1.400 School Board Meetings
3. 4.300 Extracurricular Activities
4. 4.301 Interscholastic Athletics
5. 4.406 Access to Telecommunication Networks
6. 6.200 Regularity of Attendance
7. 6.301 Rights and Responsibilities
8. 6.303 Interrogations and Searches



- Safe Environment Act of 1996)
8. TCA 49-6-4102 (Students Accountable for Conduct)
  9. TCA 49-6-4103 (Corporal Punishment)
  10. TCA 49-6-4201 (School Security Act)
  11. TCA 49-6-3017 (Denial of Motor Vehicle License or Permit)
  12. Individuals with Disabilities Act
  13. Section 504 of the Rehabilitation Act of 1973
  14. TRR/MS 0520-01-09-.05
  15. PL 103-227 - Goals 2000: Educate America Act Section 1032 (Gun Free Schools Act)
  16. US Code Section 921, Title 18 (defines firearm)
  17. Arson (TCA 39-14-301);
  18. Assault (TCA 39-13-101, 102);
  19. Breaking and Entering/Burglary (TCA 39-14-402);
  20. Bullying, Harassment and Intimidation (TCA 49-6-1015);
  21. Drug (TCA 49-6-4202(2));
  22. Extortion (TCA 39-13-501);
  23. False Imprisonment (TCA 39-13-302, 303);
  24. Forgery (TCA 39-14-112);
  25. Gambling (TCA 39-17-501);
  26. Gang (TCA 39-14-114);
  27. Obscene Material (TCA 39-17-901);
  28. Participation in Non-Sanctioned Organizations/Hazing (TCA 49-7-123);
  29. Reckless Driving (TCA 55-10-205);
  30. Robbery (TCA 39-13-401, 402);
  31. Sexual Harassment (Student to Student) (TCA 39-13-505);
  32. Theft (TCA 39-14-103);
  33. Threat (TCA 320-14-101);
  34. Vandalism (TCA 39-14-408);
  35. Weapon/Dangerous Weapon (TCA 49-6-4202(1))
9. 6.3041 Student to Student Sexual Harassment
  10. 6.3091 Unsafe School Choice
  11. 6.3103 Student Membership Badges
  12. 6.317 Appeals Relating to Student Discipline
  13. 6.405 Medications
  14. 6.4091 Mandatory Reporting of Criminal Offenses
  15. 6.309 State-Mandated Zero Tolerance Offenses

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## 6.313 Student Behavior

## Administrative Rules and Regulations

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### I. DUE PROCESS

The Code of Conduct and all local rules which furnish the basis for discipline shall be published and made available to students, parents/guardians, teachers, counselors and administrative staff. They are to be posted in conspicuous places within each school throughout the school year. Reasonable efforts shall be made to keep parents/guardians informed of basic rules and regulations governing the conduct of their children while they are at school or are participating in school-related activities.

The issuing and handling of disciplinary measures, including suspensions, forced adjustment transfers, withdrawals, and expulsions, shall be governed by the following procedures of due process.

#### A. In-school Suspensions and Suspensions

1. The principal, acting principal, or assistant principal of each school shall have sole power to suspend up to ten (10) consecutive school days and to refer students to the In School Suspension Program. Principals have the authority to designate the length of a suspension within guidelines established by the Code of Conduct.

In school suspensions and suspensions for 0-3 days are not appealable. Parents/guardians may discuss in-school suspensions and suspensions for up to three (3) days with the principal. Parents/guardians must answer an in school suspension within three (3) school days unless the principal grants an extension. Parents/guardian must clear an in school suspension with the principal or his/her designated representative by the end of the in school suspension period.

If a principal suspends a student for four to ten days, the principal must file a "Suspension Notification Report" with his/her Academic Superintendent. As part of the report, the principal must include information on the conduct leading to the current suspension, and, if applicable, information on prior suspensions and on behavioral interventions that have been used to address the student's behavior. The Academic Superintendent (or designee) shall monitor and evaluate the Suspension Notification Reports on a regular basis. Suspensions ranging from four to ten (4 – 10) days may be appealed to a Hearing Officer. The Hearing Officer's decision on the suspension is final. The Hearing Officer or the principal can make a recommendation on alternative placement. The final decision on alternative placement, however, is made by the Chief of School Security.

Notice of any suspension must be provided to the student and the parent/guardian, including notice of an option to appeal suspensions of 4-10 days. In school

- suspensions, suspensions of 0-3 days, and suspensions of 4-10 days may be cleared only by the principal or his/her designated representative following a personal conference with the parent/guardian of the student involved. Suspensions must be cleared by the last day of the suspension period and students shall be permitted back in school at the opening of the next school day.
2. Teachers and other administrative staff may recommend a suspension to the principal. It is the responsibility of the principal, assistant principal, or acting principal to investigate fully any report of possible student misconduct. Whenever possible, facts shall be obtained from those who have observed the misconduct directly, and the student shall be allowed to explain his/her side of the story fully.
  3. If, after full investigation, discussion and attempted resolution of the complaint against the student, the principal finds that (a) there is evidence the student actually has committed the act of misconduct, and (b) the matter cannot be resolved in the regular program solely through interventions, the principal may initiate a suspension and may recommend alternative placement. The principal shall furnish to the student or parent/guardian a written notice of the suspension, except in cases of an emergency where the student's continued presence poses a danger to persons or property in the school or an ongoing threat of disrupting the academic process. In the case of suspensions ranging from four to ten (4 – 10) days, the principal shall, within 24 hours, notify the parent and student of the right to appeal the decision to a Hearing Officer. The parent must request an appeal within one (1) day of receiving the notice of the suspension. The Hearing Officer must conduct a hearing within 5 days of the notice of appeal. The purpose of the hearing is to determine whether the suspension is supported by the evidence and/or is consistent with the Student Code of Conduct or state and federal law. After determining whether the decision is supported by the evidence and/or adheres to policy or law, the Hearing Officer may affirm the principal's decision or, if inconsistencies exist, extend or reduce the suspension; remove the suspension conditionally or unconditionally; and recommend an alternative placement. The decision of the Hearing Officer is final.

If the Hearing Officer or the principal recommends that the student receive an alternative placement in connection with a suspension, Chief of Student Support Services (designee) in consultation with the Academic Superintendent, the Director of Alternative Schools and Programs and appropriate school personnel, will decide the issue of remand/alternative placement.

4. The principal shall furnish to the student or parent/guardian a written notice of the suspension, except in cases of an emergency where the student's continued presence poses a danger to persons or property in the school or an ongoing threat of disrupting the academic process. In any case, the principal shall make a reasonable effort to notify the parent/guardian of the suspension within twenty-four (24) hours.

## **B. Expulsion**

1. A principal may expel a student from school or suspend a student in excess of 10 days. The principal shall give direct written or verbal notice of the expulsion within 24 hours, including giving notice that the parent/guardian or student has five days to file an appeal. All appeals must be filed, orally or in writing, within five days after receipt of the notice of expulsion. The parent/guardian, the student or a teacher requested by the student can appeal the decision.
2. The appeal shall be filed with the Pupil Services Center. The hearing shall be held no later than 10 days after the beginning of the expulsion. Notice of the time and place of the hearing shall be provided to the parent/guardian, the student, the principal and a teacher requested by the student who chooses to file an appeal.
3. The Pupil Services Center may affirm the decision of the principal, order removal of the suspension unconditionally or upon such terms and conditions as it deems reasonable, assign the student to an alternative program, or night school, or suspend the student for a specified period of time. (TCA 49-6-3401(c)(5))
4. After the decision is rendered, the student or principal may request a review of the decision before the Superintendent (or designee) within 5 days of the decision and then before the Board of Commissioners. If there is no appeal the decision is final. (See Policy on Appeals Related to Student Discipline, #3.317)
5. The Board, after a review of the record, may grant or deny a request for a Board hearing and may affirm or overturn the decision of the Pupil Services Center.
6. The action of the Board of Education is final.
7. Only the elected Board of Education has the power to expel a student permanently from school attendance.

## **C. Remand/Alternative Placement**

The Disciplinary Hearing Authority decides issues of remand/alternative placement when students are expelled. Parents/guardians can appeal the remand/alternative placement with the expulsion. Remands/alternative placements must be accompanied by notice to the parent/guardian.

If a Hearing Officer or a principal recommends moving a suspended student from his/her home school to another school, the Chief of School Security will make the final decision on the issue. Alternative placements following a suspension must be accompanied by notice to the parents/guardians; and they may discuss the alternative placement with the principal.

#### **D. Hearing Record and Hearing Procedures—Suspensions (4-10 days) and Expulsions**

A full narrative statement describing the events leading up to the suspension/expulsion shall be signed by the principal. Statements from witnesses relied upon by the principal must be attached to the suspension/expulsion. The following information must be included:

- a. The start and end date and time of the suspension
- b. Date of incident for which suspension has been issued
- c. Time of incident
- d. Place incident occurred
- e. Situation preceding and at time of act
- f. Complete statement signed by the accuser relating all facts
- g. Signed statements of witnesses, if any
- h. Signed statement of principal that he/she has discussed the suspension with the student and listened to any defense the student presented and that the student has been advised of his/her rights to a hearing by administrative personnel at the Pupil Services Center
- i. A signed recommendation by the principal in regard to the student's being returned or not returned to school with reasons to substantiate his/her recommendations.
- j. The student's full academic and conduct records for the current school year along with any other pertinent facts favorable or unfavorable to the student
- k. When appropriate, documentation of the classroom and school-wide strategies attempted to address other violations that occurred before the issuance of the suspension
- l. Documentation of the intervention plan recommended by the principal if the suspension or accumulated days of suspension exceeds five (5) days

All Pupil Services Center hearings shall be conducted as follows:

- a. The hearing is to be private unless a request is made by the parties involved and agreed to by the administrator to have other persons present.
- b. All evidence not already made available to the student and parent/guardian regarding specific charges shall be made known to them at the time of the hearing.
- c. The scope of the hearing shall be confined to the specific charges made against the student.
- d. The parent must be notified if any decision has been made either to force an adjustment transfer against the will of the student or parent or to withdraw the student from school attendance.
- e. If the appeals process for suspensions ranging from four to ten days is not complete by the last day of a student's suspension period, the student may submit a written request to the Hearing Officer to return to school while awaiting the resolution of the appeal. As a general rule, no student shall be returned to school



before the completion of an expulsion following the appeal of a Pupil Services Center Hearing Officer's ruling until all applicable appeals have been exhausted. However, the Superintendent or designee retains the authority to return the student in the event the appeals process cannot be completed in a timely manner.

- f. Any matter relating to the operation of the school system may be appealed to the Board of Commissioners, in accordance with MCS Board Policy #1.404, Appeals to and Appearances Before the Board.

### **E. Appeals Related to Student Discrimination/Harassment**

Appeals regarding whether a student has committed an act of discrimination/ harassment shall be addressed by the Division of Equity Compliance in accordance with MCS policies on discrimination/harassment. A student found responsible for an act of discrimination/harassment shall be disciplined in accordance with the Student Code of Conduct. Appeals related to student discipline resulting from an act of discrimination/harassment shall be conducted in accordance with the policy on Student Behavior (#6.313) and the policy on Appeals Related to Student Discipline (#6.317).

## **II. BEHAVIORAL INTERVENTION STRATEGIES**

Schools should strive to promote and support appropriate behavior in students. Schools are encouraged to offer incentives, such as nine-week recognition and awards events, for positive student behavior and behavioral improvements. Principals and teachers should also recognize that rules governing student behavior sometimes will be violated by students. Students must be made aware that there are consequences to any rule infraction governing inappropriate student behavior and those students will be held accountable for their actions. In addition, parents/guardians must be informed that the Memphis City Schools will not tolerate disruptive student behavior that hinders the progress of other students.

Schools shall implement behavior intervention strategies that are reasonably related to the offense. More intense strategies should be reserved for major offenses or for repeated infractions.

Memphis City Schools utilizes the School Support Team (S-Team) Process to integrate school and district-wide behavior intervention strategies with all aspects of a school's support services. The S-Team makes recommendations to the principal regarding adjustment transfers, facilitates the sharing of behavior and academic data and interventions, and provides the school with the means of integrating information from students' EXCEL Plans, Student Behavior Intervention Plans, and School-wide Behavior Plans. It is anticipated that other intervention strategies will be used before a student is referred to the S-Team.

## A. Classroom Strategies

Behavior intervention strategies for minor infractions are typically established and imposed by classroom teachers or by building principals, in collaboration with the school-wide discipline committee. Classroom strategies may include, but are not limited to:

- verbal or written warnings
- a letter of apology
- seat change
- parent contact
- teacher conference with student
- in-class time out
- student problem-solving activities
- classroom service activity
- reinforcement of appropriate behavior

Classroom strategies may also include administrative or guidance referrals. Teachers shall formally document and keep track of the disciplinary referrals they issue each year.

## B. School-Wide Strategies

When classroom strategies are ineffective or the infraction is beyond the scope of the classroom, school-wide behavior strategies may be employed. School-wide strategies should be implemented in accordance with the School-wide Behavior Plan. The School-wide Behavior Plan shall incorporate the School Support Team Process (S-Team) and the process for referring students to the In School Suspension Program.

Strategies for minor offenses may include, but are not limited to:

- supervised in-class time out
- time out in another classroom setting
- mentoring program
- parent or guardian involvement/contact/conference
- behavior contract with the student
- parent contract
- teacher and/or administrator conference with student
- conflict resolution
- peer mediation
- an anger management program
- student support groups
- class or schedule change
- community service at the school

Strategies for more severe school-wide offenses may include, but are not limited to:

- a mandatory office referral
- mandatory parent/guardian notification
- a mentoring program
- school-based alternative programs
- learning labs
- In School Suspension

- Saturday school
- school-level alternative programs/classes (attendance/truancy, violence/ weapons/ gangs, drug/ alcohol/ tobacco, harassment/bullying behavior)
- referrals to support programs (guidance counselors, mental health staff, and the Student Assistance Program)

### **C. District-Wide Strategies**

When school-wide strategies are ineffective or the infraction indicates that system-wide services are needed to support appropriate student behavior, MCS may employ district-wide strategies, such as adjustment transfer and alternative programs. Like in school suspensions, these are disciplinary measures that also include critical behavioral components. Classes focusing on specific issues also may be offered at the district level (e.g., attendance/truancy, violence/weapons/gangs, drug/alcohol, harassment/bullying behavior). Parent/guardian notification is required when district-wide strategies are used.

Before imposing behavior intervention strategies, teachers and principals will make an investigation into the incident to ensure that violators have been identified and that they understand the nature of their offense. At each level, documentation of the behavioral intervention strategy used and its impact on the student should be maintained. Parents/guardians should be informed of behavior concerns with their child. Parents/guardians shall also be notified of the intervention strategies that their children receive and, when appropriate, their obligations in supporting their child's positive behavior at school (e.g. intervention strategies that require parent/guardian participation or the process for clearing suspensions).

## **III. DISCIPLINARY MEASURES**

In addition to classroom, school-wide and district-wide behavioral intervention strategies, several disciplinary measures may be employed to support acceptable student behavior. Disciplinary measures include confiscation of items and loss of privileges, detention/Saturday school, in-school suspension, suspension, adjustment transfer, expulsion, and remand/alternative placement. Unless otherwise stipulated in the Code of Conduct, behavioral intervention strategies and disciplinary measures may be used independently or together. With the exception of activities restricted by the principal, suspension from the bus and confiscation of items, schools shall not impose multiple disciplinary measures on a student for a single offense or violation of the Code of Conduct. The principal may restrict activities for students who accumulate a certain number of suspensions. Activities that may be restricted by the principal and the actions that may place students on restriction shall be communicated to students and parents.

### **A. Confiscation of Items and/or Loss of Privileges**

Confiscated items shall be returned to the parent within 72 hours during a conference with the parent and teacher/administrator unless the district extends the return time because the cell phone contents may be evidence of violation of law or policy. Confiscated items include beepers, telephone pagers, laser pointers, and cellular phones.

Students may lose privileges including, but not limited to, the following:

1. Loss of classroom privileges
2. Loss of parking privileges
3. Loss of extracurricular/athletic or other school-wide privileges

4. Activities Restricted by the Principal

**B. Detention/Saturday School** - Students may be detained before or after the school day or required to attend Saturday school as a means of disciplinary action. The following guidelines shall be followed:

1. The student will be given at least one (1) full day of notice before detention/Saturday school.
2. Parents/guardians will be informed before detention/Saturday school takes place.
3. Students will be under supervision of certified staff members.
4. Detention will not exceed 45 minutes after the official closing of the school day but may be administered several days in succession.
5. Teachers must have the approval of the principal before issuing detention or requiring a student to attend Saturday school.
6. Students riding school buses will be provided an alternative to detention, or with agreement of the parents, go to detention at a later date.
7. Students with religious exemptions to Saturday school shall be provided with an alternative disciplinary option.

**C. In School Suspension** - The in school suspension program includes a behavior management component that teaches students skills to improve their behavior and make good choices while allowing students the opportunity to complete their regular classroom assignments in an isolated environment (see p. 7 for a discussion of the in school suspension program.)

**D. Suspension** - It is not the intent of the system to remove students from the school society for first-time or for minor violations. Therefore, suspension from school should be used with caution and only in appropriate cases.

1. A behavioral intervention plan shall be developed for students who accumulate more than five days of suspensions during the school year.
2. Multiple suspensions shall not run consecutively; nor shall multiple suspensions be applied to avoid expulsion from school.

Reasonable effort shall be made to contact the parent/guardian immediately regarding any suspension. If contact with the parent/guardian cannot be made, the student will remain at school until dismissal time except in cases of police arrest or an emergency, such as when the student's continued presence poses a danger to persons or property in the school or an ongoing threat of disrupting the academic process. Students on suspension must not be permitted to set foot on school property, attend class, take exams, or participate in school-sponsored activities while under suspension.

**E. Adjustment Transfer** – When necessary, the principal, Regional Superintendent (or designee), a Hearing Officer, or the Division of Student Enrollment may recommend students for an adjustment transfer. The Regional Superintendent (or designee), in consultation with the Office of Student Support Services and the Division of Student

Enrollment will make the final disposition on all adjustment transfers, except those related to personal safety. Personal safety transfers will be decided by the Director of Pupil Services.

Adjustment transfers shall be used sparingly and will be limited to:

1. Issues of personal safety
2. Selective behaviors/situations which may not warrant expulsion, yet call for the student's removal from the home school for a period of time
3. One per school year (expulsion could then occur instead of a second transfer)
4. The remainder of a given school year, after which the student would be returned to his/her assigned school in the fall. An extension into the following school year would be granted only at the request of the parent and with the agreement of the receiving principal.

No decision will be made regarding a forced adjustment transfer or return to school without the Hearing Record as outlined in this policy.

The principal of a school that is designated as a persistently dangerous school or a school that has students who have been victims of a violent crime while at school shall provide for student transfers in accordance with the policy on Unsafe School Choice #6.3091. Adjustment transfers may also be used to remove a student aggressor in the cases of Unsafe School Choice or safety transfers.

**F. Expulsion** - Expulsions vary in length from eleven (11) days to the remainder of the school year or one (1) calendar year for state-mandated expulsions. (Any single suspension in excess of 10 consecutive days or multiple suspensions totaling 15 days in one month is an expulsion.) Expulsions are issued for:

1. possession of a firearm or explosive (state-mandated)
2. possession of illegal drugs or unauthorized prescription drugs (state-mandated)
3. assault (injury or extremely offensive or provocative physical contact)/aggravated assault (serious injury) against school personnel (state-mandated)
4. behaviors identified by the Board and included in the Code of Conduct
5. behaviors which have high potential of causing serious injury and/or death (e.g., serious threats, throwing bricks at an occupied school bus)

The Superintendent may modify a state-mandated one-year expulsion on a case-by-case basis.

### **G. Remand/Alternative Educational Placement**

At the system level, Memphis City Schools is committed to maintaining alternative educational placements for students who have significant conduct problems and/or who have been expelled. The Disciplinary Hearing Authority decides issues of remand/alternative placement when students are expelled. If a Hearing Officer or a principal recommends moving a suspended student from his/her home school to another school, the Chief of School Security will make the final decision on the issue.

**H. Corporal Punishment** - Corporal Punishment is not an approved disciplinary measure for Memphis City Schools.

**I. Suspension From the School/MATA Bus** – Except where prohibited by law, students who engage in bus-related misconduct may be suspended from riding the school or MATA bus to and from school. Decisions involving temporary/ permanent removal from school bus or MATA bus ridership will be made by the principal. In such cases, the student would typically continue his/her school assignment, but he/she would have to find another means of transportation. Truancy laws would still be in effect. Additional disciplinary actions may also apply when bus-related misconduct involves a violation of the Student Code of Conduct.

A student receiving special education services shall not be suspended from school/Mata bus transportation if transportation services are required under the student's Individual Education Plan (IEP).

**J. Drivers' License Denial/Revocation** – In accordance with state law, the Superintendent (designee) shall refer a student who is fifteen years of age or older with over ten consecutive or fifteen total unexcused absences in a semester to the Department of Safety for drivers' license denial/revocation, unless the absences are due to transfer or are beyond the student's control. The Superintendent (designee), with the assistance of the attendance teacher and any other staff or school personnel, shall be the sole judge of whether unexcused absences are due to circumstances beyond the student's control. Suspension, expulsion or confinement in a correctional institution shall not constitute a circumstance beyond the control of a student.

A copy of the notice sent to the Department of Safety shall also be mailed to that student's parent/guardian.

### **Reporting Procedures**

#### *Mandatory Reportable Criminal Offenses*

In the event any of the following criminal offenses (see attached statutory definitions) are committed by or against a student refer to policy 6.4091, Mandatory Reporting Procedures for Criminal Offenses and 6.3091, Unsafe School Choice :

- Aggravated arson

- Aggravated assault\* (fighting with serious bodily injury)
- Aggravated child abuse and neglect (serious bodily injury or use of weapon is involved)
- Aggravated kidnapping
- Aggravated rape
- Aggravated robbery
- Aggravated sexual battery
- Aggravated spousal rape
- Assault and battery endangering life, health or safety\*
- Spousal rape
- Spousal sexual battery
- Aggravated vehicular homicide
- Carjacking
- Criminally negligent homicide
- Especially aggravated burglary
- Especially aggravated kidnapping
- Especially aggravated robbery
- First degree murder
- Incest
- Kidnapping
- Rape
- Rape of a child
- Reckless homicide
- Second degree murder
- Sexual battery by an authority figure
- Sexual battery
- Stalking
- Statutory rape
- Vandalism that endangers life, health or safety
- Vehicular assault
- Voluntary manslaughter
- Possession or use of a weapon
- Possession/concealment/use/sale/distribution of explosive devices and firearms
- Possession/sale of drugs

\*Any fight not involving the use of a weapon, or any fight not resulting in serious personal/bodily injury to the parties involved, shall be reported only to the school administrator.

### ***Violations of Student Code of Conduct***

The principal shall consult with MCS Office of Security when determining whether the Memphis Police Department should be contacted regarding any violation of the Code of Conduct that does not require mandatory reporting to law enforcement or other agency.

#### **Discrimination and Sexual Harassment**

Any student or parent/legal guardian who believes s/he is experiencing student-to-student discrimination or sexual harassment shall report such circumstances to a teacher, counselor, or principal immediately. If the report is made to a teacher or counselor, s/he must notify the principal immediately. Refer to policies 6.301 Rights and

Responsibilities (Discrimination) and 6.301 Student-to-Student Sexual Harassment for specific complaint, reporting and investigation procedures.

### **Special Education Considerations**

Students who also qualify for special education services determined to have violated this policy may be suspended, expelled, or remanded or otherwise disciplined only in accordance with special education laws and policies. For zero tolerance offenses, remand of students who qualify for special education services must be based on recommendation of the IEP team.

Unless a disciplinary infraction is the direct result of a child's disability, the child will be disciplined in the same manner as a nondisabled child. The district, parent/guardian, and relevant members of the IEP team shall review all relevant information to determine:

- a. if the conduct was a direct result of the district's failure to implement the IEP; and/or
- b. if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability.

Serious safety issues involving weapons, drugs, or inflicting serious bodily injury upon another person while at school, on school premises, or at a school function will result in removal for up to forty-five school days. In cases of expulsions (suspensions longer than 10 days), the child must continue to receive educational services.

Regular education students may invoke rights under special education laws under certain conditions, including if the parent has expressed concern in writing to supervisory or administrative personnel of the district, or the child's teacher, that the child is in need of special education and related services.

The school district must also contact the Education Specialist at the Department of Children's Services if a foster child (with or without an identified disability) has allegedly committed an offense that may result in a suspension of 10 or more days or has had a petition filed against him/her by the school or school system.

### **Make Up Work**

Students shall be permitted the opportunity to make up all work and classroom tests (or their equivalent) missed due to student discipline that resulted in an absence from school. All work and tests should be made up within a week after the pupil returns to school. The principal can grant exceptions in special circumstances. If a pupil fails to make up the work and tests, the deficiencies shall be averaged with the other grades. Makeup work for state administered tests shall be determined by state policies and procedures.

## STUDENT CODE OF CONDUCT

The Student Code of Conduct includes sample violations and sample disciplinary measures and interventions for students. This Code serves as a guide for students, parents/guardians, teachers and administrative personnel. The Code also includes examples of the rights and responsibilities of students, teachers and parents and a parent contract that a parent/guardian must sign to indicate that he/she received and read the Code and will abide by its contents. Although the disciplinary measures to be used are district-wide, schools may use their own intervention strategies in addition to the strategies listed in the Code.

**[Note: Truancy/unexcused absence is governed by the Policy on Regularity of Attendance, (#6.200)]**

### **A. Level 1 Violations**

#### **Violations**

1. excessive excused tardies to school/early releases (excluding medically documented and school-sponsored events)
2. excessive unexcused tardies to school or early releases (more than 3 times)
3. unexcused/excessive tardies to class (more than 3 times) (See Policy on Regularity of Attendance, #6.200)
4. class cutting (See Policy on Regularity of Attendance, #6.200)
5. possession of cellular phones
6. possession of objects such as laser pointers (non-use)
7. failure to wear district-adopted school uniform or violation of the school's dress code
8. misconduct-level 1 (other Level 1 incidents not specifically listed, such as running in the hall or throwing a pencil)
9. failure to wear membership badges (applicable only to middle and high school students)\*

#### **Intervention Strategies and Disciplinary Measures**

- a. classroom and school-wide intervention strategies; and/or
- b. confiscation and/or loss of privileges. Confiscated items (e.g., cell phones) shall be returned to the parent within 72 hours during a conference with the parent and teacher/administrator, unless the district extends the return time because the cell phone contents may be evidence of violation of law or policy; or
- c. detention/Saturday school; or
- d. in school suspension; or
- e. overnight suspension/parent or guardian conference in lieu of suspension.

\*A Level 1 disposition is the sole disciplinary measure for failing to wear a membership badge.

## **B. Level 2 Violations**

### **Violations**

1. continuing to engage in same Level 1 violations
2. leaving campus without permission
3. defiance of school personnel's authority, disrespect, insubordination, or refusing punishment
4. gambling
5. obscene, immoral, indecent and/or offensive behaviors/actions/materials
6. profanity, provocative and/or abusive language directed at a student
7. theft (\$500 or less)
8. possession/use of matches, lighters, or fireworks
9. unauthorized parking/reckless driving on or near campus
10. false reporting (e.g., accusations against a student, fire alarm, false ID)
11. failure to present/surrender membership badges (applicable only to middle school and high school students)\*
12. misuse, intentional damage, or theft of membership badges (applicable only to middle school and high school students)\*
13. cheating/plagiarism or forgery
14. posting/distributing unauthorized materials
15. possession/use of tobacco product (student must be issued a citation)
16. possession/use of over-the-counter medications (e.g., aspirin, cough medicine) without school approval (See Policy on Medicines, # 6.405)
17. misconduct level 2 (other Level 2 incidents not specifically listed, such as: shoving a student in line with no resulting injury; throwing a football in the hall with no injury; or misuse of locker/storage privileges)

### **Intervention Strategies and Disciplinary Measures**

- a. classroom and school-wide intervention strategies and/or
- b. confiscation and/or loss of privileges. Confiscated items (e.g., cell phones) shall be returned to the parent within 72 hours during a conference with the parent and teacher/administrator unless the district extends the return time because the cell phone contents may be evidence of violation of law or policy; or
- c. detention/Saturday school; or
- d. in school suspension; or
- e. overnight suspension/parent or guardian conference in lieu of suspension; or
- f. 1-3 day suspension (Sessions that focus on ending the student's negative or harassing behavior may replace suspension.).

\* A Level 2 disposition is the sole disciplinary measure for failing to present/surrender or for the misuse, intentional damage, or theft of a membership badge.

### **C. Level 3 Violations**

#### **Violations**

1. continuing to engage in same Level 2 violations
2. trespass or loitering
3. fighting (minor injury and non gang-related)
4. unauthorized or inappropriate use of the internet, computers, or computer software
5. potentially dangerous activity (other Level 3 incidents not specifically listed, such as: throwing a chair; a food fight; or participation in activities related to non-school sponsored/non-sanctioned organizations)

#### **Intervention Strategies and Disciplinary Measures**

- a. school- and district-wide intervention strategies and/or
- b. confiscation and/or loss of privileges. Confiscated items (e.g., cell phones) shall be returned to the parent within 72 hours during a conference with the parent and teacher/administrator unless the district extends the return time because the cell phone contents may be evidence of violation of law or policy; or
- c. detention/Saturday school; or
- d. in school suspension; or
- e. overnight suspension/parent or guardian conference in lieu of suspension; or
- f. 1-5 day suspension.

### **D. Level 4 Violations**

#### **Violations**

1. continuing to engage in same Level 3 violations
2. arson
3. burglary, theft over \$500, or motor vehicle theft
4. vandalism/graffiti
5. possession of drug paraphernalia
6. under the influence of an unauthorized substance at school (no actual possession or use at school) – Mandatory referral to Alcohol and Drug Counseling (A & D)
7. possession of electronic pagers or beepers (excluding cell phones)
8. possession/use of alcohol
9. assault against a student (resulting in minor injury)
10. threats against a student (non serious)
11. profanity, provocative and/or abusive language directed at school personnel

12. discrimination based on sex, race, religion, ethnicity, genetics, age, national origin, disability, or sexual orientation
13. sexual harassment, including distributing sexually explicit, nude, or partially nude images/videos of self, peers and/or faculty through phones, the Internet, or other electronic methods
14. bullying, intimidation and harassment, including actions occurring through phones, the Internet, or other electronic methods
15. viewing, sending, forwarding through cellular telephones or other electronic media sexually explicit, nude, or partially nude photographs/images/videos while at school, a district facility, or a school event
16. extortion
17. distribution of over-the-counter medications (e.g., aspirin, cough medicine) – See Policy on Medicines 6.405
18. off-campus criminal behavior that results in the student being legally charged with a felony and the student’s continued presence in school poses a danger to person or property or disrupts the educational process
19. disruptive behavior and potentially dangerous activity (other Level 4 incidents not specifically listed, such as: disruptive behavior with prior unsuccessful interventions, refusal to produce object identified by metal detectors, or hazing/initiation: non-school sponsored/non-sanctioned organizations, societies, clubs, or teams)
20. Activities implying gang affiliation/membership - mandatory referral to Gang Prevention Counseling (Specific activities are listed below.)\*
21. making a threat, including a false report, to use a bomb, dynamite, any other deadly explosive or destructive device including chemical weapons on school property or at a school sponsored event

#### **Intervention Strategies and Disciplinary Measures**

- a. school- and district-wide strategies (adjustment transfer and remand/alternative placement) and/or
- b. generally, 3-5 day suspension for cases involving elementary students; or
- c. generally, 5-10 day suspension or an expulsion for cases involving middle and high school students.

\*Activities implying gang affiliation/membership include gestures, signals, literature, colors, drawings, signs, jewelry, apparel, manner of grooming, writings, gang graffiti, verbal or nonverbal communication. Before this disciplinary action is applied, especially to elementary students, each instance shall be reviewed on a case-by cases basis to consider the student’s age, level of involvement, and intent. (See glossary for the definition of a gang. Also, see policy 6.3102 Gang Prevention, Intervention, and Enforcement.)

#### **D. Level 5 Violations**

##### **Board-Mandated Violations**

1. continuing to engage in same level 4 violation
2. fighting (serious injury or weapon used)
3. aggravated assault against students (resulting in serious injury)
4. assault against designated visitors
5. possession of a dangerous weapon (including a bowie knife, hawk bill knife, ice pick, dagger, a switchblade, or a weapon of like kind)
6. false imprisonment or kidnapping
7. sexual battery
8. serious threats against a student
9. threats (serious and non-serious) or false accusations against school personnel  
Engaging in activities implying gang affiliation/membership - mandatory referral to Gang Prevention Counseling (Specific activities are listed below)\*\*
10. other major incidents and behaviors which have high potential for causing serious injury and/or death (e.g., throwing bricks at an occupied school bus)

#### **Intervention Strategies and Disciplinary Measures**

- a. school- and district-wide strategies (adjustment transfer and remand/alternative placement) (optional)
- b. expulsion (11-180 days) (mandatory)

\*\*Activities implying gang affiliation/membership including gang fights, participating in gang recruitment, solicitation, or hazing/initiation activities, coordinating/ordering gang activities at school, gang-related threats, intimidation, extortion, possessing/distributing gang information, or acts that imply gang affiliation or membership. Before this disciplinary action is applied, especially to elementary students, each instance shall be reviewed on a case-by-cases basis to consider the student's age, level of involvement, and intent. (See glossary for the definition of a gang. Also, see policy 6.3102 Gang Prevention, Intervention, and Enforcement.)

#### **State-Mandated Zero Tolerance Violations**

11. assault (injury or extremely offensive or provocative physical contact)/aggravated assault (serious injury) against school personnel
12. possession/sale/distribution of illegal drugs or unauthorized prescription drugs
13. possession/concealment/use/sale/distribution of explosive devices and firearms (assembled or unassembled parts), except toy guns – real/look alike

#### **Intervention Strategies and Disciplinary Measures**

- c. school wide strategies and district-wide strategies (adjustment transfer and remand/alternative placement) (optional)
- d. mandatory expulsion for one calendar year. (mandatory) The Superintendent may modify the expulsion on a case-by-case basis.

Students who are 8 years of age or older and expelled for a Level 4 or Level 5 violation may be assigned to an alternative or other appropriate program, based on space availability.

The principal shall consult with MCS Office of Security when determining whether the Memphis Police Department or other investigatory agencies should be contacted regarding violations of the Code of Conduct. The principal shall report to MCS Office of Security and the Memphis Police Department any documentable or suspected incident involving illegal drugs, firearms, explosives, or other weapons as outlined in TCA 39-17-1307, 39-17-1309, or of title 39, chapter 17, part 4. Similarly, school personnel shall report any reasonable suspicion involving illegal drugs, firearms, explosives, or other dangerous weapons outlined in these law to the principal, or, if the principal is not available, to the principal's designee. School personnel may report such incidents to the Memphis Police Department only if neither the principal nor the designee is available.

## GLOSSARY

Listed below are commonly-used terms that will lead to a greater understanding of the Code of Conduct. All offenses listed in the Code of Conduct are not defined. Please call the Director of Pupil Services if further explanation is needed for the listed terms or if you would like explanation of a term not listed below.

### **Adjustment Transfer**

Transfer of a student from the home school to another school for personal safety reasons (other than unsafe school choice) or for behavioral/situational reasons. The transfer will be for the remainder of the school year, but a parent may request an extension into the following school year. (See Policy #6.3091, Unsafe School Choice).

### **Answering an In-School Suspension**

A parent/guardian consulting with school officials to discuss the reasons for a student's in school suspension and how the parent/guardian can work with the student, the teachers and other school personnel to improve the student's behavior or actions.

### **Arson – (see also attached statutory definitions)**

The actions of an individual who knowingly damages school property or the property of another by means of a fire or explosion without consent of the property owners and with the intent to destroy or damage for any unlawful purpose.

### **Assault – (see also attached statutory definitions)**

The actions of an individual who intentionally, knowingly or recklessly causes bodily injury to another intentionally or knowingly causes another to reasonably fear imminent bodily injury, or causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative.

- **Aggravated Assault** (see also attached statutory definitions) is committed by an individual who intentionally, knowingly or recklessly commits an assault and also causes “serious” bodily injury to another or uses or displays a deadly weapon. (See Serious Bodily Injury)

### **Assault on Designated Visitors (see also Assault/Aggravated Assault definition)**

The actions of an individual who intentionally, knowingly or recklessly causes bodily injury to persons who are legitimately present on school property or attending school-sponsored activities/ events. This would typically include parents/guardians, other family members, guests, volunteers and chaperons.

### **Assault/Aggravated Assault (formerly Battery) on a Teacher or Other School Personnel (see also Assault/Aggravated Assault definition)**

The actions of an individual who intentionally, knowingly or recklessly causes bodily injury on any elected official or school district employee whether it is committed on school property, on school-sponsored transportation, during a school-sponsored activity or while the elected official or employee is on official school business.

### **Breaking and Entering/Burglary**

An individual who enters a building not open to the public with the intent to commit a felony, theft or assault or remains concealed in a building with the intent to commit a felony, theft or assault.

### **Bricking/Stoning of Buses/Vans**

Incidents of students throwing objects at any occupied school bus, school-sponsored vehicle, or MATA bus (when the MATA bus is carrying Memphis City Schools students to/from school or school sponsored activities).

### **Bullying, Harassment and Intimidation**

Any act that substantially interferes with a student's educational benefits, opportunities or performance that takes place on school grounds, at any school-sponsored activity, on school provided transportation, or at any official school bus stop, and that has the effect of:

- (1) Physically harming a student or damaging a student's property;
- (2) Knowingly placing a student in reasonable fear of physical harm to the student or damage to the student's property; or
- (3) Creating a hostile educational environment.

Examples include, but are not limited to, name calling or “checking;” making negative comments about a person’s race, ethnicity, sexual orientation, sex, religion or disability; extortion; and following students to and from school with intent to intimidate.

Bullying, Harassment and Intimidation includes Cyber Bullying, which is bullying through the use of the Internet or through telecommunications technologies, such as computers, telephones, cell phones and text messaging.

### **Cheating/Plagiarism**

Taking credit for oneself and not giving credit to the source for written and oral expression authored and/or prepared by another, cheating on exams, etc.

### **Clearing a Suspension**

Terms and conditions of a student’s return to school after being suspended. The principal (or designee) will set the terms.

### **Cyber Bullying**

See Bullying, Harassment and Intimidation

### **Designated Visitors**

Persons who are legitimately present on school property or attending school-sponsored activities/events. This would typically include parents/guardians, other family members, guests, volunteers and chaperons.

### **Disruptive Behavior**

Conduct that significantly interferes with all or portions of the campus activities, school sponsored events and school bus transportation. Behavior that poses a serious threat to the learning environment or to the health, safety, and/or welfare of others.

### **Drug**

Any controlled substance, marijuana, alcohol, legend drug or any other substance whose possession or use is regulated in any manner by any governmental authority, including the school system.

### **Early Release**

Early release means leaving school or class before the end of the school day with the knowledge of parents and school authorities.

### **Excessive Tardies/Class Cutting**

- Excessive tardies means continuing to come to school after the school day begins or to the classroom after classes have started.
- Class cutting is absence from scheduled classes or scheduled activity without prior knowledge of parents and school authorities.

(See Policy 6.200 Regularity of Attendance.)

### **Expel/Expulsion**

Removed from the pupil's regular school program at the location where a violation occurred or removal from school attendance altogether. Suspensions of more than 10 days are expulsions.

### **Extortion**

A person who uses coercion upon another person with the intent to obtain property, services, any advantage or immunity; or restrict unlawfully another's freedom of action

- Coercion is a threat of kidnapping, extortion, force or violence to be performed immediately or in the future.

### **False Accusation**

The intentional making of untrue statements that may jeopardize the reputation, employment or professional certification of a teacher, member of the staff or student.

### **False Fire Alarm**

The intentional activation of a fire alarm, fire bell, or other signaling device with intent to deceive, mislead or otherwise misinform a school/center function concerning the presence of a fire or other disaster.

### **False Imprisonment – (see also attached statutory definitions)**

Knowingly removing or confining another person unlawfully so as to interfere substantially with the person's liberty.

- Kidnapping (see also attached statutory definitions) is false imprisonment under circumstances that expose a person to substantial risk of bodily injury.
- Aggravated Kidnapping (see also attached statutory definitions) is false imprisonment committed to facilitate commission of a felony or flight after committing a felony or interfere with the performance of any governmental or political function, with the intent to inflict serious bodily injury, or terrorize the victim or another, or where the victim

suffers bodily injury, or while in possession of a deadly weapon or threatened use of a deadly weapon.

### **Felony per Juvenile Court**

Off-campus criminal behavior that results in the student being legally charged with a felony and the student's continued presence in school poses a danger to persons or property or disrupts the educational process.

### **Fighting**

- Minor injury and non gang-related - Mutual combat and mutual altercation, including when two or more persons mutually participate in physical violence that may require physical restraint and/or results in minor or no injury. (Level 3 violation)
- Serious injury, weapon used or gang-related - Mutual combat and mutual altercation, including when two or more persons mutually participate in physical violence, that requires physical restraint and results in serious injury and/or weapons are used. (Level 5 violation)

### **Firearm or Destructive Device**

Any weapon designed, made or adapted to expel a projectile by the action of an explosion or any device readily convertible to that use.

### **Forgery**

To alter, make, complete, execute or authenticate any writing that attempts to:

- (1) be the act of another who did not authorize that act;
- (2) have been executed at a time or place or in a numbered other than was in fact the case; or
- (3) be a copy of an original when no such original existed.

### **Gambling**

Risking anything of value for a profit whose return is to any degree contingent on chance.

### **Gang**

A formal or informal ongoing organization, association, or group consisting of three or more persons who identify themselves with a common name or sign and that has as one (1) of its activities the commission of criminal acts; and has two (2) or more members who, individually or collectively, engage in or have engaged in a pattern of criminal ~~gang~~ activity.

### **Harassment**

See Bullying, Harassment and Intimidation and Sexual Harassment

### **Hazing**

Any intentional or reckless act by one student acting alone or with others which is directed against any other student, that endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger such student's mental or physical health or safety.

### **In-School Suspension**

Prohibiting a student from attending his/her regular class for a specified period of time.

**Indecent Exposure**

The display of parts of the human body without clothing in a manner that is contrary to local custom and law.

**Interventions**

Programs, curricula, strategies or activities designed to prevent, reduce or eliminate negative behaviors or actions in students or to support academic achievement.

**Insubordination/Defiance**

Refusing to follow a reasonable request, direction or instruction of an adult through disobedience, defiance, unruliness or noncompliance. Includes walking away when being addressed by an adult and refusal to work in class.

**Intimidation**

See Bullying, Harassment and Intimidation

**Locker Misuses**

Intentionally using, without proper permission, property belonging to another or the school, in a manner likely to damage the property or using another person's locker without authorization. Applying profane, obscene, sexist, racist or other decorations to a locker or any area or surface which disrupts the educational process, interferes with teaching and learning, and defaces or devalues school property.

**Making a Threat (with a Destructive Device) or False Report (Bomb)**

Threatening to throw, project, place, or discharge any destructive device, including chemical weapons, with intent to do bodily harm to any person or with intent to do damage to any property of any person; or making a false report, with intent to deceive, mislead or otherwise misinform any person, concerning the placing or planting of any destructive device, bomb, dynamite, or any other deadly explosive.

**Misconduct Level 1**

Conduct that interferes with the school or classroom environment, but has little potential for causing harm to others or destruction of property.

**Misconduct Level 2**

Conduct that interferes with the school or classroom environment, and has high potential for causing harm to other persons or destroying property.

**Obscene Material**

Material of a sexual nature which offends common decency and morals.

**Participation in Activities Related to Non-School Sponsored/Non-Sanctioned Organizations**

Participation in organizations at school that are not approved by the school's administration. Includes failure to register a non school-sponsored organization with the school or participation in the activities of a non school-sponsored organization while at school. (See definition of Hazing).

### **Posting/Distributing Unauthorized Material**

Posting or distributing leaflets or other materials that have not been approved for posting or distribution by the school and/or the district or that are not in accordance with law or policy.

### **Profanity**

Vulgar or irreverent speech or action.

### **Reckless Driving**

Driving any vehicle on or near school grounds with an intentional reckless disregard for the safety of persons or property.

### **Remand/Alternative School Placement**

Placing a student who has been expelled, suspended several times, or received a long-term suspension in a school setting that provides both behavioral and academic support.

### **Robbery**

Intentional or knowing theft of property from another person by violence or by putting the person in fear.

- Aggravated robbery is theft of property with a deadly weapon or what is believed to be a deadly weapon or where the victim suffers serious bodily injury.

### **Serious Bodily Injury**

Bodily injury that involves (a) a substantial risk of death; (b) protracted unconsciousness; (c) extreme physical pain; (d) protracted or obvious disfigurement; or (e) protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty.

Serious injury generally includes injuries requiring medical attention. Examples of serious injury include, but are not limited to, such harm as:

- assault which, if more forceful or differently targeted, would result in substantial risk of death
- loss or impairment of the functioning of a body member or organ
- being stabbed
- being shot
- being rendered unconscious
- loss of life

### **Sexual Battery – (see also attached statutory definitions)**

Unlawful sexual contact with a victim accompanied by force or coercion, or without the victim's consent or with a person who is mentally incapacitated or physically helpless, or by fraud.

- Aggravated Sexual Battery (see also attached statutory definitions) is unlawful sexual contact with a victim by:
  - force or coercion; or
  - with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon; or
  - causes bodily injury to the victim; or

- by more than one (1) person through use of force or coercion; or
- by more than one (1) person who knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless;
- or the victim is less than thirteen (13) years of age.

### **Sexual Harassment (Student to Student)**

Unwelcome actions which cause a reasonable person to feel uncomfortable or unsafe resulting in a learning environment which is offensive, hostile and/or intimidating.

### **Suspension**

Prohibiting a student from attending school for a specified period of time.

### **Theft**

Intending to deprive an owner of his/her property by knowingly exercising control over the property without the owner's consent.

### **Threat**

A pattern of conduct or statements expressing an intent to do harm or act violently against someone or something. (The principal will consult with the Safety Assessment Team to determine the seriousness of the threat. The Safety Assessment Team may be contacted at 901-416-6266.) (See also Bullying, Intimidation and Harassment.)

### **Trespass and Loitering**

Students with an unauthorized absence from their home school and who are found present without permission at another school or on other MCS school property.

- Loitering is remaining in or around the school building without permission and staff supervision.

### **Truancy/Unlawful Absence**

Being absent from school without permission.

### **Unauthorized/Inappropriate Use of the Internet, Computers or Computer Software**

Any action that violates the Policy on Access to Telecommunications Networks (#4.406) or local, state and federal law. This includes using the Internet or e-mail for non-educational purposes, transmitting personally identifiable or personal contact information without authorization, using inappropriate language, and using the network to personally attack or harass another person.

### **Unauthorized Parking**

Parking in an area or a space officially designated for another person or persons; parking in an illegal space, as designated by a school or government authority; or parking in an area not designated for students.

### **Unauthorized Possession or Use of Prescription Drugs**

Possession or use of prescription drugs for which the student is not the named recipient of a bona fide prescription or for which school approval to carry or use the prescription has not been given. It also applies to any student who is selling or otherwise distributing his/her prescribed medication. [Memphis City Schools Policy/Regulations 6.405 states that students should be allowed to carry their own

emergency medication (e.g., asthma inhalers and EpiPens<sup>®</sup>). However, this should be cleared with the school principal.]

**Unsafe School Choice**

Providing a student or the parent/guardian of a student who attends a persistently dangerous school or a student who has been the victim of a violent crime while at school with an opportunity to transfer to another school within the district that is safe for the student. (See Policy #6.3091—Unsafe School Choice.)

**Use of Provocative Language**

Obscene language, profanity, and/or inflammatory statements.

**Vandalism**

The intentional destruction, damage or defacement of property without consent of the owner or the person having custody or control of the property.

**Weapon/Dangerous Weapon**

Any dangerous instrument or substance which is capable of inflicting any injury on any person.

**Zero Tolerance**

Specific acts committed by students that require mandatory expulsion for one year under state law (e.g., possession of a firearm).

## Reportable Criminal Offenses – Definitions

Violent criminal offenses as well as attempt to commit the criminal offenses is defined by TCA 40-38-111(g), TCA 39-12-101 and other applicable state law. Definitions below preceded by an asterisk are not identified under TCA 40-38-111(g) as violent crimes, but, is provided when necessary to accurately define another crime (for example, *arson* is not identified under state law as a violent crime, but *aggravated arson* is identified).

### **\*39-12-101. Criminal attempt. (not considered a violent crime under TCA 40-38-111(g))**

- (a) A person commits criminal attempt who, acting with the kind of culpability otherwise required for the offense:
  - (1) Intentionally engages in action or causes a result that would constitute an offense if the circumstances surrounding the conduct where as the person believes them to be;
  - (2) Acts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person's part; or
  - (3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.
- (b) Conduct does not constitute a substantial step under subdivision (a)(3) unless the person's entire course of action is corroborative of the intent to commit the offense.
- (c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

### **39-14-302. Aggravated arson.**

- (a) A person commits aggravated arson who commits arson as defined in \*§39-14-301 or §39-14-303:
  - (1) When one (1) or more persons are present therein; or
  - (2) When any person, including firefighters and law enforcement officials, suffers serious bodily injury as a result of the fire or explosion.
- (b) (1) Aggravated arson is a Class A felony. It is an enhancement factor by which the court the court may increase a defendant's sentence within the appropriate range that the damage or destruction was caused to a structure, whether temporary or permanent in nature, used as a place of worship.
  - (2) As used in this subsection (b), "place of worship" means any structure that is
    - (A) Approved, or qualified to be approved, by the state board of equalization for property tax exemption pursuant to §67-5-212, based on ownership and use of the structure by a religious institution; and
    - (B) Utilized on a regular basis by such religious institution as the site of congregational services, rites or activities communally undertaken for the purpose of worship.

### **\*39-14-301. Arson. (not considered a violent crime under TCA 40-38-111(g))**

- (a) A person commits an offense who knowingly damages any structure by means of a fire or explosion:

- (1) Without the consent of all persons who have a possessory, proprietary or security interest therein; or
  - (2) With intent to destroy or damage any structure to collect insurance for the damage or destruction or for any unlawful purpose.
- (b) (1) Arson is a Class C felony.
- (3) (A) Arson of a place of worship is a Class B felony.
- (B) As used in this subdivision (b)(2), “place of worship” means any structure that is:
- (i) Approved, or qualified to be approved, by the state board of equalization for property tax exemption pursuant to §67-5-212, based on ownership and use of the structure by a religious institution; and
  - (ii) Utilized on a regular basis by such religious institution as the site of congregational services, rites or activities communally undertaken for the purpose of worship.

### **39-13-102. Aggravated assault.**

- (a) A person commits aggravated assault who:
- (1) Intentionally or knowingly commits an assault as defined in \*§39-13-101 and:
    - (A) Causes serious bodily injury to another; or
    - (B) Uses or displays a deadly weapon; or
  - (2) Recklessly commits an assault as defined in § 39-13-101(a)(1), and:
    - (A) Causes serious bodily injury to another; or
    - (B) Uses or displays a deadly weapon.
  - (b) A person commits aggravated assault who, being the parent or custodian of a child or the custodian of an adult, intentionally or knowingly fails or refuses to protect such child or adult from an aggravated assault as defined in subdivision (a)(1) or aggravated child abuse as defined in § 39-15-402.
  - (c) A person commits aggravated assault who, after having been enjoined or restrained by an order, diversion or probation agreement of a court of competent jurisdiction from in any way causing or attempting to cause bodily injury or in any way committing or attempting to commit an assault against an individual or individuals, intentionally or knowingly attempts to cause or causes bodily injury or commits or attempts to commit an assault against such individual or individuals.
  - (d)(1) Aggravated assault under subdivision (a)(1) or subsection (b) or (c) is a Class C felony. Aggravated assault under subdivision (a)(2) is a Class D felony. The court shall consider as an enhancement factor at the time of sentencing that the victim of the aggravated assault was a law enforcement officer, firefighter, correctional officer, youth services officer, probation and parole officer, or a state registered security officer/guard performing an official duty or an employee of the department of correction or the department of children’s services; provided, that such officer or employee was performing an official duty. The court shall consider as an enhancement factor at the time of sentencing that the victim of the aggravated assault was an emergency medical or rescue worker, emergency medical technician, or paramedic, whether compensated or acting as a volunteer; provided that such technician or worker was performing an official duty.
  - (2) In addition to any other punishment that may be imposed for a violation of this section, if the relationship between the defendant and the victim of the assault is such that the victim is a victim as defined in § 36-3-601(8), and if, as determined by the court, the

defendant possesses the ability to pay a fine in an amount not in excess of two hundred dollars (\$200), then the court shall impose a fine at the level of the defendant's ability to pay, but not in excess of two hundred dollars (\$200). Such additional fine shall be paid to the clerk of the court imposing sentence, who shall transfer it to the state treasurer, who shall credit the same to the general fund. All such fines so credited to the general fund shall be subject to appropriation by the general assembly for the exclusive purpose of funding family violence shelters and shelter services. Such appropriation shall be in addition to any amount appropriated pursuant to § 67-4-411.

**\*39-13-101. Assault. (not considered a violent crime under TCA 40-38-111(g))**

- (a) A person commits assault who:
  - (1) Intentionally, knowingly or recklessly causes bodily injury to another;
  - (2) Intentionally or knowingly causes another reasonably fear imminent bodily injury; or
  - (3) Intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative.
- (b) (1) Assault is a Class A misdemeanor unless the offense is committed under subdivision (a)(3), in which event assault is a Class B misdemeanor.
- (2) In addition to any other punishment that may be imposed for a violation of this section, if the relationship between the defendant and the victim of the assault is such that the victim is a victim as defined in § 36-3-601(8), and if, as determined by the court, the defendant possesses the ability to pay a fine in an amount not in excess of two hundred dollars (\$200), then the court shall impose a fine at the level of the defendant's ability to pay, but not in excess of two hundred dollars (\$200). Such additional fine shall be paid to the clerk of the court imposing sentence, who shall transfer it to the state treasurer, who shall credit the same to the general fund. All such fines so credited to the general fund shall be subject to appropriation by the general assembly for the exclusive purpose of funding family violence shelters and shelter services. Such appropriation shall be in addition to any amount appropriated pursuant to § 67-4-411.

**39-15-402. Aggravated child abuse and neglect.**

- (a) A person commits the offense of aggravated child abuse or aggravated child neglect who commits the offense of child abuse or neglect as defined in § 39-15-401 and:
  - (1) The act of abuse or neglect results in serious bodily injury to the child; or
  - (2) A deadly weapon is used to accomplish the act of abuse.
- (b) A violation of this section is a Class B felony; provided, however, that, if the abused or neglected child is six (6) years of age or less, the penalty is a Class A felony.
- (c) Nothing in this chapter shall be construed to mean a child is neglected, abused, or abused or neglected in an aggravated manner for the sole reason the child is being provided treatment by spiritual means through prayer alone in accordance with the tenets or practices of a recognized church or religious denomination by a duly accredited practitioner thereof in lieu of medical or surgical treatment.

**39-15-401. Child abuse and neglect. (not considered a violent crime under TCA 40-38-111(g))**

- (a) Any person who knowingly, other than by accidental means, treats a child under eighteen (18) years of age in such a manner as to inflict injury or neglects such a child so as to adversely affect the child's health and welfare commits a Class A misdemeanor; provided, however, that if the abused or neglected child is six (6) years of age or less, the penalty is a Class D felony.
- (b) (1) Any juvenile court having reasonable cause to believe that a person is guilty of violating this section shall have the person brought before the court either by summons or warrant. No arrest warrant or summons shall be issued by any person authorized to issue such a warrant or summons nor shall criminal charges be instituted against a child's parent, guardian or custodian for a violation of subsection (a) based upon the allegation that unreasonable corporal punishment was administered to such child unless the affidavit of complaint also contains a copy of the report prepared by the law enforcement official who investigated the allegation or independent medical verification of injury to the child.
  - (2)(A) If the person pleads not guilty, the juvenile judge shall have the power of a judge of the court of general sessions to bind the person over to the grand jury as in cases of misdemeanors under the criminal laws of this state. Upon being bound over the grand jury, the person may be prosecuted on an indictment filed by the district attorney general and prosecutor need not be named on the indictment.
  - (B) On a plea of not guilty, the juvenile court judge shall have the power to proceed to hear a case on its merits without the intervention of a jury if the person requests a hearing in juvenile court and expressly waives, in writing, indictment, presentment, grand jury investigation and jury trial.
  - (C) If the person enters a plea of guilty, the juvenile court judge shall sentence the person under this section.
- (c) Except as expressly provided, the provisions of this section shall not be construed as repealing and provision of any other statute, but shall be supplementary thereto and cumulative thereof.
- (d) A violation of this section may be lesser included offense of any kind of homicide, statutory assault, or sexual offense if the victim is a child and the evidence supports a charge under this section. In any case in which conduct violating this section also constitutes assault, the conduct may be prosecuted under this section or under § 39-13-101.

**39-13-304. Aggravated kidnapping.**

- (a) Aggravated kidnapping is false imprisonment, as defined in \*§ 39-13-302, committed:
  - (1) To facilitate the commission of any felony or flight thereafter;
  - (2) To interfere with the performance of any governmental or political function;
  - (3) With the intent to inflict serious bodily injury on or to terrorize the victim or another;
  - (4) Where the victim suffers bodily injury; or
  - (5) While the defendant is in possession of a deadly weapon or threatens the use of a deadly weapon.
- (b)(1) Aggravated kidnapping is a Class B felony.
  - (2) If the offender voluntarily releases the victim alive or voluntarily provides information leading to the victim's safe release, such actions shall be considered by the court as a mitigating factor at the time of sentencing.

**\*39-13-302. False imprisonment. (not considered a violent crime under TCA 40-38-111(g))**

- (a) A person commits the offense of false imprisonment who knowingly removes or confines another unlawfully so as to interfere substantially with the other's liberty.
- (b) False imprisonment is a Class A misdemeanor.

**39-13-502. Aggravated rape.**

- (a) Aggravated rape is unlawful sexual penetration of a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:
  - (1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;
  - (2) The defendant causes bodily injury to the victim;
  - (3) The defendant is aided or abetted by one (1) or more other persons; and
    - (A) Force or coercion is used to accomplish the act; or
    - (B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.
- (b) Aggravated rape is a Class A felony.

**39-13-402. Aggravated robbery.**

- (a) Aggravated robbery is robbery as defined in \*§ 39-13-401:
  - (1) Accomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon; or
  - (2) Where the victim suffers serious bodily injury.
- (b) Aggravated robbery is a Class B felony.

**\*39-13-401. Robbery. (not considered a violent crime under TCA 40-38-111(g))**

- (a) Robbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear.
- (b) Robbery is a Class C felony.

**39-13-504. Aggravated sexual battery.**

- (a) Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:
  - (1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;
  - (2) The defendant causes bodily injury to the victim;
  - (3) The defendant is aided or abetted by one (1) or more other persons; and
    - (A) Force or coercion is used to accomplish the act; or
    - (B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
  - (4) The victim is less than thirteen (13) years of age.
- (b) Aggravated sexual battery is a Class B felony.

**39-13-507. Limited spousal exclusion.**

- (a) A person does not commit an offense under this part if the victim is the legal spouse of the perpetrator except as provided in subsections (b) and (c).
- (b) (1) “Spouse rape” means the unlawful sexual penetration of one spouse by the other where:
  - (A) The defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;
  - (B) The defendant causes serious bodily injury to the victim; or
  - (C) The spouses are living apart and one (1) of them has filed for separate maintenance or divorce.
- (2) (A) “Spousal rape,” as defined in subdivision (b)(1)(A) or (B), is a Class C felony.
- (C) “Spousal rape,” as defined in subdivision (b)(1)(C) shall be punished pursuant to § 39-13-502 or § 39-13-503.
- (c) (1) “Aggravated spousal rape” is the unlawful sexual penetration of one spouse by the other where the defendant:
  - (A) Knowingly engaged in conduct that was especially cruel, vile and inhumane to the victim during commission of the offense; and either;
  - (B) Causes serious bodily injury to the victim; or
  - (C) Is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.
- (2) Aggravated spousal rape is a Class B felony.
- (d) (1) “Spousal sexual battery” means the unlawful sexual contact by one (1) spouse of another where:
  - (A) The defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;
  - (B) The defendant causes serious bodily injury to the victim; or
  - (C) The spouses are living apart and one (1) of them has filed for separate maintenance or divorce.
- (2) (A) “Spousal sexual battery,” as defined in subdivision (c)(1)(A) or (B), is a Class D felony.
- (C) “Spousal sexual battery,” as defined in subdivision (c)(1)(C) shall be punished pursuant to § 39-13-504 or § 39-13-505.

### **39-13-218. Aggravated vehicular homicide.**

- (a) Aggravated vehicular homicide is vehicular homicide, as defined in \*§ 39-13-213(a)(2), where:
  - (1) The defendant has two (2) or more prior convictions for:
    - (A) Driving under the influence of an intoxicant;
    - (B) Vehicular assault; or
    - (C) Any combination of such offenses;
  - (2) The defendant has one (1) or more prior convictions for the offense of vehicular homicide; or
  - (3) There was at the time of the offense twenty-hundredths of one percent (.20%), or more, by weight of alcohol in the defendant’s blood and the defendant has one (1) prior conviction for:
    - (A) Driving under the influence of an intoxicant; or
    - (B) Vehicular assault.
- (b) (1) As used in this section, unless the context otherwise requires, “prior conviction” means an offense for which the defendant was convicted prior to the commission of the instant vehicular homicide and includes convictions occurring prior to July 1, 1996.

- (2) “Prior conviction” includes convictions under the laws of any other state, government, or country which, if committed in this state, would have constituted one (1) of three (3) offenses enumerated in subdivision (a)(1) or (a)(2). In the event that a conviction from a jurisdiction other than Tennessee is not specifically named the same as one (1) of the three (3) offenses enumerated in subdivision (a)(1) or (a)(2), the elements of the offense in the other jurisdiction shall be used by the Tennessee court to determine if such offense constitutes on (1) of the prior convictions required by subsection (a).
- (c) If the defendant is charged with aggravated vehicular homicide, the indictment, in a separate count, shall specify, charge and give notice of the required prior conviction or convictions. If the defendant is convicted of vehicular homicide under § 39-13-213(a)(2), the jury shall then separately consider whether the defendant has the requisite number and types of prior offenses and/or level of blood alcohol concentration necessary to constitute the offense of aggravated vehicular homicide. If the jury convicts the defendant of aggravated vehicular homicide, the court shall pronounce judgment and sentence the defendant from within the felony classification set out in subsection (d).
- (d) Aggravated vehicular homicide is a Class A felony.

**\*39-13-213. Vehicular homicide. (not considered a violent crime under TCA 40-38-111(g))**

- (a) Vehicular homicide is the reckless killing of another by the operation of an automobile, airplane, motorboat or other motor vehicle:
  - (1) As the proximate result of conduct creating a substantial risk of death or serious bodily injury to a person; or
  - (2) As the proximate result of the driver’s intoxication as set forth in § 55-10-401. For the purposes of this section, “intoxication” includes alcohol intoxication as defined by § 55-10-408, drug intoxication, or both.
- (b) Vehicular homicide is a Class C felony, unless it is the proximate result of driver intoxication as set forth in subdivision (a)(2), in which case it is a Class B felony.
- (c) The court shall prohibit a defendant convicted of vehicular homicide from driving a vehicle in this state for a period of time not less than three (3) years nor more than ten (10) years.

**39-13-404. Carjacking.**

- (a) “Carjacking” is the intentional or knowing taking of a motor vehicle from the possession of another by use of:
  - (1) A deadly weapon; or
  - (2) Force or intimidation.
- (b) Carjacking is a Class B felony.

**39-13-212. Criminally negligent homicide.**

- (a) Criminally negligent conduct which results in death constitutes criminally negligent homicide.
- (b) Criminally negligent homicide is a Class E felony.

**39-14-404. Especially aggravated burglary.**

- (a) Especially aggravated burglary is:
  - (1) Burglary of a habitation or building other than a habitation; and
  - (2) Where the victim suffers serious bodily injury.
- (b) For the purposes of this section, “victim” means any person lawfully on the premises.
- (c) Especially aggravated burglary is a Class B felony.
- (d) Acts which constitute an offense under this section may be prosecuted under this section or any other applicable section, but not both.

**39-13-305. Especially aggravated kidnapping.**

- (a) Especially aggravated kidnapping is false imprisonment, as defined in \*§ 39-13-302:
  - (1) Accomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon;
  - (2) Where the victim was under the age of thirteen (13) at the time of the removal or confinement;
  - (3) Committed to hold the victim for ransom or reward, or as a shield or hostage; or
  - (4) Where the victim suffers serious bodily injury.
- (b) (1) Especially aggravated kidnapping is a Class A felony.
  - (2) If the offender voluntarily releases the victim alive or voluntarily provides information leading to the victim’s safe release, such actions shall be considered by the court as a mitigating factor at the time of sentencing.

**\*39-13-302. False imprisonment. (not considered a violent crime under TCA 40-38-111(g))**

- (a) A person commits the offense of false imprisonment who knowingly removes or confines another unlawfully so as to interfere substantially with the other’s liberty.
- (b) False imprisonment is a Class A misdemeanor.

**39-13-403. Especially aggravated robbery.**

- (a) Especially aggravated robbery is robbery as defined in \*§ 39-13-401:
  - (1) Accomplished with a deadly weapon; and
  - (2) Where the victim suffers serious bodily injury.
- (b) Especially aggravated robbery is a Class A felony.

**\*39-13-401. Robbery. (not considered a violent crime under TCA 40-38-111-(g))**

- (a) Robbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear.
- (b) Robbery is a Class C felony.

### **39-13-202. First degree murder.**

- (a) First degree murder is:
  - (1) A premeditated and intentional killing of another;
  - (2) A killing of another committed in the perpetration of or attempt to perpetrate any first degree murder, act of terrorism, arson, rape, robbery, burglary, theft, kidnapping aggravated child abuse, aggravated child neglect or aircraft piracy; or
  - (3) A killing of another committed as the result of the unlawful throwing, placing or discharging of a destructive device or bomb.
- (b) No culpable mental state is required for conviction under subdivision (a)(2) or (a)(3) except the intent to commit the enumerated offenses or acts in such subdivisions.
- (c) A person convicted of first degree murder shall be punished by:
  - (1) Death;
  - (2) Imprisonment for life without possibility of parole; or
  - (3) Imprisonment for life.
- (d) As used in subdivision (a)(1) “premeditation” is an act done after the exercise of reflection and judgment. “Premeditation” means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

### **39-15-302. Incest.**

- (a) A person commits incest who engages in sexual penetration as defined in § 39-13-501, with a person, knowing such person to be, without regard to legitimacy:
  - (1) The person’s natural parent, child, grandparent, grandchild, uncle, aunt, nephew, niece, stepparent, stepchild, adoptive parent, adoptive child; or
  - (2) The person’s brother or sister of the whole or half-blood or by adoption.
- (b) Incest is a Class C felony.

### **39-13-303. Kidnapping.**

- (a) Kidnapping is false imprisonment as defined in \*§ 39-13-302:
  - (1) Under circumstances exposing the other person to substantial risk of bodily injury; or
  - (2) Where the confinement of another is in a condition of involuntary servitude.
- (b) Kidnapping is a Class C felony.

### **39-13-302. False imprisonment. (not considered a violent crime under TCA 40-38-111(g))**

- (a) A person commits the offense of false imprisonment who knowingly removes or confines another unlawfully so as to interfere substantially with the other’s liberty.
- (b) False imprisonment is a Class A misdemeanor.

### **39-13-503. Rape.**

- (a) Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances:
  - (1) Force or coercion is used to accomplish the act;
  - (2) The sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent;
  - (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
  - (4) The sexual penetration is accomplished by fraud.
- (b) Rape is a Class B felony.
- (c) When imposing sentence under the provisions of title 40, chapter 35, for a conviction under this section, the court shall consider as an enhancement factor that the defendant caused the victim to be mentally incapacitated or physically helpless by use of a controlled substance.

### **39-13-522. Rape of a child.**

- (a) Rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if such victim is less than thirteen (13) years of age.
- (b) Rape of child is a Class A felony.
- (c) When imposing sentence under the provisions of title 40, chapter 35, for a conviction under this section, the court shall consider as an enhancement factor that the defendant caused the victim to be mentally incapacitated or physically helpless by use of a controlled substance.

### **39-13-215. Reckless homicide.**

- (a) Reckless homicide is a reckless killing of another.
- (b) Reckless homicide is a Class D felony.

### **39-13-210. Second degree murder.**

- (1) A knowing killing of another; or
- (2) A killing of another which results from the unlawful distribution of any Schedule I or Schedule II drug when such drug is the proximate cause of the death of the user.
- (b) Second degree murder is a Class A felony.

### **39-13-527. Sexual battery by an authority figure.**

- (a) Sexual battery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by the following circumstances:
  - (1) The victim was, at the time of the offense, thirteen (13) years of age or older but less than eighteen (18) years of age; and either
    - (A) The defendant had, at the time of the offense, supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional or occupational status and used such power to accomplish the sexual contact; or
    - (B) The defendant had, at the time of the offense, parental or custodial authority over the victim and used such authority to accomplish the sexual contact

- (b) Sexual battery by an authority figure is a Class C felony.

### **39-13-505. Sexual battery.**

- (a) Sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:
  - (1) Force or coercion is used to accomplish the act;
  - (2) The sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent;
  - (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
  - (4) The sexual contact is accomplished by fraud.
- (b) As used in this section, “coercion” means the threat of kidnapping, extortion, force or violence to be performed immediately or in the future.
- (c) Sexual battery is a Class E felony.
- (d) When imposing sentence under the provisions of title 40, chapter 35, for a conviction under this section, the court shall consider as an enhancement factor that the defendant caused the victim to be mentally incapacitated or physically helpless by use of a controlled substance.

### **39-17-315. Stalking.**

- (a) (1) A person commits the offense of stalking who intentionally and repeatedly follows or harasses another person in such a manner as would cause that person to be in reasonable fear of being assaulted, suffering bodily injury or death.
- (2) As used in this section:
  - (A) “Follows” means maintaining a visual or physical proximity over a period of time to a specific person in such a manner as would cause a reasonable person to have a fear of an assault, bodily injury or death;
  - (B) “Harasses” means a course of conduct directed at a specific person which would cause a reasonable person to fear an assault, bodily injury, or death, including, but not limited to, verbal threats, written threats, vandalism, or uncontested-to physical contact; and
  - (C) “Repeatedly” means on two (2) or more separate occasions.
- (b) (1) Stalking is a Class A misdemeanor.
- (2) A second or subsequent violation of subsection (a) occurring within seven (7) years of the prior conviction is a Class E felony. A second or subsequent violation of subsection (a) involving the same victim and occurring within seven (7) years of the prior conviction is a Class C felony.
- (c) The provisions of this section shall not be construed to prohibit following another person during the course of a lawful business activity.

### **39-13-506. Statutory rape.**

- (a) Statutory rape is sexual penetration of a victim by the defendant or of the defendant by the victim when the victim is at least thirteen (13) but less than eighteen (18) years of age and the defendant is at least four (4) years older than the victim.
- (b) If the person accused of statutory rape is under eighteen (18) years of age, such a defendant shall be tried as a juvenile and shall not be transferred for trial as an adult.

- (c) Statutory rape is a Class E felony.

**39-13-106. Vehicular assault.**

- (a) A person commits vehicular assault who, as the proximate result of the person's intoxication as set forth in § 55-10-401, recklessly causes serious bodily injury to another person by the operation of a motor vehicle. For the purposes of this section, "intoxication" includes alcohol intoxication as defined by § 55-10-408, drug intoxication, or both.
- (b) A violation of this section is a Class D felony.
- (c) Upon the conviction of a person for the first offense of vehicular assault, the court shall prohibit such convicted person from driving a vehicle in this state for a period of one (1) year. For the second such conviction, the court shall prohibit such convicted person from driving a vehicle in this state for a period of two (2) years. For the third such conviction, the court shall prohibit such convicted person from driving a vehicle in this state for a period of three (3) years. For fourth and subsequent convictions, the court shall prohibit the person from driving a vehicle in this state for a period of five (5) years.

**39-13-211. Voluntary manslaughter.**

- (a) Voluntary manslaughter is the intentional or knowing killing of another in a state of passion produced by adequate provocation sufficient to lead a reasonable person to act in an irrational manner.
- (b) Voluntary manslaughter is a Class C felony.