Policy on Out of School Removal for Periods of More Than Ten (10) Days: The following hearing procedures apply any time Success Academy seeks to remove a student from school for more than ten (10) consecutive days through a suspension or through the Interim Alternative Education Setting (“IAES”) process:

1. Due Process Protections: Success Academy will apply the same due process protections to all scholars, as outlined below, except that Success Academy will apply heightened protections for removal of disabled scholars as outlined in Section 7 below and mandated by law.

2. Parental Notice: Notice will be provided in writing by mail and via electronic means within 24 hours of the first day of the proposed removal, and must include:

i. the dates of the proposed removal;

ii. a description of the alleged behavior that led to the removal;

iii. a proposed date and time for the hearing (within five (5) school days of the removal of the scholar from school);

iv. that the scholar and parent/guardian have the following rights: the right to contest the alleged behavior, the right to representation by counsel at their expense, the right to question material witnesses against the scholar and who a parent requests be made available (to the extent that Success reasonably can make those witnesses available), and the right to present witnesses and other evidence on the student’s behalf;
v. information as to when and where alternative instruction will be provided and appropriate contact information should a parent/guardian have questions about alternative instruction.

3. If the student’s behavior warrants immediate removal, days during which the student is removed pre-hearing are included for the total number of days specified in the Parental Notice.

4. **Alternative instruction:** Success Academy will set up alternative instruction as soon as possible. Any special education services and related services that are being provided pursuant to an individualized education program (“IEP”) must also be provided during alternative instruction. Therefore, any such services that Success Academy is providing directly will continue to be provided during alternative instruction. To the extent that related services agreements (“RSAs”) are used, Success Academy will make every reasonable effort to facilitate the provision of any services contemplated therein through the Committee on Special Education (“CSE”) or applicable agency. Success Academy also will make every reasonable effort to ensure that alternative instruction is provided on the first day of the removal and for each subsequent school day until the day the scholar is returned to school.

5. **Hearing:** A hearing will be held at the school as soon as possible (and within five (5) school days of the removal of the scholar from school unless the parent/guardian or their representative requests a later date) to determine whether any alleged incident that led to the scholar’s removal is substantiated and if so, the length of any removal.

   i. **Rescheduling/Postponements:** Reasonable efforts will be made
to reschedule a hearing at the parent/guardian’s request. If a parent/guardian or their representative requests a postponement, the scholar will remain in alternative instruction pending the hearing.

ii. **Hearing Officer:** The School Manager (“SM”) (Superintendent) of a different school than the one that the student attends or another senior employee within Success Academy’s School Management Office (“SMO”) will preside over the hearing and make the final determinations.

   a. If the SM or SMO team member has met with the parent previously or is unavailable, the SM or SMO team member will designate another SM or SMO team member to preside over the hearing.

iii. **Attorney representation:** The parent has a right to bring an attorney or other representation to the hearing at their own expense. A member of the Advisory team will attend on behalf of the school.

iv. **Evidence:**

   a. The parent/guardian and/or their representative and Success Academy will have the right to present evidence and witnesses. Success Academy will ensure that any of its employees (at the time of the hearing) who are material witnesses and who a parent requests be made available are
available to testify (unless they are physically unable to testify due to injury) and will make every reasonable effort to ensure that non-employees who are material witnesses and who a parent requests be made available are also available to testify.

b. Within two (2) school days of sending the Parental Notice, Success Academy will provide the parent/guardian or their representative with a packet containing the list of the names of all potential witnesses, copies of all written statements, and any and all evidence that Success Academy will rely on at the hearing. No evidence may be presented by Success Academy at the hearing that was not included in the packet or parental notice letter. No child can be forced to testify.

v. The hearing shall address two issues: whether the alleged behavior occurred, and whether a removal is appropriate and if so, the length of the removal.

vi. **Burden of proof:** Success Academy bears the burden of proof.

vii. **Record of the proceeding:** Success Academy shall record the hearing and provide a copy of the recording to the parent (or their representative, if they elect to use one) by email or other electronic means within two (2) school days of the hearing.

6. **Findings/hearing decision:** The SM or SMO team member will issue a
finding as to whether the alleged behavior occurred and if so, the length of any removal, no later than two (2) school days after the hearing is completed. A written decision must be rendered by the SM or SMO team member and provided to the parent/guardian (or their representative if they elect to use one) via electronic means and mail. The findings of fact shall state which, if any, alleged incidents involving the student were found to be substantiated and what evidence, documents, and/or testimony was relied on to reach that conclusion. The disposition shall state the length of the removal for each incident that was sustained.

7. **For Students with Disabilities**

i. **Manifestation Determination Review (“MDR”) Notice:** Success Academy will notice an MDR to the CSE, request an MDR meeting, and will request RSAs for any related services promptly after issuing a Parental Notice. Nothing in this section limits or changes the rights of students under the IDEA and other applicable federal and New York law.

ii. **Use of Special Circumstances and Interim Alternative Educational Settings (“IAES”)**

   a. Before removing a student to an IAES, a hearing must be held to determine if the student’s conduct constitutes a Special Circumstance consistent with 20 U.S.C. § 1415(k) and 18 U.S.C. § 1365(h)(3). Special Circumstances apply where a student:

      1) carries or possesses a **weapon** (that is used for, or is
readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length) to or at school or on school premises;

2) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school or on school premises; or

3) has inflicted serious bodily injury (which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty) upon another person while at school or on school premises.

b. An IAES may only be considered if the behavior occurred at school, on school premises, or at a school function.

c. Any staff member who learns of an incident that may warrant removal of a disabled student to an IAES should contact the Advisory team before taking any action.

d. Evidence: SA may pursue a removal alleging serious bodily injury only where it has obtained evidence of serious bodily injury, including but not limited to witness testimony or medical documentation, and has provided such evidence to
the parent/guardian in advance of the hearing.

e. To ensure delivery of services and education is as seamless as possible as required by the IDEA, if the SM upholds removal to an IAES, SA must contact the DOE promptly regarding any request for an IAES so that the CSE may plan the appropriate setting and services. If the SM determines that the Special Circumstances standard has not been met, the student will be reinstated immediately.

iii. Nothing in this section limits or changes the rights of students under the IDEA and other applicable federal and New York law.

8. **Appeals to SA Board:** The hearing decision shall include notice of the parent’s right to appeal the decision to the SA Board of Trustees (the “Board”) and information explaining how to do so, where and to whom an appeal must be submitted, and the information to include in an appeal. Appeal decisions must be rendered by the Board and provided to the parent/guardian via electronic means and mail within five (5) business days of receipt of the appeal request. The Board shall rely only on the recorded transcript and evidence admitted at the hearing.