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WITHDRAWAL SHEET

Ronald Reagan Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
<i>NY 1/2/84</i>			
letter case (168863PD)			
1. memo	from Jack Svahn to Craig Fuller, re 1/3 memo for the File on liver transplantation and related issues (copy)	1/13/84	B5
2. memo	from Craig Fuller to the File, re liver transplantation and related issues (copy)	1/3/84	B5
3. memo	from Margaret Heckler to CCHR, re liver transplantation and related issues (copy) (10 pp including appendices)	12/16/83	B5
4. notes	handwritten in pencil by Ray Donovan, re liver transplantation (2 pp)	1/27/84	B5
5. memo	same as item #2	1/3/84	B5
6. memo	same as item #3 (10 pp)	12/16/83	B5
7. memo	same as item #1	1/13/84	B5
8. memo	same as item #2	1/3/84	B5
9. memo	same as item #3 (10 pp)	12/16/83	B5
COLLECTION:			
WHORM: Subject File			kb
FILE LOCATION:			
FG 010-02 Cabinet Councils (168863) [4 of 4]			6/2/93

RESTRICTION CODES

A. National security classified information.

B. Presidential Records Act

- B1. Release would violate a Federal statute.
- B2. Release would disclose trade secrets or confidential commercial or financial information.
- B3. Release would constitute a clearly unwarranted invasion of personal privacy.
- B4. Relating to appointment to Federal office.
- B5. Release would disclose confidential advice between the President and his advisors, or between such advisors.

B6. Release could disclose internal personnel rules and practices of an agency.

B7. Release would disclose information compiled for law enforcement purposes.

B8. Release would disclose information concerning the regulation of financial institutions.

B9. Release would disclose geological or geophysical information concerning wells.

C. Closed in accordance with restrictions contained in donor's deed of gift.

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CODE OF DISCIPLINE



Boston Public Schools

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CODE OF DISCIPLINE

**The School Committee
of the
City of Boston**

**Mrs. Jean Sullivan McKeigue, President
Mr. John D. O'Bryant, Vice-President
Mr. Kevin McCluskey, Treasurer
Mrs. Jean McGuire, Member
Mrs. Rita Walsh-Tomasini, Member
Robert R. Spillane, Superintendent**

1982

CITY OF BOSTON  PRINTING SECTION

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FOREWORD

It is the firm conviction of the Boston Public Schools that equality of educational opportunity and a safe and effective educational environment are essential to good school discipline. The Boston Public Schools strives to develop and to implement programs and approaches to learning and discipline that will 1. insure parental confidence in the ability of the schools to provide climates that are safe and orderly; 2. assist administrators, teachers, and other staff in their quest for providing effective teaching and learning environments; and 3. provide students with the assurance that they can learn in a nondisruptive atmosphere and can be treated in a fair, consistent, and nondiscriminatory manner.

Every student should have the opportunity for an education in an atmosphere that encourages academic excellence, free exchange of ideas, and maximum personal growth. It should be understood that on entering a school building, students do not divest themselves of their constitutional rights, e.g., the rights to due process, freedom of expression, orderly assembly, privacy of person, freedom from discrimination, and so forth. However, it is reasonable to expect that no student will disrupt the educational process or impose upon, endanger, or deprive others of their rights to an education.

It is the policy of the Boston Public Schools to attempt to resolve disciplinary problems by every means short of exclusion from school. Fair and reasonable procedures will be followed to assure students of their rights. Students may, according to established rules, regulations, and procedures, request and receive fair hearing in any instance in which they feel they have been unfairly treated. In turn, students must recognize that, to maintain an atmosphere conducive to learning, the reasonable exercise of authority by school officials is necessary.

It is the intent of the School Committee and the administration that all persons connected with the schools will demonstrate mutual respect for the rights of others, and that all involved in the teaching and learning process will fully accept and discharge their responsibilities toward others and toward the school system.

PHILOSOPHY

The Boston Public Schools recognizes that the primary intent of society in establishing public schools is to provide an opportunity for learning which cannot be provided in the home. It further recognizes that students have the full rights of citizenship as delineated in the United States Constitution and its Amendments, and that these rights may not be abridged, obstructed, or altered except in accordance with due process.

This document details the responsibilities and rights of students, teachers, administrators, and parents. The quality of education depends not only upon the responsibilities and rights of students, but also upon the quality of interaction among students, parents, teachers, and administrators. To the extent that any of these is missing, to that extent does the quality suffer.

Parents are vital to the success of the school. Parents have the responsibility to reinforce the learning process at home. Their assistance is needed to motivate children to be interested in school and to attend school regularly. Parents should expect the highest level of achievement of which their children are capable, and teacher performance which can elicit this level of achievement. Parents are welcomed and encouraged to confer with teachers to find out how their children are progressing. Parents need to be involved to insure that their children receive a high quality education.

Teachers and all other school personnel should treat students with the same respect and consideration that they expect from students. Teachers need to explain and apply to students in a consistent manner a clear set of ground rules for acceptable behavior, class participation, grades, and assignments. Teachers should communicate with the home about school activities, positive accomplishments and problems, and the ways in which parents can help their children succeed in school.

Principals and headmasters have the responsibility for assuring that the educational needs of students in school are met and that all members of the school community experience fair treatment. Principals and headmasters should instill in students, parents, and staff the belief that school is a place for learning and teaching, and it is the business of all to see that this happens on a consistent basis every day. They should clearly communicate and fairly and consistently enforce the school disciplinary policies. Principals and headmasters have broad power and broad responsibilities and are the key to balancing the best interests of those concerned about the schools.

If enough people work cooperatively and creatively to resolve the complex and persistent problems we face daily . . . if students work hard and aim high . . . if parents provide support and encouragement . . . if school officials provide quality instructional programs, competent instructional personnel, and strong commitment to high standards, then excellence can be achieved in the Boston Public Schools.

RATIONALE FOR THE CODE OF DISCIPLINE

The Code of Discipline is that set of policies, rules and laws, and their concomitant enforcement by which order is established for the benefit of all.

Discipline, as defined by the Code, must have the qualities of understanding, fairness and consistency. It is the responsibility of the school personnel, students, parents and the community to contribute to a school atmosphere which promotes a climate conducive to learning. Discipline is a shared responsibility for students, the administrators, teachers, and the community.

RIGHTS AND RESPONSIBILITIES

I STUDENTS

A. RESPONSIBILITIES

Responsibilities are not a substitute for rules which are included in the Code of Discipline. It is not possible to list all student responsibilities, but it must be emphasized that lack of responsibility means a weakening of rights.

Students have the responsibility to:

1. Respect the rights of all persons involved in the educational process.
2. Respect the racial and cultural diversity of staff and students in the Boston Public Schools.
3. Contribute to the maintenance of a positive educational environment.
4. Apply their abilities and interests to the improvement of their education.
5. Exercise the highest degree of self-discipline in observing and adhering to rules and regulations.
6. Recognize that responsibility is inherent in the exercise of every right.
7. Assure that they exercise their voice in student government.

B. RIGHTS

Correspondingly, it is not possible to list all of the rights of students. Therefore, the following list of rights shall not be construed to deny or limit others retained by students in their own schools, in their capacity as members of the student body, or as citizens.

1. In accordance with the United States Constitution and applicable federal and state laws and regulations, students have the right to participate fully in classroom instruction and extracurricular activities regardless of race, color, national origin, religion, sex, marriage, pregnancy, parenthood, sexual persuasion, primary language, handicap, special needs, age, or economic class.
2. Students have the right to an education of the highest standards.

3. Students have the right to a meaningful curriculum and the right to voice their opinions in the development of such a curriculum.

4. Students have the right to physical safety and protection of personal property.

5. Students have the right to safe and sanitary facilities.

6. Students have the right to consult with teachers, counselors and administrators and anyone else connected with the school if they so desire at appropriate times.

7. Students have the right to free election by secret ballot of their peers in student government and the right to seek and hold office.

8. Students have the right to participate in the development of rules and regulations to which they are subject and the right to be notified of such rules and regulations.

9. Parents and students (if either 14 years of age or in the 9th grade or above) have various rights under state and federal student records laws, including the right to see all the student's records, to control who outside the school may see them, and to appeal decisions concerning the records. (A more detailed summary of these rights is distributed annually to all students and parents. Additional information and copies of the actual regulations are available at each school upon request and from the Massachusetts Department of Education's Bureau of Student Services.)

10. Students in their own schools may exercise the rights of free speech, assembly, press, and association, in accordance with the First Amendment of the United States Constitution and Part I, Article XVI of the Massachusetts Declaration of Rights.

In exercising these rights, students shall refrain from any expression which is libelous or obscene according to current legal definitions, or which is intended to and likely to incite the commission of illegal acts, or which can reasonably be forecast to cause substantial disruption of school or classroom activity, as defined in Section 7.8 of this Code. Consistent with the foregoing:

(a) Students have the right to wear political buttons, armbands, and other badges of symbolic expression.

(b) Students have the right to distribute printed materials and to circulate petitions on school property, including inside school buildings, without prior authorization by school administrators, except that:

(1) materials distributed and petitions circulated on school property shall bear the name and address of the individual or sponsoring organization (including the name and address of at least one member of the group) distributing or circulating the material or petition; and

(2) the person(s) distributing or circulating materials or petitions must be a student in the school involved; and

(3) the time for such distribution or circulation shall be limited to periods before school begins, after dismissal, and during lunchtime to prevent interference with the school program; and

(4) the places for such distribution or circulation in each school shall

be reasonably restricted so as to permit the normal flow of traffic within the school and at exterior doors; and

(5) the manner of such distribution or circulation shall be reasonably restricted so as to prevent undue levels of noise; and

(6) students shall be subject to reasonable requirements for removing litter resulting from such distribution or circulation.

(c) Students have the right to use their own bulletin board(s) without censorship, provided that:

(1) all materials, notices, and other communications posted shall include the name and address of the individual or sponsoring organization (including the name and address of at least one member of the group) posting the material, notice or other communication; and

(2) all materials, notices, and other communications shall be dated before posting and removed after a reasonable time to assure full access to the bulletin board(s).

(d) Students have the right to reasonable use of the public address systems and other school media facilities, except that announcements shall be limited to before school, after dismissal, and other times when classes are not in session.

(e) Students have the right to form political and social organizations and to conduct activities in this connection, provided that group membership shall be open to any student, in accordance with Paragraph B.1 of the Rights and Responsibilities Section of this Code.

11. Students have the right to present petitions, complaints, or grievances to appropriate school authorities regarding disciplinary and other school-related issues except where this Code provides for formal right of appeal.

12. Students have the right to respect from teachers and administrators.

13. Students have the right to personal privacy, including the right to determine their own appearance and select their own style of hair and clothing, subject to reasonable rules necessary for health and safety.

14. Students have the right not to be searched arbitrarily or to have their lockers, automobiles, or personal belongings subjected to arbitrary searches and seizures.

II ADMINISTRATION

The administrator has the responsibility to:

1. Protect the mental and physical well-being of all students and staff.
2. Protect the legal rights of teachers, students, and parents.
3. Support school personnel in the fulfillment of their disciplinary responsibilities as defined by the Code of Discipline and individual school-based rules.

4. Contact and involve parents in dealing with disciplinary matters.
5. Provide a broad-based and varied curriculum to meet individual needs.
6. Develop and implement overall disciplinary policies in cooperation with students, parents and teachers and in conformance with School Committee policy and the Code of Discipline.
7. Inform the community, students and school staff about policies relating to pupil conduct.
8. Provide qualified staff to meet the needs of students and to accomplish school goals and objectives.
9. Consistently maintain a humanistic approach with all students.

III TEACHER

Teachers hold the responsibility to:

1. Maintain a good learning atmosphere.
2. Exhibit qualities of competency, creativity, and self-control.
3. Respect each student as a person.
4. Demonstrate understanding and concern for the individual pupil and his or her needs.
5. Inspire in students the desire for personal growth.
6. Guide students toward the development of self-discipline.
7. Keep informed about current rules and policies.
8. Enforce the policies, rules, and regulations of the School Committee.
9. Communicate with students and their parents.
10. Be conscious of professional ethics in relationships with students, fellow teachers, and administrators.

IV PARENTS

Parents have the responsibility to:

1. Share the responsibility for the behavior of their child in the school environment.
2. Prepare the child to assume responsibility for his or her own behavior.
3. Foster in the child positive attitudes toward himself or herself, others, school, and the community.
4. Communicate with school personnel about the child.
5. Attend individual or group conferences.
6. Recognize that the teacher acts for the parent while the child is in school.

V COMMUNITY

The community has the responsibility to:

1. Assume responsibility in determining school goals.
2. Be informed about school goals and policies.
3. Support an effective school system.

CODE OF DISCIPLINE

Section 1.0 EQUAL EDUCATIONAL OPPORTUNITY

In accordance with the United States Constitution and applicable federal and state laws and regulations, no student shall be suspended, excluded, or otherwise disciplined on account of race, color, national origin, religion, sex, marriage, pregnancy, parenthood, sexual persuasion, primary language, handicap, special needs, age, or economic class.

Section 2.0 LANGUAGE OF NOTICES, CONFERENCES AND HEARINGS

2.1 All written and oral notices required by this Code shall be in English and in the primary language of the home. All notices shall be made in simple and commonly understood words to the extent possible.

2.2 At all hearings and conferences, students and parents have a right to an interpreter of their primary language upon request. All notices regarding hearings or conferences required by this Code shall inform the parents of this right.

Section 3.0 INFORMAL CONFERENCE PROCEDURES

3.1 General Policy

It is the policy of the Boston Public Schools to encourage the use of the procedures described in this Section to discuss and to reach nonpunitive solutions to problems of student conduct.

3.2 Academic Employee Conference

Academic employees shall attempt to resolve disciplinary problems prior to referral to the administrative head. To this end, academic employees, upon witnessing or being informed of the commission of an offense prohibited under this Code, are encouraged to confer privately with the student at the earliest opportunity, and to confer with a parent by phone or by letter. An academic employee or a student may invite a parent to a conference with the student and the employee at a mutually convenient time and place.

3.3 Referral by Nonacademic Employees

Nonacademic employees, upon witnessing the commission of an offense prohibited under this Code, are encouraged to refer the matter to an academic employee supervising the student or, if none is available or known, to the administrative head who may designate an appropriate academic employee to initiate the procedure described in Section 3.2.

3.4 Referral from Academic Employee Conference

When resolution at the academic employee conference is not successful, the academic employee shall inform the administrative head that the student is being referred for attempted resolution of problems or misbehavior. A written statement of the events leading to the referral, the offense the student is believed to have committed, and efforts of the teacher to resolve the problem shall be placed in the student's record.

3.5 Administrative Head Informal Conference

The administrative head shall attempt to arrange a time and place for an informal conference convenient to all participants. The administrative head may invite the parent(s) to attend the informal conference, but failure of the parent(s) to attend shall not delay the conference nor affect the duration or type of disciplinary action taken. If more than one student participated in the incident for which a referral is made, the administrative head may require, or the student may request, the attendance of all students involved.

3.6 Elementary School Procedures

It is recognized that elementary schools experience disciplinary problems of a unique and at times serious nature which are not realistically addressed by most of the referral or conference procedures described in Sections 3.3 through 3.5 of this Code. It is further recognized that elementary schools do not have many of the organizational or programmatic structures which can provide preventive measures or alternative solutions at the secondary level. It is particularly important, therefore, that committees developing school-based rules at the elementary level under Section 4.0 build in support mechanisms within the school and between school staff and parents. Community Superintendents and elementary school principals should work together with staff and parents to develop such resources.

Section 4.0 PROCEDURES FOR ESTABLISHING SCHOOL-BASED RULES ON DISCIPLINARY PROBLEMS

4.1 This Code establishes uniform rules and procedures to be followed throughout the system in disciplinary actions that could result in suspension, transfer or expulsion. However, the Boston Public Schools encourages the establishment of school-based rules for nonsuspendable offenses and the development and consideration of nonexclusionary solutions to violations of school-based rules and, where possible, violations of Section 7.0 of this Code. Section 5.0 describes some nonexclusionary solutions which may be adopted by each school in accordance with the provisions of this Section.

4.2 The administrative head in each school shall convene a committee composed as indicated in Section 4.3 to develop the rules for that school describing nonsuspend-

able disciplinary problems and solutions. The rules shall not diminish or conflict with any procedures or rights described by this Code. Descriptions of disciplinary rules shall be clear and precise. Undefined terms should be avoided, and no rules shall provide for any demeaning, degrading or physical punishment.

4.3 Committees in elementary schools shall consist of the administrative head, an administrative designee, four (4) parents selected by the R.E.P.C. or the Home and School Association where only one exists, or three (3) from the R.E.P.C. and one (1) from the Home and School Association where both exist; and no less than two (2) or more than four (4) teachers selected by the school faculty. Committees in middle schools and high schools shall include, in addition, six (6) student representatives selected by the R.E.S.C. The committee membership shall be racially representative of the school.

4.4 The administrative head of each school shall set up a mechanism to allow time for the representatives of parents, teachers, and students to involve their constituencies to the maximum in the development of the rules.

4.5 The rules adopted pursuant to this Section shall not become effective until approved by the administrative head, a majority of the committee, the appropriate Community Superintendent, and the Deputy Superintendent for School Operations.

4.6 Any person who believes this Code has not been followed in the establishment of school-based rules may file a complaint with the Grievance Coordinator who shall investigate and make recommendations to the Deputy Superintendent for School Operations.

4.7 The rules and solutions adopted pursuant to this Section shall be reevaluated in the same manner each year.

4.8 After adoption, the school-based rules and any subsequent changes shall not go into effect until they have been distributed to students, parents, and faculty members. Thereafter, at the beginning of each school year the standards of conduct shall be distributed to students, parents, and faculty members and shall be posted in conspicuous places within the school.

Section 5.0 ALTERNATIVE SOLUTIONS TO DISCIPLINARY PROBLEMS

5.1 Solutions to disciplinary problems established by each school in accordance with Section 4.0 may include but are not limited to:

5.2 Referral

The student may be referred to school or community resources such as the school's guidance counselor, pupil adjustment counselor, evaluation team leader, supervisor of attendance, in-school peer group counseling program, or, where appropriate, to a school or other drug-abuse or alcohol-abuse program or community-based outreach

program. The student's participation in any counseling, evaluation, or rehabilitation shall be voluntary and shall include parental involvement where appropriate.

5.3 Detention

After notice to the student and parent, a student may be detained for not more than one hour after school on each of up to three days or may be required to arrive early for a definite number of days, provided the total detention time does not exceed three hours per offense. If a parent cannot be reached by telephone, the student may be detained the following school day by sending written notice home with the student.

5.4 Loss of School Privileges

After written notice to the student and parent(s), a student may be denied specific school privileges, to be enumerated by each school under Section 4.0, but not in a manner so as permanently to deny the student the right to participate in a continuing school activity. A student may be denied school privileges for no longer than one week at a time, or a total of three weeks in a marking period.

5.5 Adjustment of Class Schedule

After written notice to the student and parent(s) giving the reasons for the proposed class adjustment, and after a conference among the student, parent(s), and administrative head, a student's class schedule may be adjusted, but only to minimize contact between the student and a teacher or between the student and another student where there is evidence of an ongoing conflict between the two.

5.6 Probation

With written notice to the student and parent(s) that the commission of an additional offense will lead to a particular disciplinary measure, a student may be placed on probation until the end of the marking period. Any disciplinary measure carried out in connection with probation shall be done in strict adherence to the Code.

5.7 Restitution

After written notice to the student and parent(s), and after a conference with the student and parent(s), a student may be required to repair, restore, replace, or pay for damaged or stolen property. Payment may be required either in cash or in appropriate, agreed-upon services.

5.8 Denial of School-Provided Transportation

School-provided transportation may be denied, provided that an alternative form of transportation is available. If an alternative form of transportation is not available, an informal hearing in accordance with Section 9.4 shall be held.

5.9 Student Planning Centers

After positive and responsible approaches have been exhausted within the classroom, the disruptive student may be referred to a Student Planning Center. These

are "time out" centers in schools which are implementing the Schools Without Failure preventive approach. The student remains in the planning center only long enough to be assisted in assessing present behavior and making a plan for more responsible behavior. The planning center provides the opportunity for the student to maintain classroom assignments, follow-up for the student's plan, and support for the staff. Removal to a Student Planning Center shall not constitute a suspension or an in-school suspension.

Section 6.0 TEMPORARY REMOVAL FROM CLASS

6.1 The administrative head, upon the request of a teacher, may authorize the removal of a student from class to a supervised area within the school when the student's actions are causing and will continue to cause substantial disruption of classroom activity, as defined in Section 7.8. Removal from class shall last only as long as necessary to ensure that the conditions justifying the removal have ended, and in no case beyond the end of two class periods or 90 minutes, whichever occurs first, except when a student has been sent to an authorized Student Planning Center.

6.2 When a student has been removed from the same class more than once, the administrative head who authorized the removal shall, within two school days following the removal, mail a written report of the removal and reasons for it, prepared by the teacher, to the student's parent(s).

6.3 No student may be removed from the same class more than two times per week or four times per marking period unless the student is offered the procedures in Section 9.4.

Section 7.0 GROUNDS FOR SUSPENSION, LONG-TERM SUSPENSION, TRANSFER, OR EXPULSION

This section describes the school-related disciplinary offenses for which a student, in accordance with other sections of this Code, may be subject to suspension, long-term suspension, transfer, or expulsion. For the purpose of this Code, "school-related disciplinary offense" refers to a violation of this Code occurring while the student is on school grounds, during a school-sponsored activity, while on school-provided transportation enroute to or from a school or a school-sponsored activity, or when such misconduct is likely to have an adverse effect on the maintenance of discipline in school, while walking to or from school, waiting for school-provided transportation, or waiting for or riding on public transportation.

A student may, as a last resort, be subject to suspension, long-term suspension, transfer or expulsion only if he or she:

7.1 causes physical injury to another person except when the student's actions are reasonably believed necessary to protect himself or herself as determined by the building administrator or his or her designee on the evidence presented, provided that assault and battery on a school employee shall result in a long-term suspension or transfer in accordance with Section 10.0."

7.2 causes damage to or steals school or private property.

7.3 attempts by force or threat of force to steal private property.

7.4 endangers the physical safety of another by the use of force or threats of force. A threat of force is some overt act, above and beyond mere threatening words, which places the victim in fear of imminent bodily injury.

7.4.1 engages in acts of sexual harassment which are defined as sexually related physical contacts or offensive sexual insults or comments.

7.5 possesses any firearm, knife, razor blade, club, explosive, mace or tear gas, or other dangerous object of no reasonable use to the student at school, except that possession of any firearm will result in expulsion in accordance with Section 12.0.

7.6 possesses or uses any nonprescribed narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, alcoholic beverage or intoxicant or any kind, or sells or distributes any such drug, beverage, or intoxicant whether or not prescribed.

7.7 uses racial slurs if intended to and likely to cause violence.

7.8 substantially disrupts school or classroom activity in a repeated, aggravated or flagrant manner. Substantial disruption of school or classroom activity is defined as one or more of the following acts:

7.8.1 occupying any school building, school grounds, or part thereof so as to deprive others of its use.

7.8.2 blocking the entrance or exit of any school building, corridor or room, therein so as to deprive others of lawful access to or from, or use of, the building, corridor or room;

7.8.3 preventing or attempting to prevent by physical act the safe functioning of a substantial part of any school.

7.8.4 continuously and intentionally making noise or otherwise seriously preventing the teaching of other students.

7.8.5 engaging in persistent verbal abuse in the form of profanity, obscenity or racial epithets.

7.9 is present in a part of the school building or grounds which is off limits to students and refuses to leave when requested.

7.10 leaves the school building without permission.

7.11 refuses to identify self on the reasonable request of staff or gives false identification.

7.12 engages in excessive cutting of classes. This penalty shall only be assessed after alternatives to suspension such as adjustment of class schedule, if appropriate,

alternative programs, parental conferences and detention have been attempted and documented. Excessive cutting may then result, at a *maximum*, in a three-day suspension, preferably in-school, regardless of the student's age.

Section 8.0 EMERGENCY SUSPENSIONS

8.1 The administrative head may temporarily suspend a student from school until the reason for the emergency suspension has ceased, but in no case for longer than the end of the next school day, when:

8.1.1 the student has committed a suspendable offense by violating Section 7.1, 7.4, 7.5, or 7.8; and

8.1.2 the student's presence poses a continuing danger to persons or property or of material interference with the instructional process; and

8.1.3 there is no alternative available to alleviate the danger or interference; and

8.1.4 it is impossible because of the student's behavior to provide the student with notice and hearing prior to the emergency suspension.

(NOTE: An administrator's unavailability is insufficient cause to suspend a student under this Section prior to an informal hearing.)

8.2 The administrator authorizing the emergency suspension shall as soon as possible make reasonable efforts to reach by telephone or telegram a parent of the student to inform the parent of the emergency suspension. A student subjected to emergency suspension shall not be put out of the school building until adequate provisions have been made for transportation and safety.

8.3 Within 24 hours of the beginning of the emergency suspension, the administrator shall notify the student's parent(s) by certified or hand-delivered letter of the emergency suspension and the specific basis for determining that it was necessary under Section 8.1. The notice shall also inform the student of the right to a hearing under Section 9.4, and the decision(s) to be considered at that hearing.

8.4 The student is entitled to a hearing under Section 9.4 as soon as possible, but no later than three school days after the emergency suspension began. The student is also entitled to the appeal rights of Section 9.6. If the hearing or the appeal demonstrates that the emergency suspension was unwarranted because any of the factors in Section 8.1 were not met, then all references to the emergency suspension shall be expunged from the student's records.

If it is found that the emergency suspension was warranted, and the continued need for suspension exists, the suspension may be extended up to limits provided by this Code for the particular offense. Time spent out of school during the emergency suspension shall count toward any additional suspension imposed after this hearing.

Section 9.0 PROCEDURES FOR SUSPENSION

9.1 The administrative head may impose suspension if a student has committed a violation of Section 7.0 and all nonexclusionary alternatives under Sections 3.0, 4.0, and 5.0 have been tried or carefully considered. The term "suspension" shall include any "in-school" suspension.

9.2 Frequency and Duration of Suspensions

9.2.1 No suspensions may exceed three school days for a student fifteen years of age or younger or five school days for a student sixteen years of age or older.

9.2.2 A student shall not be suspended twice for the same incident.

9.3 Suspension, except emergency suspension, shall not be imposed until an informal hearing has been held.

9.4 Informal Hearing

9.4.1 Notice to parent(s)

Prior to the hearing, the administrative head shall make all possible efforts to contact the parent(s) and/or parent-appointed representative. These efforts shall include one or more of the following: telephone call, telegram, certified and/or special delivery letter. If the parent(s) express an intent to participate in the informal hearing, the informal hearing shall be delayed until up to the end of the next day to permit the parent(s) to attend.

9.4.2 Actions Pending Hearing

If an informal hearing is delayed in accordance with Section 9.4.1, a student may be held out of a particular class or activity if the administrative head has a substantial reason, based on discussions with the student and/or the teacher, for believing that the student's presence in the class or activity will lead to disruption.

9.4.3 Conduct of the Informal Hearing

The informal hearing will be conducted by the administrative head. In attendance will be the student, the parent(s) (if the parents choose to attend) and other persons determined by the administrative head. The following procedures will be followed at the informal hearing:

(a) *Charges.* The administrative head will state the charges and determine that the student understands them.

(b) *Witnesses.* If the student disputes the charges, persons with direct knowledge of the alleged incidents shall be summoned. Student witnesses do not have to be summoned if the administrative head specifically finds that identification of the student witness would endanger his or her physical safety.

(c) *Decision.* The administrative head shall determine if the student committed a suspendable offense as charged. This decision shall be reached impartially and shall be based exclusively on the evidence.

(d) *Punishment.* If the administrative head determines that the student has committed a suspendable offense, and after nonexclusionary alternatives under Sections 3.0, 4.0 and 5.0 have been tried or carefully considered, the student may be suspended in accordance with the limitations set out in Section 9.2.1.

9.5 If suspension is imposed, the administrative head shall orally notify the student, and within 24 hours after the hearing shall give written notice to the student and to the parent(s) by registered or certified mail, of the specific acts for which the student is being suspended, the length of the suspension, the date on which the student may return to school, and the right to appeal pursuant to Section 9.6. The administrative head shall make a reasonable effort to contact the parent(s) by telephone to communicate directly the information described in the preceding sentence. A student who is sixteen years of age or older or the parent of a student who is younger than sixteen years of age may refuse in-school suspension if offered and may choose out-of-school suspension.

9.6 Appeal

Within ten days of the imposition of a suspension, a student or parent(s) may lodge a request for an appeal with the appropriate Community Superintendent. The procedure used in the appeal shall comply with the following requirements:

(a) *Review of Evidence.* The administrative head shall first address the Community Superintendent and may summarize any evidence presented at the informal hearing. The student, student's parent(s), and/or representative (including an attorney) may then ask questions of the administrative head and may address the Community Superintendent on the evidence and the appropriateness of the penalty.

(b) *Decision.* The Community Superintendent shall record findings, copies of which shall be included in the student's records and mailed to the student, the student's parent(s), and the administrative head. However, if the Community Superintendent determines that no violation of the Code has occurred, or that nonexclusionary alternatives were either not tried or carefully considered, no records and documentation regarding the suspension shall be placed in the student's records or communicated to any person except those entitled to receive a copy under this Section. If the suspension has not already been fully served, the Community Superintendent may determine that the student be readmitted immediately.

Section 10.0 LONG-TERM SUSPENSION OR TRANSFER

10.1 Utilization

The administrative head, or the designee with the written approval of the administrative head, may recommend long-term suspension (suspension for greater than three days for a student under the age of sixteen or five days for a student sixteen years of age or older, but not to exceed ten days) or transfer, when the student has repeatedly violated Section 7.0 of this Code despite having been subject to action under Sections 3.0, 4.0, 5.0, and 9.0. If in the judgment of the administrative head a single suspendable offense is of such severity that it would constitute an ongoing threat to the physical safety of others, a long-term suspension or transfer may also be recommended. Long-term suspension or transfer shall not be imposed until a formal hearing pursuant to Section 10.5 has been held; however, an administrative head may impose a suspension in accordance with Section 9.0 prior to a formal hearing to consider long-term suspension or transfer.

10.2 Nature of Transfer

A student may be transferred on disciplinary grounds to another Boston public school offering an equivalent academic program but the transfer shall not be ordered when as a direct or indirect result it would cause the student to suffer an academic penalty. Disciplinary transfer shall be viewed as an opportunity for the student to achieve positive educational and behavioral objectives rather than as punishment and shall be used accordingly. Disciplinary transfers other than those to special education alternative programs shall be limited to one per year per student. Any transfer under this Section shall be in conformity with all relevant orders of the U.S. District Court, *Morgan et als. v. McDonough et als.*, C.A. No. 72-911-G (D. Mass.).

10.3 Nature of Long-Term Suspension

Long-term suspension means the exclusion of a student from regular school activities for more than five days (three days for students under sixteen years of age) but not greater than ten days and shall include any "in-school" suspension. In cases of long-term suspension, the School Department will provide an opportunity for the student to maintain academic standing in school by being provided by the administrative head with a list of assignments, and any such services as guidance, counseling, referral services, or special needs referral which might enable the student to use the time out of school constructively.

10.4 Informal Hearing

The procedures set out in Sections 9.4 and 9.5 shall apply to long-term suspension and transfer, except that:

10.4.1 References to "suspension" in those sections shall be treated as references to "long-term suspension or transfer"; and

10.4.2 Before long-term suspension or transfer may be recommended, the administrative head must find, in addition to the findings required in Section

9.4, that the student has repeatedly violated Section 7.0 of the Code despite having been subjected to action under Sections 3.0, 4.0, 5.0, and 9.0, or has committed a single suspendable offense of such severity that the student's presence in school would constitute an ongoing threat to the physical safety of the student or others; and

10.4.3 The notice of the recommendation of a long-term suspension or transfer shall inform the student and parent(s) of the right to a formal hearing pursuant to Section 10.5.

10.5 Formal Hearing

10.5.1 The procedures set out in Section 9.6 shall apply to appeals of long-term suspensions and transfers, except that students shall have the following additional rights:

(a) The student shall have the right to call witnesses and to cross-examine witnesses against the student, subject to the limitation set out in Section 9.4.3 (b); and

(b) A tape recording or stenographic transcript shall be made by the Community Superintendent and, upon request, a transcript shall be made available to the student or parent(s) within five days of the request for purposes of review pursuant to Section 10.6.

10.5.2 The student is entitled to a hearing before the Community Superintendent as soon as possible, but no later than five days after the recommendation of long-term suspension or transfer by the administrative head. If such hearing is not held within five days, and the delay is not due to the failure to appear or other inaction on the part of the student or parent(s), the student shall be reinstated pending the formal hearing.

10.5.3 In any case where a Community Superintendent rejects a recommendation for transfer, a long-term suspension may be imposed if the requirements of Sections 10.4.2 and 10.4.3 have been met.

10.5.4 In any case where a Community Superintendent rejects a recommendation for long-term suspension or transfer and a suspension pursuant to Section 9.0 has been imposed, the student's right to appeal under Section 9.6 shall be deemed to have been exercised, and the Community Superintendent shall record findings relating to both the suspension and the proposed long-term suspension or transfer, in accordance with Sections 9.6 and 10.5.1.

10.6 Review and Appeal

In any case where the Community Superintendent imposes a long-term suspension or transfer under Section 10.5, the decision shall automatically be reviewed by the Deputy Superintendent for School Operations, who shall have the power to overrule the imposition of a long-term suspension or a transfer or to shorten its duration. The Deputy Superintendent shall review all written documents in the case

and, if requested, review the entire record or transcript of the appeal or any portions thereof designated by the student, administrative head, or Community Superintendent.

10.6.1 Appeal of Transfer. In the case of a transfer, the student shall have five school days after the Community Superintendent's decision to request, orally or in writing, a private appeal hearing before the Deputy Superintendent. At the appeal hearing, the student, parent(s), the student's representative, the administrative head, and the Community Superintendent may address the Deputy Superintendent on the evidence and the appropriateness of the penalty.

10.6.2 Standard of Review. The Deputy Superintendent shall specifically determine whether there was sufficient evidence to find that the violation occurred and that the long-term suspension or transfer is appropriate.

Section 11.0 CUMULATIVE SUSPENSIONS

11.1 After a student has been subjected to suspension or long-term suspension twice in a marking period or a total of fifteen days or four times in a school year, whichever occurs first, the administrative head of the school building (this duty may not be delegated) shall conduct a meeting to explore nonpunitive solutions to the problems resulting in suspensions. No further suspensions, except emergency suspensions, may be authorized until this meeting is held or refused. The administrative head shall invite to the meeting the following: the student, the student's parent(s), a school counselor or other appropriate professional invited by the student or parent(s), any teacher or staff member who has recommended the student for suspension more than once, and any other staff member whose presence would be deemed appropriate.

The student and the parent(s) shall be sent a written notice at least five days prior to the meeting. The student and parent(s) shall be notified of their right to invite to the meeting any persons from within or outside the school system whom they deem helpful in discussing the student's behavior.

At the meeting, the following shall be among the nonpunitive solutions discussed:

11.1.1 adjustment of class schedule;

11.1.2 professional or peer counseling;

11.1.3 referral to a social service agency;

11.1.4 referral to the evaluation team for possible classification as a student with special needs*;

* If the student is already classified as a student with special needs, consideration should be given to referring the student to the evaluation team for a possible change in educational placement or other appropriate modification of the student's IEP.

11.1.5 tutoring and other forms of academic assistance.

No actions shall be taken as a result of this meeting except with the consent of the student and parent(s). Within 48 hours after the meeting, the administrative head shall mail letters to the student and the parent(s) describing solutions, if any, agreed to at the meeting and any actions that the student or parent(s) should take to follow through on those solutions.

11.2 In the case of any student for whom suspension beyond five days in a marking period, transfer, or expulsion is recommended, the administrative head shall make a specific determination as to whether the student should be referred for an evaluation to determine whether the student is a student with special needs according to state law and regulations.

Section 12.0 EXPULSION

12.1 Expulsion means an exclusion from school attendance and school privileges for more than ten consecutive days but not beyond the end of the school year.

12.2 Expulsion may be recommended by the Community Superintendent to the Deputy Superintendent for School Operations only for a student who has knowingly possessed a firearm, or for a student who has committed some other offense under Section 7.0 of the Code, as charged, and has inflicted serious physical injury on a student or staff member or has repeatedly and flagrantly violated Section 7.0 and whose presence in the school would constitute an ongoing threat to the physical safety of others or to the normal functioning of the school. Prior to recommending expulsion, the Community Superintendent shall determine that all disciplinary measures short of expulsion have been tried but have not corrected the student's behavior.

12.3 If the Community Superintendent decides to recommend expulsion, the following procedure shall apply:

12.3.1 Notice of Recommendation of Expulsion

Written notice of the recommendation shall be mailed or hand-delivered to the student, and sent by certified or registered mail to the student's parent(s) or designated representatives, within 24 hours of the recommendation having been made by the Community Superintendent. Each school shall provide such notice on the form provided by the Boston Public Schools, in the primary language of the student's home as well as in English. The notice shall contain, in understandable language:

(a) a statement that expulsion has been recommended and the proposed duration of the expulsion; and

(b) a complete description of the alleged offense requiring expulsion, including a reference to the appropriate Section of this Code; and

(c) a full statement of the facts and evidence as known to the Community Superintendent; and

(d) specific notice of all procedural rights, including the student's right to have a private hearing, to have his or her parent(s) present at the hearing, to have an attorney or other representative of his or her choice at the hearing, to present witnesses, to cross-examine witnesses against the student, and to have a verbatim transcript or tape recording of the hearing made by the Boston Public Schools, and upon request, to have a transcription of the same made available, at no cost, to the student or parent within five school days for the purpose of appeal; and

(e) a list of Legal Services offices and other advocacy groups; and

(f) specific reference to the rights of the student and/or parent to have access to the student's school records as required by law; and

(g) specific reference to the right of the parent(s) to obtain a referral for special education evaluation if the parent(s) feel the student may need special education services. (Section 316.0, Chapter 766 regulations).

12.3.2 Expulsion Hearing

A hearing to consider expulsion shall be conducted in accordance with the following rules:

(a) The hearing shall be conducted by the Deputy Superintendent for School Operations or a Hearing Officer designated by the Superintendent specifically for this purpose. The Hearing Officer shall have a working knowledge of the Code of Discipline and all pertinent laws and regulations. The Deputy Superintendent for School Operations shall review all hearings conducted by the Hearing Officer.

(b) The hearing shall be scheduled within five days of the date of recommendation for expulsion with the right of the student and parent(s) to a postponement of an additional five days. The hearing shall be private unless the Deputy Superintendent agrees with a student's or parent's request that it be public.

(c) All witnesses presenting testimony against the student shall appear in person at the hearing, and no statements against the student shall be presented unless the persons making the statements are so present. The only exception would be if the Deputy Superintendent specifically finds that the identification and appearance of a student witness will endanger the student's physical safety. In such a case, the parent(s) and/or representative of the accused student will be given the opportunity to question the student witness in the presence of the Deputy Superintendent.

(d) The student, the parent(s), or the student's representative shall have the right to request the presence of other students or school employees with knowledge of the alleged acts or circumstances surrounding such acts.

(e) The student shall have the right to be present during the presentation of evidence. The student, parent(s) or the student's representative shall be allowed to question witnesses against the student. After the case against the student has been presented, the student shall be allowed to submit evidence in his or her own defense, including the presentation of live witnesses, and to testify in his or her own behalf but shall not be compelled to do so.

(f) The student, the parent(s), or their representative may object to the admission of any testimony or evidence. If the Deputy Superintendent determines that evidence has been improperly obtained, such evidence shall be inadmissible. The scope of the hearings shall be confined to the charges contained in the notice.

(g) The student is entitled to a presumption of innocence, and the burden of proof rests upon the person presenting the case against the student.

(h) A tape recording or stenographic transcription shall be made by the Deputy Superintendent and, upon request, a transcript shall be made available, at no cost, to the student or parent within five days of the hearing for purposes of appeal.

12.3.3 Issuance of Findings

The Deputy Superintendent shall fully record findings of fact, the disposition and reasons therefor, and shall, within 48 hours after the hearing, mail one copy thereof to the appropriate Community Superintendent, the administrative head, and one copy each to the student, the parent(s) (by registered mail), and the student's representative. If expulsion is to be imposed, the dates when it is to begin and end shall be included. If the student is found guilty, notice of the right of appeal shall be included.

12.4 To impose expulsion, the Deputy Superintendent must find that there is clear and convincing evidence, limited solely to evidence presented at the hearing, that:

12.4.1 The student knowingly possessed a firearm; or

12.4.2A the student committed an offense described in Section 7.0 and contained in the notice of charges; and

12.4.2B the student inflicted serious physical injury on a student or staff member, or has repeatedly and flagrantly violated Section 7.0 of this Code despite having been subjected to action under Sections 9.0 or 10.0 and his or her continued presence in the school would be an ongoing threat to the physical safety of others or to the normal functioning of the school; and

12.4.2C nonexclusionary alternatives in Sections 3.0, 4.0, and 5.0 have been either tried or fully considered by the school administration.

12.5 In any case where the Deputy Superintendent imposes expulsion, the decision shall automatically be reviewed by the Superintendent of Schools, who shall have the power to overrule the imposition of expulsion or shorten its duration.

12.5.1 Prior to review by the Superintendent of Schools, the student shall have five school days in which to request in writing a private appeal hearing before the Superintendent. In the event that an appeal hearing is requested, the Superintendent shall review all written documents in the case, and, if requested, review the entire recording or transcript of the hearing or any portion(s) thereof designated by the student or the Community Superintendent. The student or his or her representative and the Community Superintendent may address the Superintendent on the evidence at the hearing and the appropriateness of the penalty.

12.5.2 The Superintendent of Schools shall specifically determine if there was sufficient evidence to find that the violation occurred and that expulsion is appropriate.

12.6 The decision to expel a student may be stayed by the Deputy Superintendent for School Operations or Superintendent pending review by the Superintendent.

12.7 If a student is expelled during the first two marking periods, unless three weeks prior to the beginning of the third marking period, and the expulsion is upheld, an automatic review shall be held by the Deputy Superintendent for School Operations within two weeks of the beginning of the third marking period. The Deputy Superintendent for School Operations shall consider, in addition to the original record, any credible, substantial evidence offered by or on behalf of the student relating to his or her readiness to return to school. Such review may lead to a recommendation that the student be reinstated for the remainder of the school year.

12.8 Following an expulsion decision, the Superintendent shall ensure that School Department staff meet with the student and the parent(s) to explore a range of available alternatives that would allow the student to continue his or her education during the expulsion period, including, but not limited to; home study, adult education programs (day, evening, and modified combination), and alternative work study programs.

Section 13.0 STUDENTS WITH SPECIAL NEEDS

13.1 Students with special needs, as defined by Massachusetts General Laws, Chapter 71B (Chapter 766), shall be subject to the provisions of this Code except as otherwise provided by this Section.

13.2 Special education staff, including the IEP liaison person, shall be involved in all administrative decisions under this Code involving students with special needs.

13.3 Prior to an administrative decision under this Code, the administrative head shall determine whether or not the student has been designated a student with special needs or has been referred for a special education evaluation but not yet determined to have special needs.

13.4 No student who has been determined to be in need of special services shall be suspended under Sections 9.0 and 10.0 of this Code for more than ten days in a school year unless the administrative head obtains the prior written approval of the Manager of the Department of Student Support Services. Prior to seeking such approval, the administrative head shall:

13.4.1 follow all procedures in Section 9.0 or 10.0, whichever is applicable; and

13.4.2 review with appropriate special education staff, including the IEP liaison person, and with parent(s), the student's IEP; and

13.4.3 be able to show that:

- a) the student's handicapping condition has been considered in the disciplinary deliberations;
- b) the effect of the disciplinary action on the goals and objectives of the IEP has been considered;
- c) less restrictive methods of discipline have been tried and these attempts documented;
- d) the proposed suspension is for a definite number of days;
- e) special education services, as close to the student's original program as possible, will be provided during the term of the suspension; and
- f) strategies designed to prevent further suspensions are provided in the plan.

13.5 Nothing in the above sections shall preclude the emergency suspension of a student with special needs provided that all of the provisions of Section 8.0 have been followed.

13.6 No student for whom an evaluation or appeal under Chapter 766 is pending shall be suspended under Sections 9.0 and 10.0 of this Code for more than ten days in a school year unless the administrative head obtains the prior written approval of the Manager of the Department of Student Support Services.

13.7 No student with special needs shall be expelled without the prior approval of the Massachusetts Regional Bureau of Special Education.

13.8 No student with an IEP shall be transferred under Section 10.0 of this Code unless:

13.8.1 all the provisions of Section 10.0 have been followed; and

13.8.2 the student's IEP is modified in accordance with the Massachusetts Department of Education Chapter 766 regulations.

13.9 Nothing in Section 13.8 precludes a student and/or the parent(s) from appealing a transfer under Section 10.0 in accordance with procedures established by state and federal law.

13.10 No student for whom an evaluation or appeal under Chapter 766 is pending shall be transferred under Section 10.0 except in compliance with Section 327.0 of the Massachusetts Department of Education Chapter 766 regulations.

Section 14.0 DISCIPLINE AND SCHOOLWORK

14.1 A student who misses any class because of disciplinary penalties except expulsion shall be given a reasonable opportunity to make up all assignments and tests and shall receive academic credit for such work completed. (See Section 12.0 for procedures regarding education of expelled students.)

14.2 In no case shall punishment for violation of this Code or for violation of school rules established pursuant to Section 4.0 of this Code include any mandated reduction of grades.

Section 15.0 EXPUNGING RECORDS

Whenever it is determined by a hearing, appeal, or informal administrative decision that a student did not commit a violation with which he or she has been charged, all references to the incident and the disciplinary proceedings shall be expunged immediately from the student's record.

Section 16.0 TEACHER AND ADMINISTRATOR APPEAL

Any teacher or administrator who is involved in a disciplinary action and who is not satisfied with the action taken by the administrative head in a disciplinary case may appeal the decision in writing to the administrative head, the Community Superintendent, and the Deputy Superintendent for School Operations in the proper order. If it is decided on appeal that an improper decision was made, a letter so stating shall be mailed to the teacher or administrator within two days with copies to the student and the parent(s).

Section 17.0 PHYSICAL FORCE

A student shall not be subjected to corporal punishment. School employees may use reasonable and prudent physical force to restrain a student whose actions it is

reasonably believed are likely to result in any physical injury to any person including the student. Any school employee who uses plainly unreasonable or unjustified force shall be subject to discipline.

Section 18.0 PROMULGATION AND DISTRIBUTION

18.1 Uniformity

This Code together with any additional rules and alternative measures established under Sections 4.0 and 5.0 shall constitute the sole rules and regulations of the Boston Public Schools governing the behavior of pupils and procedures for discipline and shall be in effect in all Boston Public Schools.

18.3 Effective Date

This Code and a statement highlighting its major provisions shall be effective upon approval by the Boston School Committee and filing with the Commissioner of Education in accordance with Massachusetts General Laws Chapter 71, Section 37H. Additional rules and alternative measures established under Sections 4.0 and 5.0 of this Code shall become effective upon the distribution required under those sections and filing with the Commissioner under Massachusetts General Laws Chapter 71, Section 37H.

18.3 Notice and Distribution

Within three weeks of the effective date of this Code and within two weeks of the beginning of each school year thereafter, this Code shall be distributed to all staff, to students at the secondary level, and to parents in English and in the primary language of the home of the student.

This Code and a statement highlighting the major provisions, which shall be prepared prior to the effective date of the Code, shall also be permanently posted in conspicuous places in each Boston Public School; shall be orally presented to students attending each school within three weeks of its effective date and, thereafter, within two weeks of the first day of school each school year. Such oral presentation may be made at an assembly conducted for that purpose, by homeroom teachers, administrators, the student government, or in any other manner calculated to provide effective oral notice to all students.

Section 19.0 DEFINITIONS

As used in this Code, the following words shall have the meanings set forth below:

19.1 "Academic school employee" shall mean and include only Community Superintendents, administrative heads, assistant administrative heads, directors, assistant directors, supervisors, teachers, substitute teachers, librarians, guidance counselors and guidance advisors, and such other persons as may be actively engaged in the teaching process.

ACKNOWLEDGEMENT

During the 1980-82 school years, a committee, the members of which are listed below, reviewed the implementation of the 1980 Code of Discipline and, on October 27, 1981, made recommendations for changes in the Code to the Superintendent. The Superintendent reviewed the recommendations of the committee and those of other constituent groups, solicited reactions from the school community and made his final recommendation to the Boston School Committee on February 26, 1982.

The Boston School Committee approved the suggested changes to the 1980 Code of Discipline on April 12, 1982 for implementation in September 1982. This document reflects those changes.

CODE OF DISCIPLINE REVIEW COMMITTEE

Chairman: Donald Burgess, Community Superintendent

Members:

Evelyn Babin, Parent, Home and School Association
Kevin Barrett, Teacher, Hyde Park High School
John Best, Headmaster, Another Course to College
Stephen Bing, Executive Director, Massachusetts Advocacy Center
Willa Ella Brown, Principal, Martin Luther King Middle School
Michael Contompasis, Headmaster, Boston Latin School (Alt.)
Richard Colon, Student (BHSSC), Madison Park High School
John Daniels, Principal, Rogers Middle School
Marion Ego, Department of Student Support Services
Sandra Hall, Student (BHSSC), East Boston High School
Charles Hambelton, Associate Counsel, Boston Public Schools
Kevin Haymon, Student (BSAC), Copley High School
William Lawrence, Headmaster, English High School (Alt.)
Hugh McDonough, Assistant Principals' Association
Paula McDonough, Student (BSAC), Boston Latin School
John Miranda, Teacher, Champlain Middle School
James "Timo" Philip, Teacher, Champlain Middle School
Lydia Rivera, Department of Implementation
Lisa Tinsley Sanon, Parent, Home and School Association
John Sisco, Coordinator of Investigation and Disciplinary Procedures
James Walsh, Office of the Superintendent
Paul Weckstein, Attorney, Center for Law and Education
William Wright, Principal, Rochambeau Elementary School

C.F. 168863

DOCUMENT NO. ~~185652~~ PD

FG010-02

OFFICE OF POLICY DEVELOPMENT

MEMORANDUM

DATE: 1/14/84 ACTION/CONCURRENCE/COMMENT DUE BY: fyi

SUBJECT: SVAHN MEMO TO FULLER RE: FULLER MEMO OF JANUARY 3 TO THE FILE "LIVER TRANSPLANTATION AND RELATED ISSUES"

	ACTION	FYI		ACTION	FYI
SVAHN	<input type="checkbox"/>	<input type="checkbox"/>	DRUG POLICY	<input type="checkbox"/>	<input type="checkbox"/>
PORTER	<input type="checkbox"/>	<input type="checkbox"/>	TURNER	<input type="checkbox"/>	<input type="checkbox"/>
ANDERSON	<input type="checkbox"/>	<input type="checkbox"/>	D. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>
BLED SOE	<input type="checkbox"/>	<input type="checkbox"/>	WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>
BRADLEY	<input type="checkbox"/>	<input type="checkbox"/>			
CHAO	<input type="checkbox"/>	<input type="checkbox"/>	OFFICE OF POLICY INFORMATION		
COY	<input type="checkbox"/>	<input type="checkbox"/>	HOPKINS	<input type="checkbox"/>	<input type="checkbox"/>
GALEBACH	<input type="checkbox"/>	<input type="checkbox"/>			
GUNN	<input type="checkbox"/>	<input type="checkbox"/>	PROPERTY REVIEW BOARD	<input type="checkbox"/>	<input type="checkbox"/>
HOBSON	<input type="checkbox"/>	<input type="checkbox"/>	OTHER		
B. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>	Ed Meese ✓	<input type="checkbox"/>	<input type="checkbox"/>
LI	<input type="checkbox"/>	<input type="checkbox"/>	Dick Darman ✓	<input type="checkbox"/>	<input type="checkbox"/>
McALLISTER	<input type="checkbox"/>	<input type="checkbox"/>	Bill Roper ✓	<input type="checkbox"/>	<input type="checkbox"/>
McCAFFREY	<input type="checkbox"/>	<input type="checkbox"/>	Craig Fuller ✓	<input type="checkbox"/>	<input type="checkbox"/>
SIMMONS	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
SMITH	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
SWEET	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
UHLMANN	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
WALTERS	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
ADMINISTRATION/ JOHNSTON	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

[Red handwritten scribbles]

RESPONSE TO:

John A. Svahn
Assistant to the President
for Policy Development
(x6515)

Roger B. Porter
Director
Office of Policy Development
(x6515)

THE WHITE HOUSE

WASHINGTON

January 13, 1984

MEMORANDUM FOR CRAIG FULLER

FROM:

JACK SVAHN 

SUBJECT:

Your January 3rd Memorandum for the File:
"Liver Transplantation and Related Issues"

As you know, we have been working to resolve the outstanding issues on liver transplantation and organ sale. We are in the process of finishing an issue paper for the President on that subject.

I was under the impression, however, that HHS was not making any recommendations since they had eliminated any discussion of fiscal implications from the paper. Clearly we can't make decisions, and I would think they wouldn't make recommendations, until they had considered the fiscal impact.

I'm not in favor of a federal ban on the buying and selling of non-renewable organs. I think this is a matter that is more emotional than one needing federal policy. States are in a position to regulate the health and welfare of their own citizens and I certainly think that this is one area that we ought to let them handle. It seems a little inconsistent to me that we allow, in many parts of the country, a person to sell blood and bone marrow, so-called renewable body organs, yet we're going to pass a federal law which prohibits a person from selling from their own cadaver other types of body organs. It is all a little ghoulish, but a strong argument can be made that, were the sale permitted, more organs would be available for transplantation and more lives would be saved.

More to follow in the body of the report.

Attachment

cc: Edwin Meese III
Richard G. Darman

THE WHITE HOUSE

WASHINGTON

January 3, 1984/

MEMORANDUM FOR THE FILE

FROM: CRAIG L. FULLER 

SUBJECT: Liver Transplantation and Related Issues

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There was no objection to the HHS recommendations to:

- Ban the buying and selling of solid organs whether from a living donor or from a cadaver. [I. (1)]
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There were reservations expressed about indicating medicare coverage was available for liver transplants, although there was no objection to recognizing liver transplantation as an acceptable operation. It is this area specifically that requires further study.

This summary should not suggest that other issues will not arise following review of the paper by White House offices and other agencies.

cc: Ed Meese
Richard Darman
→ Jack Svahn

OFFICE OF
POLICY DEVELOPMENT

1983 DEC 35 A 11:42



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

DEC 16 1983

MEMORANDUM FOR THE CABINET COUNCIL ON HUMAN RESOURCES

FROM: MARGARET M. HECKLER

SUBJECT: Liver Transplantation and Related Issues (CM429)

ISSUE

What should be the Administration policy on liver transplants and related subjects?

BACKGROUND

In 1980, the PHS assessed liver transplantation as "experimental" which precluded HCFA from including the procedure as a reimbursable technique (cite). In April 1982, the Health Care Financing Administration asked the Public Health Service to reassess the safety and efficacy of liver transplantation in light of new technology, drug therapy, clinical trials, etc.

Because of the complex scientific issues, the National Institutes of Health convened a Consensus Development Conference in June 1983, in which the skills, resources and institutional support needed for liver transplantation were discussed. The consensus of the participants was that "liver transplantation offers an alternative therapeutic approach which may prolong life in some patients suffering from severe liver disease that has progressed beyond the reach of currently available treatment and consequently carries a prognosis of death". However, it was also the consensus that in many forms of liver disease, the precise indications and timing of liver transplantation remain uncertain or controversial. With materials from these and other sources, the Office of Health Technology Assessment developed its report as to the safety and efficacy of liver transplantation. The report indicates that significant advances have been made in human liver transplantation so that it can be performed safely and effectively: a) in carefully selected patients with certain forms of end-stage liver disease, b) by transplant surgeons specifically trained to perform the procedures, and c) in hospitals having special arrangements to support the process.

There are four related issues to be resolved on this question. First, the legality of buying and selling solid organs. Second, whether the government or voluntary agencies will be responsible for donor identification, recipient coordination and transportation of organs. Third, whether Medicare will cover liver transplantation. Fourth, the composition and structure of an advisory committee to address the bio-ethical, legal, economic and social questions concerning organ transplantation.

Not discussed in this paper are the fiscal implications of coverage decisions according to varying populations. It is the presumption of this Department that the medical-scientific questions should be the driving force behind the decisions leading to a federal policy on organ transplantation.

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2. Oppose federal action on the buying and selling of organs.

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1. Federal organ procurement agency.
2. Private sector clearinghouse with Federal participation.

ISSUE III: Medicare Coverage for Liver Transplantation

1. Accept the findings of the NIH consensus conference as a basis for coverage guidelines and limit procedures to institutions with special capacities.
2. Cover persons with Biliary Atresia and conduct clinical trials for others.
3. Establish broad clinical trials involving 224 cases (adults and children).

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1. This committee should be appointed by the President.
2. This committee should be appointed by the Secretary.

ISSUE I: The Buying and Selling of Organs

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OPTIONS

1. Ban the buying and selling of solid organs whether from a living donor or from a cadaver. (Such a ban would not preclude payment for the cost of locating, harvesting, transporting, storing, matching or transplanting.)

ARGUMENTS FOR:

- The buying and selling of organs regardless of the source appears morally and ethically repugnant to most of society; sanctioning the profitable trafficking in body parts would be unseemly for this Administration. Moreover, in the case of living donors selling organs,

medical ethics would appear to be violated: physicians performing the subsequent transplants would be de facto sanctioning potentially dangerous medical procedures for the healthy donors who have no familial ties to the recipient.

- This would protect individuals unable to make informed decisions (retarded, etc.) from being exploited for profit.
- Commercialization might give donors an incentive to conceal medical history leading to inappropriate organs being transplanted.
- Public insurance, Medicare and Medicaid would pay for such transactions, requiring the need for a federal regulatory effort.

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- Potential donors would be unable to sell organs with the intent of giving them to survivors or to charitable causes (non-sale transfer would of course remain an option).
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- A ban at the federal level could be regarded as intervention in the regulation of medical practice, traditionally performed by the states.
- A ban has the potential for creation of a black market for transplantable organs.

2. Oppose Federal Action on the Buying and Selling of Organs

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- Avoids the need for Federal enforcement efforts.
- Permits the maximum personal liberty in choosing organ disposal whether for profitable, charitable or medical purposes.
- Allows States to regulate this activity (to date, no States have laws applicable to this).

ARGUMENTS AGAINST:

- Places young, poor, bereaved and mentally incompetent persons at risk of exploitation.
- Not consistent with efforts to achieve orderly and safe utilization of organs using clinical criteria.
- Due to the inter-state use of organs, Federal action is necessary to avoid conflicting State standards.

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To provide the most efficient use of scarce human organs, it is necessary to have a mechanism for matching donors and potential recipients. Since solid human organs have a short period of viability, it is essential that such a clearinghouse be operated continuously, as is currently available for kidneys.

To assist the establishment of such a system for the other organs and to develop a mechanism for encouraging organ donation, the Surgeon General convened two workshops involving organ procurement agencies, transplant surgeons and other private sector organizations concerned with organ transplantation. From these conferences, the American Council on Transplantation was formed.

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ARGUMENTS FOR:

- Reflects clear Federal commitment to a leadership role.
- Provides somewhat better potential for uniform data collection.
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- Creates the potential for political intrusion into the process of organ procurement.
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- American Council on Transplantation provides an effective mechanism reflecting broad-based participation by all major parties of interest.
- Established regional organizations are already providing an effective harvesting and referral service and can be readily integrated for added effectiveness for multiple organ harvests from appropriate available donors.
- Avoid another layer of decision-makers in this process.

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- Will be perceived by some as an unwillingness for the Federal government to assume responsibility.
- May stimulate jurisdictional disputes between existing organ harvest and referral organizations.

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There are a significant number of medical conditions leading to end-stage liver disease for which liver transplantation offers the only alternative to death. Even then, the palliative potential of transplantation is likely to be effective only for certain causes of end-stage liver disease in selected patients, when performed by experienced surgical teams with appropriate supportive ancillary services.

Even under optimal circumstances, serious questions remain to be addressed to assure that diffusion of this technology occurs in an orderly fashion which avoids subjecting patients to unnecessary risks and puts scarce institutional resources to use for those individuals who have the optimal chance to be helped.

1. Accept the Findings of the NIH Consensus Conference as a Basis for Coverage Guidelines and Limit Procedures to Institutions With Special Capacities

According to the conference, patients with the following diseases are most likely to benefit. Other causes do exist and would be assessed on a case-by-case basis:

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Note that this population is limited to those conditions outlined above; for instance, those with liver malignancies or for "reformed" alcoholics transplantation is likely to be beneficial.

ARGUMENTS FOR:

- Guidelines were decided by panel of experts.
- Broad level of acceptance in significant parts of the medical community.
- Identifies broad outlines of groups likely to benefit (i.e., children with biliary atresia).
- Excludes on clinical grounds specific groups unlikely to benefit.
- Has potential for restricting the number of centers likely to perform the procedure to those with special preparation and facilities.

ARGUMENTS AGAINST:

- Medical knowledge continues to expand; it is not known which individuals may best benefit from this procedure.
- The long term survivability of transplant recipients is unclear.
- Scientific questions may remain unanswered since no guarantee exists that data collection would occur.
- Legal issues may arise by excluding alcoholics and substance abusers (Section 504) despite basis for exclusion being medical.

2. Cover Persons with Biliary Atresia and Conduct Clinical Trials for Others.

ARGUMENTS FOR:

- Largest single category of diseases with both natural history data and transplant data, thus, adequate information is available to proceed.
- Coverage for Biliary Atresia supportable by consensus conference.
- Any further information needed on Biliary Atresia can be derived from nearly 100 cases with this diagnosis already transplanted.
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- This procedure currently covered under Medicaid at State option.

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 - o when Kasai procedure is followed, successful or not, should transplant be done.
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 - o 55% cases, children
 - o 45% cases, adults.
3. Establish Broad Clinical Trials Involving 224 Cases (Adults and Children).

Certain critical questions remain which, when answered, would enable the Secretary to make a decision based on better information than is currently available while continuing to allow transplantation for those patients who we now believe would benefit. The critical questions presented below represent a framework for a collaborative study of liver transplant criterion in both the long and the short term.

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On the basis of information now available, we do not have definitive answers to these important questions:

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There remains a number of bio-ethical, legal, economic and social questions concerning organ transplantation. An advisory committee on transplantation should be established to address these issues.

This committee would be composed of physicians, patients or their guardians, lawyers, clergymen, economists and others who would bring a diverse set of skills and concerns to bear on these difficult issues. The committee would monitor the existing transplant experience as well as new information (i.e., clinical trials) to provide advice as how best to deal with the complex issues involving organ transplantation.

1. This committee should be appointed by the President.

ARGUMENTS FOR PRESIDENTIAL COMMITTEE:

- This would underscore the commitment of the Administration toward this therapy.
- Reports by this committee would receive a wider degree of public awareness.
- Some may perceive Secretarial committee as lower level decision-making body.

2. This committee should be appointed by the Secretary.

ARGUMENTS FOR SECRETARIAL COMMITTEE:

- It is more appropriate for this committee to answer to the Secretary.
- The highly technical information addressed by this committee would be more appropriate for analysis by the Department of Health and Human Services.
- It would report to the Secretary, allowing the President the option of reviewing the decisions.

APPENDIX 1

COSTS FOR BROAD CLINICAL TRIALS (Option 3)

	Year 1 ⁴	Year 2 ⁴	Year 3 ⁴	Year 4 ⁴	Year 5 ⁴	TOTAL
PROCEDURE	1,200,000					1,200,000
DATA ¹	1,120,000	790,000	680,000	620,000	620,000	3,830,000
ANALYSIS ²	150,000	150,000	300,000	400,000	500,000	1,500,000
CASES ³	(224)	(158)	(136)	(124)	(124)	(224)
TOTAL	2,470,000	940,000	980,000	1,020,000	1,120,000	6,530,000

If Option 2 is chosen costs would be half of those shown.

- 1 Subject costs estimated based on \$5,000 per patient per year. Data collection includes appropriate clinical and charge information to be developed in linkable, machine readable form.
- 2 Analytic staff cost include required analytic staff, support staff, and computer costs.
- 3 Based on one time intake of 224 cases in the first year with subsequent attrition due to mortality. To reach 224 cases, actual intake. May exceed one year.
- 4 Five year followup may be required to access long term effects. However, design could allow for 1, 3, or 5 year followup end points.

APPENDIX 2

TRANSPLANT CANDIDATES FOR BROAD CLINICAL TRIALS (Option 3)

	PRIVATE	MEDICARE	MEDICAID	TOTAL
Adults Under 65	0	0	112	112
Children Under 18	92	0	20	112
Total Patients	92	0	132	224
Total Costs (Average cost per patient \$200,000)	18,400,000	0	26,400,000	44,800,000
Federal Costs	0	0	13,200,000	13,200,000

If Option 2 is chosen no children would be necessary

2 Probs: →

- clearly a state matter
- role of fed. govt.
- starting a new entitlement

confusion across the country
procedure is safe and effective

bids — survival rate is
high.

- broad consensus
that it should be
funded.

Fed Govt. stay out of it. Its not a federal question

wont participate in financing of it

- dont need a fed. law
- matter normally handled by states

- OK to sell renewable organs
- live person can do ^{blood/plasma}
- cant sell cadaver organ
↳ leave to estate

MNH — comment re Jackson — 1/3 women
gains made in science

* liver transplants — safe & effective

•• most effective for kids w/ biliary atresia

cost avg. → \$200K
over a country.

Ray Donovan

1/27/84

THE WHITE HOUSE

WASHINGTON

1984 JAN -4 AM

January 3, 1984

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DEC 16 1983

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ARGUMENTS FOR SECRETARIAL COMMITTEE:

- It is more appropriate for this committee to answer to the Secretary.
- The highly technical information addressed by this committee would be more appropriate for analysis by the Department of Health and Human Services.
- It would report to the Secretary, allowing the President the option of reviewing the decisions.

APPENDIX 1

COSTS FOR BROAD CLINICAL TRIALS (Option 3)

	Year 1 ⁴	Year 2 ⁴	Year 3 ⁴	Year 4 ⁴	Year 5 ⁴	TOTAL
PROCEDURE	1,200,000					1,200,000
DATA ¹	1,120,000	790,000	680,000	620,000	620,000	3,830,000
ANALYSIS ²	150,000	150,000	300,000	400,000	500,000	1,500,000
CASES ³	(224)	(158)	(136)	(124)	(124)	(224)
TOTAL	2,470,000	940,000	980,000	1,020,000	1,120,000	6,530,000

If Option 2 is chosen costs would be half of those shown.

- 1 Subject costs estimated based on \$5,000 per patient per year. Data collection includes appropriate clinical and charge information to be developed in linkable, machine readable form.
- 2 Analytic staff cost include required analytic staff, support staff, and computer costs.
- 3 Based on one time intake of 224 cases in the first year with subsequent attrition due to mortality. To reach 224 cases, actual intake. May exceed one year.
- 4 Five year followup may be required to access long term effects. However, design could allow for 1, 3, or 5 year followup end points.

APPENDIX 2

TRANSPLANT CANDIDATES FOR BROAD CLINICAL TRIALS (Option 3)

	PRIVATE	MEDICARE	MEDICAID	TOTAL
Adults Under 65	0	0	112	112
Children Under 18	92	0	20	112
Total Patients	92	0	132	224
Total Costs (Average cost per patient \$200,000)	18,400,000	0	26,400,000	44,800,000
Federal Costs	0	0	13,200,000	13,200,000

If Option 2 is chosen no children would be necessary

THE WHITE HOUSE

WASHINGTON

January 13, 1984

MEMORANDUM FOR CRAIG FULLER

FROM:

JACK SVAHN 

SUBJECT:

Your January 3rd Memorandum for the File:
"Liver Transplantation and Related Issues"

As you know, we have been working to resolve the outstanding issues on liver transplantation and organ sale. We are in the process of finishing an issue paper for the President on that subject.

I was under the impression, however, that HHS was not making any recommendations since they had eliminated any discussion of fiscal implications from the paper. Clearly we can't make decisions, and I would think they wouldn't make recommendations, until they had considered the fiscal impact.

I'm not in favor of a federal ban on the buying and selling of non-renewable organs. I think this is a matter that is more emotional than one needing federal policy. States are in a position to regulate the health and welfare of their own citizens and I certainly think that this is one area that we ought to let them handle. It seems a little inconsistent to me that we allow, in many parts of the country, a person to sell blood and bone marrow, so-called renewable body organs, yet we're going to pass a federal law which prohibits a person from selling from their own cadaver other types of body organs. It is all a little ghoulish, but a strong argument can be made that, were the sale permitted, more organs would be available for transplantation and more lives would be saved.

More to follow in the body of the report.

Attachment

cc: Edwin Meese III
Richard G. Darman

THE WHITE HOUSE

WASHINGTON

January 3, 1984/

MEMORANDUM FOR THE FILE

FROM: CRAIG L. FULLER 

SUBJECT: Liver Transplantation and Related Issues

The attached paper on liver transplantation and related issues was presented to the President by Secretary Heckler during the Cabinet Council on Human Resources meeting today.

At the conclusion of the discussion, it was determined that the matter should be reviewed further by OPD and OMB and, if necessary, scheduled for another brief session with the President.

There was no objection to the HHS recommendations to:

- Ban the buying and selling of solid organs whether from a living donor or from a cadaver. [I. (1)]
- Use the Private Sector Clearinghouse with federal participation as the system for encouraging organ donation. [II. (2)]

There were reservations expressed about indicating medicare coverage was available for liver transplants, although there was no objection to recognizing liver transplantation as an acceptable operation. It is this area specifically that requires further study.

This summary should not suggest that other issues will not arise following review of the paper by White House offices and other agencies.

cc: Ed Meese
Richard Darman
→ Jack Svahn



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

DEC 16 1983

MEMORANDUM FOR THE CABINET COUNCIL ON HUMAN RESOURCES

FROM: MARGARET M. HECKLER

SUBJECT: Liver Transplantation and Related Issues (CM429)

ISSUE

What should be the Administration policy on liver transplants and related subjects?

BACKGROUND

In 1980, the PHS assessed liver transplantation as "experimental" which precluded HCFA from including the procedure as a reimbursable technique (cite). In April 1982, the Health Care Financing Administration asked the Public Health Service to reassess the safety and efficacy of liver transplantation in light of new technology, drug therapy, clinical trials, etc.

Because of the complex scientific issues, the National Institutes of Health convened a Consensus Development Conference in June 1983, in which the skills, resources and institutional support needed for liver transplantation were discussed. The consensus of the participants was that "liver transplantation offers an alternative therapeutic approach which may prolong life in some patients suffering from severe liver disease that has progressed beyond the reach of currently available treatment and consequently carries a prognosis of death". However, it was also the consensus that in many forms of liver disease, the precise indications and timing of liver transplantation remain uncertain or controversial. With materials from these and other sources, the Office of Health Technology Assessment developed its report as to the safety and efficacy of liver transplantation. The report indicates that significant advances have been made in human liver transplantation so that it can be performed safely and effectively: a) in carefully selected patients with certain forms of end-stage liver disease, b) by transplant surgeons specifically trained to perform the procedures, and c) in hospitals having special arrangements to support the process.

There are four related issues to be resolved on this question. First, the legality of buying and selling solid organs. Second, whether the government or voluntary agencies will be responsible for donor identification, recipient coordination and transportation of organs. Third, whether Medicare will cover liver transplantation. Fourth, the composition and structure of an advisory committee to address the bio-ethical, legal, economic and social questions concerning organ transplantation.

Not discussed in this paper are the fiscal implications of coverage decisions according to varying populations. It is the presumption of this Department that the medical-scientific questions should be the driving force behind the decisions leading to a federal policy on organ transplantation.

STATEMENT OF THE ISSUES AND OPTIONS

ISSUE I: The Buying and Selling of Organs

1. Ban the buying and selling of solid organs whether from a living donor or from a cadaver.
2. Oppose federal action on the buying and selling of organs.

ISSUE II: Organ Procurement Clearinghouse

1. Federal organ procurement agency.
2. Private sector clearinghouse with Federal participation.

ISSUE III: Medicare Coverage for Liver Transplantation

1. Accept the findings of the NIH consensus conference as a basis for coverage guidelines and limit procedures to institutions with special capacities.
2. Cover persons with Biliary Atresia and conduct clinical trials for others.
3. Establish broad clinical trials involving 224 cases (adults and children).

ISSUE IV: Transplantation Advisory Committee

1. This committee should be appointed by the President.
2. This committee should be appointed by the Secretary.

ISSUE I: The Buying and Selling of Organs

During this session of Congress, Senator Orrin G. Hatch (R-Utah) and Congressman Albert T. Gore, Jr., (D-Tennessee) introduced separate pieces of legislation to impose a federal ban on the buying and selling of solid human organs, such as livers, kidneys, corneas, hearts, lungs, pancreas and bone.

On December 6, 1983 the American Medical Association (AMA) joined the American Society of Transplant Surgeons, the National Kidney Foundation, the National Association of Patients on Hemodialysis and Transplantation in "opposing the sale of non-renewable, transplantable organs for the purpose of profit..." In addition the AMA Judicial Council stated "The voluntary donation of organs in appropriate circumstances is commendable and is to be encouraged. However, it is not ethical to participate in a procedure to enable a donor to receive payment, other than for the reimbursement of expenses necessarily incurred in connection with removal, for any of the donors non-renewable organs."

OPTIONS

1. Ban the buying and selling of solid organs whether from a living donor or from a cadaver. (Such a ban would not preclude payment for the cost of locating, harvesting, transporting, storing, matching or transplanting.)

ARGUMENTS FOR:

- The buying and selling of organs regardless of the source appears morally and ethically repugnant to most of society; sanctioning the profitable trafficking in body parts would be unseemly for this Administration. Moreover, in the case of living donors selling organs,

medical ethics would appear to be violated: physicians performing the subsequent transplants would be de facto sanctioning potentially dangerous medical procedures for the healthy donors who have no familial ties to the recipient.

- This would protect individuals unable to make informed decisions (retarded, etc.) from being exploited for profit.
- Commercialization might give donors an incentive to conceal medical history leading to inappropriate organs being transplanted.
- Public insurance, Medicare and Medicaid would pay for such transactions, requiring the need for a federal regulatory effort.

ARGUMENTS AGAINST:

- Potential donors would be unable to sell organs with the intent of giving them to survivors or to charitable causes (non-sale transfer would of course remain an option).
- The number of organs available might diminish, assuming the cash incentive would increase the number of donors.
- A ban at the federal level could be regarded as intervention in the regulation of medical practice, traditionally performed by the states.
- A ban has the potential for creation of a black market for transplantable organs.

2. Oppose Federal Action on the Buying and Selling of Organs

ARGUMENTS FOR:

- Avoids the need for Federal enforcement efforts.
- Permits the maximum personal liberty in choosing organ disposal whether for profitable, charitable or medical purposes.
- Allows States to regulate this activity (to date, no States have laws applicable to this).

ARGUMENTS AGAINST:

- Places young, poor, bereaved and mentally incompetent persons at risk of exploitation.
- Not consistent with efforts to achieve orderly and safe utilization of organs using clinical criteria.
- Due to the inter-state use of organs, Federal action is necessary to avoid conflicting State standards.

ISSUE II: Organ Procurement Clearinghouse

To provide the most efficient use of scarce human organs, it is necessary to have a mechanism for matching donors and potential recipients. Since solid human organs have a short period of viability, it is essential that such a clearinghouse be operated continuously, as is currently available for kidneys.

To assist the establishment of such a system for the other organs and to develop a mechanism for encouraging organ donation, the Surgeon General convened two workshops involving organ procurement agencies, transplant surgeons and other private sector organizations concerned with organ transplantation. From these conferences, the American Council on Transplantation was formed.

1. Federal Organ Procurement Agency.

ARGUMENTS FOR:

- Reflects clear Federal commitment to a leadership role.
- Provides somewhat better potential for uniform data collection.
- More likely to approach uniform, universal coverage and access.

ARGUMENTS AGAINST:

- Creates the potential for political intrusion into the process of organ procurement.
- Creates Federal intrusion into an area where voluntary groups have already demonstrated effective, coordinated action.
- Reduces incentive for local or regional participation in the process.

2. Private Sector Clearinghouse With Federal Participation.

ARGUMENTS FOR:

- American Council on Transplantation provides an effective mechanism reflecting broad-based participation by all major parties of interest.
- Established regional organizations are already providing an effective harvesting and referral service and can be readily integrated for added effectiveness for multiple organ harvests from appropriate available donors.
- Avoid another layer of decision-makers in this process.

ARGUMENTS AGAINST:

- Will be perceived by some as an unwillingness for the Federal government to assume responsibility.
- May stimulate jurisdictional disputes between existing organ harvest and referral organizations.

ISSUE III: Medicare Coverage for Liver Transplantation

There are a significant number of medical conditions leading to end-stage liver disease for which liver transplantation offers the only alternative to death. Even then, the palliative potential of transplantation is likely to be effective only for certain causes of end-stage liver disease in selected patients, when performed by experienced surgical teams with appropriate supportive ancillary services.

Even under optimal circumstances, serious questions remain to be addressed to assure that diffusion of this technology occurs in an orderly fashion which avoids subjecting patients to unnecessary risks and puts scarce institutional resources to use for those individuals who have the optimal chance to be helped.

1. Accept the Findings of the NIH Consensus Conference as a Basis for Coverage Guidelines and Limit Procedures to Institutions With Special Capacities

According to the conference, patients with the following diseases are most likely to benefit. Other causes do exist and would be assessed on a case-by-case basis:

- o Biliary Atresia
- o Chronic Active Hepatitis
- o Primary Biliary Cirrhosis
- o Type 1 Antitrypsin Globulin Deficiency (Pi ZZ)
- o Wilsons Disease
- o Crigler-Najjar Syndrome
- o Miscellaneous Metabolic Liver Diseases
- o Primary Sclerosing Cholangitis

Patients whose medical conditions would be least likely to be improved by transplantation include:

- o malignancy metastatic to liver or where the malignancy extends beyond the liver
- o viral induced liver disease if persisting virus is present
- o alcoholics not in remission
- o active substance abusers
- o diseases likely to recur in the transplanted organ

Note that this population is limited to those conditions outlined above; for instance, those with liver malignancies or for "reformed" alcoholics transplantation is likely to be beneficial.

ARGUMENTS FOR:

- Guidelines were decided by panel of experts.
- Broad level of acceptance in significant parts of the medical community.
- Identifies broad outlines of groups likely to benefit (i.e., children with biliary atresia).
- Excludes on clinical grounds specific groups unlikely to benefit.
- Has potential for restricting the number of centers likely to perform the procedure to those with special preparation and facilities.

ARGUMENTS AGAINST:

- Medical knowledge continues to expand; it is not known which individuals may best benefit from this procedure.
- The long term survivability of transplant recipients is unclear.
- Scientific questions may remain unanswered since no guarantee exists that data collection would occur.
- Legal issues may arise by excluding alcoholics and substance abusers (Section 504) despite basis for exclusion being medical.

2. Cover Persons with Biliary Atresia and Conduct Clinical Trials for Others.

ARGUMENTS FOR:

- Largest single category of diseases with both natural history data and transplant data, thus, adequate information is available to proceed.
- Coverage for Biliary Atresia supportable by consensus conference.
- Any further information needed on Biliary Atresia can be derived from nearly 100 cases with this diagnosis already transplanted.
- No group of adults large enough to reach meaningfully scientific conclusion exists, except malignancy which has negative experience. More data necessary for other diseases.
- This procedure currently covered under Medicaid at State option.

ARGUMENTS AGAINST:

- Would not answer many questions about Biliary Atresia, such as:
 - o who might benefit from Kasai procedure (an alternative to transplantation) and
 - o when Kasai procedure is followed, successful or not, should transplant be done.
- No greater overall experience with children than adults:
 - o 55% cases, children
 - o 45% cases, adults.

3. Establish Broad Clinical Trials Involving 224 Cases (Adults and Children).

Certain critical questions remain which, when answered, would enable the Secretary to make a decision based on better information than is currently available while continuing to allow transplantation for those patients who we now believe would benefit. The critical questions presented below represent a framework for a collaborative study of liver transplant criterion in both the long and the short term.

A. Patient selection:

On the basis of information now available, we do not have definitive answers to these important questions:

- 1.) Which patients are likely to benefit from transplant?
 - o which patients may benefit from alternative medical and surgical procedures which can substitute permanently or for some period of time for a liver transplant, (i.e., Kasai procedure).
- 2.) In which individuals may liver transplants be the only treatment?

B. Long term risks and benefits:

Recent advances in surgical technique and in immunosuppressive drugs and the treatment of rejection phenomenon are suggested to have improved short-term survival. The following, however, are not understood:

- 1.) The cause of both the mortality and morbidity that is seen in transplant patients.
- 2.) The impact transplantation will have on the physical and mental development of children.

ARGUMENTS FOR:

- Could answer the above questions.
- Provides scientific basis for a decision.
- Has had precedent in heart transplant trials.
- Study could be interrupted at any point should adequate data exist to answer questions.

ARGUMENTS AGAINST:

- Some desirable candidates may not receive transplant during trial period.
- May be perceived as needless further study to save federal dollars.
- Findings may not advance knowledge beyond that developed at consensus conference.
- Private sector insurance coverage determination would be deferred, limiting availability for some patients.

ISSUE IV: Transplantation Advisory Committee

There remains a number of bio-ethical, legal, economic and social questions concerning organ transplantation. An advisory committee on transplantation should be established to address these issues.

This committee would be composed of physicians, patients or their guardians, lawyers, clergymen, economists and others who would bring a diverse set of skills and concerns to bear on these difficult issues. The committee would monitor the existing transplant experience as well as new information (i.e., clinical trials) to provide advice as how best to deal with the complex issues involving organ transplantation.

1. This committee should be appointed by the President.

ARGUMENTS FOR PRESIDENTIAL COMMITTEE:

- This would underscore the commitment of the Administration toward this therapy.
- Reports by this committee would receive a wider degree of public awareness.
- Some may perceive Secretarial committee as lower level decision-making body.

2. This committee should be appointed by the Secretary.

ARGUMENTS FOR SECRETARIAL COMMITTEE:

- It is more appropriate for this committee to answer to the Secretary.
- The highly technical information addressed by this committee would be more appropriate for analysis by the Department of Health and Human Services.
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