



**Suspension and Expulsion Policy**  
**(Washington)**  
2019 - 2020

# Table of Content

<b>Table of Content</b>	<b>2</b>
<b>Student Rights</b>	<b>3</b>
<b>Conditions and Limitations</b>	<b>3</b>
<b>Grounds for Suspension and Expulsion of Students</b>	<b>3</b>
<b>Enumerated Offenses</b>	<b>4</b>
<b>Suspension and Expulsion Policy and Procedure</b>	<b>6</b>
Short-term Suspension	7
Conditions and Limitations of Short-term Suspensions	7
Notice to Parents/Guardians and Student of Short-term Suspensions	7
Grievance Procedure for Short-term Suspensions	8
Long-term Suspensions	8
Conditions and Limitations of Long-term Suspensions	8
Notice of Hearing and Waiver of Hearing Rights for Long-term Suspensions	9
Prehearing and Hearing Process for Long-term Suspensions	9
Expulsion	10
Conditions and Limitations of Expulsion	10
Notice of Hearing and Waiver of Request for Hearing Rights for Expulsions	10
Prehearing and Hearing Process for Expulsions	11
Emergency Actions	11
Emergency Removal from a Class, Subject, or Activity	11
Limitations on Emergency Expulsions	11
Notice of Hearing and Waiver of Hearing Rights for Emergency Expulsions	12
Prehearing and Hearing Process for Emergency Expulsions	12
Appeal Process	13
Long term Suspensions and Expulsion Appeals	13
Procedures for Appeals Hearings before the Disciplinary Appeal Council	13
Disciplinary Appeal Council Decisions	14
Students With Disabilities	14
Services During Suspension	15
Procedural Safeguards/Manifestation Determination	15
Due Process Appeals	15
Special Circumstances	16
Interim Alternative Educational Setting	16
Procedures for Students Not Yet Eligible for Special Education Services	16
Re-Engagement Plan	17

# Student Rights

Each Charter School student possesses the following rights which may not be limited without good and sufficient cause:

- Students may not be denied equal educational opportunity or be discriminated against because of national origin, race, religion, economic status, sex, pregnancy, marital status, previous arrest, previous incarceration, or a physical, mental or sensory handicap.
- The constitutional rights to freedom of speech and press, to peaceably assemble, to petition the government and its representatives, to the free exercise of religion, and to have their Charter Schools free from sectarian control or influence, with reasonable limitations on the time, place and manner of exercising these rights.
- The constitutional right to be secure from unreasonable searches and seizures of their person, papers, and belongings.
- The right to be free from unlawful interference while attending Charter School.
- Students may not be deprived of the right to an equal educational opportunity without due process of law.

# Conditions and Limitations

Students may be disciplined for violating the lawful rules of the Charter School. Students have the right to utilize the grievance (appeal) procedure described in this policy. The conditions under which a student may be disciplined are:

- A student may not be prevented from meeting specific academic grade, subject, or graduation requirements.
- A student's academic grade may only be negatively impacted by his or her tardies or absences if:
  - o The student's attendance and/or participation is related to the objectives or goals of the particular subject or course, and
  - o The teacher has indicated that the student's attendance and/or participation is a basis for at least some part of the student's grade.
- Willfully inflicting or willfully causing the infliction of physical pain on a student is prohibited. This does not include:
  - o The use of reasonable physical force by a Charter School administrator, teacher, Charter School employee or volunteer that is necessary to maintain order or to prevent a student from harming himself other students and Charter School staff or property;
  - o Physical pain or discomfort involved in the student's voluntary participation in athletic competition or recreational activity;
  - o Physical exertion in a teacher directed class activity, such as physical education exercises, field trips or vocational education projects; or
  - o Physical restraint or the use of aversive therapy as part of a behavior management program in a student's individual education program which has been signed by the parent and is carried out according to Charter School procedures in compliance with the law.<sup>3</sup>

# Grounds for Suspension and Expulsion of Students

A student may be suspended or expelled for prohibited misconduct if the act is related to Charter School activity or Charter School attendance, occurring at Charter School or at any other school or a Charter School sponsored event, occurring at anytime including but not limited to: (a) while on Charter School grounds; (b) while going to or coming from

Charter School; (c) during the lunch period, whether on or off Charter School campus; (d) during, going to, or coming from a Charter School Sponsored activity.

## Enumerated Offenses

**1. Non discretionary offenses, students must be suspended and recommended for expulsion for any of the following acts:**

- a) Possessed, sold, or otherwise furnished a firearm, explosive, or other dangerous object, unless, in the case of possession of any object of this type, the student had obtained written permission to possess the item from a certificated school employee, with the Director or designee's concurrence.

If it is determined by the Administrative Panel that a student has brought a firearm or destructive device, as defined in Section 921 of Title 18 of the United States Code, onto campus or to have possessed a firearm or dangerous device on campus, the student shall be expelled for one year, pursuant to the Federal Gun Free Charter Schools Act of 1994.

The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

The term "dangerous object" means (A) any explosive, incendiary, or poison gas, including but not limited to: (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses.

**2. Discretionary Offenses, students may be suspended (short-term or long-term) or expelled for any of the following acts when it is determined the student:**

- a) Caused, attempted to cause, or threatened to cause physical injury to another person.
- b) Willfully used force of violence upon the person of another, except self defense.
- c) Possessed, sold, or otherwise furnished any knife unless, in the case of possession of any object of this type, the student had obtained written permission to possess the item from a certificated Charter School employee, with the Executive Director or designee's concurrence.
- d) Unlawfully possessed, used, sold or otherwise furnished, or was under the influence of any controlled substance, alcoholic beverage, or intoxicant of any kind.
- e) Unlawfully offered, arranged, or negotiated to sell any controlled substance, alcoholic beverage or intoxicant of any kind, and then sold, delivered or otherwise furnished to any person another liquid substance or material and represented same as controlled substance, alcoholic beverage or intoxicant.
- f) Committed or attempted to commit robbery or extortion.
- g) Caused or attempted to cause damage to Charter School property or private property.
- h) Stole or attempted to steal Charter School property or private property.

- i) Possessed or used tobacco or products containing tobacco or nicotine products, including but not limited to cigars, cigarettes, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets and betel. This section does not prohibit the use of his or her own prescription products by a student.
- j) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia.
- k) Possessed an imitation firearm, i.e.: a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.
- l) Committed or attempted to commit a sexual assault or committed a sexual battery.
- m) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.
- n) Made terrorist threats against school officials and/or school property. For purposes of this section, "terroristic threat" shall include any statement, whether written or oral, by a person who willfully threatens to commit a crime which will result in death, great bodily injury to another person, or property damage in excess of one thousand dollars (\$1,000), with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, or for the protection of school property, or the personal property of the person threatened or his or her immediate family.
- o) Caused, attempted to cause, threatened to cause or participated in an act of hate violence.

**3. Other Discretionary Offenses, students may be suspended (short-term) for any of the following acts when it is determined the student:**

- a) Committed an obscene act or engaged in habitual profanity or vulgarity.
- b) Knowingly received stolen Charter School property or private property.
- c) Harassed, threatened, or intimidated a student who is a complaining witness or witness in a Charter School disciplinary proceeding for the purpose of preventing that student from being a witness and/or retaliating against that student for being a witness.
- d) Committed sexual harassment.
- e) Intentionally harassed, threatened or intimidated a student or group of students to the extent of having the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder and invading student rights by creating an intimidating or hostile environment.
- f) Engaged in, or attempted to engage in hazing. For the purposes of this subdivision, "hazing" means a method of initiation or preinitiation into a student organization or body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective student. For purposes of this section, "hazing" does not include athletic events or Charter School sanctioned events.

- g) Aided or abetted the infliction or attempted infliction of physical injury to another person.
- h) Engaged in an act of bullying, including, but not limited to, bullying committed by means of an electronic act.
  - 1) "Bullying" means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a student or group of students which would be deemed hate violence or harassment, threats, or intimidation, which are directed toward one or more students that has or can be reasonably predicted to have the effect of one or more of the following:
    - i. Placing a reasonable student (defined as a student, including, but is not limited to, a student with exceptional needs, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with exceptional needs) or students in fear of harm to that student's or those students' person or property.
    - ii. Causing a reasonable student to experience a substantially detrimental effect on his or her physical or mental health.
    - iii. Causing a reasonable student to experience substantial interference with his or her academic performance.
    - iv. Causing a reasonable student to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by the Charter School.
  - 2) "Electronic Act" means the creation and transmission originated on or off the school site, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:
    - i. A message, text, sound, or image.
    - ii. A post on a social network Internet Web site including, but not limited to:
      - (a) Posting to or creating a burn page. A "burn page" means an Internet Web site created for the purpose of having one or more of the effects as listed in subparagraph (1) above.
      - (b) Creating a credible impersonation of another actual student for the purpose of having one or more of the effects listed in subparagraph (1) above. "Credible impersonation" means to knowingly and without consent impersonate a student for the purpose of bullying the student and such that another student would reasonably believe, or has reasonably believed, that the student was or is the student who was impersonated.
      - (c) Creating a false profile for the purpose of having one or more of the effects listed in subparagraph (1) above. "False profile" means a profile of a fictitious student or a profile using the likeness or attributes of an actual student other than the student who created the false profile.
    - iii. Notwithstanding subparagraphs (1) and (2) above, an electronic act shall not constitute pervasive conduct solely on the basis that it has been transmitted on the Internet or is currently posted on the Internet.

## **Suspension and Expulsion Policy and Procedure**

The Charter School believes that due process means that students must be treated fairly and with regard for their rights under the law. This means that any discipline or corrective action of a student who has violated rules must be administered fairly and for good and just cause. Students have the right to tell their side of the incident and receive a fair punishment for their behavior. Charter School officials will take corrective action only after a

thorough examination of the facts. The facts must always be reasonably related to the nature and circumstances of the violation. Students have the right to appeal corrective action that they feel is unjust or unjustly administered. The Charter School has adopted and implemented the due process rules found in the law<sup>4</sup>. These rules outline the substantive and procedural due process rights of students who are involved in programs or activities within the Charter School. Additionally, the Charter School has adopted rules that guarantee the minimum due process standards and protections.

## **A. Short-term Suspension**

### **Conditions and Limitations of Short-term Suspensions**

The Charter School must consider the nature and circumstances of the student's act, and the act must reasonably warrant both a short-term suspension and the length of the suspension imposed. However, the Charter School may designate certain offenses so severe that suspension must be imposed as a consequence. The Executive Director may grant exceptions to a short-term suspension punishment for extenuating circumstances. Any student who has been suspended may apply for readmission at any time.

As a general rule, the Charter School may not impose a short-term suspension unless another appropriate form of corrective action has already been imposed. Additionally, a student may not be subject to a short-term suspension for one or more unexcused absences unless:

- The Charter School first attempted another form of appropriate corrective action;
- The Charter School notified the student's parents/guardians in writing, in the parents/guardians' primary language, of the student's unexcused absences;
- The Charter School scheduled conference(s) with the parents/guardians and the student to analyze the cause of the student's absences, especially to determine if that cause of absences means the student needs special education services; and
- The Charter School has taken steps to reduce the student's absences, including discussions the parents/guardian, adjusting the student's schedule, or assisting the parents/guardians in securing assistive services for the student.

Students may not receive short-term suspensions for a total of fifteen (15) school days during any single semester or ten (10) school days during any single trimester. Any student given a short-term suspension must be allowed to make up assignments and tests missed during the suspension if:

- The assignments or tests have a substantial effect on the student's grade; or
- The student would fail to receive credit in the class if he did not make up the assignment.

### **Notice to Parents/Guardians and Student of Short-term Suspensions**

A student is entitled to a conference before he or she is suspended for a short-term. Prior to the conference, the student must be given verbally or in writing:

- Notice of the alleged misconduct and Charter School rule(s) that was allegedly violated;
- An explanation of the evidence that supports the allegations;
- An explanation of the corrective action that will occur; and
- An opportunity to explain him or herself.

If the suspension is to exceed one calendar day, the Charter School must inform the parents/guardians of the reason for the student's suspension and the duration of the suspension verbally and/or by letter as soon as

reasonably possible. This notice shall also inform the parents/guardians of their right to an informal conference, and that the suspension may possibly be reduced as a result of such conference.

All short-term suspensions, and the reasons for the suspensions, must be reported to the Superintendent or their designee within twentyfour (24) hours after the suspension is imposed.

## **Grievance Procedure for Short-term Suspensions**

If the student or parent disagrees with a proposed short-term suspension, they have the right to an informal conference with the Executive Director to resolve the grievance. During the conference, the Executive Director may question any person involved; the student or parent/guardian may also question the employee who imposed the discipline.

If the grievance is not resolved, a written or verbal appeal may be made to the Administrative Panel within two (2) school business days. If the grievance is not resolved at the Administrative Panel level, a written or verbal appeal may be made to the Disciplinary Appeal Council. The Disciplinary Appeal Council must notify the student and parents/guardians of its response within ten (10) school business days after receiving the appeal. Unless the Executive Director decides to delay the suspension, it may be imposed during the appeal process.

## **B. Long-term Suspensions**

### **Conditions and Limitations of Long-term Suspensions**

The Charter School must consider the nature and circumstances of the student's act, and the act must reasonably warrant both a long-term suspension and the length of the suspension imposed. However, the Charter School may designate certain offenses so severe that suspension must be imposed as a consequence. The Executive Director may grant exceptions to a long-term suspension punishment for extenuating circumstances. Any student who has been suspended may apply for readmission at any time.

As a general rule, the Charter School may not impose a long-term suspension unless another appropriate form of corrective action has already been imposed. Additionally, a student may not be subject to a long-term suspension for one or more unexcused absences unless:

- The Charter School first attempted another form of appropriate corrective action;
- The Charter School notified the student's parents/guardians in writing, in the parents/guardians' primary language, of the student's unexcused absences;
- The Charter School scheduled conferences with the parents/guardians and the student to analyze the cause of the student's absences, especially to determine if that cause of absences means the student needs special education services; and
- The Charter School has taken steps to reduce the student's absences, including discussions the parents/guardian, adjusting the student's schedule, or assisting the parents/guardians in securing assistive services for the student.

Students may not receive long-term suspensions which cause the student to lose academic grades or credit in excess of one semester or trimester during the same school year. All long-term suspensions, and the reasons for the suspensions, must be reported to the Superintendent or their designee within twentyfour (24) hours after the imposition of the suspension.



## **Notice of Hearing and Waiver of Hearing Rights for Long-term Suspensions**

Before a student can be suspended long-term, the student and his or her parents/guardians must receive a written notice of an opportunity for a hearing. This notice must be either delivered in person or by certified mail. The notice must:

- Be in the parents/guardians' primary language, to the extent feasible;
- Explain the alleged misconduct and the Charter School rule(s) alleged to have been violated;
- Identify the corrective action or discipline being proposed;
- Explain the rights of the student and his or her parents/guardians to a hearing to contest the allegation(s); and
- Explain that parents/guardians have three (3) school business days after receipt of the notice to request a hearing. It must also state if the request is not received within that timeline, then the right to a hearing may be deemed to have been waived, and the proposed long-term suspension may be imposed without any further opportunity for the student and parents/guardians to contest it.
- Include a schedule of "school business days" potentially applicable to the hearing date.

Students and their parents/guardians have three (3) school business days to request the hearing after they receive the notice. The parents/guardians' request for hearing may be made either in writing or verbally, if accepted by the Charter School. If the Charter School does not receive the request for the hearing within three (3) school business days, it may determine that the parents/guardians have waived that right, and the Charter School may impose the long-term suspension.

## **Prehearing and Hearing Process for Long-term Suspensions**

If the Charter School receives the request for hearing within the designated time frame (three (3) school business days), it must schedule a hearing. This hearing must commence within three (3) school business days from when the Charter School received the request. In the hearing process, the student and parents/guardians have certain rights, including:

- Before the hearing, the right to inspect any evidence the Charter School plans to introduce at the hearing;
- Be represented by legal counsel;
- Question and confront witnesses, unless the witness is excused by the hearing officer. A witness may be excused if the Charter School can demonstrate it made a reasonable effort to produce the witness, or the witness can establish good cause to fear retaliation as a result of being a witness.
- Present the student's explanation of the alleged misconduct; and
- Introduce any evidence or present witnesses. The Charter School has the right to inspect any evidence the student plans to introduce before the hearing.

The Administrative Panel hearing the case shall not be a witness in the case for either the Charter School or the student, and may only determine the student's guilt or innocence based on evidence presented at the hearing. The hearing will either be tape recorded or transcribed verbatim in a written record. The hearing officer must present the student, or his or her attorney or parents/guardians, with written findings of fact, conclusions, and the nature and duration of the suspension or lesser punishment imposed.

## c. **Expulsion**

### **Conditions and Limitations of Expulsion**

Before a student may be expelled, he must receive a written notice and an opportunity for a hearing. A student may not be expelled unless the nature of his or her misconduct warrants the harshness of an expulsion. The Charter School may not expel a student unless another appropriate form of corrective action has already been imposed, or the Charter School reasonably believes other forms of corrective action would fail if employed. Any student who has been expelled may apply for readmission at any time.

A student may not be expelled for one or more unexcused absences unless:

- The Charter School notified the student's parents/guardians in writing, or other necessary manner, of the student's unexcused absences;
- The Charter School scheduled conference(s) with the parents/guardians and the student to analyze the cause of the student's absences, especially to determine if that cause of absences means the student needs special education services; and
- The Charter School has taken steps to reduce the student's absences, including discussions the parents/guardian, adjusting the student's schedule, or assisting the parents/guardians in securing assistive services for the student.

Once a student is expelled from the Charter School, the Charter School must notify the appropriate local and state authorities, including but not limited to juvenile authorities, so the authorities may address the student's educational needs. All long-term expulsions, and the reasons for the expulsions, must be reported to the Superintendent or their designee within twentyfour (24) hours after the imposition of the expulsion.

### **Notice of Hearing and Waiver of Request for Hearing Rights for Expulsions**

Before a student can be expelled, the student and his or her parents/guardians must receive a written notice of an opportunity for a hearing. This notice must be either delivered in person or by certified mail. The notice must:

- Be in the parents/guardians' primary language, to the extent feasible;
- Explain the alleged misconduct and the Charter School rule(s) alleged to have been violated;
- Identify the corrective action or discipline being proposed;
- Explain the rights of the student and his or her parents/guardians to a hearing to contest the allegation(s); and
- Explain that parents/guardians have three (3) school business days after receipt of the notice to request a hearing. It must also state if the request is not received within that timeline, then the right to a hearing may be deemed to have been waived, and the proposed expulsion may be imposed without any further opportunity for the student and parents/guardians to contest it.
- Include a schedule of "school business days" potentially applicable to the hearing date.

Students and their parents/guardians have three (3) school business days to request the hearing after they receive the notice. The parents/guardians' request for hearing may be made either in writing or verbally, if accepted by the Charter School. If the Charter School does not receive the request for the hearing within three (3) school business days, it may determine that the parents/guardians have waived that right, and the

Charter School may impose the expulsion.

## **Prehearing and Hearing Process for Expulsions**

If the Charter School receives the request for hearing within the designated time frame (three (3) school business days), it must schedule a hearing. This hearing must commence within three (3) school business days from when the Charter School received the request. In the hearing process, the student and parents/guardians have certain rights, including:

- Before the hearing, the right to inspect any evidence the Charter School plans to introduce at the hearing;
- Be represented by legal counsel;
- Question and confront witnesses, unless the witness is excused by the hearing officer. A witness may be excused if the Charter School can demonstrate it made a reasonable effort to produce the witness, or the witness can establish good cause to fear retaliation as a result of being a witness.
- Present the student's explanation of the alleged misconduct; and
- Introduce any evidence or present witnesses. The Charter School has the right to inspect any evidence the student plans to introduce before the hearing.

The Administrative Panel hearing the case shall not be a witness in the case for either the Charter School or the student, and may only determine the student's guilt or innocence based on evidence presented at the hearing. The hearing will either be tape recorded or transcribed verbatim in a written record. The hearing officer must present the student, or his or her attorney or parents/guardians, with written findings of fact, conclusions, and the expulsion or nature of any lesser punishment imposed.

## **D. Emergency Actions**

### **Emergency Removal from a Class, Subject, or Activity**

A student may be immediately removed from a class or activity by a certificated teacher or Charter School administrator, and sent to the Executive Director's office, when there is good and sufficient reason to believe that the student's presence poses an immediate and continuing danger or a continuing threat of substantial disruption. This is a short-term action that may continue only until the danger or threat ceases, or the Executive Director imposes discipline, such as a short-term suspension, long-term suspension, or expulsion.

The Executive Director must meet with the student as soon as possible after the student's removal to take the appropriate corrective action or punishment. The removal cannot normally exceed one day. Before the student can be returned to the class or activity he was removed from, the Executive Director must inform the teacher or administrator who initiated the removal.

### **Limitations on Emergency Expulsions**

A student may be expelled immediately by the Executive Director in emergency situations, if the Executive Director has good and sufficient cause to believe the student's presence poses an immediate and continuing danger or a continuing threat of substantial disruption. An emergency expulsion continues until the Charter School rescinds or reverses it through the hearing or appeals process.

## Notice of Hearing and Waiver of Hearing Rights for Emergency Expulsions

The Charter School must notify the student's parents/guardians of the emergency expulsion, and their right for a hearing, within twenty four (24) hours of the expulsion (If the expulsion is based on failure to comply with state immunization law, the notice must be made *before* the expulsion is imposed). The notice must be delivered either in person, with the Charter School documenting delivery of the notice by obtaining the parents/guardians' signature, or by certified mail. Reasonable attempts to contact the parents/guardians must be made by phone if the notice is mailed. The notice must:

- Be in the parents/guardians' primary language, to the extent feasible;
- Specify the alleged reasons for the emergency expulsion;
- Identify the corrective action or punishment taken and proposed;
- Explain the rights of the student and his or her parents/guardians to a hearing to contest the allegation(s) as soon as reasonably possible; and
- Explain that parents/guardians have ten (10) school business days after receipt of the notice to request a hearing. It must also state if the request is not received within that timeline, then the right to a hearing may be deemed to have been waived, and the emergency expulsion may be continued as deemed necessary by the Charter School without any further opportunity for the student and parents/guardians to contest it.
- Include a schedule of "school business days" potentially applicable to the hearing date.

Students and their parents/guardians have ten (10) school business days to request the hearing after they receive the notice. The parents/guardians' request for hearing may be made either in writing or verbally, if accepted by the Charter School. If the Charter School does not receive the request for the hearing within ten (10) school business days, it may determine that the parents/guardians have waived that right, and the Charter School may continue the emergency expulsion as deemed necessary by the Charter School.

## Prehearing and Hearing Process for Emergency Expulsions

If the Charter School receives the request for hearing within the designated time frame (ten (10) school business days), it must immediately schedule a hearing, and give notice of the hearing, as soon as reasonably possible. This hearing must occur no later than three (3) school business days from when the Charter School received the request. In the hearing process, the student and parents/guardians have certain rights, including:

- Before the hearing, the right to inspect any evidence the Charter School plans to introduce at the hearing;
- Be represented by legal counsel;
- Question and confront witnesses, unless the witness is excused by the hearing officer. A witness may be excused if the Charter School can demonstrate it made a reasonable effort to produce the witness, or the witness can establish good cause to fear retaliation as a result of being a witness.
- Present the student's explanation of the alleged misconduct; and
- Introduce any evidence or present witnesses. The Charter School has the right to inspect any evidence the student plans to introduce before the hearing.

The Administrative Panel hearing the case shall not be a witness in the case for either the Charter School or the student, and may only determine the student's guilt or innocence based on evidence presented at the hearing. The hearing will either be tape recorded or transcribed verbatim in a written record.

The Administrative Panel must make a decision whether or not to continue the emergency expulsion within

one Charter School business day after the hearing concludes. The hearing officer must inform the student, or his or her attorney or parents/guardians, of the findings of fact, conclusions (including whether or not the emergency situation giving rise to the emergency expulsion continues), and whether the emergency expulsion should be continued or a lesser punishment imposed. The Administrative Panel's decision must be sent to the student, or his or her attorney or parents/guardians, via certified mail.

An emergency expulsion may be continued following the hearing if the emergency basis continues and/or as corrective action or punishment for the actions giving rise to the emergency expulsion in the first place.

## **E. Appeal Process**

### **Long term Suspensions and Expulsion Appeals**

The student may appeal an Administrative Panel's decision regarding his or her long term suspension, expulsion, or emergency expulsion. The Disciplinary Appeal Council will hear such appeals. The student must notify the Executive Director of the student's desire to appeal within three (3) school business days after receiving the Administrative Panel's written decision.

If the student does not appeal within that time frame (three (3) school business days), his or her suspension or expulsion may begin on the first calendar day following the expiration of that three (3) school business day period. If the student does appeal, the suspension or expulsion may be imposed during the appeal, subject to the following conditions:

- The long term suspension or non emergency expulsion may be imposed during the appeal period for no more than ten (10) consecutive school days or until the appeal is decided, whichever is shorter;
- An emergency expulsion may be continued during the appeal period as long as the student continues to pose an immediate and continuing danger or continuing threat of substantial disruption;
- If the student serves any days of the suspension or expulsion before the appeal is decided, those days will be credited toward the overall duration of the suspension or expulsion and will not limit or extend the duration of that suspension or expulsion; and
- If a student subject to a temporary suspension returns to Charter School before the appeal is decided, he must be allowed to make up assignments and tests missed during his or her suspension if the missed assignments or tests have a substantial effect on the student's grade, or failure to complete the assignments would prevent the student from receiving credit for the course(s).

The student must appeal the Disciplinary Appeal Council's decision directly to the courts. The Charter School has the discretion to postpone its decision pending the student's appeal to the court, except if ordered otherwise by the court.

### **Procedures for Appeals Hearings before the Disciplinary Appeal Council**

If the Disciplinary Appeal Council receives the notice of appeal within the designated time frame (three (3) school business days), they must schedule and hold an informal conference to review the matter. This informal conference must occur within ten (10) school business days after the Charter School receives the notice of appeal. The purpose of this meeting is to meet with both the student and the Administrative Panel

to decide the most appropriate way to handle the appeal. At that time, the student, or his or her attorney or parents/guardians, may present witnesses and evidence as Disciplinary Appeal Council deems is reasonable. The Disciplinary Appeal Council will decide on one of the following procedures before the conclusion of the conference:

- Review the hearing record or other submitted materials, and make its decision within ten (10) school business days after the date of the conference; or
- Hear further arguments based on the hearing record and make its decision within fifteen (15) school business days after the date of the conference; or
- Hear new evidence and arguments, not based on the hearing record, within ten (10) school business days after the date of the conference.

If the Disciplinary Appeal Council decides to hear new evidence and arguments, the student has certain rights, including:

- Before the new hearing, to inspect any evidence the Charter School plans to introduce at the hearing;
- Be represented by legal counsel;
- Question and confront witnesses, unless the witness is excused by the hearing officer. A witness may be excused if the Charter School can demonstrate it made a reasonable effort to produce the witness, or the witness can establish good cause to fear retaliation as a result of being a witness.
- Present the student's explanation of the alleged misconduct; and
- Introduce any evidence or present witnesses he desires. The Charter School has the right to inspect any evidence the student plans to introduce before the hearing.

The hearing will either be tape recorded or transcribed verbatim in a written record.

## **Disciplinary Appeal Council Decisions**

The Disciplinary Appeal Council may decide to impose, affirm, reverse, or modify a student's discipline, suspension, or expulsion after the appeal hearing. This decision may only be made:

- By the council members who heard or read the evidence;
- By the council members who were not witnesses in the case; and
- At a meeting at which a quorum of the council members is present, and by majority vote.

## **Students With Disabilities**

A pupil identified as an individual with disabilities or for whom the Charter School has a basis of knowledge of a suspected disability pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA") or who is qualified for services under Section 504 of the Rehabilitation Act of 1973 ("Section 504") is subject to the same grounds for disciplinary action, including suspension and expulsion, and is accorded the same due process procedures applicable to regular education pupils except when federal and state law mandates additional or different procedures. The Charter School will follow the IDEA, Section 504, and all applicable federal and state laws when imposing any form of discipline on a pupil identified as an individual with disabilities or for whom the Charter School has a basis of knowledge of a suspected disability or who is otherwise qualified for such services or protections in according due process to such pupils. The following procedures shall be followed when a student with a disability is considered for suspension or expulsion. These procedures will be updated if there is a change in the law.

## 1. Services During Suspension

Students suspended for more than ten (10) school days in a school year shall continue to receive services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP/504 Plan; and receive, as appropriate, a functional behavioral assessment or functional analysis, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. These services may be provided in an interim alternative educational setting.

## 2. Procedural Safeguards/Manifestation Determination

Within ten (10) school days of a recommendation for expulsion or any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the Charter School, the parent, and relevant members of the IEP/504 Team shall review all relevant information in the student's file, including the child's IEP/504 Plan, any teacher observations, and any relevant information provided by the parents to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
2. If the conduct in question was the direct result of the local educational agency's failure to implement the IEP/504 Plan.

If the Charter School, the parent, and relevant members of the IEP/504 Team determine that either of the above is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

If the Charter School, the parent, and relevant members of the IEP/504 Team make the determination that the conduct was a manifestation of the child's disability, the IEP/504 Team shall:

1. Conduct a functional behavioral assessment or a functional analysis assessment, and implement a behavioral intervention plan for such child, provided that the Charter School had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement;
2. If a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and
3. Return the child to the placement from which the child was removed, unless the parent and the Charter School agree to a change of placement as part of the modification of the behavioral intervention plan.

If the Charter School, the parent, and relevant members of the IEP/504 Team determine that the behavior was not a manifestation of the student's disability and that the conduct in question was not a result of the failure to implement the IEP/504 Plan, then the Charter School may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities.

## 3. Due Process Appeals

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination, or the Charter School believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request an expedited administrative hearing through the Special Education Unit of the Office of Administrative Hearings or by utilizing the dispute provisions of the 504 Policy and Procedures.

When an appeal relating to the placement of the student or the manifestation determination has been requested by either the parent or the Charter school, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the fortyfive (45) day time period provided for in an interim alternative educational setting, whichever occurs first, unless the parent and the Charter School agree otherwise.

#### 4. Special Circumstances

Charter School personnel may consider any unique circumstances on a case by case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

The Executive Director or designee may remove a student to an interim alternative educational setting for not more than forty five (45) days without regard to whether the behavior is determined to be a manifestation of the student's disability in cases where a student:

1. Carries or possesses a weapon, as defined in 18 USC 930, to or at school, on school premises, or to or at a school function;
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function; or
3. Has inflicted serious bodily injury, as defined by 20 USC 1415(k)(7)(D), upon a person while at school, on school premises, or at a school function.

#### 5. Interim Alternative Educational Setting

The student's interim alternative educational setting shall be determined by the student's IEP/504 Team.

#### 6. Procedures for Students Not Yet Eligible for Special Education Services

A student who has not been identified as an individual with disabilities pursuant to IDEA and who has violated the Charter School's disciplinary procedures may assert the procedural safeguards granted under this administrative regulation only if the Charter School had knowledge that the student was disabled before the behavior occurred.

The Charter School shall be deemed to have knowledge that the student had a disability if one of the following conditions exists:

1. The parent/guardian has expressed concern in writing, or orally if the parent/guardian does not know how to write or has a disability that prevents a written statement, to Charter School supervisory or administrative personnel, or to one of the child's teachers, that the student is in need of special education or



related services.

2. The parent has requested an evaluation of the child.
3. The child's teacher, or other Charter School personnel, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to Charter School supervisory personnel.

If the Charter School knew or should have known the student had a disability under any of the three (3) circumstances described above, the student may assert any of the protections available to IDEA-eligible children with disabilities, including the right to stay put.

If the Charter School had no basis for knowledge of the student's disability, it shall proceed with the proposed discipline. The Charter School shall conduct an expedited evaluation if requested by the parents; however the student shall remain in the education placement determined by the Charter School pending the results of the evaluation.

The Charter School shall not be deemed to have knowledge of that the student had a disability if the parent has not allowed an evaluation, refused services, or if the student has been evaluated and determined to not be eligible.

## **F. Re-Engagement Plan**

The Charter School should make efforts to have suspended or expelled students return to an educational setting as soon as possible. The Charter School must convene a meeting with the student and the student's parents or guardians within twenty days of the student's long-term suspension or expulsion, but no later than five days before the student's enrollment, to discuss a plan to re-engage the student in a school program at the Charter School or any other school district or school to which the student seeks enrollment. Families must have access to, provide meaningful input on, and have the opportunity to participate in a culturally sensitive and culturally responsive re-engagement plan.