

## PROCEDURES FOR DISCIPLINARY EXCLUSION OF CHILDREN WITH DISABILITIES:

There are special rules in Pennsylvania for excluding children with disabilities for disciplinary reasons:

### AUTHORITY OF SCHOOL PERSONNEL (34 CFR §300.530)

#### 1. Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis, when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

#### 2. General

To the extent that they also take such action for children without disabilities, school personnel may, for not more than 10 consecutive school days, remove a child with a disability (other than a child with mental retardation) who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension. School personnel may also impose additional removals of the child of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see Change of Placement Because of Disciplinary Removals for the definition, below) or exceed 15 cumulative school days in a school year. Once a child with a disability has been removed from his or her current placement for a total of 10 school days in the same school year, the Charter School must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading Services.

#### 3. Additional authority

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see Manifestation determination, below) and the disciplinary change of placement would exceed 10 consecutive school days, the Charter School may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under Services. The child's IEP Team determines the interim alternative educational setting for such services. Under PA special education regulations, a disciplinary exclusion of a student with a disability for more than 10 cumulative school days in a school year can be considered a pattern so as to be deemed a change in educational placement (explained under Change of Placement Because of Disciplinary Removals). The Charter School is required to issue a NOREP/Prior Written Notice to parents prior to a removal that constitutes a change in placement (removal for more than 10 consecutive days or more than 10 cumulative days).

#### 4. Services

The services that must be provided to a child with a disability who has been removed from the child's current placement may be provided to an interim alternative educational setting. A Charter School is only required to provide services to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who has been similarly removed. Students may have the responsibility to make up exams and work missed while being disciplined by suspension and may be permitted to complete these assignments within guidelines established by their Charter School.

A child with a disability who is removed from the child's current placement for more than 10 consecutive school days must:

- a. Continue to receive educational services, so as to enable the child 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; and
- b. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for more than 10 school days during one school year, or if current removal is for 10 consecutive school days or less, and if the removal is not a change of placement (see definition below), then school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child 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.

If the removal is a change of placement (see definition below), the child's IEP Team determines the appropriate services to enable the child 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.

#### 5. Manifestation Determination

Within 10 school days of 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 Team (as determined by the parent and the Charter School) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

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

If the Charter School, the parent, and relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the Charter School, the parent, and relevant members of the child's IEP Team determine that the conduct in question was the direct result of the Charter School's failure to implement the IEP, the Charter School must take immediate action to remedy those deficiencies.

#### 6. Determination that behavior was a manifestation of the child's disability

If the Charter School, the parent, and relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

- a. Conduct a functional behavioral assessment, unless the Charter School had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
- b. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading Special circumstances, the Charter School must 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.

#### 7. Special circumstances

Whether or not the behavior was a manifestation of the child's disability, School personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for up to 45 school days, if the child:

- a. Carries a weapon (see the Definitions below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the Charter School;
- b. Knowingly has or uses illegal drugs (see the Definitions below), or sells or solicits the sale of a controlled substance, (see the Definitions below), while at school, on school premises, or at a school function under the jurisdiction of the Charter School; or
- c. Has inflicted serious bodily injury (see the Definitions below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the Charter School.

#### 8. Definitions

- a. Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202 (c) of the Controlled Substances Act (21 U.S.C. 812(c)).

b. Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

c. Serious bodily injury has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

d. Weapon has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

## 9. Notification

On the date it makes the decision to make a removal that is a change of placement of the child with a disability because of a violation of a code of student conduct, the Charter School must notify the parents of that decision, and provide the parents with a Procedural Safeguards Notice.

### Change Of Placement Because Of Disciplinary Removals (34 CFR §300.536)

A removal of a child with a disability from the child’s current educational placement is a change of placement requiring a NOREP/prior written notice if:

1. The removal is for more than 10 consecutive school days; or
2. The removal is for more than 15 cumulative school days total in any one school year; or
3. The child has been subjected to a series of removals that constitute a pattern because:
  - a. The series of removals total more than 10 school days in a school year;
  - b. The child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in a series of removals; and
  - c. Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the Charter School and, if challenged, is subject to review through due process and judicial proceedings.

### Determination of Setting (34 CFR §300.531)

The IEP must determine the interim alternative educational setting for removals that are changes of placement, and removals under the headings Additional authority and Special circumstances, above.

## Appeal (34 CFR §300.532)

### 1. General

The parent of a child with a disability may file a due process complaint (see above) to request a due process hearing if he or she disagrees with:

- a. Any decision regarding placement made under these discipline provisions; or
- b. The manifestation determination described above.

The Charter School may file a due process complaint (see above) to request a due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

### 2. Authority of hearing officer

A hearing officer that meets the requirements described under the sub-heading Impartial Hearing Officer must conduct the due process hearing and make a decision. The hearing officer may:

- a. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of the requirements described under the heading Authority of School Personnel, or that the child's behavior was a manifestation of the child's disability; or
- b. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

These hearing procedures may be repeated, if the Charter School believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Whenever a parent or a Charter School files a due process complaint to request such a hearing, a hearing must be held in accordance the Due Process Complaint Procedures, Hearings on Due Process Complaints outlined in 34 CFR §300.507 et seq , except as follows:

1. The Charter School must arrange for an expedited due process hearing, which must occur within 20 school days of the date the hearing is filed and must result in a determination within 10 school days after the hearing.
2. Unless the parents and Charter School agree in writing to waive the resolution meeting, or agree to use mediation, a resolution meeting must occur within 7 calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process complaint.

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings.

When, as described above, the parent or Charter School has filed a due process complaint related to disciplinary matters, the child must (unless the parent and Charter School agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading Authority of School Personnel, whichever occurs first. (34 CFR §300.533)

#### Special Rules for Students with Mental Retardation

The disciplinary removal of a child with mental retardation attending either a Charter School for any amount of time is considered a change in placement and requires NOREP/prior written notice (if the disciplinary event does not involve drugs, weapons and/or serious bodily injury). A removal from school is not a change in placement for a child who is identified with mental retardation when the disciplinary event involves weapons, drugs, and/or serious bodily injury.

According to certain assurances the Commonwealth entered into related to the PARC consent decree, a Charter School may suspend on a limited basis a student with mental retardation who presents a danger to himself or others upon application and approval by the Bureau of Special Education and only to the extent that a student with a disability other than mental retardation could be suspended.

#### Protections For Children Not Yet Eligible For Special Education and Related Services (0)

##### 1. General

If a child has not been determined eligible for special education and related services and violates a code of student conduct, but the Charter School had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that the child was a child with a disability, then the child may assert any of the protections described in this notice.

##### 2. Basis of knowledge for disciplinary matters

The Charter School must be deemed to have knowledge that a child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

- a. The parent of the child expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel of the Charter School, or a teacher of the child;
- b. The parent requested an evaluation related to eligibility for special education and related services under Part B of the IDEA; or
- c. The child's teacher, or other Charter School personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the Charter School's Director of Special Education or to other supervisory personnel of the Charter School.

### 3. Exception

A Charter School would not be deemed to have such knowledge if:

- a. The child's parent has not allowed an evaluation of the child or refused special education services; or
- b. The child has been evaluated and determined to not be a child with a disability under Part B of the IDEA.

### 4. Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against the child, the Charter School does not have knowledge that a child is a child with a disability, as described above under the sub-headings Basis of knowledge for disciplinary matters and Exception, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors. However, if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by School authorities, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the Charter School and information provided by the parents, the Charter School must provide special education and related services in accordance with Part B of the IDEA, including the disciplinary requirements described above.

### REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES (34 CFR §300.535)

#### 1. The state and federal regulations do not:

- a. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; or
- b. Prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

Subsequent to a referral to law enforcement, an updated functional behavior assessment and positive behavior support plan are required.

#### 2. Transmittal of records

If the Charter School reports a crime committed by a child with a disability, the Charter School must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the Charter School reports the crime and may transmit copies of the child's special education and disciplinary records only to the extent permitted by FERPA.

THIS ANNUAL NOTICE AND STATEMENT OF POLICY AND PROCEDURES HAS BEEN WRITTEN IN ACCORDANCE WITH CHAPTER 711 OF TITLE 22 OF THE PA CODE AND INCORPORATED INFORMATION

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THIS NOTICE IS ONLY A SUMMARY OF THE SPECIAL EDUCATION SERVICES, EVALUATION AND SCREENING ACTIVITIES, AND RIGHTS AND

PROTECTIONS PERTAINING TO CHILDREN WITH DISABILITIES, CHILDREN THOUGHT TO BE DISABLED, AND THEIR PARENTS AND IS ONLY A SUMMARY OF THE CONFIDENTIALITY RIGHTS REGARDING STUDENT INFORMATION.

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