

Student Discipline Policies for New York City Charter Schools

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Introduction

Pursuant to the Charter Schools Act, all charter schools in New York are required to develop rules and procedures by which students will be disciplined, including the circumstances under which students can be suspended or expelled. It is inevitable that schools will deal with student discipline, and we encourage all charter schools to be transparent with students and parents about their school's discipline policies.

There are typically two parts to a discipline policy: the expectations and rules for *students* to follow (the "code of conduct" which defines what behaviors/actions may lead to a suspension) and the procedures that the *school* will follow when these rules are not adhered to. While charter schools have autonomy to shape their discipline policies, there are certain due process procedures that all schools must follow no matter how they structure their student code of conduct. This guide is focused on helping schools meet the baseline requirements under due process law in their discipline policies (schools can always add more!).

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1. Discipline Policy

The Charter School Act requires that charter schools develop discipline rules and procedures as part of their application to open a school.¹ That policy is incorporated into a school's charter upon its approval. These rules must be consistent with the requirements of due process and with federal laws and regulations regarding students with disabilities.² Each of the charter authorizers (Board of Regents, SUNY Board of Trustees, and New York City DOE) has their own requirements for discipline codes. The charter agreements generally require the following:

- written rules and procedures for how schools implement discipline, including suspension and expulsion;
- dissemination of those rules and procedures to students and parents;
- discipline rules follow due process requirements;
- provisions for alternative instruction in the event the student is removed from school; and,
- discipline rules for students with disabilities that are consistent with federal laws and requirements.

While all of the authorizers require the above, schools should always consult with their charter agreement to make sure their discipline policy is conforming to their authorizer's requirements. Changes to a school's discipline policy may require authorizer approval or review depending on the change and authorizer practice.

2. Removal from School

¹ NY Education Law §2851(2)(h).

² NY Education Law §2851(2)(h).

The Supreme Court held in the landmark case *Goss v. Lopez*, 419 U.S. 565 (1975) that anytime a student is removed from school, certain constitutional due process protections attach depending on the number of days the school has suspended the student.

Short Term Suspension

Due process provides that when a school suspends any student for a period of 10 school days or less (“short term suspension”), the school must provide the student and parent with oral or written notice of the charged misconduct and an informal hearing where the school explains the charges against the student and the student has an opportunity to deny the charge. If the student denies the charges, the school must explain the evidence it has against the student and provide the student an opportunity to present his or her version of the event. This informal hearing must take place prior to the suspension of the student unless the student’s presence in the school poses a continuing danger to persons or property or an ongoing threat of disruption to the academic process, in which case the student’s notice and opportunity for an informal conference should take place as soon after the suspension is practicable.³ Students (parents) are able to appeal short term suspensions to the Board of Trustees or the school’s authorizer.

Required Check List for Short Term Suspension (include in discipline guide!):

- Number of days that constitute a short term suspension (cannot not be more than 10 days).
- Notice: student (parent) will receive oral or written notice of the charged misconduct.
- Informal hearing: prior to suspension being instituted, student (parent) will have opportunity to attend an informal hearing with school leader where:
 - student will have the opportunity to deny or explain his or her version of the events and
 - student will be given an explanation of the school’s evidence against the student.
- The informal hearing should occur prior to suspension as long as the student’s behavior does not pose an ongoing threat to the safety of students and staff, if not, the informal hearing must take place as soon as practicable.
- Information on how the student/parent can appeal the short term suspension (to the Board of Trustees and then to authorizer) Student/Parent may appeal the short term suspension first to the Board of Trustees and then to the authorizer, pursuant to Education Law Section 2855(4).

Best Practice Tips:

- ✓ Include in the policy how parents can appeal the decision, including contact information for both the Board of Trustees and Authorizer.
- ✓ For parental notification make all attempts to contact parents within 24 hours, using mail, personal delivery, phone, or email.

Long Term Suspension and Expulsion

Due process provides that when a school suspends a student for a period longer than 10 days (“long term suspension”) or expulsion, the school must provide the student (and parent) written notice of the charges against him/her. To institute a long term suspension or expulsion, the student must be afforded a hearing, including the opportunity to secure counsel, confront and cross examine witnesses and call his or her own witnesses to verify his/her version of the incident.

Charter schools are free to define short-term suspension as less than ten days (e.g. 5 days) and therefore treat all suspensions over five days as long term suspensions as long as they provide the minimum due process protections.

Required Check List for Long Term Suspension and Expulsion (include in discipline guide!):

- Number of days that constitute a long term suspension (all suspensions over ten days are long term suspensions, but schools can choose to define them as less)
- Notice: students (parents) will be informed in writing about the charges against him/her and the date of the suspension hearing.

³ *Goss v. Lopez*, 419 U.S. 565 (1975)

- Hearing: student has right to be represented by counsel and the opportunity to confront and cross-examine witnesses supporting the charge as well as call witnesses on his/her behalf.
- A record of the hearing will be maintained and the hearing officer's decision is appealable to the Board of Trustees and then to the authorizer, pursuant to Education Law Section 2855(4).

Best Practice Tip:

- ✓ Schools should determine who will serve as the hearing officer (an impartial party: principal, board chair, board committee, external party) and identify that individual in the discipline policy.

3. Alternative Instruction

Charter schools are required to provide alternative instruction in accordance with New York's compulsory education law when students are removed from school.⁴ This alternative instruction should be arranged as soon as practicable. Students must receive substantially equivalent education, which the State Education Department has opined is, at minimum, one hour of alternative instruction a day for elementary students and two hours a day for secondary students. Charter schools are obligated to provide alternative instruction to students receiving an in-school suspension that removes them from their regular school program.

Required Check List for Alternative Instruction (include in discipline guide!):

- Alternative instruction will be provided for students that are suspended (short or long term).
- Alternative instruction will begin on the first day of the student's suspension or as soon as practicable.
- Number of hours students will receive alternative instruction on every day of the suspension (must be for a minimum of two hours for students in secondary grades (7-12) or one hour for students in elementary grades (K-6)).

Best Practice Tips:

- ✓ While schools have to provide the minimum alternative instruction, schools should strive to provide alternative instruction that is sufficient to enable students to keep up with class and progress to the next grade level.
- ✓ Include details in the discipline guide about where and when alternative instruction will be provided.

4. Gun-Free Schools Act

Charter schools must adhere to the Gun-Free Schools Act, which requires a student who is determined to have brought a firearm to school, or possessed a firearm at school, to be suspended for no less than one year. The school/board may modify such suspension requirement on a case-by-case basis.

Required Check List for Gun-Free Schools Act (include in discipline guide!):

- School's compliance with the Gun-Free Schools Act, meaning that the school will suspend a student for at least one full calendar year if it is determined, following a due process hearing, that the student was in possession of a firearm at school(firearm is defined in 18 U.S.C. § 921(a)).
- The school can modify the term of the suspension on a case-by-case basis.

5. Students with Disabilities

Charter schools are required to provide "methods and strategies for serving students with disabilities in compliance with all federal laws and regulations relating thereto."⁵ Schools can expect that all students, including students with disabilities, follow their code of student conduct and violations of the code are subject to the school's discipline procedures. However, there are specific federal policies and regulations that apply when suspending students with disabilities and these must be adhered to in addition to the due process rights required for all students. Specifically, charter schools must comply with the requirements of

⁴ See Education Law §2854(1)(b).

⁵ Education Law §2851(2)(s).

the Individuals with Disabilities Education Act (IDEA) and the discipline procedures set forth in 34 CFR Sections 300.530-300.537. These protections apply to students who have Individualized Education Plans (IEPs) and students for whom the school is deemed to have knowledge of a disability.

Due process provides that if a student with a disability, or known to the school as having a disability, is being suspended the school must provide the following:

- If the student is being suspended for less than or equal to 10 consecutive or cumulative days the student is subject to the same due process requirements as short term removal (see above).
- If the student is being suspended for more than 10 cumulative days throughout the school year the school must determine if a pattern of removal exists that constitute a change of placement. If the school determines there is a pattern of removal, a Manifestation Determination Review is required.
- If the student is being suspended for more than 10 consecutive days, a Manifestation Determination Review is required.

Because the New York City Department of Education is the Local Education Agency (LEA) for special education students in charter schools, a representative from the Committee of Special Education (CSE) must be involved if a student with a disability is being suspended for more than 10 cumulative or consecutive days.

Best Practice Tips:

- ✓ Check out resources from the Special Education Collaborative (<http://specialednyc.org/>) for more information/best practices on discipline procedures for students with disabilities and what should be included in the discipline code.
- ✓ The DOE has created a flowchart outlining the options/steps for discipline for students with disabilities (<http://www.nyccharterschools.org/sites/default/files/NYC-DOE-IDEA-FlowChart-9-2013.pdf>)

6. Policies Against Harassment, Bullying, and Discrimination

Under New York State's Dignity for All Students Act (DASA) and the resulting charter school regulations, all charter schools must include in their discipline policy (or code of conduct) provisions regarding harassment, bullying, and discrimination.⁶ The school's discipline policy must include:

- Provisions prohibiting harassment, bullying, and discrimination against any student by any employees or student that creates a hostile environment by conduct, threats, intimidation, or abuse (including cyberbullying);
- Provisions on how the school will respond to acts of harassment, bullying, and/or discrimination and the disciplinary measures that will be taken;
- Guidelines that promote a safe and supportive school climate while discouraging harassment, bullying and/or discrimination against students by students and/or school employees;
- Provisions that explain the process for students and parents to make an oral or written report of harassment, bullying, and/or discrimination to the school; and
- Provision prohibiting retaliation against any individual who, in good faith, reports or assists in the investigation of harassment, bullying, and/or discrimination.

Best Practice Tip:

- ✓ Each charter school must develop their own DASA policy, check out New York State's sample policy guideline for more information: (<http://www.nycourts.gov/ip/justiceforchildren/PDF/NYS%20Summit-Additional%20Resources/P5%20%20%20DASA%20Sample%20Local%20Policy%20Guidelines.pdf>)

What laws regarding discipline do not apply to charter schools?

⁶ Education Law §§10-18, 8 NYCRR 119.6

Charter schools are required to meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools.⁷ Student discipline does not generally fall into one of these categories and therefore charter schools do not need to follow other sections of the Education Law regarding state discipline procedures or the Department of Education Chancellor's regulations on discipline.

⁷ NY Education Law §2854(1)(b).