

## NYC DOE Students with Disabilities Discipline in Charter Schools Quick Guidance

IDEA protections apply to:

- Students with disabilities in Charter Schools; AND
- Students for whom the Charter School is deemed to have knowledge of a disability.

When a Charter School student with a disability violates the Charter School's code of conduct and is removed (either immediately or following a hearing or conference consistent with due process), then the following procedures apply.

### **I. SHORT-TERM REMOVALS**

**IF** the removal is 10 or fewer consecutive school days AND 10 or fewer cumulative school days in a school year,

**THEN** the Charter School:

- May remove the student; AND
- Must provide services to student similar to students without disabilities.
- Must provide the Student with due process consistent with Goss v. Lopez.

See 34 CFR § 300.530(a), (b), (d)(3); Goss v. Lopez, 419 U.S. 565, 576-583 (1975).

### **II. CUMULATIVE REMOVALS**

**IF** the removal is more than 10 cumulative school days in a school year, but not more than 10 consecutive school days,

**THEN** the Charter School:

- Must first determine if the previous removals in conjunction with the current removal constitutes a pattern of removal. The Charter School should consider the following factors to determine whether a pattern exists:
  - whether the series of removals total more than ten (10) school days in a school year;
  - whether the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in discipline; and
  - if the behavior is substantially similar, whether there is a pattern by considering additional factors such as
    - the length of each prior removal;
    - the total amount of time the student has been removed from school; and
    - the proximity of the removals to one another.

See 34 CFR § 300.530(d)(4), 300.536; 34 CFR § 300.11(c)(1) through 34 CFR § 300.11(c)(2).

**IF** there is **NO PATTERN**,

**THEN** the Charter School

- May remove the student; AND

- Must determine and provide special education services so the student continues to make progress towards the goals on the student's IEP and continues to participate in the general education curriculum.

See 34 CFR §§ 300.101(a); 300.530(d)(4), 300.536.

**IF** there is a PATTERN, see Section III (“Long-Term Removals”).

### **III. LONG-TERM REMOVALS**

**IF** the removal is for more than 10 consecutive school days, OR

**IF** there is a pattern of removals (see Section II, “Cumulative Removals”),

**THEN** a “disciplinary change of placement” has occurred, and the following actions must be taken:

#### **Services:**

- When the student is removed, then
  - o The CSE, which includes relevant personnel from the Charter School (including the Student’s teacher), determines the special education services so the student continues to make progress towards the goals on the student's IEP and continues to participate in the general education curriculum; AND
  - o The Charter School determines the alternative site that implements the services recommended by CSE during the disciplinary change of placement.

See 34 CFR §§ 300.530(c), (d)(1), (d)(2), (d)(5), 300.531, 300.536.

New York State Charter School Office Guidance on Charter Schools and Special Education at Q&A No. 8, found online at <http://www.p12.nysed.gov/psc/specialed.html>.

#### **Actions:**

- The Charter School sends notice of discipline and procedural safeguards notice (“PSN”) to the parents and immediately notifies DOE in writing;
- DOE sends a manifestation determination review (“MDR”) scheduling notice and PSN to the parents;
- The Charter School suspension hearing must occur prior to the MDR.
- MDR must occur within 10 school days of the earlier of either (a) actual removal, or (b) the decision to remove the student (a disciplinary change of placement).<sup>1</sup> Accordingly, the suspension hearing must be scheduled and held immediately after the conduct in question to allow the MDR to occur within 10 school days of the earlier of either (a) actual removal, or (b) the decision to remove the student.
- MDR Team, including DOE, parent, and relevant IEP team members of the Charter School (such as the student’s teacher, etc.) must review the student’s file and determine if the conduct was a manifestation of the student’s disability.

See 34 CFR §§ 300.503, 300.504, 300.530(e); Goss v. Lopez, 419 U.S. 565 (1975); New York State Charter School Office Guidance on Charter Schools and Special Education at Q&A No. 8, found online at <http://www.p12.nysed.gov/psc/specialed.html>.

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<sup>1</sup> For example, if a student were to violate a Charter School code of conduct on day 1, and was immediately removed due to the nature of the conduct, and on day 3 the decision was made to effectuate a disciplinary change in placement, the MDR would have to occur no more than 10 school days from the immediate removal (day 1), **not** the subsequent date the decision was made (day 3).

### **Manifestation Determination Review:**

- The manifestation team must consider all relevant information pertaining to the behavior including:
  - Relevant information in the student’s file, including evaluations and the student’s IEP or Section 504 Accommodation Plan, any Functional Behavioral Assessment (“FBA”) or Behavioral Intervention Plan (“BIP”);
  - Teacher observations; and
  - Relevant information supplied by the parents of the student
- The manifestation team shall determine that the conduct is a manifestation of the student’s disability if:
  - The conduct in question was caused by or had a direct and substantial relationship to the student’s disability; **OR**
  - The conduct in question was the direct result of the Charter School’s failure to implement the IEP. The MDR team does not have to determine that ALL services were not provided, but rather only those in relation to the behavior that is the subject of the disciplinary action.
- If the manifestation team finds the answer to either of these questions is “yes,” the behavior must be considered a manifestation of the student’s disability.

See 34 CFR § 300.530(e).

**IF** the behavior that led to removal was **NOT** a manifestation of the student’s disability, **THEN** the Charter School:

- May remove the student; **AND**
- Must implement the services recommended by the CSE during the length of the disciplinary change of placement.

See 34 CFR § 300.530(c), (d)(1), (5); 300.531; 300.536.

**IF** the behavior that led to removal **WAS** a manifestation of the student’s disability, **THEN**:

- The Charter School must return student to the original charter school placement, unless:
  - If the misconduct involved weapons, illegal drugs, controlled substances, or serious bodily injury, in which case the Charter School **may** remove the Student for up to 45 days in an alternative site while providing services recommended by the CSE; **OR**
  - The parent and DOE agree to a change of placement.
- The CSE and the Charter School remedy deficiencies in IEP and implementation of IEP, respectively;
- The CSE conducts an FBA and develops/modifies the BIP;
- The Charter School implements the BIP.

See 34 CFR § 300.530(e), (f), (g).