



Baypoint Preparatory Academy - San Diego Suspension and Expulsion Procedures & Policy

Governing Law: The procedures by which pupils can be suspended or expelled. – California Education Code Section 47605(b)(5)(J).

These Pupil Suspension and Expulsion Policies and Procedures have been established to promote learning and protect the safety and well-being of all students at Baypoint Preparatory Academy - San Diego “Charter School”. When a student commits one of the enumerated offenses described herein, it may be necessary to suspend or expel a student from regular classroom instruction. Compliance with the procedures set forth in this \Charter shall be the only processes for the Charter School to remove or otherwise exclude a student who attends the Charter School from attendance at the Charter School.

The Charter School will follow all applicable federal and state laws including but not limited to the California Education Code, when imposing any form of discipline on a student 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 students.

These procedures may be amended without the materially revise the charter so long as the amendments comport with legal requirements.

These Procedures will be printed and distributed as part of the Charter School’s Parent-Student Handbook and will clearly describe discipline expectations. Charter School staff shall enforce disciplinary rules and procedures fairly and consistently among all students. Corporal punishment shall not be used as a disciplinary measure against any student. Corporal punishment includes the willful infliction of or willfully causing the infliction of physical pain on a student. For purposes of the Policy, corporal punishment does not include an employee’s use of force that is reasonable and necessary to protect the employee, students, staff or other persons or to prevent damage to school property.

The Charter School administration shall ensure that students and their parents/guardians are notified in writing upon enrollment of all discipline policies and procedures. The notice shall state that these Procedures are available on request at the Site Director’s office.

Suspended or expelled students shall be excluded from all school and school-related activities unless otherwise agreed during the period of suspension or expulsion.

Grounds for Suspension and Expulsion of Students

A student may be suspended or expelled for prohibited misconduct if the act is:

- A. related to school activity;
- B related to school attendance occurring at the Charter School or any other school; or**
- C. related to attendance at a Charter School sponsored event. A student may be suspended or expelled for acts that are enumerated below and occur at any time including but not limited to the following:**
 - 1) while on school grounds;**
 - 2) while going to or coming from school;**
 - 3) during the lunch period, whether on or off the school campus;**
 - 4) during, going to, or coming from a school-sponsored activity.**

Enumerated Offenses

Enumerated Offenses

1. Discretionary Suspension and Recommendation for Expulsion Offenses

Students may be suspended from school or recommended for expulsion for any of the following acts when it is determined the pupil:

- a) Either:
 - i) Caused, attempted to cause, or threatened to cause physical injury to another person.
 - ii) Willfully used force or violence upon the person of another, except in self-defense.
- a) Possessed, sold, or otherwise furnished a firearm, knife, explosive, or other dangerous object.
- b) Caused or attempted to cause damage to school property or private property.
- c) Stole or attempted to steal school property or private property.
- d) Possessed or used tobacco, or products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, the pupil is not prohibited from the use or possession by that pupil of his or her own prescription products.
- e) Committed an obscene act or engaged in habitual profanity or vulgarity.
- f) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.
- g) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel

engaged in the performance of their duties, except that a pupil enrolled in kindergarten or any of grades 1 to 3, inclusive, shall not be suspended for disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers, administrators, school officials, or other school personnel, nor shall these acts constitute grounds for a pupil enrolled in kindergarten or any of grades 1 to 12, inclusive, to be recommended for expulsion.

- h) Knowingly received stolen school property or private property.
- i) Possessed an imitation firearm. "Imitation firearm" means 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.
- j) Harassed, threatened, or intimidated a pupil who is a complaining witness or a witness in a school disciplinary proceeding for purposes of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.
- k) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.
- l) Engaged in, or attempted to engage in, hazing. For purposes of this subdivision, "hazing" means a method of initiation or preinitiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, that is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. For purposes of this subdivision, "hazing" does not include athletic events or school-sanctioned events.
- m) 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:
 - (1) 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.
 - (2) Causing a reasonable student to experience a substantially detrimental effect on his or her physical or mental health.
 - (3) Causing a reasonable student to experience substantial interference with his or her academic performance.
 - (4) 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.
 - ii) "Electronic Act" means the creation or transmission originated on or off the schoolsite, 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:

- (1) A message, text, sound, video, or image.
 - (2) A post on a social network Internet Web site including, but not limited to:
 - 1) 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.
 - 2) Creating a credible impersonation of another actual pupil 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 pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed, that the pupil was or is the pupil who was impersonated.
 - 3) 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 pupil or a profile using the likeness or attributes of an actual pupil other than the pupil who created the false profile.
- iii) An act of cyber sexual bullying.
- (1) For purposes of this clause, “cyber sexual bullying” means the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a pupil to another pupil or to school personnel by means of an electronic act that has or can be reasonably predicted to have one or more of the effects described in subparagraphs (i) to (iv), inclusive, of paragraph (1). A photograph or other visual recording, as described above, shall include the depiction of a nude, semi-nude, or sexually explicit photograph or other visual recording of a minor where the minor is identifiable from the photograph, visual recording, or other electronic act.
 - (2) For purposes of this clause, “cyber sexual bullying” does not include a depiction, portrayal, or image that has any serious literary, artistic, educational, political, or scientific value or that involves athletic events or school-sanctioned activities.
- iv) Notwithstanding the 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.
- v) “Reasonable pupil” for purposes of this subsection means a pupil, including, but not limited to, an exceptional needs pupil, 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 his or her exceptional needs.
- b) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime

of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a).

- c) In addition to the reasons specified above, a pupil may be suspended from school or recommended for expulsion from school if the Site Director or Designee determines that the pupil has committed sexual harassment as defined in Ed. Code section 212.5. The conduct described in Section 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment. This enumerated offense shall not apply to pupils enrolled in kindergarten and grades 1 to 3, inclusive.
- d) In addition to the reasons set forth above, a pupil in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion from school if the Site Director or Designee determines that the pupil has caused, attempted to cause, threatened to cause, or participated in an act of, hate violence, as defined in subdivision (e) of Education Code section 233.
- e) In addition to the grounds specified above, a pupil enrolled in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion from school if the Site Director or Designee determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against school personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.
- f) In addition to the grounds specified above, a pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has made terroristic threats against school officials or school property, or both.
 - i) "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 district property, or the personal property of the person threatened or his or her immediate family.
 - ii) "[S]chool property" includes, but is not limited to, electronic files and databases.
- g) For a pupil subject to discipline, the Site Director may use his or her discretion to provide alternatives to suspension or expulsion that are age appropriate and designed to address and correct the pupil's specific misbehavior.

2. Shall Recommend for Expulsion Offenses

The Site Director or designee shall recommend the expulsion of a pupil for any of the following acts committed at school or at a school activity off school grounds, unless the Site Director or designee determines that expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct:

- (1) Causing serious physical injury to another person, except in self-defense.
- (2) Possession of any knife or other dangerous object of no reasonable use to the pupil.
- (3) Unlawful possession of any controlled substance listed in Health and Safety Code section 11053 et seq. (except one ounce of marijuana or over the counter dictations or medication prescribed to student).
- (4) Robbery or extortion.
Assault or battery (as defined in Penal Code section 240 and 242) upon any school employee.

3. Immediate Suspension and Mandatory Recommendation for Expulsion Offenses

- (1) Possessing, selling, or furnishing a firearm, as defined below. E.C. 48915(c)(1)
- (2) Brandishing a knife¹ at another person. E.C. 48915(c)(2)
- (3) Unlawfully selling a controlled selling a controlled substance listed in Health and Safety Code section 11053 et seq. E.C. 48915(c)(3)
- (4) Committing or attempting to commit a sexual assault or committing a sexual battery, as defined in the enumerated offenses above. E.C. 48915(c)(4)
- (5) Possession of an explosive². E.C. 48915(c)(5)

B. Teachers

1. Teacher Recommendations for Suspension and Teacher Suspensions

A teacher may also refer a pupil, for any of the acts enumerated in the “Discretionary Suspension and Recommendation for Expulsion Offenses” to the principal or the designee of the principal for consideration of a suspension from the school.

The Charter School Governing Board may adopt a policy authorizing a teacher to suspend any pupil from class, for any of the acts enumerated in the “Discretionary Suspension and Recommendation for Expulsion Offenses,” for the day of the suspension and the day following. The policy shall specify that:

- a) The teacher shall immediately report the suspension to the principal of the school and send the pupil to the principal or the designee of the principal for appropriate

¹ “Knife” means any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing, a weapon with a blade fitted primarily for stabbing, a weapon with a blade longer than 3 1/2 inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.

² The term “explosive” means “destructive device” as described in Section 921 of Title 18 of the United States Code.

action. If that action requires the continued presence of the pupil at the schoolsite, the pupil shall be under appropriate supervision, as defined in policies and related regulations adopted by the governing board of the school district. As soon as possible, the teacher shall ask the parent or guardian of the pupil to attend a parent-teacher conference regarding the suspension. If practicable, a school counselor or a school psychologist may attend the conference. A school administrator shall attend the conference if the teacher or the parent or guardian so requests. The pupil shall not be returned to the class from which he or she was suspended, during the period of the suspension, without the concurrence of the teacher of the class and the principal.

A pupil suspended from a class pursuant to this policy shall not be placed in another regular class during the period of suspension. However, if the pupil is assigned to more than one class per day this subdivision shall apply only to other regular classes scheduled at the same time as the class from which the pupil was suspended.

2. Parent/Guardian Classroom Attendance

The Charter School Governing Board may adopt a board policy authorizing teachers to require the parent or guardian of a pupil who has been suspended by a teacher for committing an obscene act or engaging in habitual profanity or vulgarity or disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties, subject to the grade limitations specified above, to attend a portion of a schoolday in the classroom of his or her child or ward. The policy shall take into account reasonable factors that may prevent compliance with a notice to attend. The attendance of the parent or guardian shall be limited to the class from which the pupil was suspended.

Parents and guardians shall be notified of this policy prior to its implementation. A teacher shall apply any policy adopted pursuant to the policy uniformly to all pupils within the classroom.

The adopted policy shall include the procedures that the Charter School will follow to accomplish the following:

- (1) Ensure that parents or guardians who attend school meet with the school administrator or his or her designee after completing the classroom visitation and before leaving the schoolsite.
- (2) Contact parents or guardians who do not respond to the request to attend school.

If a teacher imposes the procedure, the principal shall send a written notice to the parent or guardian stating that attendance by the parent or guardian is pursuant to board policy. This notice shall apply only to a parent or guardian who is actually living with the pupil.

The notice may specify that the attendance of the parent or guardian be on the day the pupil is scheduled to return to class, or within a reasonable period of time thereafter, as established by the policy of the board.

C. Alternatives to Suspension or Expulsion

Suspension shall be imposed only when other means of correction fail to bring about proper conduct. The Charter School may document the other means of correction used and place that documentation in the pupil's record. However, a pupil, including an individual with exceptional needs, as defined in Ed. Code section 56026, may be suspended, subject to Section 1415 of Title 20 of the United States Code, upon a first offense if the principal or principal's designee determines that the pupil's presence causes a danger to persons or that the pupil committed any of the following acts:

- (1) Caused, attempted to cause, or threatened to cause physical injury to another person.
- (2) Willfully used force or violence upon the person of another, except in self-defense.
- (3) Possessed, sold, or otherwise furnished a firearm, knife, explosive, or other dangerous object, unless, in the case of possession of an object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.
- (4) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.
- (5) Unlawfully offered, arranged, or negotiated to sell a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to a person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.
- (6) Committed or attempted to commit robbery or extortion.

Other means of correction include, but are not limited to, the following:

- (1) A conference between school personnel, the pupil's parent or guardian, and the pupil.
- (2) Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management and counseling.
- (3) Study teams, guidance teams, resource panel teams, or other intervention-related teams that assess the behavior, and develop and implement individualized plans to address the behavior in partnership with the pupil and his or her parents.
- (4) Referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an individualized education program, or a plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)).
- (5) Enrollment in a program for teaching prosocial behavior or anger management.
- (6) Participation in a restorative justice program.
- (7) A positive behavior support approach with tiered interventions that occur during the schoolday on campus.
- (8) After-school programs that address specific behavioral issues or expose pupils to positive activities and behaviors, including, but not limited to, those operated in collaboration with local parent and community groups.

- (9) Performing community service on school grounds or, with written permission of the parent or guardian of the pupil, off school grounds, during the pupil's nonschool hours. "Community service" may include, but is not limited to, work performed in the community or on school grounds in the areas of outdoor beautification, community or campus betterment, and teacher, peer, or youth assistance programs. Community service may not be assigned if a pupil has been suspended, pending expulsion, for any of the acts enumerated in the "Shall Recommend for Expulsion Offenses" or the "Immediate Suspension and Mandatory Recommendation for Expulsion Offenses." However, if the recommended expulsion is not implemented or is, itself, suspended by stipulation or other administrative action then community service may be assigned.

B. In-Class Suspensions

A pupil suspended from a school for any of the reasons enumerated in the "Discretionary Suspension and Recommendation for Expulsion Offenses" may be assigned, by the Site Director or designee, to a supervised suspension classroom for the entire period of suspension if the pupil poses no imminent danger or threat to the campus, pupils, or staff, or if an action to expel the pupil has not been initiated.

Pupils assigned to a supervised suspension classroom shall be separated from other pupils at the schoolsite for the period of suspension in a separate classroom, building, or site for pupils under suspension.

The Charter School may continue to claim apportionments for each pupil assigned to and attending a supervised suspension classroom provided as follows:

- (1) The supervised suspension classroom is staffed as otherwise provided by law.
- (2) Each pupil has access to appropriate counseling services.
- (3) The supervised suspension classroom promotes completion of schoolwork and tests missed by the pupil during the suspension.
- (4) Each pupil is responsible for contacting his or her teacher or teachers to receive assignments to be completed while the pupil is assigned to the supervised suspension classroom. The teacher shall provide all assignments and tests that the pupil will miss while suspended. If no classroom work is assigned, the person supervising the suspension classroom shall assign schoolwork.

At the time a pupil is assigned to a supervised suspension classroom, a school employee shall notify, in person or by telephone, the pupil's parent or guardian. Whenever a pupil is assigned to a supervised suspension classroom for longer than one class period, a school employee shall notify, in writing, the pupil's parent or guardian.

C. Suspension Procedure

The following suspension procedures shall be followed:

1. Suspensions for violations of the offenses listed in the “Discretionary Suspension and Recommendation for Expulsion Offenses” stated herein shall be for no more than five consecutive days.

2. For suspensions of fewer than 10 days, the charter school shall provide oral or written notice of the charges against the pupil and, if the pupil denies the charges, an explanation of the evidence that supports the charges and an opportunity for the pupil to present his or her side of the story.

3. For suspensions of 10 days or more and all other expulsions for disciplinary reasons, the charter school shall do both of the following:

- a) Provide timely, written notice of the charges against the pupil and an explanation of the pupil’s basic rights.
- b) Provide a hearing adjudicated by a neutral officer within a reasonable number of days at which the pupil has a fair opportunity to present testimony, evidence, and witnesses and confront and cross-examine adverse witnesses, and at which the pupil has the right to bring legal counsel or an advocate.

4. The notice shall contain a clear statement that no pupil shall be involuntarily removed by the charter school for any reason unless the parent or guardian of the pupil has been provided written notice of intent to remove the pupil no less than five (5) school days before the effective date of the action. The written notice shall be in the native language of the pupil or the pupil’s parent or guardian or, if the pupil is a foster child or youth or a homeless child or youth, the pupil’s educational rights holder, and shall inform him or her of the right to initiate the procedures specified in clause (2) before the effective date of the action. If the pupil’s parent, guardian, or educational rights holder initiates the procedures specified in clause (2), the pupil shall remain enrolled and shall not be removed until the charter school issues a final decision. For purposes of this clause, “involuntarily removed” includes disenrolled, dismissed, transferred, or terminated, but does not include suspensions specified in clauses (1) and (2).

5. The total number of days for which a pupil may be suspended from school shall not exceed twenty (20) schooldays.

Suspensions shall be initiated according to the following procedures:

1. Conference

Suspension shall be preceded, if possible, by an informal conference conducted by the Site Director or Designee with the student and his or her parent and, whenever practical, the teacher, supervisor or Charter School employee who referred the student to the Site Director or Designee.

The conference may be omitted if the Site Director or Designee determines that an emergency situation exists. An “emergency situation” involves a clear and present danger to the lives, safety or health of students or Charter School personnel. If a student is

suspended without this conference, both the parent/guardian and student shall be notified of the student's right to return to school for the purpose of a conference.

At the conference, the pupil shall be informed of the reason for the disciplinary action and the evidence against him or her and shall be given the opportunity to present his or her version and evidence in his or her defense. This conference shall be held within (2) two school days, unless the pupil waives this right or is physically unable to attend for any reason including, but not limited to, incarceration or hospitalization. No penalties may be imposed on a pupil for failure of the pupil's parent or guardian to attend a conference with Charter School officials. Reinstatement of the suspended pupil shall not be contingent upon attendance by the pupil's parent or guardian at the conference.

2. Notice to Parents/Guardians

At the time of the suspension, an administrator or Designee shall make a reasonable effort to contact the parent/guardian by telephone or in person. Whenever a student is suspended, the parent/guardian shall be notified in writing of the suspension and the date of return following suspension. This notice shall state the specific offense committed by the student. In addition, the notice may also state the date and time when the student may return to school. If Charter School officials wish to ask the parent/guardian to confer regarding matters pertinent to the suspension, the notice may request that the parent/guardian respond to such requests without delay.

3. Suspension Time Limits/Recommendation for Expulsion

Suspensions, when not including a recommendation for expulsion, shall not exceed five (5) consecutive school days per suspension. Upon a recommendation of Expulsion by the Site Director or Designee, the pupil and the pupil's guardian or representative will be invited to a conference to determine if the suspension for the pupil should be extended pending an expulsion hearing. This determination will be made by the Site Director or Designee upon either of the following: 1) the pupil's presence will be disruptive to the education process; or 2) the pupil poses a threat or danger to others. Upon either determination, the pupil's suspension will be extended pending the results of an expulsion hearing.

D. Expulsion Procedures

Students will be recommended for expulsion after the Site Director or Designee conducts an investigation process by gathering written statements, meeting with witnesses, and conducting a pre-expulsion conference with the student and family.

In cases where a finding is made that a student has caused, attempted to cause, or threatened to cause physical injury to another person; willfully used force or violence upon the person of another, except in self-defense; possessed, sold, or otherwise furnished a firearm, knife, explosive, or other dangerous object; unlawfully possessed, used, sold, or otherwise furnished, or

been under the influence of, a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind; unlawfully offered, arranged, or negotiated to sell a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to a person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant; or committed or attempted to commit robbery or extortion, a decision for expulsion by the Principal (or designee) will be based on one or both of the following findings:

1. Other means of conduct support and correction are not feasible and have repeatedly failed to bring about an improvement in conduct.
2. Due to the nature of the violation, the presence of the student causes a continuing danger to the health and/or safety of the student, other students in the schools, and/or faculty.

Upon this determination, the student will be suspended, pending the results of an expulsion hearing. The Site Director's or Designee's recommendation to expel the student will satisfy all the procedural requirements stated herein.

E. Expulsion Hearing – Rules and Regulations

The family of a student who has been expelled will be notified of the student's right to request a hearing to determine whether the expulsion recommendation was justified and whether the expulsion will be upheld. The hearing will be held, if requested, within 30 days from the original expulsion decision. The hearing will be presided over by an administrative panel (three to five impartial individuals) appointed by the Site Director. A document will be prepared by the Site Director or Designee that includes a full description of the reasons for the expulsion, including dates, previous conferences and actions taken, and events.

The Charter School's governing board shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to, all of the following:

1. The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 schooldays after the date the principal determines that the pupil has committed any of the acts enumerated herein, unless the pupil requests, in writing, that the hearing be postponed. The adopted rules and regulations shall specify that the pupil is entitled to at least one postponement of an expulsion hearing, for a period of not more than 30 calendar days. Any additional postponement may be granted at the discretion of the principal. The administrative panel shall make its decision to expel within 3 school days after the hearing's conclusion, unless the pupil requests in writing that the decision be postponed.
2. If compliance by the administrative panel with the time requirements for the conducting of an expulsion hearing and a decision to expel is impracticable during the regular school year,

the principal or the principal's designee may, for good cause, extend the time period for the holding of the expulsion hearing for an additional five schooldays. If compliance by the administrative panel with the time requirements for the conducting of an expulsion hearing is impractical due to a summer recess of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess shall not exceed 20 schooldays, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held not later than 20 calendar days before the first day of school for the school year. Reasons for the extension of the time for the hearing shall be included as a part of the record at the time the expulsion hearing is conducted. Upon the commencement of the hearing, all matters shall be pursued and conducted with reasonable diligence and shall be concluded without any unnecessary delay.

2.1. Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days before the date of the hearing. The notice shall include all of the following:

- 2.2. The date and place of the hearing.
- 2.3. A statement of the specific facts and charges upon which the proposed expulsion is based.
- 2.4. A copy of the disciplinary rules of the school that relate to the alleged violation.
- 2.5. A notice of the parent, guardian, or pupil's obligations pursuant to Ed. Code section 48915.1(b).
 - 2.6. Notice of the opportunity for the pupil or the pupil's parent or guardian to appear in person or to be represented by legal counsel or by a nonattorney adviser, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including witnesses. In a hearing in which a pupil is alleged to have committed or attempted to commit a sexual assault as specified in subdivision (n) of Section 48900 or to have committed a sexual battery as defined in subdivision (n) of Section 48900, a complaining witness shall be given five days' notice before being called to testify, and shall be entitled to have up to two adult support persons, including, but not limited to, a parent, guardian, or legal counsel, present during his or her testimony. Before a complaining witness testifies, support persons shall be admonished that the hearing is confidential. This subdivision shall not preclude the person presiding over an expulsion hearing from removing a support person whom the presiding person finds is disrupting the hearing. If one or both of the support persons is also a witness, the provisions of Section 868.5 of the Penal Code shall be followed for the hearing. The pupil or the pupil's parent or guardian is not required to be represented by legal counsel or by a nonattorney adviser at the hearing. "Legal counsel" means an

attorney or lawyer who is admitted to the practice of law in California and is an active member of the State Bar of California.

“Nonattorney adviser” means an individual who is not an attorney or lawyer, but who is familiar with the facts of the case, and has been selected by the pupil or pupil’s parent or guardian to provide assistance at the hearing.

3. The administrative panel shall conduct a hearing to consider the expulsion of a pupil in a session closed to the public, unless the pupil requests, in writing, at least five days before the date of the hearing, that the hearing be conducted at a public meeting. Regardless of whether the expulsion hearing is conducted in a closed or public session, the administrative panel may meet in closed session for the purpose of deliberating and determining whether the pupil should be expelled.
 - 3.1. If the administrative panel admits any other person to a closed deliberation session, the parent or guardian of the pupil, the pupil, and the counsel of the pupil also shall be allowed to attend the closed deliberations.
 - 3.2. If the hearing is to be conducted at a public meeting, and there is a charge of committing or attempting to commit a sexual assault as defined in subdivision (n) of Ed. Code section 48900 or to commit a sexual battery as defined in subdivision (n) of Ed. Code section 48900, a complaining witness shall have the right to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television.
4. If the administrative panel decides not to expel, the expulsion proceedings shall be terminated, and the pupil immediately shall be reinstated and permitted to return to the classroom instructional program from which the expulsion referral was made. The decision not to recommend expulsion shall be final.
5. If the administrative panel determines to expel, findings of fact in support of the recommendation shall be prepared. All findings of fact and recommendations shall be based solely on the evidence adduced at the hearing.
6. The decision of the administrative panel to expel a pupil shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing or hearings. Except as provided herein, no evidence to expel shall be based solely upon hearsay evidence. The administrative panel may, upon a finding that good cause exists, determine that the disclosure of either the identity of a witness or the testimony of that witness at the hearing, or both, would subject the witness to an unreasonable risk of psychological or physical harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations that shall be examined only by the administrative panel. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.
7. A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

8. A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.
9. Technical rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. A decision of the administrative panel to expel shall be supported by substantial evidence showing that the pupil committed any of the acts enumerated herein.
10. In hearings that include an allegation of committing or attempting to commit a sexual assault as defined in subdivision (n) of Ed. Code section 48900 or to commit a sexual battery as defined in subdivision (n) of Ed. Code section 48900, evidence of specific instances, of a complaining witness's prior sexual conduct is to be presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence be heard. Before the person conducting the hearing makes the determination on whether extraordinary circumstances exist requiring that specific instances of a complaining witness's prior sexual conduct be heard, the complaining witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose.
11. Before the hearing has commenced, the administrative panel may issue subpoenas at the request of either the principal or principal's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the administrative panel may, upon request of either the principal or principal's designee or the pupil, issue subpoenas. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with Section 11455.20 of the Government Code.
 - 11.1. Any objection raised by the principal or principal's designee or the pupil to the issuance of subpoenas may be considered by the administrative panel in closed session, or in open session, if so requested by the pupil before the meeting. Any decision by the administrative panel in response to an objection to the issuance of subpoenas shall be final and binding.
 - 11.2. If the administrative panel determines that a percipient witness would be subject to an unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as provided for herein.
 - 11.3. Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision of the state, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the

same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

12. Final action to expel a pupil shall be taken only by the administrative panel in a public session. Written notice of any decision to expel or to suspend the enforcement of an expulsion order during a period of probation shall be sent by the principal or his or her designee to the pupil or the pupil's parent or guardian and shall be accompanied by all of the following:
 - 12.1. Notice of the right to appeal the expulsion to the Charter School Governing Board.
 - 12.2. Notice of the education alternative placement to be provided to the pupil during the time of expulsion, if applicable.
 - 12.3. Notice of the obligation of the parent, guardian, or pupil, upon the pupil's enrollment in a new school district, to inform that school district of the pupil's expulsion.
13. The governing board of the Charter School shall maintain a record of each expulsion, including the cause for the expulsion. Records of expulsions shall be nonprivileged, disclosable public records.
 - 13.1. The expulsion order and the causes for the expulsion shall be recorded in the pupil's mandatory interim record and shall be forwarded to any school in which the pupil subsequently enrolls upon receipt of a request from the admitting school for the pupil's school records.

F. Decision of the Panel

The final decision by the administrative panel will be made within 3 school days following the conclusion of the hearing, unless the pupil requests in writing that the decision be postponed.

The administrative panel will make one of two determinations:

1. Uphold the expulsion.
2. Determine the expulsion was not within the Charter School's guidelines, overturn it, and order that records and documents regarding the proceedings be destroyed and removed from student's record.

Following the final decision of the administrative panel, the administrative panel will send written Findings of Fact to the parent that contain the following information:

1. The outcome of the hearing and the decision of the administrative panel
2. The specific offenses committed by the student for any of the acts listed in the above "Reasons for Suspension and/or Expulsion" section (if expulsion is decided)
3. Notification of the family's responsibility to inform any new district in which the student seeks to enroll of the student's status with the Charter School (if expulsion is decided)

4. Reinstatement eligibility review date (if expulsion is decided)
5. A copy of the rehabilitation plan (if expulsion is decided)
6. The type of educational placement during the period of expulsion (if expulsion is decided)
7. Pupils who are expelled shall be responsible for seeking alternative education programs

G. Alternative Education

Pupils who are expelled shall be responsible for seeking alternative education programs including, but not limited to, programs within the County for their school district of residence. The school shall work cooperatively with parents/guardians as requested by parents/guardians or by the school district of residence to assist with locating alternative placements during expulsion.

H. Rehabilitation Plans

Students who are expelled from the Charter School shall be given a rehabilitation plan upon expulsion as developed by the administrative panel at the time of the expulsion order, which may include, but is not limited to, periodic review as well as assessment at the time of review for readmission. The rehabilitation plan should include a date not later than one year from the date of expulsion when the pupil may reapply to the Charter School for readmission.

I. Readmission

The decision to readmit a pupil or to admit a previously expelled pupil from another school district or charter school shall be in the sole discretion of the Charter School Board following a meeting with the CEO or designee and the pupil and guardian or representative to determine whether the pupil has successfully completed the rehabilitation plan and to determine whether the pupil poses a threat to others or will be disruptive to the school environment. The CEO or designee shall make a recommendation to the Charter School Board following the meeting regarding his or her determination. The pupil's readmission is also contingent upon the Charter School enrollment capacity at the time the student seeks readmission.

J. Notice of Expulsion to Last Known District of Residence

The Charter School shall, in accordance with Education Code § 47605(d)(3), notify the superintendent of the school district of the pupil's last known address within 30 days of expulsion, and shall, upon request of the district, provide the district with a copy of the student's cumulative record, including a transcript of grades or report card and health information.

K. Special Procedures for Expulsion Hearings Involving Sexual Assault or Battery Offenses

The Charter School may, upon a finding of good cause, determine that the disclosure of either the identity of the witness or the testimony of that witness at the hearing, or both, would subject

the witness to an unreasonable risk of psychological or physical harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations that shall be examined only by the Charter School or the hearing officer. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.

1. The complaining witness in any sexual assault or battery case must be provided with a copy of the applicable disciplinary rules and advised of his/her right to (a) receive five days' notice of his/her scheduled testimony, (b) have up to two (2) adult support persons of his/her choosing present in the hearing at the time he/she testifies, which may include a parent, guardian, or legal counsel, and (c) elect to have the hearing closed while testifying.
2. the Charter School must also provide the victim a room separate from the hearing room for the complaining witness's use prior to and during breaks in testimony.
3. At the discretion of the person or panel conducting the hearing, the complaining witness shall be allowed periods of relief from examination and cross-examination during which he or she may leave the hearing room.
4. The person conducting the expulsion hearing may also arrange the seating within the hearing room to facilitate a less intimidating environment for the complaining witness.
5. The person conducting the expulsion hearing may also limit time for taking the testimony of the complaining witness to the hours he/she is normally in school, if there is no good cause to take the testimony during other hours.
6. Prior to a complaining witness testifying, the support persons must be admonished that the hearing is confidential. Nothing in the law precludes the person presiding over the hearing from removing a support person whom the presiding person finds is disrupting the hearing. The person conducting the hearing may permit any one of the support persons for the complaining witness to accompany him or her to the witness stand.
7. If one or both of the support persons is also a witness, the Charter School must present evidence that the witness's presence is both desired by the witness and will be helpful to the school. The person presiding over the hearing shall permit the witness to stay unless it is established that there is a substantial risk that the testimony of the complaining witness would be influenced by the support person, in which case the presiding official shall admonish the support person or persons not to prompt, sway, or influence the witness in any way. Nothing shall preclude the presiding officer from exercising his or her discretion to remove a person from the hearing whom he or she believes is prompting, swaying, or influencing the witness.

8. The testimony of the support person shall be presented before the testimony of the complaining witness, and the complaining witness shall be excluded from the courtroom during that testimony.
9. Especially for charges involving sexual assault or battery, if the hearing is to be conducted in the public at the request of the pupil being expelled, the complaining witness shall have the right to have his/her testimony heard in a closed session when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are not alternative procedures to avoid the threatened harm. The alternative procedures may include videotaped depositions or contemporaneous examination in another place communicated to the hearing by means of closed-circuit television.
10. Evidence of specific instances of a complaining witness's prior sexual conduct is presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence be heard. Before such a determination regarding extraordinary circumstances can be made, the witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose.
11. If the pupil being expelled requests a public hearing, the complaining witness shall have the right to have his/her testimony heard in a closed session or alternative methods videotaped, etc.

L. Probation

The administrative panel, upon voting to expel a pupil, may suspend the enforcement of the expulsion order for a period of not more than one calendar year and may, as a condition of the suspension of enforcement, assign the pupil to a school, class, or program that is deemed appropriate for the rehabilitation of the pupil. The rehabilitation program to which the pupil is assigned may provide for the involvement of the pupil's parent or guardian in his or her child's education in ways that are specified in the rehabilitation program. A parent or guardian's refusal to participate in the rehabilitation program shall not be considered in the administrative panel's determination as to whether the pupil has satisfactorily completed the rehabilitation program.

The administrative panel shall apply the criteria for suspending the enforcement of the expulsion order equally to all pupils, including individuals with exceptional needs as defined in Cal. Ed. Code section 56026.

During the period of the suspension of the expulsion order, the pupil is deemed to be on probationary status.

The administrative panel may revoke the suspension of an expulsion order if the pupil commits any of the acts enumerated in Ed. Code section 48900 or violates any of the school's rules and regulations governing pupil conduct. When the administrative panel revokes the suspension of an expulsion order, a pupil may be expelled under the terms of the original expulsion order. Upon satisfactory completion of the rehabilitation assignment of a pupil, the administrative panel shall reinstate the pupil in the school and may also order the expungement of any or all records of the expulsion proceedings.

A decision of the administrative panel to suspend an expulsion order does not affect the time period and requirements for the filing of an appeal of the expulsion order with the Governing Board of the Charter School.

M. Expulsion Appeals

If a pupil is expelled from the Charter School, the pupil or the pupil's parent or guardian may, within 30 days following the decision of the administrative panel to expel, file an appeal to the Governing Board of the Charter School, which shall hold a hearing thereon and render its decision.

The Governing Board shall hold the hearing within 20 schooldays following the filing of a formal request.

The Governing Board shall hear an appeal of an expulsion order in closed session, unless the pupil requests, in writing, at least five (5) days prior to the date of the hearing, that the hearing be conducted in a public meeting. Upon the timely submission of a request for a public meeting, the Governing Board shall be required to honor the request. Whether the hearing is conducted in closed or public session, the Governing Board may meet in closed session for the purpose of deliberations. If the Governing Board admits any representative of the pupil or the school district, the board shall, at the same time, admit representatives from the opposing party. The Governing Board shall render a decision within three schooldays of the hearing unless the pupil requests a postponement.

The period within which an appeal is to be filed shall be determined from the date the student is provided notice of the decision of the administrative panel to expel, even if enforcement of the expulsion action is suspended and the pupil is placed on probation. A pupil who fails to appeal the original action of the panel within the prescribed time may not subsequently appeal a decision of the panel to revoke probation and impose the original order of expulsion.

N. Transcripts

The pupil shall submit a written request for a copy of the written transcripts and supporting documents from the administrative panel simultaneously with the filing of the notice of appeal with the Governing Board. The Charter School shall provide the pupil with the transcriptions, supporting documents, and records within 10 schooldays following the pupil's written request.

The Governing Board shall determine the appeal from a pupil expulsion upon the record of the hearing before the administrative panel, together with such applicable documentation or regulations as may be ordered. No evidence other than that contained in the record of the proceedings of the administrative panel may be heard unless a de novo proceeding is granted as provided herein.

It shall be the responsibility of the pupil to request a written transcription from the Charter School for review by the Charter School Governing Board. The cost of the transcript, if any, shall be borne by the pupil except in either of the following situations:

- (1) Where the pupil's parent or guardian certifies to the Charter School that he or she cannot reasonably afford the cost of the transcript because of limited income or exceptional necessary expenses, or both.
- (2) In a case in which the Governing Board reverses the decision of the administrative panel, the Governing Board shall require that the Charter School reimburse the pupil for the cost of such transcription.

O. Standard of Review

The review by the Governing Board of the decision of the administrative panel shall be limited to the following questions:

- (1) Whether the administrative panel acted without or in excess of its jurisdiction.
- (2) Whether there was a fair hearing before the administrative panel.
- (3) Whether there was a prejudicial abuse of discretion in the hearing.
- (4) Whether there is relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the administrative panel.

As used herein, a proceeding "without or in excess of jurisdiction" includes, but is not limited to, a situation where an expulsion hearing is not commenced within the time periods prescribed by this article, a situation where an expulsion order is not based upon the acts enumerated herein, or a situation involving acts not related to school activity or attendance.

As used herein, an "abuse of discretion" is established in any of the following situations:

- (1) If school officials have not met the procedural requirements of this article.
- (2) If the decision to expel a pupil is not supported by the findings prescribed herein as grounds for expulsion.
- (3) If the findings are not supported by the evidence.

The Governing Board may not reverse the decision of the administrative panel to expel a pupil based upon a finding of an abuse of discretion unless the Governing Board also determines that the abuse of discretion was prejudicial.

P. Decision on Appeal

The decision of the Governing Board shall be limited as follows:

1. If the Governing Board finds that relevant and material evidence exists which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the governing board, it may do either of the following:
 - A. Remand the matter to the administrative panel for reconsideration and may in addition order the pupil reinstated pending the reconsideration.
 - B. Grant a hearing *de novo* upon reasonable notice thereof to the pupil and to the administrative panel. The hearing shall be conducted in conformance with the rules and regulations stated herein.
2. If the Governing Board determines that the decision of the administrative panel is not supported by the findings required to be made herein, but evidence supporting the required findings exists in the record of the proceedings, the Governing Board shall remand the matter to the administrative panel for adoption of the required findings. This remand for the adoption and inclusion of the required findings shall not result in an additional hearing, except that final action to expel the pupil based on the revised findings of fact shall meet all of the following requirements:
 - A. Final action to expel a pupil shall be taken only by the administrative panel in a public session. Written notice of any decision to expel or to suspend the enforcement of an expulsion order during a period of probation shall be sent by the administrative panel to the pupil or the pupil's parent or guardian and shall be accompanied by all of the following: 1) Notice of the right to appeal the expulsion to the Governing Board; 2) Notice of the education alternative placement to be provided to the pupil during the time of expulsion, if applicable; 3) Notice of the obligation of the parent, guardian, or pupil, upon the pupil's enrollment in a new school district, to inform that school district of the pupil's expulsion.
 - B. the Charter School shall maintain a record of each expulsion, including the cause for the expulsion. Records of expulsions shall be nonprivileged, disclosable public records.
3. In all other cases, the Governing Board shall enter an order either affirming or reversing the decision of the administrative panel. In any case in which the Governing Board enters a decision reversing the administrative panel, the Governing Board may direct the administrative panel to expunge the record of the pupil and the records of the school of

any references to the expulsion action and the expulsion shall be deemed not to have occurred.

The decision of the Governing Board shall be final and binding upon the pupil and upon the administrative panel. The pupil and the administrative panel shall be notified of the final order of the Governing Board, in writing, either by personal service or by certified mail. The order shall become final when rendered.

The Site Director or Designee shall send a copy of the written notice of the decision to expel to the school district of student's last known residence, within thirty (30) days.

Special Procedures for the Consideration of Suspension and Expulsion of Students with Disabilities

As an independent LEA member of a SELPA, the Charter School shall immediately notify the SELPA and coordinate the procedures in this policy with the SELPA of the discipline of any student with a disability or student who the Charter School or SELPA would be deemed to have knowledge that the student had a disability.

1. Services During Suspension

Students with disabilities suspended and/or placed in an interim alternative setting shall continue to receive services so as to provide FAPE and enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP/504. Any discipline that includes removal from school for more than ten (10) consecutive days, including placement in an interim alternative educational setting, constitutes a change in placement and a manifestation determination shall be conducted.

An IEP or 504 meeting is required within ten (10) days of initial suspension or placement 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, 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 local educational agency's failure to implement the IEP/504.

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:

- a. 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;
- b. 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
- c. 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, 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 a hearing. A hearing officer shall make a determination regarding an appeal requested under 20 USC 1415(k)(3)(A).

The hearing officer may order a change in placement of the child and either return the child to the placement from which the child was removed, or order a change in placement of a 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 such child is substantially likely to result in injury to the child or to others.

When an appeal has been requested by either the parent or the Charter School, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in 20 USC 1415(k)(1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise, and the State or Charter School shall arrange for an expedited hearing, which shall occur within 20 school days

of the date the hearing is requested and shall result in a determination within 10 school days after the hearing. In effect, this would allow for a maximum placement in an interim alternative educational setting pending a decision for no more than 30 school days.

4. Special Circumstances

The 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 Site 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:

- a. 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;
- b. 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
- c. 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 or change of placement shall be determined by the student's IEP/504 team. A change of placement is a removal from education for more than ten (10) consecutive days or a pattern of removal, even if for less than ten (10) days. For effective change of placement, there first need be:

- a. Notice
- b. Manifestation determination
- c. Continued receipt of special education services

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 IDEIA and who has violated the District's disciplinary procedures may assert the procedural safeguards granted under these procedures 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 the

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; or

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