

**New Foundations Charter School
8001 Torresdale Avenue
Philadelphia, Pennsylvania 19136**

2018-2019

CODE OF CONDUCT AND DISCIPLINE

This Code applies to any conduct that occurs:

- On School Grounds at anytime
- Off School Grounds at any school activity, function or event
- Off School Grounds when the conduct may reasonably be expected to:
 1. Undermine the proper disciplinary authority of the school
 2. Endanger the safety of members of the School Community
 3. Disrupt the school
- While traveling to and from school, including but not limited to actions on any school bus, van or public transportation

Levels of Misconduct

The following list of conduct categories represents a continuum of misbehavior based on the seriousness of the act and the frequency of occurrence.

The infraction classified at **Level I** are relatively minor and involve acts that only minimally interfere with the orderly conduct of the educational process.

At **Level II**, the seriousness of the misconduct remains a primary classification factor but the frequency of occurrence plays a significant role in determining the most appropriate disciplinary response.

At **Level III**, misconduct usually involves a serious action that shows disregard for the student, classmate, teacher, and the school.

By contrast, **Level IV** misconduct involves extremely serious behavior or criminal acts that represent a direct and immediate threat to the welfare of individuals. **Level IV** misconducts often require interventions by law enforcement authorities.

A minor misconduct appropriately classified at **Level I** could move to **Level II**, and subsequently **Level III**, if the act persisted after several interventions had been attempted at a lower level. Although the seriousness of the infraction remains the same, the frequency of the occurrence requires it to be classified at a high level where a different set of disciplinary responses could be applied.

In terms of seriousness, most **Level I and II** misbehavior could probably be characterized as “victimless infractions.” since they are generally do not involve the welfare of others but could have a serious effect on the student’s own education. On the other hand, misconducts in **Level III and IV**, take an added gravity because they frequently involve a violation of the personal property or

personal rights of others.

The following list of infractions and consequences/corrective action list serves as a general guideline for student conduct and discipline. Repeated violations, regardless of whether they occurred in the same school year or in prior school years, may result in a violation being treated as a higher-level offense and may warrant suspension, expulsion and/or other disciplinary consequences connected with higher level offenses as reasonably determined by NFCS on a case by case basis.

The School's Code of Conduct and Discipline is kept on file in the school's main office and is available upon request.

The consequences/corrective action for any level infraction may include but is not limited to any one or more consequences/corrective actions listed.

Discipline of students in Grades K-2:

Students in grades K-2 who violate the code of conduct should be disciplined on a case-by-case basis. Students should be referred to the administration to determine whether discipline is appropriate. Exclusions from school should not be considered unless absolutely necessary.

Level I Infractions:

- Failure to obey directions from administrators, teachers or staff
- Homework or assignments incomplete
- Violation of a specific classroom norm
- Violation of a specific teacher classroom rule
- Classroom/school disturbance/interruption/disruption
- Non-return or damage of library book(s); school book(s)
- Hall violation or not having a hall pass
- Possession/eating/chewing of gum, food or candy in the classroom
- Late to class
- Bathroom misconduct/procedure
- Failure to comply with any policy stated in this handbook or school or classroom rule
- Violation of Dress Code

3-8 Level I Consequences/Corrective Action HS Level I Consequences/Corrective

Action

<ul style="list-style-type: none">• Teachers may use a variety of in class consequences or redirection techniques• Class Meetings may be used for problem solving• A written infraction will be documented• If a student accrues three (3) written infractions in one week, a “Because I Care” note will be sent home• If a student receives any infraction after a “Because I Care” note in the same week, he or she will receive an after-school detention	<ul style="list-style-type: none">• Teachers may use a variety of in class consequences or redirection techniques• Class Meetings may be used for problem solving• A written infraction will be documented• IF a student received more than three level 1 infractions one week, he or she will receive an afterschool detention
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Level II Infractions:

- Disrespectful language/gesture
- Possession of personal listening device, cell phone or any electronic device during school hours.
- Repeated violation of school dress code
- Chronic disruptive bus behavior

3-8 Level II Consequences/Corrective Action HS Level II Consequences/Corrective Action

<ul style="list-style-type: none">• Class Meetings may be used for problem solving• Student may receive a “Because I Care” note• Student may receive an after-school detention• Meeting/Conference between student, teacher and Administration	<ul style="list-style-type: none">• Class Meetings may be used for problem solving• Student may receive an after-school detention• Meeting/Conference between student, teacher and Administration
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LEVEL III INFRACTIONS

- Falsifying teacher or parent/guardian signature
- Cheating
- Bullying including physical, verbal and cyber forms and false accusations of any bullying, including physical, verbal and cyber forms
- Use of racial or other derogatory terms
- Threatening another student, adult or staff member
- Misuse of the computer or internet
- Use of a cell phone, hand held device etc. or other electronic device during school hours without permission
- Repeatedly skipping or “cutting” class
- Tampering with or unauthorized use of elevator
- Aggressive behaviors, including but not limited to hitting, pushing and shoving
- Disobedience to teacher or another staff member
- Failure to report to office as directed
- Gambling or present at scene of gambling
- Lying/falsehood: including presentation of forged notes or passes or refusal to identify yourself properly
- Misuse of school property or property of others including computers, networks, web pages
- Threatening bodily harm or property damage depending on type and severity of damage
- Use of Obscene/Profane/Violent language or gestures through written, electronic, or verbal means
- Creation or Possession of Obscene/Violent writing, pictures or articles
- Academic dishonesty/Plagiarism

3-8 Level III Consequences/Corrective Action HS Level III Consequences/Corrective Action

<ul style="list-style-type: none"> ● Teacher will issue an administrative referral ● Meeting/conference between student, counselor and parent/guardian ● Meeting/conference between student, teacher, principal/vice principal/social worker and parent/guardian ● Saturday Detention or Suspension ● Suspension from school ● Referral to Board of Trustees Discipline Committee for consequences 	<ul style="list-style-type: none"> ● Teacher will issue an administrative referral ● Meeting/conference between student, counselor and parent/guardian ● Meeting/conference between student, teacher, principal/vice principal/social worker and parent/guardian ● Saturday Detention or Suspension ● In school suspension ● Suspension from school ● Referral to Board of Trustees Discipline Committee for consequences
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Level IV Infractions

- Repeatedly having III Infractions
- Fighting
- Stealing/theft of school or private property
- Smoking or use of e-cigarettes
- Threatening bodily harm or property damage depending on type and severity of damage through verbal, written, non-verbal or electronic means
- Violation of Drug/Alcohol Policy including but not limited to possession, sale solicitation, use of controlled substances, including but not limited to illegal and/or counterfeit drugs, related paraphernalia, tobacco/tobacco products, alcohol and transfer of legal/prescription medication or medical equipment to other students
- Possession and/or use and/or transfer of matches, lighters, laser pointers or any incendiary devices, weapons**, alcohol, or illegal substances/drugs
- Tampering with fire alarm/extinguishers
- Terroristic threats and/or threats of death whether written, verbal or cyber in nature
- Harassment of another student, teacher, administrator or staff member, contractor

or volunteer, through verbal, physical or cyber medium

- Counterfeiting
- Sexual harassment of another student, teacher, administrator or staff member, contractor or volunteer
- Failure to reasonably comply with any school policy
- Unlawful assembly and/or riot
- Attempted or actual Possession/use/sale/solicitation of/manufacture and/or distribution of prescription or over the counter drugs or counterfeit drugs
- Threats of death or serious bodily injury– either written, electronic or verbal
- Vandalism or defacing or destruction of school property or property of another (includes writing on walls, etc.)
- Leaving school grounds without proper authorization
- Harassment of any kind – verbal, written or gestures
- Attempted or actual Possession/use/sale/solicitation of and/or distribution of lighters, matches, or laser pointers
- Arson or attempted arson
- Assault and/or battery of an employee or student, contractor or volunteer
- Other criminal acts in violation of local, state, or federal laws and/or regulations
- Extortion, attempted extortion, robbery, burglary and/or larceny
- Actual or attempted possession, distribution, sale, use or lighting of fireworks, stink bombs, or other explosives
- Sexual Harassment and/or Sexual Assault and/or Sexual Battery, including but not limited to sexual molestation, making unwanted sexual advances (See Title IX Policy for further information)
- Violations of school’s internet safety and/or acceptable use policies
- Actual or attempted possession, use, distribution, solicitation or sale of a firearm or dangerous weapon or look-alike weapon (Weapons include, but are not limited to: any knife, cutting instrument, cutting tool, nunchaku, firearm, shotgun, rifle, and any other tool, instrument or implement capable of inflicting serious bodily injury)
- Hazing
- Trespassing
- Purposefully or recklessly endangering the health, welfare or safety of any member of the school community
- Threatening to endanger the health, welfare or safety of any member of the school community
- Engaging in any consensual sexual acts (for the purpose of this Code, sexual acts include, but are not limited to: Intercourse, oral sex, groping, simulated sex) on school property, at a school function, on school transportation or at any school-related activity or trip
- Causing or attempting to cause physical bodily injury or pain to any member of the school community
- Engaging in any activity that can reasonably be expected to have the effect of harassing, threatening or damaging the safety or reputation of any member of the school community

- Actual or attempted possession, distribution, sale or use of pornography (whether written or electronic) in violation of the Child Internet Protection Act or otherwise
- Violations of School Acceptable Use or Internet Safety Policy

3-8 Level IV Consequences/Corrective Action:

HS Level IV

Consequences/Corrective Action:

<ul style="list-style-type: none"> • Teacher will issue an administrative referral • Meeting/conference between student/school counselor and parent/guardian • Meeting/conference/informal hearing between student, teacher, principal, social worker and parent/guardian • Suspension from school • Referral to Board of Trustees Discipline Committee for consequences up to and including expulsion 	<ul style="list-style-type: none"> • Teacher will issue an administrative referral • Meeting/conference between student/school counselor and parent/guardian • Meeting/conference/informal hearing between student, teacher, principal, social worker and parent/guardian • In school suspension • Suspension from school • Referral to Board of Trustees Discipline Committee for consequences up to and including expulsion
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**Note: The Pennsylvania Public School Code requires the school to refer for expulsion for not less than one year “any student who is determined to have brought onto or is in possession of a weapon on any school property, any school-sponsored activity or any public conveyance providing transportation to school or school-sponsored activity.”

Accordingly, NFCS administration shall do the following:

- The student shall be detained
- Any safe school’s violation shall be reported to the police immediately
- The parents/guardians shall be reasonably notified
- The student shall be suspended
- A Safe Schools Act report to PDE and/or School District of Philadelphia will be filed to the extent required by applicable laws/regulations.
- The student will be recommended to the Discipline Committee for expulsion.
- Expulsion from school as determined after a hearing held in accordance with the due process procedures below

SUSPENSION/EXPULSION PROCEDURES

Saturday Suspension

- (a) No student may receive a Saturday Suspension unless the student has been informed of the reasons for the suspension and has been given an opportunity to respond before the

suspension becomes effective.

- (b) Communication to the parent/guardian shall follow the suspension action taken by the school.

In-school suspension

- (a) A student may not receive an in-school suspension unless the student has been informed of the reasons for the suspension and has been given an opportunity to respond before the suspension becomes effective.
- (b) Communication to the parents or guardian shall follow the suspension action taken by the school.
- (c) When the in-school suspension exceeds 3 consecutive school days, an informal hearing with the principal or head of school shall be offered to the student and the student's parent or guardian prior to the 5th school day in accordance with the procedures in the Pennsylvania Code.
- (d) The student's school entity has the responsibility to make provision for the student's education during the period of the in-school or out of school suspension.

Out of School Suspension and Expulsion

It is the policy of New Foundations Charter School not to suspend students out of school in grades Kindergarten through grade two.

Exclusion from school may take the form of suspension or expulsion.

- (1) Suspension is exclusion from school for a period of from 1 to 10 consecutive school days.
 - (a) Suspensions may be given by the principal or person in charge of the charter school.
 - (b) A student may not be suspended until the student has been informed of the reasons for the suspension and given an opportunity to respond. Prior notice of the intended suspension need not be given when it is clear that the health, safety or welfare of the school community is threatened.
 - (c) The parents or guardians shall be notified immediately in writing when the student is suspended.
 - (d) When the suspension exceeds 3 school days, the student and parent shall be given the opportunity for an informal hearing consistent with the requirements of the Pennsylvania Code within the first 5 days of the suspension.
 - (e) Suspensions may not be made to run consecutively beyond the 10-school day period.
 - (f) Students shall have the responsibility to make up exams and work missed while being disciplined by suspension and shall be permitted to complete these assignments within guidelines established by the governing board.
- (2) Expulsion is exclusion from school by the governing board for a period exceeding 10 school days and may be permanent expulsion from the school rolls. Expulsions require a prior formal hearing pursuant to the Pennsylvania Code.

- (a) During the period prior to the hearing and decision of the board in an expulsion case, the student shall be placed in his normal class except as set forth in subsection (d).
- (b) If it is determined after an informal hearing that a student's presence in his normal class would constitute a threat to the health, safety or welfare of others and it is not possible to hold a formal hearing within the period of a suspension, the student may be excluded from school for more than 10 school days. A student may not be excluded from school for longer than 15 school days without a formal hearing unless mutually agreed upon by both parties. Any student so excluded shall be provided with alternative education, which may include home study.
- (c) Students who are under 17 years of age are still subject to the compulsory school attendance law even though expelled and shall be provided an education.
- (d) The initial responsibility for providing the required education rests with the student's parents or guardian, through placement in another school, tutorial or correspondence study, or another educational program approved by the district's superintendent.
- (e) Within 30 days of action by the board, the parents or guardians shall submit to the school written evidence that the required education is being provided as described in paragraph (1) or that they are unable to do so. If the parents or guardians are unable to provide the required education, the school entity shall, within 10 days of receipt of the notification, make provision for the student's education. A student with a disability shall be provided educational services as required by the Individuals with Disabilities Education Act 2004.
- (f) If the approved educational program is not complied with, the school entity may take action in accordance with 42 Pa.C.S. Ch. 63 (relating to the Juvenile Act) to ensure that the child will receive a proper education. See 22 Pa. Code § 12.1 (relating to free education and attendance).

Hearings

- (1) *General.* Education is a statutory right, and students shall be afforded due process if they are to be excluded from school. In a case involving a possible expulsion, the student is entitled to a formal hearing.
- (2) *Formal hearings.* A formal hearing is required in all expulsion actions. This hearing may be held before the board or an authorized committee of the board, or a qualified hearing examiner appointed by the board. When a committee of the board or a hearing examiner conducts the hearing, a majority vote of the entire board is required to expel a student. The following due process requirements shall be observed with regard to the formal hearing:
 - (a) Notification of the charges shall be sent to the student's parents or guardians by certified mail.
 - (b) At least 3 days' notice of the time and place of the hearing shall be given. A copy of the expulsion policy, notice that legal counsel may represent the student and hearing procedures shall be included with the hearing notice. A student may request the

rescheduling of the hearing when the student demonstrates good cause for an extension.

- (c) The hearing shall be held in private unless the student or parent requests a public hearing.
- (d) The student may be represented by counsel, at the expense of the parents or guardians, and may have a parent or guardian attend the hearing.
- (e) The student has the right to be presented with the names of witnesses against the student, and copies of the statements and affidavits of those witnesses.
- (f) The student has the right to request that the witnesses appear in person and answer questions or be cross-examined.
- (g) The student has the right to testify and present witnesses on his own behalf.
- (h) A written or audio record shall be kept of the hearing. The student is entitled, at the student's expense, to a copy. A copy shall be provided at no cost to a student who is indigent.
- (i) The proceeding shall be held within 15 school days of the notification of charges, unless mutually agreed to by both parties. A hearing may be delayed for any of the following reasons, in which case the hearing shall be held as soon as reasonably possible:
 - (1) Laboratory reports are needed from law enforcement agencies.
 - (2) Evaluations or other court or administrative proceedings are pending due to a student invoking his rights under the Individuals with Disabilities Education Act 2004 (20 U.S.C.A. § § 1400—1482).
 - (3) In cases in juvenile or criminal court involving sexual assault or serious bodily injury, delay is necessary due to the condition or best interests of the victim.
- (j) Notice of a right to appeal the results of the hearing shall be provided to the student with the expulsion decision.
- (k) *Informal hearings.* The purpose of the informal hearing is to enable the student to meet with the appropriate school official to explain the circumstances surrounding the event for which the student is being suspended or to show why the student should not be suspended. (k) The informal hearing is held to bring forth all relevant information regarding the event for which the student may be suspended and for students, their parents or guardians and school officials to discuss ways by which future offenses might be avoided.
- (l) The following due process requirements shall be observed in regard to the informal hearing:
 - (1) Notification of the reasons for the suspension shall be given in writing to the parents or guardians and to the student.
 - (2) Sufficient notice of the time and place of the informal hearing shall be given.
 - (3) A student has the right to question any witnesses present at the

- hearing.
- (4) A student has the right to speak and produce witnesses on his own behalf.
 - (5) The school entity shall offer to hold the informal hearing within the first 5 days of the suspension

All hearings will take place before a qualified hearing examiner or authorized committee of the Board who will consider the evidence presented by Administration and the student in connection with a formal hearing and will make a recommendation to the Board of Trustees.

Student Expression

Students have the right to express themselves unless such expression materially and substantially interferes with the educational process, threatens immediate harm to the welfare of the school or community, encourages unlawful activity or interferes with another individual's rights.

Class Meetings

Class Meetings are used throughout our school to solve problems, learn procedures, check-in with students, and to keep an open dialogue between faculty and students.

Class Meetings may be used to discuss behavior and discipline as a class. Class Meetings give the students opportunities to explore and understand the meaning of a caring community at New Foundations Charter School. Class meetings take place in both formal and informal assessments.

In-class Consequences and Redirections

Teachers may use a variety of methods in class to redirect students' behavior. Methods may include conversations or conferencing, temporary restrictions of class privileges, temporary separation from the group. These methods may be used for Level I infractions.

Written Infractions

All infractions in K-8th grade will be documented in writing. Faculty or administration may issue written infractions for Level I Infractions. As mentioned above, there may be in-class consequences or redirections that accompany the written infractions.

Because I Care Notes (K-8 only)

“Because I Care” notes are an important method of communication between families and teachers. These notes are written when a teacher or administrator has concerns about a student's behavior or actions in school. These notes are automatically written if a student receives three Level I infractions in one week of school. These notes may also be written at any time there is a concern to be addressed. This is a warning that a detention will be issued if the behavior is not corrected. A parent or guardian must sign the note and it must be returned the next school day. Failure to get notes signed will result in additional infractions.

Detentions

Detentions are served on Wednesday afternoons from 3-4pm for Kindergarten – 8th grade students and Friday afternoons from 2 – 3 pm for the High School students. Saturday Detentions are served on Saturday mornings from 7:00 AM – 9:00 AM for High School students and from 8:00 AM – 10:00 AM for Kindergarten – 8th grade students. Detentions are not optional and must be served on the assigned day. A written notice is sent home when a student receives a detention. This notice must also be returned on the next school day to avoid additional infractions. Students who fail to serve detentions on the day assigned will receive an additional detention (see administrative referral below).

Detentions will be issued to a student who receives 4 or more Level I infractions in one week. Detentions may also be issued for Level II infractions. Students who are issued more than one detention in a week will be issued a Saturday detention.

Saturday Suspensions

Saturday Suspension is a positive alternative to Out of School Suspension.

Saturday Suspension at New Foundations Charter School is utilized when a student has frequent infractions or acquired Level III infractions. Saturday Suspensions are assigned when other interventions fail to change a student's behavior. Saturday Suspension grants students an opportunity to stay in school, with potential for academic improvement, social engagement and building positive relationships. Saturday Suspension is a mechanism through which New Foundations Charter School's faculty and administration communicate to students in a positive fashion that they are important members of our Caring School Community. Saturday Suspension provides students with an opportunity to acknowledge behavior, resolve conflicts and engage in problem solving activities.

Conferences

A student's behavior records are kept in PowerSchool and through other classroom-based tracking tools. If a teacher or administrator notices a problem of repeated infractions, a conference may be called with parents or guardians. The goal of such a conference would be to discuss the problems and attempt to resolve them.

Administrative Referrals

Having more than two detentions in one quarter will result in an administrative referral. Administrative referrals will also automatically be issued for any Level III or Level IV infractions. If such a referral is written, the school administration will review the problem and decide upon an appropriate action. Such actions may include suspension from school and/or loss of school privileges.

Suspension

There are times when a student's behavior, abuse of school rules or track record of discipline problems may warrant suspension from school as stated above with regard to specific instances of misconduct pursuant to the various Levels of offenses.

Loss of School Privileges

After an administrative referral, a student may lose certain privileges for a period of time to be determined by the administrator based on the student's discipline record. Such privileges may include field trips, dress down days, assemblies, class parties, or other special events.

STUDENT ASSISTANCE PROGRAM (SAP)

New Foundations Charter School's' Student Assistance Program is a multi-disciplinary team that includes teachers, administrators, nurses, social workers, psychologists and counselors. The team is specially trained to understand and work with adolescent drug and alcohol use, abuse and dependency, depression or suicide in addition to other "at risk" behavior. The team's primary role is to identify, intervene and refer when chemical use, abuse, possession and/or distribution is suspected. The same referral process will be initiated when "at risk" behavior is identified and referred by other professionals. "At risk" behavior is defined as any manifestation of self-destructive behavior. Parents can initiate a referral to the Student Assistance Team by contacting their child's school principal or counselor.

ANTI-CORPORAL PUNISHMENT POLICY

In accordance with Title 22 Pa Code Chapter 12.5, Corporal punishment is defined as physically punishing a student for an infraction of the discipline policy. Use of corporal punishment is prohibited. Teachers and school administrators may only use reasonable force under the following circumstances and to the extent consistent with applicable state and federal laws and regulations: (1) to quell a disturbance, (2) to obtain possession of weapons or other dangerous objects; (3) for the purpose of self-defense; (4) for the protection of persons or property.

PROCEDURES FOR DISCIPLINARY EXCLUSION OF CHILDREN WITH DISABILITIES.

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

AUTHORITY OF SCHOOL PERSONNEL (34 CFR §300.530)

1. Case-by-case determination

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

2. General

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

3. Additional authority

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

4. Services

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

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

- a. Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; **and**
- b. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for **more than 10 school days** during one school year, or **if** current removal is for **10 consecutive school**

days or less, **and** if the removal is not a change of placement (see definition below), **then** school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement (see definition below), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

5. **Manifestation Determination**

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, Charter School, the parent, and relevant members of the IEP Team (as determined by the parent and Charter School) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

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

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

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

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

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

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

Except as described below under the sub-heading **Special circumstances**, Charter School must return the child to the placement from which the child was removed, unless the parent and Charter School agree to a change of placement as part of the modification of the behavioral intervention plan.

7. **Special circumstances**

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

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

8. **Definitions**

- a. *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202 (c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- b. *Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
- c. *Serious bodily injury* has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
- d. *Weapon* has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

9. **Notification**

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

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

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

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

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

Determination of Setting (34 CFR §300.531)

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

Appeal (34 CFR §300.532)

1. General

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

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

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

2. Authority of hearing officer

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

The hearing officer may:

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

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

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

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

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

When, as described above, the parent or Charter School has filed a due process complaint

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

Special Rules for Students with Mental Retardation

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

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

Protections for Children Not Yet Eligible for Special Education and Related Services

1. General

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

2. Basis of knowledge for disciplinary matters

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

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

3. Exception

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

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

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

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

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

1. The state and federal regulations do not:

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

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

2. Transmittal of records

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