

3300 Suspension/Expulsion Policy and Procedures

Board Policy #: 3300

Adopted/Ratified: March 11, 1998

Amended: May 13, 2009; September 22, 2020; February 17, 2021; June 22, 2023; February 28, 2024; June 26, 2024; September 4, 2025; June 25, 2026

This Student Suspension and Expulsion Policy and Procedures has been established by the Board of Directors of Altus Schools San Diego in order to promote learning and protect the safety and well-being of all students at Altus Schools Charter School of San Diego (hereinafter referred to as "Charter School").

In adopting this policy, the Charter School has reviewed Education Code Section 48900 *et seq.* which describe the offenses for which students at non charter schools may be suspended or expelled and the procedures governing those suspensions and expulsions in order to establish its list of offenses and procedures for suspensions, expulsions and involuntary removal. The language that follows is largely consistent with the language of Education Code Section 48900 *et seq.* The Charter School is committed to annual review of policies and procedures surrounding suspensions, expulsions, and involuntary removals, and, as necessary, modification of the lists of offenses for which students are subject to suspension, expulsion, or involuntary removal, and the procedures thereto so long as not materially different from the charter petition.

Consistent with this Policy, it may be necessary to suspend or expel a student from regular classroom instruction. This shall serve as the Charter School's Policy and Procedures for student suspension, expulsion, and involuntary removal, and it may be amended from time to time without the need to seek a material revision of the charter so long as the amendments comport with legal requirements. Charter School staff shall enforce disciplinary policies and procedures fairly and consistently among all students. This Policy and its Procedures will be printed and distributed annually as part of the Student Handbook which will clearly describe discipline expectations.

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 this 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/guardians¹ are notified in writing upon enrollment of all discipline and involuntary removal policies and procedures. The notice shall state that this Policy and its Procedures are available on request at the Instructional Administrator'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.

A student identified as an individual with disabilities or for whom the Charter School has a basis of knowledge of a suspected disability pursuant to the IDEA or who is qualified for services under Section 504 will be subject to the same grounds for suspension and expulsion and will be accorded the same due

process procedures applicable to general education students except when federal and state law requires additional or different procedures. The Charter School will follow all applicable federal and state laws including but not limited to the applicable provisions of 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.

No student shall be involuntarily removed by the Charter School for any reason unless the parent/guardian of the student has been provided written notice of intent to remove the student 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 student or the student's parent/guardian, and shall inform the student, and the student's parent/guardian, of the basis for which the student is being involuntarily removed and the student's parent/guardian's right to request a hearing to challenge the involuntary removal. If a student's parent/guardian requests a hearing, the Charter School shall utilize the same hearing procedures specified below for expulsions, before the effective date of the action to involuntarily remove the student. If the student's parent/ guardian requests a hearing, the student shall remain enrolled and shall not be removed until the Charter School issues a final decision. As used herein, "involuntarily removed" includes disenrolled, dismissed, transferred, or terminated, but does not include removals for misconduct which may be grounds for suspension or expulsion as enumerated below. Students may be involuntarily removed for reasons including, but not limited to, failure to comply with the terms of the student's independent study written agreement pursuant to Education Code Section 51747(c)(4).

Procedures

A. Grounds for Suspension and Expulsion of Students

A student may be suspended or expelled for prohibited misconduct if the act is related to school activity or school attendance occurring at any time including but not limited to: a) while on school grounds; b) while going to or coming from school; c) during the lunch period, whether on or off the school campus; d) during, going to, or coming from a school-sponsored activity.

B. Enumerated Offenses

1. **Discretionary Suspension and Expulsion Offenses.** Students may be suspended when the School Coordinator or designee determines the student:
 - a. Caused, attempted to cause, or threatened to cause physical injury to another person.
 - b. Willfully used force or violence upon the person of another except self-defense.
 - c. Unlawfully possessed, used, or otherwise furnished, or was under the influence of any controlled substance, as defined in Health and Safety Code Sections 11053- 11058, alcoholic beverage, or intoxicant of any kind. Students who voluntarily disclose their use of a controlled substance, alcohol, or an intoxicant of any kind in order to seek help through services or supports shall not be suspended solely for that disclosure.
 - d. Unlawfully offered, arranged, or negotiated to sell any controlled substance as defined in Health and Safety Code Sections 11053-11058, alcoholic beverage or intoxicant of any kind,

and then sold, delivered or otherwise furnished to any person another liquid substance or material and represented same as controlled substance, alcoholic beverage or intoxicant.

- e. Committed or attempted to commit robbery or extortion.
- f. Caused or attempted to cause damage to school property or private property, which includes but is not limited to electronic files and databases.
- g. Stole or attempted to steal school property or private property, which includes but is not limited to electronic files and databases.
- h. Possessed or used tobacco or products containing tobacco or nicotine products, including but not limited to cigars, cigarettes, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets and betel. This section does not prohibit the use of a student's own prescription products by a student. Students who voluntarily disclose their use of a tobacco product in order to seek help through services or supports shall not be suspended solely for that disclosure.
- i. Committed an obscene act or engaged in habitual profanity or vulgarity.
- j. Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Health and Safety Code Section 11014.5.
- k. Knowingly received stolen school property or private property, which includes but is not limited to electronic files and databases.
- l. Possessed an imitation firearm, i.e.: 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.
- m. Harassed, threatened, or intimidated a student who is a complaining witness or witness in a school disciplinary proceeding for the purpose of preventing that student from being a witness and/or retaliating against that student for being a witness.
- n. Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.
- o. Engaged in or attempted to engage in hazing. For the purposes of this Policy, "hazing" means a method of initiation or preinitiation into a student organization or body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective student. For purposes of this Policy, "hazing" does not include athletic events or school-sanctioned events.
- p. Made terroristic threats against school officials and/or school property, which includes but is not limited to electronic files and databases. For purposes of this Policy, "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 their own safety or for their immediate family's safety, or for the protection of school property, which includes but is not limited to electronic files and databases, or the personal property of the person threatened or their immediate family.

- q. Committed sexual harassment, as defined in Education Code Section 212.5. For the purposes of this Policy, 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 provision shall apply to students in any of grades 7 to 12, inclusive.
- r. Caused, attempted to cause, threatened to cause or participated in an act of hate violence, as defined in Education Code Section 233(e). This section shall apply to students in any of grades 7 to 12, inclusive.
- s. Intentionally harassed, threatened or intimidated school personnel or volunteers and/or a student or group of students to the extent of having the actual and reasonably expected effect of materially disrupting class work, creating substantial disorder and invading the rights of either school personnel or volunteers and/or student(s) by creating an intimidating or hostile educational environment. This provision shall apply to students in any of grades 7 to 12, inclusive.
- t. 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:
 - i. 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 their age, or for a person of their age with exceptional needs) or students in fear of harm to that student's or those students' person or property.
 - ii. Causing a reasonable student to experience a substantially detrimental effect on their physical or mental health.
 - iii. Causing a reasonable student to experience substantial interference with their academic performance.
 - iv. Causing a reasonable student to experience substantial interference with their ability to participate in or benefit from the services, activities, or privileges provided by the Charter School.
 - 2. "Electronic Act" means the creation or transmission originated on or off the school site, 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:
 - i. A message, text, sound, video, or image.
 - ii. A post on a social network Internet Web site including, but not limited to:

- a. 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.
- b. Creating a credible impersonation of another actual student 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 student for the purpose of bullying the student and such that another student would reasonably believe, or has reasonably believed, that the student was or is the student who was impersonated.
- c. 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 student or a profile using the likeness or attributes of an actual student other than the student who created the false profile.

iii. An act of cyber sexual bullying.

- a. For purposes of this Policy, "cyber sexual bullying" means the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a student to another student 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.
- b. For purposes of this Policy, "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.

3. Notwithstanding subparagraphs (1) and (2) 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.

- u. A student who aids or abets, as defined in Penal Code Section 31, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion. However, if a juvenile court finds that the student committed a crime of physical violence as an aider or abettor, and the victim suffered great bodily injury or serious bodily injury, the student may be subject to suspension and/or expulsion for causing, attempting to cause, or threatening to cause physical injury to another person, and/or willfully using force or violence upon the person of another, except self-defense.
- v. Possessed, sold, or otherwise furnished any knife or other dangerous object of no reasonable use to the student unless, in the case of possession of any object of this type, the

student had obtained written permission to possess the item from a certificated school employee, with the Administrator of Instructional Services or designee's concurrence.

2. Non-Discretionary Suspension and Expulsion Offenses: Students must be suspended and recommended for expulsion when it is determined the student:

- a. Possessed, sold, or otherwise furnished any firearm, explosive, or other destructive device unless, in the case of possession of any device of this type, the student had obtained written permission to possess the item from a certificated school employee, with the Administrator of Instructional Services or designee's concurrence.
- b. Brandished a knife at another person.
- c. Unlawfully sold a controlled substance listed in Health and Safety Code Section 11053, et seq.
- d. Committed or attempted to commit a sexual assault as defined in Penal Code Sections 261, 266c, 286, 287, 288, or 289 or former Section 288a of the Penal Code or committed a sexual battery as defined in Penal Code Section 243.4

If it is determined by the Administrative Panel and/or Board of Directors that a student has brought a firearm or destructive device, as defined in Section 921 of Title 18 of the United States Code, on to campus or to have possessed a firearm or destructive device on campus, the student shall be expelled for one year, pursuant to the Federal Gun Free Schools Act of 1994. In such instances, the student shall be provided due process rights of notice and a hearing as required in this policy.

The Charter School will use the following definitions:

- The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.
- The term "destructive device" means (A) any explosive, incendiary, or poison gas, including but not limited to: (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses.
- The term "knife" means (A) any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing; (B) a weapon with a blade fitted primarily for stabbing; (C) a weapon with a blade longer than 3½ inches; (D) a folding knife with a blade that locks into place; or (E) a razor with an unguarded blade.

C. Suspension Procedures

Suspensions shall be initiated according to the following procedures:

1. Conference

Suspension shall be preceded, if possible, by a conference conducted by the Instructional Administrator or designee with the student and the student's parent/guardian and, whenever

practical, the teacher, supervisor or Charter School employee who referred the student to the Instructional Administrator or designee.

The conference may be omitted if the Instructional Administrator 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 student shall be informed of the reason for the disciplinary action and the evidence against the student and shall be given the opportunity to present their version and evidence in their defense, in accordance with Education Code Section 47605(c)(5)(J)(i). This conference shall be held within two (2) school days, unless the student waives this right or is physically unable to attend for any reason including, but not limited to, incarceration or hospitalization. Penalties shall not be imposed on a student for failure of the student's parent or guardian to attend a conference with Charter School officials. Reinstatement of the suspended student shall not be contingent upon attendance by the student'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, by email or in person. Whenever a student is suspended, the parent/guardian shall be notified in writing of the suspension.

This notice shall include:

- a. the specific offense(s) committed by the student,
- b. duration and dates of the suspension,
- c. the date the student may return to school following the suspension, and
- d. an explanation of the evidence that supports the charges.

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 Instructional Administrator or designee, the student and the student's parent/guardian shall be invited to a conference to determine if the suspension for the student should be extended pending an expulsion hearing. In such instances when the Charter School has determined a suspension period shall be extended, such extension shall be made only after a conference is held with the student and the student's parent/guardian, unless the student and the student's parent/guardian fail to attend the conference.

This determination will be made by the Instructional Administrator or designee upon either of the following: 1) the student's presence will be disruptive to the education process; or 2) the student poses a threat or danger to others. Upon either determination, the student's suspension will be extended pending the results of an expulsion hearing.

4. Homework Assignments During Suspension

In accordance with Education Code Section 47606.2(a), upon the request of a parent, a legal guardian or other person holding the right to make education decisions for the student, or the affected student, a teacher shall provide to a student in any of grades 1 to 12, inclusive, who has been suspended from school for two (2) or more school days, the homework that the student would otherwise have been assigned.

In accordance with Education Code Section 47606.2(b), if a homework assignment that is requested pursuant to Section 47606.2(a) and turned into the teacher by the student either upon the student's return to school from suspension or within the timeframe originally prescribed by the teacher, whichever is later, is not graded before the end of the academic term, that assignment shall not be included in the calculation of the student's overall grade in the class.

D. Authority to Expel

Charter School may expel a student following a hearing adjudicated by a neutral and impartial Hearing Officer or Administrative Panel to be assigned by the Deputy Superintendent as needed.

If a Panel shall conduct the hearing, it shall consist of at least three (3) members who do not have an instructional or supervisory relationship with the student and not a member of the ASSD Board of Directors. The Panel shall be presided over by a designated neutral hearing chairperson.

The Hearing Officer or Panel may recommend expulsion of any student found to have committed an expellable offense, and the Board of Directors shall make the final determination.

E. Expulsion Procedures

Students recommended for expulsion are entitled to a hearing to determine whether the student should be expelled. Unless postponed for good cause, the hearing shall be held within thirty (30) school days after the Instructional Administrator or designee determines that the student has committed an expellable offense and recommends the student for expulsion.

The hearing shall be held in a confidential setting (complying with all student confidentiality rules under the Family Educational Rights and Privacy Act("FERPA").

Written notice of the hearing shall be forwarded to the student and the student's parent/guardian via email or other means at least ten (10) calendar days before the date of the hearing. Upon mailing the notice, it shall be deemed served upon the student. The notice shall include:

1. The date and place of the expulsion hearing;
2. A statement of the specific facts, charges and offenses upon which the proposed expulsion is based;
3. A copy of the Charter School's disciplinary rules which relate to the alleged violation;
4. Notification of the student's or parent/guardian's obligation to provide information about the student's status at the Charter School to any other school district or school to which the student seeks enrollment;
5. An explanation of the opportunity for the student and/or the student's parent/guardian to appear in person or to employ and be represented by counsel or a non-attorney advisor;
6. An explanation of the right to inspect and obtain copies of all documents to be used at the hearing;
7. An explanation of the opportunity to confront and question all witnesses who testify at the hearing;
8. An explanation of the opportunity to question all evidence presented and to present oral and documentary evidence on the student's behalf including witnesses.

F. Record of Hearing

A record of the hearing shall be made and may be maintained by any means, including electronic recording, as long as a reasonably accurate and complete written transcription of the proceedings can be made.

G. Presentation of Evidence

While technical rules of evidence do not apply to expulsion hearings, evidence may be admitted and used as proof only if it is the kind of evidence on which reasonable persons can rely in the conduct of serious affairs. A recommendation by the Hearing Officer or Panel to expel must be supported by substantial evidence that the student committed an expellable offense. Findings of fact shall be based solely on the evidence at the hearing. While hearsay evidence is admissible, no decision to expel shall be based solely on hearsay. Signed and dated statements or declarations may be admitted as testimony.

H. Expulsion Decision

The determination of the Hearing Officer or Panel shall be in the form of written findings of fact and a written recommendation to the Board which will make a final determination regarding the expulsion. The Board of Directors shall make the final determination regarding the expulsion within ten (10) school days following the conclusion of the hearing or as soon as practicable. The decision of the Board is final. If the Hearing Officer or Panel decides not to recommend expulsion, or the Board of Directors ultimately decides not to expel, the student shall immediately be returned to their educational program at Charter School.

The Board of Directors may also determine to suspend the enforcement of the expulsion order for a period of not more than one (1) calendar year from the date of the expulsion hearing and return the student to the student's previous educational program under a probationary status and rehabilitation plan to be determined by the Board. During the period of the suspension of the expulsion order, the student is deemed to be on probationary status. The Deputy Superintendent Schools Services and Founding Director ("Deputy Superintendent") may revoke the suspension of an expulsion order under this section if the student commits any of the enumerated offenses listed above or violates any of the Charter School's rules and regulations governing student conduct. If the Deputy Superintendent revokes the suspension of an expulsion order, the student may be expelled under the terms of the original expulsion order.

I. Notice of Expulsion Decision

The Instructional Administrator or designee shall send written notice of the expulsion decision to the student and student's parent/guardian within ten (10) school days of the expulsion hearing.

This notice shall include the following:

- a. The findings of fact, including the student's name, the specific offense(s) committed by the student, as well as the duration and term of the student's expulsion; and
- b. Notice of the student's or parent/guardian's obligation to inform any new district in which the student seeks to enroll of the student's status with the Charter School.

The Instructional Administrator or designee shall send a copy of the written notice of the decision to expel to the chartering authority (if required). This notice shall include the following:

- a) The student's name; and
- b) The specific expellable offense committed by the student.

In accordance with Education Code Section 47605(e)(3), the Charter School shall send notice of the expulsion to the student's district of residence within 30 calendar days.

J. Disciplinary Records

Charter School shall maintain records of all student suspensions and expulsions at the Charter School. Such records shall be made available to the chartering authority upon request.

K. No Right to Appeal

The student shall have no right of appeal from expulsion from the Charter School as the ASSD Board of Directors' decision to expel shall be final.

L. Expelled Students/Alternative Education

Students who are expelled shall be responsible for seeking alternative education programs including, but not limited to, programs within the County or their school district of residence. The Charter 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.

M. Rehabilitation Plans

Students who are expelled from the Charter School shall be given a rehabilitation plan upon expulsion as developed by the Board of Directors 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 student may reapply to Charter School for readmission.

N. Readmission or Admission of Previously Expelled Student

The decision to readmit a student after the end of the student's expulsion term or to admit a previously expelled student from another school district or charter school who has not been readmitted/admitted to another school or school district after the end of the student's expulsion term, shall be in the sole discretion of the Board following a meeting with the Instructional Administrator or designee and the student and parent/guardian or representative to determine whether the student has successfully completed the rehabilitation plan and to determine whether the student poses a threat to others or will be disruptive to the school environment. The Instructional Administrator or designee shall make a recommendation to the Board following the meeting regarding their determination. The Board shall then make a final decision regarding readmission or admission of the student during the closed session of a public meeting, reporting out any action taken during closed session consistent with the requirements of the Brown Act. The student's readmission is also contingent upon the Charter School's capacity at the time the student seeks readmission or admission to the Charter School.

O. Notice to Teachers

Charter School shall notify teachers of each student who has engaged in or is reasonably suspected to have engaged in any of the acts listed in Education Code Section 49079 and the corresponding enumerated offenses set forth above.

P. Removal Due to Noncompliance with Independent Study Requirements

In accordance with Education Code Section 51747 and the Charter School's Board policy on independent study, after two (2) missed assignments, an evaluation is held to determine whether it is in the best interest of the student to remain in independent study. If it is determined that it is not in the student's best interest to remain in independent study, the Charter School may involuntarily remove the student after the Charter School follows the requirements of the Missed Assignment Policy and only after providing notice and an opportunity for a parent, guardian, educational rights holder to request a hearing prior to any involuntary removal as forth herein. Students who are involuntarily removed for noncompliance with independent study requirements shall be given a rehabilitation plan and shall be subject to the readmission procedures set forth herein.

Q. 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 signed and dated declarations, edited to delete the name and identity of the witness, shall be made available to the student.

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 their right to (a) receive five days' notice of their scheduled testimony, (b) have up to two (2) adult support persons of their choosing present in the hearing at the time the complaining witness testifies, which may include a parent, guardian, or legal counsel, and (c) elect to have the hearing closed while testifying.
2. Charter School must also provide the complaint witness a room separate from the hearing room for the complaining witness' use prior to and during breaks in testimony.
3. At the discretion of the Hearing Officer or Panel, the complaining witness shall be allowed periods of relief from examination and cross-examination during which the complaining witness may leave the hearing room.
4. The Hearing Officer or Panel may also arrange the seating within the hearing room to facilitate a less intimidating environment for the complaining witness.
5. The Hearing Officer or Panel may also limit time for taking the testimony of the complaining witness to the hours the complaining witness 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 Hearing Officer or Panel from removing a support person whom Hearing Officer or Panel finds is disrupting the hearing. The Hearing Officer or Panel may permit any one of the support persons for the complaining witness to accompany the complaining witness 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' presence is both desired by the witness and will be helpful to the Charter School. The Hearing Officer or Panel 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 Hearing Officer or Panel shall admonish the support person or persons not to prompt, sway, or influence the witness in any way. Nothing shall preclude the Hearing Officer or Panel from exercising their discretion to remove a person from the hearing whom the Hearing Officer or Panel 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 hearing room during that testimony.
9. The complaining witness may have their testimony heard via alternative means that may include but are not limited to, videotaped testimony or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television. Evidence of specific instances of a complaining witness' prior sexual conduct is presumed inadmissible and shall not

be heard absent a determination by the Hearing Officer or Panel 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.

10. 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.

R. Special Procedures for the Consideration of Suspension and Expulsion or Involuntary Removal of Students with Disabilities

1. Notification of 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 that the Charter School or the SELPA would be deemed to have knowledge that the student had a disability.

2. Services During Suspension

Students suspended for more than ten (10) school days in a school year shall continue to receive services so as to enable the student to continue to participate in the general education curriculum, although in another setting (which could constitute a change of placement and the student's IEP would reflect this change), and to progress toward meeting the goals set out in the child's IEP/504 Plan; and 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 recur. These services may be provided in an interim alternative educational setting.

3. 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, Charter School, the parent/guardian, and relevant members of the IEP/504 Team shall review all relevant information in the student's file, including the child's IEP/504 Plan, any teacher observations, and any relevant information provided by the parent/guardian 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 Plan.

If the Charter School, the parent/guardian, 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/guardian, 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 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/guardian 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/guardian, 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 direct result of the failure to implement the IEP/504 Plan, 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.

4. Due Process Appeals

The parent/guardian 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 an expedited administrative hearing through the Special Education Unit of the Office of Administrative Hearings or by utilizing the dispute provisions of the 504 Policy and Procedures.

When an appeal relating to the placement of the student or the manifestation determination has been requested by either the parent/guardian or the Charter School, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer in accordance with state and federal law, including 20 U.S.C Section 1415(k), until the expiration of the forty-five (45) day time period provided for in an interim alternative educational setting, unless the Parent/guardian and the Charter School agree otherwise.

In accordance with 20 U.S.C. Section 1415(k)(3), if a parent/guardian disagrees with any decision regarding placement, or the manifestation determination, or if 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, the parent/guardian or Charter School may request a hearing.

In such an appeal, a hearing officer may: (1) return a child with a disability to the placement from which the child was removed; or (2) 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.

5. Special Circumstances

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 Instructional Administrator or designee may remove a student to an interim alternative educational setting for not more than forty-five (45) school 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 U.S.C Section 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 U.S.C Section 1415(k)(7)(D), upon a person while at school, on school premises, or at a school function.

6. Interim Alternative Educational Setting

The student's interim alternative educational setting shall be determined by the student's IEP/504 team.

7. Procedures for Students Not Yet Eligible for Special Education Services

A student who has not been identified as an individual with disabilities pursuant to IDEA and who has violated the Charter School's disciplinary procedures may assert the procedural safeguards granted under this administrative regulation only if the Charter School had knowledge that the student was disabled before the behavior occurred.

Charter School shall be deemed to have knowledge that the student had a disability if one of the following conditions exists:

- a. 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 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.
- b. The parent/guardian has requested an evaluation of the child.
- c. The child's teacher, or other 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 IDEA-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/guardian has not allowed an evaluation, refused services, or if the student has been evaluated and determined to not be eligible.