



AFC'S GUIDE TO

Charter School Discipline

February 2013



Advocates for Children of New York
Protecting every child's right to learn

TABLE OF CONTENTS

| | |
|--|----|
| What discipline policy applies to my child’s charter school? | 3 |
| When can my child be suspended or removed from school?..... | 3 |
| What should I do if my child has been suspended? | 4 |
| Is my child entitled to academic instruction while suspended? | 4 |
| What are my rights if my child has been suspended for five days or less? | 5 |
| My child has been suspended for 6 days or more. Now what?..... | 6 |
| What should I know about the suspension hearing process? | 7 |
| At the hearing: The fact-finding phase | 8 |
| At the hearing: The dispositional phase | 10 |
| What should I do to appeal the charter school’s suspension decision? | 11 |
| What happens if my child has a disability and has been suspended? | 12 |
| Manifestation Determination Review (MDR) | 13 |
| Functional Behavioral Assessments (FBAs) and Behavioral Intervention Plans (BIPs) | 15 |
| Contact information: Committee on Special Education..... | 16 |
| Other helpful links | 18 |
| About Advocates for Children/Contact us | 20 |

This guide does not constitute legal advice. This guide attempts to summarize existing policies or laws without stating the opinion of AFC. If you have a legal problem, please contact an attorney or advocate.

WHAT DISCIPLINE POLICY APPLIES TO MY CHILD'S CHARTER SCHOOL?

Every charter school is required to create a discipline policy explaining the procedures that the school must follow when disciplining students. Charter schools must make their discipline policies available to you and your child. If you do not have a copy, you should ask your child's charter school to give you one. Charter schools **do not** have to follow the New York City Department of Education (DOE) Chancellor's regulations or the DOE Discipline Code, but their discipline policies do need to follow certain state and federal laws.

WHEN CAN MY CHILD BE SUSPENDED OR REMOVED FROM SCHOOL?

Charter schools can only remove your child from school for any period of time by suspending him or her. Your child cannot be placed on a partial-day schedule or instructed to stay home from school *unless* the charter school follows procedures to suspend your child. In addition, a school cannot **require** that you or an adult be present in school in order for your child to attend school.

Your child may only be suspended from school when he or she has engaged in behavior that violates the school's discipline policy and is insubordinate, disorderly, violent, disruptive, or endangers the safety, morals, health, or welfare of others, and if suspension is an appropriate penalty for that violation. Therefore, under New York State education law, **your child cannot be suspended for** absence, lateness, or a parent's failure to follow a school policy. Also, your child can be suspended only if the charter school's discipline code allows suspension as a consequence for the type of behavior that the charter school says your child showed.

WHAT SHOULD I DO IF MY CHILD HAS BEEN SUSPENDED?

If your child is being suspended, you should request a copy of the school's discipline policy. If a charter school wants to suspend your child, it must follow the procedures stated in its policy or charter, as well as the procedures required by the law.

You should make sure you get written notice of the suspension. Under the law, a charter school must give you notice of the suspension, even if the school is suspending your child for only one day. You should also ask for a copy of all documents related to your child's suspension.

You should find out the school's plan to give your child alternative instruction during the suspension. See below.

IS MY CHILD ENTITLED TO ACADEMIC INSTRUCTION WHILE SUSPENDED?

Yes. Your child must continue to receive instruction – not just homework – that is substantially equivalent to the instruction he or she was getting in school before the suspension. Your child should be able to earn academic credit as a result of attending this alternative instruction while suspended. This alternative instruction must begin immediately after you receive notice of your child's suspension and should be provided by the school for the full length of your child's suspension. The charter school must provide you with information about when and where your child will receive alternative instruction at the time of or immediately following the start of the suspension.

Your child should not be marked as absent from school if he or she is attending alternative instruction.

WHAT ARE MY RIGHTS IF MY CHILD HAS BEEN SUSPENDED FOR FIVE DAYS OR LESS?

For suspensions of five days or less, the charter school must give you written notice of the suspension within 24 hours of the proposed suspension. The notice should tell you the date(s) that your child will be suspended and the behavior that led to the suspension. The notice should also tell you of your right to have a conference with the principal and the witnesses involved in the incident. The notice should also include any other information that the charter school's discipline policy requires the school to give to parents. The school should also tell you about the alternative instruction your child will receive while suspended. See page 4.

For suspensions of one to five days, you must be given the opportunity for an informal conference with the principal. At this conference, you or your child may present your version of what happened and ask questions of the person who witnessed your child's behavior. The informal conference must take place *before* your child is suspended unless your child poses a continuing danger or an ongoing threat of disruption to the academic process. If you would like an informal conference and the school has not scheduled one, you should ask the school to schedule the conference as soon as possible.

The charter school may ask to hold a separate meeting with you and school staff upon your child's return from suspension. While the school can request to have this meeting, it cannot extend your child's suspension because you are unable to attend this meeting.



MY CHILD HAS BEEN SUSPENDED FOR 6 DAYS OR MORE. NOW WHAT?

Under New York State law, if your child's school is proposing a suspension of 6 days or more, then you have the right to have a suspension hearing. The school must give you written notice of the proposed suspension. The notice must include:

- the charges against your child
- the date and time of the suspension/expulsion hearing
- your right to have an attorney represent you and your child at the hearing
- your right to cross-examine (question) witnesses and present evidence at the hearing

The school must also give you information about the alternative instruction your child will receive while he or she waits for the hearing. See page 4 for more information about alternative instruction.



You have the right to have a hearing within five days of your child's suspension. If you need more time to find a lawyer or prepare, you may request that the school adjourn (reschedule) the hearing to give you a reasonable amount of time to prepare. If the school denies your request before the hearing, then at the start of the hearing you should ask the hearing officer(s), on the record, to adjourn the hearing and state your reason for requesting more time. If you request an adjournment and your child is out of his or her regular classroom and in an alternative educational setting during this time, he or she may remain in the alternative setting until the hearing occurs and until the hearing officer makes a decision about the suspension.

WHAT SHOULD I KNOW ABOUT THE SUSPENSION HEARING PROCESS?

A suspension hearing is like a mini-trial. The person in charge of conducting the hearing, sometimes called the “hearing officer,” must decide (1) if your child has done what the suspension/expulsion notice says he or she did; and, if so, (2) what the appropriate response should be for your child’s conduct. You should check the school’s discipline policy to find out who should be conducting the suspension hearing (e.g., principal, student support team, Board of Trustees). The person(s) conducting the hearing can accept the school’s recommendation for a long-term suspension or expulsion, reject the recommendation and allow your child to return to school immediately, or decide that a shorter suspension or a less severe consequence is appropriate.

As soon as you receive notice of the proposed suspension or expulsion, you should ask the charter school to give you the documents and the list of witnesses that the school will present at the hearing, as well as any other evidence that the school has related to the incident that led to the suspension. These documents should include any statements that your child or other students or teachers have written about the incident. You should make sure to get this information before the hearing. If the school does not give you this evidence in a reasonable amount of time before the hearing, then you can request that the school adjourn (reschedule) the suspension hearing to give you time to prepare. At the hearing, you can also ask the hearing officer not to allow the school to present information that the school did not give to you in advance.

If you haven’t already done so, talk to your child about what happened. Did your child do what the school accuses your child of doing? What happened leading up to the incident? What happened after the incident? Next, review the documents given to you. Note any differences between the witness statements. Do the statements say that your child did what the suspension notice says your child did?

There should be two parts to the hearing: (1) the fact-finding phase and (2) the dispositional phase. During the fact-finding phase, the hearing officer(s) should be deciding whether the charges against your child are true and should only be hearing evidence related to incident that caused the suspension. The charter school must record the hearing. Video or audio recording is acceptable. You should ask for a copy of this recording if you want to appeal the decision.

AT THE HEARING: THE FACT-FINDING PHASE

The School's Case

The school must present evidence to prove that your child did what the suspension notice says he or she did. You have the right to cross-examine (question) any witnesses that the school calls to testify or any witnesses who wrote statements that the school uses as evidence against your child. You may want to take notes while the witness is testifying. Then, when it is your turn to question the school's witnesses, you may want to ask them questions that will help you and the hearing officer(s) understand what happened. This is an opportunity to show that the school is incorrect or does not have enough information about the events that led to your child's suspension. Below are some examples of questions you may want to think about when deciding what questions to ask the school's witness.

- Is the witness missing any information?
- Is there something the witness did **not** see?
- Does everything the witness says make sense?

The school may have a staff person testify about his or her investigation of the incident. Charter schools may have procedures that staff is required to follow when investigating an incident or recommending a long-term (6 days or more) suspension. You may want to ask this witness to tell you what these procedures are and then ask questions to see if he or she followed them. If it seems that the person did not follow the school's procedures, then you may want to point this out during a closing statement, which you can give at the end of the fact-finding phase of the hearing.

Remember that only the *specific charges against your child* can be discussed during the fact-finding part of the hearing. This means that the school cannot bring up other times that your child has gotten in trouble, whether before or after the incident for which your child was suspended. If any of the school's testimony or evidence is not related to the charges at this point in the hearing, then you should **object** by stating to the hearing officer(s): "I object to this testimony or evidence because it's not related to the charges against my child."



Your Case

Again, at the hearing, it is the *school's* job to show that your child did what the school accuses your child of doing. The hearing officer(s) should only uphold the suspension if the school shows that your child did what the school says your child did. So, you can decide whether you want to present any evidence (documents, pictures, etc.) or testimony (witnesses) to show your child's side of the story. Your witnesses can be anyone who can support your child's version of events, including other students and school staff. You should talk to potential witnesses about coming to the hearing at least a few days before the date of the hearing.



It is important to talk to your witnesses before the hearing to find out exactly what they saw and what they will say at the hearing. Just because someone saw the events that day does not mean he or she would be a good witness for your child. It is up to you and your child whether or not your child testifies at the hearing. Your child **cannot** be forced to testify. Remember that if your child does choose to tell his or her side of the story, the school and/or the hearing officer(s) may ask your child questions about the incident. If your child has been arrested for the incident that caused the suspension, then you should speak with your child's attorney before deciding whether your child will testify at the suspension/expulsion hearing. Your child's testimony will be recorded at the suspension/expulsion hearing and may be used against your child in a court case.

Closing Statements

At the end of the fact-finding phase of the hearing, each side will have the opportunity to make a closing statement. It is up to you whether or not to make a closing statement. You **cannot** present new evidence in your closing statement. Rather, the closing is your opportunity to summarize everything that came up at the hearing that supports your child's side of the story and/or shows that the school didn't present enough evidence to prove that your child actually did what the school says he or she did. You may want to consider discussing: statements and/or testimony that contradict each other, lack of information about what actually happened, and procedures that the school didn't follow correctly.

AT THE HEARING: THE DISPOSITIONAL PHASE

During the second part of the hearing, the dispositional phase, the school may present evidence about why the recommended suspension or expulsion is appropriate in your child's case. During this part of the hearing, the school may discuss past violations of the discipline code. You may discuss why you believe the recommended suspension/expulsion is too harsh of a penalty for the conduct that led to the suspension. You may introduce any evidence that you have that shows why the punishment that is recommended is too harsh. This may include punishments that other students have received for the same conduct. You may also want to submit into evidence any positive information you have about your child like certificates of achievement he or she has earned, any volunteering he or she has done in school, or anything that shows your child in a positive light.

The Decision

The hearing officer(s) may make a decision at the hearing or may send you a decision letter following the hearing. If the hearing officer(s) does not make a decision at the hearing, then you should ask when you can expect to get the decision. Any punishment that your child receives from the charter school must be appropriate. This means that your child should not receive a harsh punishment like a long suspension or expulsion for a minor violation of the charter school's discipline code.



WHAT SHOULD I DO TO APPEAL THE CHARTER SCHOOL'S SUSPENSION DECISION?

After you receive the charter school's final decision to suspend or expel your child, you have the right to file an appeal (ask to overturn the decision). In a recent court case, the New York State Supreme Court decided that parents at all New York charter schools must follow the steps listed below in the order that they appear to appeal a suspension or expulsion decision. Some charter schools might have family handbooks or discipline codes that list a different appeals process. However, the Court said that parents must follow the process listed below regardless of what the charter school's handbook or discipline code says. The appeal should be submitted as soon as possible and within the school's deadline for submitting the appeal.

Step 1: Submit a letter to the charter school's Board of Trustees.

In your letter, you should explain (1) the problem that you are having with the charter school (e.g., suspension/expulsion decision), (2) the reason you disagree with the school's decision, and (3) the specific request that you are making to the Board (e.g., remove the suspension from the student's record, impose a shorter suspension, or reinstate the student in school). You can ask the school for the name and contact information for the Chairperson of the Board of Trustees.

Step 2: Submit a letter to the charter school's authorizer.

If the Board of Trustees does not respond to your complaint letter or if it agrees with the charter school's decision, then you can submit a letter of complaint to the **charter school's authorizer**, the entity that approved the school's charter. A school is authorized by one of three entities—the NYC Department of Education (DOE), the State University of New York Board of Trustees (SUNY), or the New York State Education Department (NYSED). You can find out which authorizer is responsible for your school by checking the NYC Charter School Directory, <http://schools.nyc.gov/community/planning/charters/Directory.htm>, or by asking the charter school. See page 18 for the websites of the three authorizers.

Step 3: Submit a letter to the State Education Department.

If the school's authorizer agrees with the school's decision, then you can submit your complaint to the New York State Education Department's Charter School Office by e-mailing your complaint to charterschools@mail.nysed.gov.

WHAT HAPPENS IF MY CHILD HAS A DISABILITY AND HAS BEEN SUSPENDED?

If your child has a disability or you suspect your child of having a disability, he or she may be entitled to special protections.

A federal law called the Individuals with Disabilities Education Act (IDEA) gives protections to students with disabilities facing suspensions. These protections apply to students who have Individualized Education Programs (IEPs) and, under certain circumstances, to students whom the school has reason to suspect may have a disability. There are also protections available for students who have Section 504 Plans. These protections also apply to students in charter schools. In general, the law says that schools, including charter schools, cannot suspend a student for more than ten days for behavior that is closely related to that student's disability.

Before the hearing:

Read your child's latest IEP carefully. Is there any connection between the incident for which your child was suspended and his or her disability? Were all of your child's services in place on the day of the incident? If your child has a Behavioral Intervention Plan (BIP), was it being followed?

At the hearing:

Ask questions of witnesses that will help get out any information about your child's disability or services that you think are important to showing that the charges against your child should not be sustained (upheld). During the dispositional phase of the hearing, the hearing officer(s) must be given a copy of your child's special education records. You may discuss any information related to your child's disability or services that the hearing officer(s) should consider when deciding the appropriate consequences for the incident. The hearing officer(s) should consider the circumstances surrounding the incident leading to the suspension and any existing IEP or BIP in determining whether to uphold or overturn the suspension, and in determining the length of the suspension.



MANIFESTATION DETERMINATION REVIEW (MDR)

If your child has an IEP and is facing a suspension of more than 10 days, the Department of Education's Committee on Special Education (CSE) should hold a Manifestation Determination Review (MDR) meeting for your child. The CSE must hold the MDR before your child is suspended from school for a period of more than 10 days in a row or before your child is suspended for a total of more than 10 days during the current school year for similar types of behavior. The CSE should hold the MDR *immediately* when your child is facing this type of suspension. The charter school is required to request that the CSE hold the MDR and to make sure that an MDR occurs. However, to help make sure that the MDR happens quickly, you may also want to contact the CSE where the charter school is located to ask that it hold an MDR for your child once your child has either been recommended for a suspension of more than 10 days or if your child has already missed 10 days of school because he or she has served multiple suspensions due to similar behaviors. See page 16 for a list of CSEs.

An MDR is a meeting that happens with you and other members of your child's IEP team, including a representative from the CSE, to determine the relationship, if any, between your child's disability and the behavior leading to the suspension(s). You have the right to bring an advocate or attorney with you to the MDR.

Everyone at the MDR must review and consider all relevant information in your child's file, including his or her IEP, evaluations, teacher observations, and any other information that you provide. If your child works with someone (like a counselor or a psychologist) from outside the school who can explain how your child's actions were related to his or her disability, then you may want to consider asking that person to come to the MDR, to participate by telephone, or to write a letter explaining the connection between your child's behavior and his or her disability.

If the CSE finds that your child's behavior had a direct and substantial relationship to your child's disability OR if your child's behavior was the direct result of the school's failure to fully implement your child's IEP, then the CSE must determine that your child's behavior was a "manifestation" of his or her disability.

If the CSE determines that your child's behavior was a manifestation of his or her disability, then your child has the right to return to the charter school immediately. The CSE must also conduct a Functional Behavioral Assessment (FBA) and then hold a meeting with you to develop a Behavior Intervention Plan (BIP) or review the student's BIP if the student already has one. See page 15.

If the CSE determines that your child's behavior was not a manifestation of his or her disability, then your child's suspension will continue until the end of the suspension period determined by the charter school. During your child's suspension, he or she must be provided with appropriate special education services that allow him or her to continue to participate in the general education curriculum and to progress toward meeting his or her IEP goals. The CSE should work with you and the school to develop a plan for providing your child with these services during the suspension. In addition, the CSE should conduct an FBA and develop a BIP to try to stop the behavior from happening again. See page 15.

If you do not agree with the result of your child's MDR, then you have the right to an **expedited** (faster than usual) impartial hearing to appeal the MDR decision. See *Advocates for Children's Impartial Hearing Guide*, available in English and Spanish at http://www.advocatesforchildren.org/get_help/guides_and_resources, or call AFC's Helpline for more information on impartial hearings.

Expedited Evaluation for Initial Special Education Services

If your child has been suspended and you think that your child may need special education services, your child has the right to an expedited (faster than usual) special education evaluation (conducted within 15 school days) when you make a request for an evaluation at any time during the suspension. If you suspect your child of having a disability, you should send the request to the Committee on Special Education (CSE) for the region where the charter school is located and send a copy of the request to the school leader (principal) for your child's school. The expedited evaluation request should be in writing, dated, and signed by you. It should include the name of your child's school and should also explain the reason that you are requesting an expedited evaluation, including the fact that your child has been suspended/expelled by the charter school. See page 16 for a list of CSEs.

FUNCTIONAL BEHAVIORAL ASSESSMENTS (FBAs) AND BEHAVIORAL INTERVENTION PLANS (BIPs)

What is an FBA?

A Functional Behavioral Assessment (FBA) is an evaluation that tries to determine what causes your child's behaviors that get in the way of learning. The FBA must include a description of the problem behavior(s), the factor(s) that contribute to the behavior(s), and thoughts as to why the behavior(s) is/are happening. Your child's FBA must be based on multiple sources, including direct observation of your child, information from your child's teachers and/or related service providers, as well as a review of your child's history of behavior.



What is a BIP?

A Behavioral Intervention Plan (BIP) is a plan that is based on the results of the FBA and, at a minimum, includes a description of the problem behavior(s), thoughts as to why the problem behavior(s) is/are happening, and **intervention strategies** that include **positive** behavioral supports (e.g., rewards or praise) and services to address the behavior(s).

FBAs and BIPs are tools that can help students with disabilities who have behavioral challenges. The need for an FBA and BIP must be considered when the behavior of a student with a disability is consistently getting in the way of his or her learning or that of others. If your child with a disability is struggling with his or her behavior, you may want to consider asking the school and the Committee on Special Education (CSE) to conduct an FBA and develop a BIP.

For more information on FBAs and BIPs, see AFC's Fact Sheet on FBAs and BIPs, available in English and Spanish at http://www.advocatesforchildren.org/get_help/guides_and_resources. Also see the Department of Education website at http://www.schools.nyc.gov/Offices/District75/Departments/PBS/pbs_forms.htm.

CONTACT INFORMATION: Committee on Special Education

| Region | Chairperson | Districts | Address | Phone/Fax |
|--------|-------------------|------------|---|--|
| 1 | Rosetta BrownLee | 7, 9, 10 | 1 Fordham Plaza, 7th Fl. Bronx, NY 10458 | P: (718) 329-8001 F: (718) 741-7928 |
| 2 | Michele Beatty | 8, 11, 12 | 3450 E. Tremont Ave., 2nd Fl. Bronx, NY 10465 | P: (718) 794-7429 F: (718) 794-7445 |
| 3 | Esther Morell | 25, 26 | 30-48 Linden Pl. Flushing, NY 11354 | P: (718) 281-3461 F: (718) 281-3478 |
| | | 28, 29 | 90-27 Sutphin Blvd. Jamaica, NY 11435 | P: (718) 557-2553 F: (718) 557-2620 |
| 4 | Chris Cinicola | 24, 30 | 28-11 Queens Plaza North, 5th Fl. Long Island City, NY 11101 | P: (718) 391-8405 F: (718) 391-8556 |
| | | 27 | Satellite Office 82-01 Rockaway Blvd., 2nd Fl. Ozone Park, NY 11416 | P: (718) 642-5715 F: (718) 642-5891 |
| 5 | Mariama Sandi | 19, 23, 32 | 1665 St. Marks Ave. Brooklyn, NY 11233 | P: (718) 240-3558 F: (718) 240-3555 |
| 6 | Arlene Rosenstock | 17, 18, 22 | 5619 Flatlands Ave. Brooklyn, NY 11234 | P: (718) 968-6200 F: (718) 968-6253 |

| Region Chairperson Districts | | | Address | Phone/Fax |
|------------------------------|---------------------------|-------------------|---|--|
| 7 | Amine Haddad | 31 | 715 Ocean Terrace, Bldg. A Staten Island, NY 10301 | P: (718) 420-5700 F: (718) 420-5787 |
| | | 20, 21 | 415 89th St. Brooklyn, NY 11209 | P: (718) 759-4900 F: (718) 759-4970 |
| 8 | Deborah Cuffey-Jackson | 13, 14, 15, 16 | 131 Livingston St., 4th Fl. Brooklyn, NY 11201 | P: (718) 935-4900 F: (718) 935-5167 |
| 9 | Jennifer Lozano | 1, 2, 4 | 333 7th Ave., 4th Fl. New York, NY 10001 | P: (917) 339-1600 F: (917) 339-1450 |
| 10 | Mark Jacoby | 3, 5, 6 | 388 West 125th St. New York, NY 10027 | P: (212) 342-8300 F: (212) 342-8427 |

An updated list is available at

<http://schools.nyc.gov/Academics/SpecialEducation/ContactsResources/cse.htm>

OTHER HELPFUL LINKS

To find out more about filing a complaint to appeal a charter school suspension/expulsion, visit the website for your school's authorizer.

NYC DOE Office of Charter Schools

<http://schools.nyc.gov/community/planning/charters/For+Parents/default.htm>

SUNY Charter Schools Institute

<http://www.newyorkcharters.org/parentResources.htm#questions>

NYSED Charter School Office

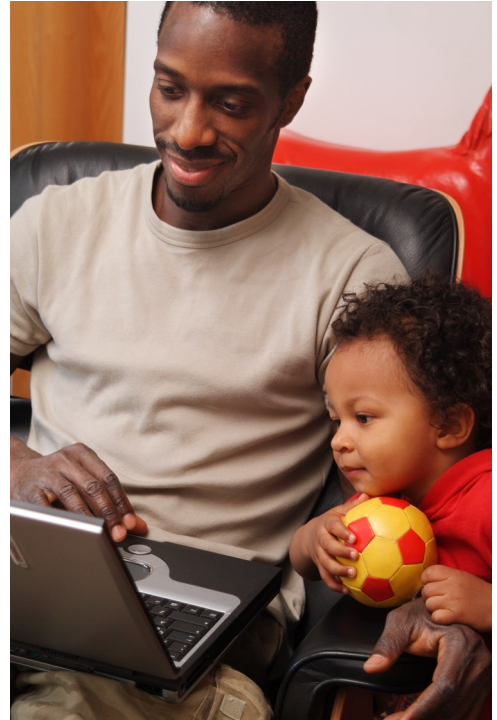
<http://www.p12.nysed.gov/psc/complaint.html>

For more general information about charter schools, please view AFC's Questions and Answers about Charter Schools Fact Sheet at

http://www.advocatesforchildren.org/sites/default/files/library/charter_questions_answers.pdf.

For information about charter schools and special education, please view AFC's Rights of Students with Disabilities in Charter Schools Fact Sheet at

http://www.advocatesforchildren.org/sites/default/files/library/charter_sch_sp_ed_fact_sheet.pdf.





Our Mission

AFC promotes access to the best education New York can provide for all students, especially students of color and students from low-income backgrounds. We use uniquely integrated strategies to advance systemic reform, empower families and communities, and advocate for the educational rights of individual students.

Still have more questions?

Please Call
The Jill Chaifetz Education Helpline
Monday through Thursday
10AM to 4PM
866-427-6033 (toll free)

Advocates for Children of New York, Inc.
151 West 30th Street, 5th Floor
New York, NY 10001
Phone (212) 947-9779
Fax (212) 947-9790
info@advocatesforchildren.org
www.advocatesforchildren.org