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An Analysis of New York City Charter School
Discipline Policies



A report by Advocates for Children of New York
February 2015



Acknowledgements

We would like to thank and acknowledge Paulina Davis for her work as primary author of this report, as well as Randi Levine and Sarah Part for their significant contributions. We would also like to thank the former Advocates for Children interns who helped collect, enter, and organize charter school discipline policies for this report. Finally, we would like to thank the students and families that we serve for sharing their experiences with us.

We are grateful to The Atlantic Philanthropies for their generous support of our work.

About Advocates for Children

Since its founding in 1971, Advocates for Children of New York (AFC) has been protecting the education-related needs of children most at risk of academic failure or school-based discrimination due to such factors as poverty, disability, race, ethnicity, language barriers, immigration status, homelessness, or involvement in the child welfare or juvenile justice system. AFC's mission is to promote access to the best education New York can provide for all students, especially students of color and students from low-income backgrounds. AFC uses integrated strategies to advance systemic reform, empower families and communities, and advocate for the educational rights of individual students.

TABLE OF CONTENTS

EXECUTIVE SUMMARY4

APPLICABLE LAWS GOVERNING CHARTER SCHOOL DISCIPLINE.....9

KEY FINDINGS 12

Excessive Punishments12

Due Process16

Students with Disabilities24

Alternative Instruction27

RECOMMENDATIONS 29

EXECUTIVE SUMMARY

Ms. Lopez¹ rejoiced when her daughter, Mia, was accepted to a local charter school for kindergarten. Ms. Lopez believed that this school would provide her daughter with the best chance of getting a high-quality education. However, within the first month of school, the charter school suspended five-year-old Mia for disruptive behavior, claiming that she had hit another student. Ms. Lopez was very concerned about Mia's alleged behavior and therefore requested that Mia be evaluated to determine if she had a disability and needed special education services. While evaluations were pending, the charter school suspended Mia another two times for impulsive behavior. Ms. Lopez tried to find out from Mia what had happened, but given Mia's age and a delay in her communication skills, Ms. Lopez was unable to get an explanation that she could understand.

Ms. Lopez was devastated when the charter school principal then told her that, based on the charter school's policy, because Mia had received three suspensions, the charter school was expelling her after just two months of kindergarten. The principal stated that the school would give Ms. Lopez a two-week "grace period" to return Mia to her preschool (for which she was no longer eligible) or enroll her at her zoned elementary school. During those two weeks, Mia could attend school if her mother stayed with her the whole time.

Ms. Lopez had chosen the charter school because it had touted the extra support it provided to students to help them succeed. But at the time when Mia needed support, the charter school told Ms. Lopez to take Mia someplace else. Ms. Lopez could not believe that the charter school was giving up on Mia so quickly.

Mia's charter school expelled her without providing written notice of the charges against Mia and the school's proposal to expel her, without scheduling a hearing to consider Mia's actions and determine an appropriate penalty, and without following any procedures required to protect the rights of students with disabilities even though Mia was being evaluated for special education services. Without the opportunity for a hearing, Mia's mother did not have the chance to ask questions about what had happened or to suggest a less severe response that would address Mia's behavior and allow her to stay at the school. Because the school did not follow the required procedures for students with disabilities, Mia did not receive a behavioral assessment to determine the cause of her behavior and develop effective intervention strategies.

When Advocates for Children of New York (AFC) reviewed the charter school's discipline policy, we found that, although it had been approved by the charter school's authorizer and the New York State Board of Regents, it did not comport with the requirements of the law. The policy did not require notice prior to imposing suspensions or expulsions, did not require a hearing prior to suspensions or expulsions, did not place any limits on the kinds of infractions that could trigger an expulsion, and did not include any of the legal protections required for students with disabilities. Indeed, a school administrator acknowledged that, before AFC's involvement in Mia's case, she had not been aware of the need to follow additional procedures for students with disabilities, as they were not included in the charter school's policy.

After AFC intervened, Mia was able to stay at the charter school and begin receiving special education supports and services, including an individualized behavioral plan, that helped to improve her behavior in class.



¹ All names in this report have been changed to protect the anonymity of the students and parents we have assisted.

Over the past few years, Advocates for Children of New York (AFC) has assisted an increasing number of parents who have contacted us with concerns about charter school suspensions and expulsions. In the past year-and-a-half alone, AFC has provided guidance or legal representation to more than 100 parents in charter school suspension and expulsion cases. Most of these parents had celebrated winning the charter school lottery and wanted their children to continue attending the charter school.

In helping parents with these cases, AFC found that charter school discipline policies were not always readily available.² Parents often did not have a copy of the policies, and the policies were not always available online.

In June 2013, we sent Freedom of Information Law (FOIL) requests to the three New York City charter school authorizers,³ all charter schools operating in NYC during the 2012-2013 school year, and, to the extent possible, charter schools opening in NYC during the 2013-2014 school year seeking, among other things, copies of their discipline policies. Charter schools are required to comply with FOIL requests,⁴ and most charter schools responded. From the FOIL responses and charter school websites, we were able to review 164 discipline policies from 155 of the 183 charter schools operating in NYC during the 2013-2014 school year.⁵ These discipline policies came from large charter school networks as well as from small, independent charter schools.

From our review, we found:

- (1) 107 of the 164 NYC charter school discipline policies we reviewed **permit suspension or expulsion as a penalty for any of the infractions listed in the discipline policy, no matter how minor** the infraction.

By contrast, the New York City Department of Education's (DOE) Discipline Code aligns infractions with penalties, limiting suspension to certain violations and prohibiting expulsion for all students under age 17 and for all students with disabilities.⁶

² New York charter schools operate independently from the school districts in which they are located. N.Y. EDUC. LAW § 2850(2) (2014). These schools are exempt from most state and local laws, § 2854(1)(b), and are responsible for creating their own discipline policies that meet certain legal requirements. See *id.* § 2851(2)(h).

³ The three charter school authorizers for New York City charter schools are the New York State Board of Regents, the Board of Trustees of the State University of New York, and the Chancellor of the New York City Department of Education. See N.Y. EDUC. LAW § 2851(3). Currently, the New York City Department of Education does not have the authority to accept new charter applications, but continues to be responsible for the existing charter schools that it authorized. See N.Y. EDUC. LAW §§ 2851(3), 2852(9), (9-a).

⁴ N.Y. EDUC. LAW § 2854(1)(e).

⁵ Seven charter schools provided multiple discipline policies, as they have different discipline policies for different grade levels.

⁶ In each section, we provide a comparison with the New York City Department of Education's Discipline Code and Regulations of the Chancellor. These regulations and policies do not apply to charter schools, but provide useful comparisons because they apply to the vast majority of students in New York City. It is important to note that we do not uphold the DOE Discipline Code as a model. Indeed, we are working with other advocates to reform the DOE Discipline Code so that it relies less on excluding students from school. While we receive numerous calls from parents requesting assistance with suspensions from DOE district public schools, the vast majority of those cases involve the implementation of the DOE's regulations and policies rather than the illegality of the policies themselves.

- (2) 82 of the 164 NYC charter school discipline policies we reviewed **permit suspension or expulsion as a penalty for lateness, absence, or cutting class**, in violation of state law.
- (3) 133 of the 164 NYC charter school discipline policies we reviewed **fail to include the right to written notice** of a suspension prior to the suspension taking place, in violation of state law.
- (4) 36 of the 164 NYC charter school discipline policies we reviewed **fail to include an opportunity to be heard prior to a short-term suspension**, in violation of the U.S. Constitution, New York State Constitution, and state law.
- (5) 25 of the 164 NYC charter school discipline policies we reviewed **fail to include the right to a hearing prior to a long-term suspension**, in violation of the U.S. Constitution, New York State Constitution, and state law.
- (6) 59 of the 164 NYC charter school discipline policies we reviewed **fail to include the right to appeal** charter school suspensions or expulsions, even though state law establishes a distinct process for charter school appeals.
- (7) 36 of the 164 NYC charter school discipline policies we reviewed **fail to include any additional procedures for suspending or expelling students with disabilities**, in violation of federal and state law.
- (8) 52 of the 164 NYC charter school discipline policies we reviewed **fail to include the right to alternative instruction** during the full suspension period, in violation of state law.

While charter schools should be able to discipline their students, they must uphold the rights of their students and provide them with a fair discipline process. The Charter Schools Act requires charter school authorizers to ensure that charter applications include discipline policies and procedures that comport with the law.⁷ Yet, all three authorizers of New York City charter schools have approved charters for schools that have legally inadequate discipline policies.

⁷ The Charter Schools Act states: “An application for a charter school shall not be approved unless the charter entity finds that: (a) the charter school described in the application meets the requirements set out in this article and all other applicable laws, rules and regulation.” N.Y. EDUC. LAW § 2852(2). The charter school application must include discipline procedures. *Id.* § 2851(2)(h).

Based on these findings and our work assisting families in charter school suspension and expulsion cases, we recommend:

- (1) Charter school authorizers and the Board of Regents should **ensure that charter school discipline policies meet the requirements of the law** and are aligned with federal guidance. They should not approve or renew charter schools unless they have discipline policies that comply with the law.
- (2) The State Legislature should **amend state law to affirm that charter schools must abide by the requirements of Section 3214 of the New York Education Law and its regulations**, ending any perceived ambiguity in the law.
- (3) The State Legislature should **amend state law to include explicit standards for expelling students** to ensure that expulsions for all schools, including charter schools, are limited to the most severe and dangerous behaviors in accordance with decisions of the New York State Education Department (NYSED) Commissioner.
- (4) The State Legislature should **amend state law to require all public schools, including charter schools, to provide full-time alternative instruction** when students are suspended or expelled. New York City district public school⁸ students are currently entitled to full-time alternative instruction when they are suspended for more than five days.
- (5) The State Legislature should **amend state law to require charter schools to report suspension and expulsion data**. Charter school authorizers and the Board of Regents should consider suspension and expulsion data, as well as student attrition data, in charter school renewal applications.
- (6) Because charter schools and the DOE both have responsibilities to students with disabilities who face suspension or expulsion, **charter school authorizers should collaborate with the DOE to develop a memorandum of understanding** delineating their respective responsibilities to ensure that these students are receiving protections required by federal and state law.
- (7) Charter school authorizers and the Board of Regents, with input from parents, advocates, and students, should **develop a model discipline policy to provide guidance to charter school leaders**. In addition, authorizers should provide training for charter school leaders and staff in suspension procedures, discipline of students with disabilities, and positive approaches to discipline, such as restorative justice, peer mediation, social-emotional learning, or positive behavior interventions.

⁸ We use the term “district public school” to refer to New York City public schools that are not charter schools.

- (8) Charter school authorizers and the Board of Regents should **identify and promote best practices and innovative, positive approaches to discipline**, as encouraged by the U.S. Departments of Education and Justice.
- (9) NYSED should **post the Education Commissioner’s charter school suspension and expulsion appeal decisions on the NYSED website**, alongside the district public school appeal decisions that are already posted.
- (10) The State Legislature should **amend the Charter Schools Act to require all charter schools to distribute their discipline policies to students and parents** at the beginning of the school year and post the policies on their websites along with contact information for the appeals/grievance process.

We make these recommendations in recognition that suspension and expulsion can have devastating consequences for the students involved. Suspended students are more likely to repeat a grade,⁹ drop out of school,¹⁰ have increased behavioral problems in school,¹¹ and come into contact with the juvenile justice system.¹² This data is particularly troubling because, nationally and locally, African American students and students with disabilities are suspended from school at rates disproportionate to their peers.¹³ One year ago, the federal government called upon all public schools to curb reliance on suspension, expulsion, and zero tolerance policies and to increase use of positive interventions, such as conflict resolution, counseling, and other inclusive approaches to discipline, to address suspension disparities and to minimize the negative impact of suspension on students.¹⁴ Improving school discipline in these ways is integral to creating high-quality public schools, including charter schools, that work for students, teachers, and school communities.

⁹ T. Fabelo et al., COUNCIL OF STATE GOV'TS JUSTICE CTR., *BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT* 54 (2011), available at http://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf.

¹⁰ *Id.*; see Linda M. Raffaele Mendez, *Predictors of Suspension and Negative School Outcomes: A Longitudinal Investigation*, 99 *NEW DIRECTIONS FOR YOUTH DEV.* 17 (2003).

¹¹ S.A. Hemphill et al., *The Effect of School Suspensions and Arrests on Subsequent Adolescent Antisocial Behavior in Australia and the United States*, 39 *J. ADOLESCENT HEALTH* 736, 736-44 (2006).

¹² Fabelo, *supra* note 9, at 61.

¹³ See U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, *DATA SNAPSHOT: SCHOOL DISCIPLINE* (Mar. 2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>; N.Y. CIVIL LIBERTIES UNION, *STUDENT SAFETY ACT REPORTING ON SUSPENSIONS 2013-2014* (2014), available at http://www.nyclu.org/files/ssa_suspension_factsheet_2013-2014.pdf.

¹⁴ See U.S. DEP'T OF EDUC., *GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE* (Jan. 2014), available at <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>; see also U.S. DEP'T OF EDUC. & U.S. DEP'T OF JUSTICE, *DEAR COLLEAGUE LETTER: NONDISCRIMINATORY ADMINISTRATION OF SCHOOL DISCIPLINE* (Jan. 8, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>.

APPLICABLE LAWS GOVERNING CHARTER SCHOOL DISCIPLINE

We are often asked which laws charter schools must follow when disciplining students. Here is a list of certain key provisions, but it is not a comprehensive list of the laws that charter schools must follow. The requirements of some of these laws will be discussed in more detail later in the report.

Federal

Charter schools must comply with the U.S. Constitution and federal statutes and regulations.¹⁵

U.S. Constitution

In 1974, in the landmark case of *Goss v. Lopez*, the U.S. Supreme Court established that suspending students from school without first providing them with notice and an opportunity to be heard violated the Due Process Clause of the 14th Amendment of the Constitution.¹⁶ While the Court was addressing suspensions of ten days or less, the Court also noted that longer suspensions or expulsions may require more formal due process procedures.¹⁷ Since there are no federal statutes or regulations that govern the process of suspending students, the *Goss* decision is the federal guidepost for minimum due process requirements for student suspensions.

Individuals with Disabilities Education Act (IDEA)¹⁸ and Section 504 of the Rehabilitation Act¹⁹

These federal statutes and their implementing regulations include requirements that schools provide additional protections to students with disabilities when disciplining them.

State

Charter schools must comply with the New York State Constitution. Charter schools must meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools except as provided in the Charter Schools Act.²⁰ Charter schools are exempt from all other state and local laws and regulations except as provided in the Charter Schools Act.²¹

¹⁵ See N.Y. EDUC. LAW § 2854(1)(b).

¹⁶ *Goss v. Lopez*, 419 U.S. 565, 581 (1975).

¹⁷ *Id.* at 584.

¹⁸ 20 U.S.C. §§ 1400-1482 (2014); 34 C.F.R. Part 300 (2014).

¹⁹ 29 U.S.C. § 794; 34 C.F.R. Part 104.

²⁰ N.Y. EDUC. LAW § 2854(1)(b).

²¹ *Id.*

New York State Constitution

Similarly to the United States Constitution, the New York State Constitution includes a Due Process Clause.²²

New York State Charter Schools Act (Charter Schools Act)²³

This law governs the requirements for charter schools. When it comes to discipline, charter school applications must include “rules and procedures by which students may be disciplined, including but not limited to expulsion or suspension from the school, which shall be consistent with the requirements of due process and with federal laws and regulations governing the placement of students with disabilities.”²⁴ The Charter Schools Act also states that the exemptions of charter schools from the requirements of state law shall not affect “the requirements of compulsory education of minors established by part one of article sixty-five [of the Education Law].”²⁵ Part one of article sixty-five, entitled “Compulsory Education,” includes Section 3214, which sets forth due process requirements for school suspensions.²⁶

New York State Education Law Section 3214²⁷

This state law governs student suspension. The law codifies the *Goss v. Lopez* decision by setting out the due process requirements and procedures that New York public schools must follow when seeking to suspend a student from school. Section 3214 and its implementing regulations include a set of procedures for students facing suspensions of five days or less and an additional set of procedures for students facing suspensions of more than five days.²⁸ It also includes procedures regarding disciplining students with disabilities, in line with the federal laws mentioned above.²⁹

Court decisions interpreting these federal and state provisions are also applicable. Furthermore, the Commissioner of the New York State Education Department (Education Commissioner) is

²² N.Y. CONST. art. I, § 6 (2014) (“No person shall be deprived of life, liberty or property without due process of law.”).

²³ N.Y. EDUC. LAW §§ 2850-2857.

²⁴ *Id.* § 2851(2)(h).

²⁵ *Id.* § 2854(1)(b).

²⁶ See N.Y. EDUC. LAW, art. 65.

²⁷ *Id.* § 3214. Some charter school advocates have claimed that Section 3214 does not apply to charter schools, citing the provision of the Charter Schools Act that states that charter school applications must include “rules and procedures by which students may be disciplined, including but not limited to expulsion or suspension from the school, which shall be consistent with the requirements of due process and with federal laws and regulations governing the placement of students with disabilities.” *Id.* § 2851(2)(h). However, this argument ignores the facts that the Charter Schools Act explicitly states that the state law exemption does not affect part one of article 65 (where Section 3214 is contained) and that New York’s “requirements of due process” for suspensions are found in Section 3214. In 2011, a group of legal service organizations wrote to the State Education Department, which, in response, confirmed that the State expects charter schools, at a minimum, to meet the requirements of Section 3214. Given the argument that some charter school advocates have made, we recommend that the State Legislature end any perceived ambiguity by amending state law to clarify that Section 3214 applies to charter schools. Nevertheless, we note that most of our key findings do not rest solely on the applicability of Section 3214 to these schools.

²⁸ See *id.* § 3214(3); N.Y. COMP. CODES R. & REGS. tit. 8, § 100.2(l) (2014).

²⁹ N.Y. EDUC. LAW § 3214(3)(g). In addition to establishing protections for students with disabilities, Section 3214 also references article 89 of the New York State Education Law. The state regulations implementing the laws regarding discipline for students with disabilities are found in N.Y. COMP. CODES R. & REGS. tit. 8, Part 201.

authorized to decide discipline appeals from district public schools³⁰ and from charter schools.³¹ As a result, the Education Commissioner has issued decisions further clarifying the requirements that schools must follow when seeking to suspend or expel students.

Local

Although the New York City Department of Education (DOE) Discipline Code and Chancellor's Regulations do not apply to charter schools, these policies provide an important point of comparison because they govern school discipline for the vast majority of New York City students.

³⁰ See N.Y. EDUC. LAW § 310. The Education Commissioner's decisions for district school suspension cases are available online at <http://www.counsel.nysed.gov/Decisions/dcommissionersdecisions>.

³¹ N.Y. EDUC. LAW § 2855(4); N.Y. COMP. CODES R. & REGS. tit. 8, § 3.16(a); see *G.L. v. King*, No. 695-12 (N.Y. Sup. Ct. Sept. 18, 2012). The Education Commissioner's decisions for charter school suspension cases are not available online.

Excessive Punishments

FINDING I • 107 of the 164 NYC charter school discipline policies we reviewed permit suspension or expulsion as a penalty for any of the infractions listed in the discipline policy, no matter how minor the infraction.

What's Required

In deciding suspension appeal cases, the New York State Commissioner of Education has explained repeatedly that disciplinary penalties imposed on students must be proportionate to the severity of the student's misconduct.³² The Education Commissioner has also explained that permanent suspension or expulsion from school is “an extreme penalty that is generally educationally unsound except under extraordinary circumstances, such as where the student exhibits ‘an alarming disregard for the safety of others’ and where it is necessary to safeguard the well-being of other students.”³³

Furthermore, guidance from the federal Department of Education explains that school discipline policies should define offense categories and ensure that “clear, developmentally appropriate, and proportional consequences apply for misbehavior.”³⁴ As the guidance explains: “Developmentally appropriate consequences take into account the developmental differences of students at various stages of childhood and adolescence, as well as the cognitive and emotional maturity of the students served. Proportional consequences generally involve disciplinary responses that match the severity of the consequences to the severity of the behavior violation, with mild consequences being used for minor offenses, and harsher consequences – including, in particular, exclusionary discipline – being used as a last resort and only for the most serious infractions.”³⁵ This alignment of infractions with ranges of penalties helps to ensure that students receive a fair, proportionate penalty for their conduct, as required by law. Furthermore, discipline policies with graduated penalties provide guidance to decision-makers, schools, parents, and students on what constitutes a proportionate penalty and puts parents and students on notice as to the possible punishments that students may face based on their misconduct.

NYC DOE Discipline Policy

The NYC DOE Discipline Code divides infractions into five levels of misconduct, provides a range of possible penalties for each infraction, and places limits on the use of certain penalties for

³² See, e.g., *Appeal of T.C.*, 47 N.Y. Educ. Dep't Rep., Decision No. 15,697 (2007); *Appeal of Harlan*, 40 N.Y. Educ. Dep't Rep., Decision No. 14,488 (2000); *Appeal of Mace*, 40 N.Y. Educ. Dep't Rep., Decision No. 14,433 (2000).

³³ *Appeal of Dale C.*, 40 N.Y. Educ. Dep't Rep., Decision No. 14,423 (2000) (internal citations omitted).

³⁴ U.S. DEP'T OF EDUC., GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE 13 (Jan. 2014), available at <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

³⁵ *Id.* at 14.

certain infractions.³⁶ For example, lower level infractions, such as failing to wear the required school uniform, making noise in the hallway, or failing to be in one's assigned place, may result in a parent conference or loss of extracurricular privileges for a student, rather than suspension from school.³⁷ The NYC DOE Discipline Code authorizes more severe penalties for students, including short-term and long-term suspensions, as students get older and as they commit higher level infractions.³⁸ The NYC DOE Discipline Code permits expulsion from school only for the most severe infractions and only for general education students who were at least 17 years old at the start of the school year.³⁹

NYC Charter School Policies

Similarly to the NYC DOE Discipline Code, many of the charter school policies we reviewed align infractions with a range of penalties. However, 107 of the charter school discipline policies that we reviewed do not align infractions with specific disciplinary responses and allow for suspension or expulsion for *any* violation of the code of conduct. Such discipline policies, on their face, allow schools to impose the same punishment on a student who chews gum in class as on a student who uses a weapon to cause serious injury to a classmate. Furthermore, such discipline policies ostensibly allow schools to impose vastly different punishments on two similarly situated students who engage in the same misconduct, increasing the likelihood of results that are biased and unfair. Some of the policies we reviewed gave school staff unbridled discretion to impose suspensions of any length and even expulsion for infractions as minor as chewing gum, drinking soda, bringing a phone to school, littering, lying, and using an elevator without permission, and for infractions as vague as engaging in “unacceptable behavior” and “refusing accountability.”

Indeed, AFC has assisted parents whose children were suspended from their charter schools for minor misconduct, such as laughing during detention, holding on to the teacher's leg, walking out of the classroom to use the bathroom, and wearing the wrong shoes. By addressing these infractions through suspensions instead of by other means, schools forced these students to miss valuable instructional time.

It is particularly concerning that 107 charter school discipline policies allow schools to impose *expulsion* as a penalty for any infraction for students of any age. When charter schools expel students, the district public schools are required to admit them and serve them. Thus, expulsion for low-level infractions gives charter schools a way to send students they find difficult back to district public schools, making students' punishment for violating a charter school rule a one-way ticket to a district public school.⁴⁰

³⁶ See N.Y.C. DEP'T OF EDUC., CITYWIDE STANDARDS OF INTERVENTIONS AND DISCIPLINE MEASURES (Sept. 2013) (hereinafter referred to as “N.Y.C. D.O.E. DISCIPLINE CODE”), available at <http://schools.nyc.gov/NR/rdonlyres/188AF3E2-F12B-4754-8471-F2EFB344AE2B/0/DiscCodebooklet2013final.pdf>.

³⁷ See *id.* at 17 and 23.

³⁸ See *id.* at 5, 17-29.

³⁹ See *id.* at 15, 27, 28, 29.

⁴⁰ The Charter Schools Act allows charter schools to refuse admission to a student who has been expelled or suspended from a district public school until the period of suspension from the public school has expired. N.Y. EDUC. LAW § 2854(2)(d). The law does not permit district public schools to refuse admission to a student who has been expelled or suspended from a charter school.



JARVUS is a student diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). Last year, when Jarvus was ten years old, he attended a charter school that had a policy of suspending students when they accumulated demerits. Jarvus received demerits for behaviors such as calling out in class, leaving his seat without permission, and talking back to staff, and therefore, Jarvus's charter school suspended him multiple times. Eventually, the charter school developed a behavior intervention plan to help address Jarvus's behaviors in class rather than excluding him from class. By that time, however, Jarvus had already missed more than twenty days of school.

PEYTON is a charter school student diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). When he was in fifth grade, his charter school sought to expel him because he threw a bag of food on the floor and then swept it up with a "bad attitude" and because he had three previous suspensions for relatively minor misbehavior.

JEREMIAH attended a charter school with a strict discipline policy. When Jeremiah was in the fifth grade, he received detention for behaviors such as talking while standing in line, playing with his pencil, not following directions, and failing to complete his homework on time. The charter school principal met with his mother and informed her that unless she withdrew him from the charter school, the school would expel him. The charter school never informed Jeremiah's mother of the expulsion process or her rights. Feeling like she had no choice, Jeremiah's mother withdrew him from the charter school and enrolled him in his zoned school.

The cases in which we have assisted parents whose children faced expulsion from their charter schools include: a seven-year-old student with a disability who took a small car part resembling a LEGO piece from another student and refused to let go of it when asked by a staff member; a ten-year-old student with a disability with no prior suspensions who stated he wished he could throw a bomb at the school; and an eleven-year-old who lived in a homeless shelter, had no prior suspensions, and sent one e-mail with inappropriate language to a classmate.

The State does not make publicly available the number of students who have been expelled from charter schools. Even if this figure were available, it would mask the true impact of lax charter school expulsion policies. We have heard from parents whose charter schools threatened to expel the student if the parent did not withdraw the student from the school. These charter schools told these parents that they could avoid having an expulsion in their children's records only by withdrawing them from their charter schools. The schools encouraged the parents to withdraw their children even when the schools had not conducted expulsion hearings and even when the students' misconduct had not shown "an alarming disregard for the safety of others"—the State's standard for determining whether expulsion is an appropriate penalty for a student's behavior. The charter schools were able to threaten expulsion based on the schools' discipline policies that allowed for expulsion for any infraction.

To ensure that students receive a proportionate and fair penalty for their conduct, charter school discipline policies should include a graduated list of infractions aligned with penalties from least to most severe and should place limits on the use of suspension for minor infractions. The policies should prohibit expulsion except for the most severe and dangerous misconduct that shows “an alarming disregard for the safety of others.”

FINDING 2 • 82 of the 164 NYC charter school discipline policies we reviewed permit suspension or expulsion as a penalty for lateness, absence, or cutting class, in violation of state law.

What’s Required

Under Section 3214 of the New York State Education Law, only a student who is “insubordinate or disorderly or violent or disruptive, or whose conduct otherwise endangers the safety, morals, health or welfare of others” may be suspended or expelled from school.⁴¹ The New York State Supreme Court and the Education Commissioner have held that schools may not suspend students for being late or absent or for cutting class.⁴² Schools may take other actions to address truancy, but may not resort to suspensions or expulsions.

The Education Commissioner has explained that suspending a student for truant behavior is not only illegal; it is also poor educational policy.⁴³ As the Education Commissioner has explained: “[A] policy that addresses nonattendance by suspending a student’s right to attend school sends a logically inconsistent message to school-age children.”⁴⁴ Indeed, when the problem is that a student is failing to go to class on time or at all, prohibiting the student from attending class fails to teach the student the importance of being present for instruction.

NYC DOE Discipline Policy

The NYC DOE Discipline Code does not allow suspension or expulsion as penalties for lateness, absence, or skipping class.⁴⁵ In cases of truancy, school personnel must meet with the student and parent to determine needed supports and an appropriate course of action.⁴⁶

⁴¹ N.Y. EDUC. LAW § 3214(3)(a).

⁴² See *Blackman v. Brown*, 100 Misc. 2d 566, 568 (N.Y. Sup. Ct. 1978) (explaining that truancy does not fit into any of the categories of authorized suspensions under § 3214(3)); *Appeal of Ackert*, 30 N.Y. Educ. Dep’t Rep. 31, 33 (1990) (holding that “a student may not be suspended, expelled or dropped from school attendance for truancy”); *Appeal of Hynds*, 34 N.Y. Educ. Dep’t Rep., Decision No. 13,407 (1995) (invalidating school policy of suspending student from class for lateness or nonattendance); *Appeal of Strada*, 34 N.Y. Educ. Dep’t Rep., Decision No. 13,434 (1995) (invalidating school policy by which student with four absences could be removed from class and assigned to study hall on basis that it results in suspension of student from class due to truancy); *Appeal of Vitello*, 32 N.Y. Educ. Dep’t Rep., Decision No. 12,813 (1992) (invalidating school policy of suspending student from class for cutting that class).

⁴³ See *Appeal of Hynds*, 34 N.Y. Educ. Dep’t Rep., Decision No. 13,407 (1995).

⁴⁴ *Id.*

⁴⁵ N.Y.C. D.O.E. DISCIPLINE CODE at 3, 17, 23.

⁴⁶ *Id.* at 3.

NYC Charter School Policies

While many charter school discipline policies prohibit suspension or expulsion as penalties for lateness, absence, or skipping class, half (82) of the charter school discipline policies we reviewed allow for suspension or even expulsion for being late to class or absent from class or skipping class.

AFC has assisted parents whose children faced suspension or expulsion for lateness or absence based on these discipline policies.

Charter school discipline policies must be revised to ensure that they do not allow suspension or expulsion as penalties for lateness, absence, or cutting class. Furthermore, charter school authorizers should strongly encourage charter schools to use guidance interventions, not only penalties, with students who exhibit truant behaviors.

Due Process

The Charter Schools Act requires charter schools to have discipline policies that include procedures “consistent with the requirements of due process.”⁴⁷ In the landmark case of *Goss v. Lopez*, the U.S. Supreme Court held that the Due Process Clause of the Constitution prohibits schools from suspending students from school, even for a short period of time, without first providing them with notice and the opportunity to be heard.⁴⁸ The Court found that these procedures are necessary because schools can make mistakes in the disciplinary process and it is important to protect students against suspensions that are unwarranted. As the Court stated: “Disciplinarians, although proceeding in utmost good faith, frequently act on the reports and advice of others; and the controlling facts and the nature of the conduct under challenge are often disputed.”⁴⁹

⁴⁷ N.Y. EDUC. LAW § 2851(2)(h).

⁴⁸ See *Goss*, 419 U.S. at 573-74, 581-584.

⁴⁹ *Id.* at 580.



GARNETT was in the middle of his last year at his charter school when the school sought to expel him. The charges against Garnett were that he was late to class four times without excuse, absent from school on three days without excuse, skipped a class, and failed to have teachers sign a self-evaluation chart. The charter school's policy gave the school the discretion to use any penalty listed, including suspension or expulsion, to address any of the listed infractions, which included absence and lateness. Following an expulsion hearing, the school suspended Garnett for the remainder of the school year, providing him with only two hours of instruction per day for the rest of his time at the school. In other words, for missing the equivalent of four days of school, Garnett's punishment was to miss four months of school.

New York State Education Law Section 3214 codifies the *Goss v. Lopez* decision by setting out the due process requirements and procedures that New York public schools must follow when seeking to suspend a student from school.⁵⁰

FINDING 3 • 133 of the 164 NYC charter school discipline policies we reviewed fail to include the right to written notice of a suspension prior to the suspension taking place, in violation of state law.

What's Required

Federal and state law requires schools to provide notice before a student is suspended from school.⁵¹ In *Goss v. Lopez*, the U.S. Supreme Court explained that schools must provide oral or written notice of the charges against a student and the basis for the accusation prior to even a short-term suspension.⁵² If the student's presence poses a continuing danger to people or property or an ongoing threat of disrupting the academic process, only then may a school remove a student immediately.⁵³ In such cases, the school must provide the student with notice of the charges as soon as possible after the student starts the suspension.⁵⁴

Similarly, Section 3214 requires schools to provide notice of the charged misconduct, even in the case of short-term suspensions.⁵⁵ The implementing regulations of Section 3214 provide additional detail requiring schools to give parents *written* notice of a proposed suspension, including a description of the underlying incident.⁵⁶ The regulations require schools to send notice to the parent in the parent's dominant language within 24 hours of the decision to recommend suspension using a method "reasonably calculated to assure receipt."⁵⁷ Schools should provide parents with oral notification in addition to written notice of a proposed suspension,⁵⁸ but oral notice cannot be a substitute for written notice.⁵⁹ Schools must provide the notice of a proposed suspension prior to the actual suspension unless the student's presence in school presents a continuing danger to people or property or ongoing threat of disruption to the academic process, in which case notice should be provided as soon as practicable after the suspension begins.⁶⁰ If a school recommends a suspension of more than five days, Section 3214 requires the school to provide the student and parent with reasonable notice of the opportunity for a hearing and their rights at that hearing, including fair notice of the charges against the student, so that the parent and student can prepare for the hearing.⁶¹

⁵⁰ N.Y. EDUC. LAW § 3214(3).

⁵¹ *Goss*, 419 U.S. at 581-83; N.Y. EDUC. LAW §§ 3214(3)(b), (c).

⁵² *Goss*, 419 U.S. at 581.

⁵³ *Id.* at 581-83.

⁵⁴ *Id.*

⁵⁵ N.Y. EDUC. LAW § 3214(3)(b)(1).

⁵⁶ N.Y. COMP. CODES R. & REGS. tit. 8, § 100.2(l)(4).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*; *Appeal of B.L.G.*, 50 N.Y. Educ. Dep't Rep., Decision No. 16,101 (2010).

⁶⁰ N.Y. EDUC. LAW § 3214(3)(b)(1).

⁶¹ *Id.* § 3214(3)(c)(1); *Bd. of Educ. of Monticello Cent. Sch. Dist. v. Comm'r of Educ.*, 91 N.Y.2d 133, 139-40 (N.Y. App. Div.1997).

NYC DOE Discipline Policy

The NYC DOE Chancellor's Regulations have far more detailed notice requirements than the state law and regulations for proposed short-term and long-term suspensions.⁶² For example, for proposed suspensions of more than five days, Chancellor's Regulation A-443 includes a list of more than 20 items that the DOE is required to include in the written suspension notice including the specific reasons for the suspension; the alternative instruction arrangements for the student; the date, time, and place of the suspension hearing; a list of rights that the student and parent have at the hearing; and a list of agencies providing free or low-cost assistance at suspension hearings.⁶³

NYC Charter School Policies

While some charter school discipline policies require the schools to provide written notice of a proposed suspension or expulsion, 133 of the NYC charter school discipline policies we reviewed fail to include the right to written notice of a suspension prior to the suspension taking place.

We have received calls from parents who have not received written notice of a proposed suspension. Instead, the charter schools in these cases called the parents to inform them that the school would be suspending their child. Sometimes, parents were unsure about the charges leading to the suspension because they had not received written or even oral notification of the specific charge. They were informed merely that their children were suspended and could not attend school. We have had cases in which charter schools failed to provide written notice even where the charter school was proposing a long-term suspension or expulsion.

All charter school discipline policies should require schools to provide parents and students with advanced written notice of a proposed suspension of any length or expulsion, including the charge and information about their rights, prior to the suspension or expulsion taking place, or as soon as practicable after the suspension has begun if exigent circumstances exist.



TYRONE's mother received a text message from the principal of Tyrone's charter school asking if she was available to meet with him for an hour the following school day. When Tyrone's mother arrived at the school, she was surprised to learn that the charter school wanted to expel her son and that the "meeting" was actually for the purpose of expelling Tyrone. At the end of the meeting, the school's superintendent informed Tyrone's mother that she could withdraw him from school to avoid his expulsion.

⁶² See N.Y.C. DEP'T OF EDUC., REGULATION OF THE CHANCELLOR A-443 (hereinafter referred to as "N.Y.C. D.O.E. CHANCELLOR'S REG. A-443") §§ III.B.2(j)-(k), III.B.3(n) (2004), available at <http://schools.nyc.gov/NR/rdonlyres/E711B08E-B149-49DA-BCFA-9BAF174F0096/0/A4433504Combined.pdf>.

⁶³ See N.Y.C. D.O.E. CHANCELLOR'S REG. A-443 § III.B.3(n).

FINDING 4 • 36 of the 164 NYC charter school discipline policies we reviewed fail to include an opportunity to be heard prior to a short-term⁶⁴ suspension, in violation of the U.S. Constitution, New York State Constitution, and state law.

What's Required

In *Goss v. Lopez*, the U.S. Supreme Court explained that, if a student facing suspension denies the charges, the school must provide an explanation of the school's evidence and an opportunity for the student to present his or her side of the story prior to suspension from school.⁶⁵ If the student's presence poses a continuing danger to people or property or an ongoing threat of disrupting the academic process, only then may a school remove a student immediately.⁶⁶ In such cases, the school must provide the student with this opportunity to be heard as soon as possible after the student starts the suspension.⁶⁷

Under Section 3214 and its implementing regulations, prior to a suspension of one to five days, schools must inform students and parents of their opportunity to request an informal conference with the principal, at which the student and parent have a right to present their version of the incident and question witnesses.⁶⁸ Similar to the requirement for notice, the conference must take place prior to the suspension unless the student poses a continuing danger to people or property or an ongoing threat of disruption to the academic process, in which case the conference should take place as soon as practicable after the suspension begins.⁶⁹

NYC DOE Discipline Policy

For suspensions of five days or less, the DOE Chancellor's Regulations require the principal to hold a conference with the parent and student and include more detailed requirements than state law and regulations regarding this opportunity to be heard.⁷⁰ The conference is an opportunity to discuss the facts surrounding the incident; "determine whether or not a suspension is justified; devise collaboratively satisfactory solutions for the student's return to his/her program; and prevent further disruption of the student's education."⁷¹

NYC Charter School Policies

While most of the charter school discipline policies that we reviewed include an opportunity to be heard prior to a short-term suspension, 36 of the discipline policies we reviewed fail to include an opportunity to have an informal conference with the principal, or any opportunity to be heard, prior to a short-term suspension, in violation of the law.

⁶⁴ Some charter school discipline policies define a short-term suspension as a suspension of five days or less. Others define a short-term suspension as a suspension of ten days or less. The numbers referenced in this section reflect the schools' policies for short-term suspensions, however defined.

⁶⁵ *Goss*, 419 U.S. at 581-83.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ N.Y. EDUC. LAW § 3214 3(b)(1); N.Y. COMP. CODES R. & REGS. tit. 8, § 100.2(l)(4).

⁶⁹ N.Y. EDUC. LAW § 3214(3)(b)(1); N.Y. COMP. CODES R. & REGS. tit. 8, § 100.2(l)(4).

⁷⁰ N.Y.C. D.O.E. CHANCELLOR'S REG. A-443 § III.B.2.

⁷¹ *Id.* § III.B.2(l).

OMAR's charter school suspended him from school for four days for horse playing with another student and talking back to a teacher. The school's discipline policy stated that parents would receive written notice when the school proposed a suspension of five days or more, but did not require the school to provide written notice for shorter suspensions. The discipline policy also failed to include the right to an informal conference with the principal for students facing short-term suspensions. Omar's mother did not receive written notice of his suspension from school or an opportunity for a conference. The principal called her one evening and simply told her that Omar was suspended for the next four school days.

Many of the parents who have contacted AFC about charter school suspensions were not given an opportunity to meet with the charter school or to present their version of events or question witnesses regarding their children's short-term suspension. They were told simply that the student was being suspended or were invited to attend a meeting prior to reinstatement.

Charter school discipline policies should require schools to provide parents and students with the opportunity for an informal conference with the principal where they may question witnesses, present their version of events, and disagree with the recommended penalty before the start of the short-term suspension, or as soon as practicable after the suspension has begun if exigent circumstances exist.

FINDING 5 • 25 of the 164 NYC charter school discipline policies we reviewed fail to include the right to a hearing prior to a long-term⁷² suspension, in violation of the U.S. Constitution, New York State Constitution, and state law.

What's Required

In *Goss v. Lopez*, the U.S. Supreme Court was addressing an Ohio statute concerning suspensions of ten days or less.⁷³ The Court explained that the more severe the proposed suspension, the more formal the due process that schools must provide to students, and noted that longer suspensions or expulsions may require more formal procedures.⁷⁴ In keeping with this general guidance, prior to suspending students for more than five days, Section 3214 requires schools to provide students and parents with an opportunity for a formal hearing where they may be represented by counsel, question witnesses, and present evidence, including witnesses, on the students' behalf.⁷⁵ A federal district court in New York has also held that students and parents have the right to review evidence prior to a disciplinary hearing in order to prepare an adequate defense to the charges against the students.⁷⁶ At the hearing, the school must prove through

⁷² Although Section 3214 prohibits schools from suspending a student for *more than five days* without the opportunity for a hearing, the numbers in this section apply to long-term suspensions even if charter schools defined long-term suspensions as suspensions of more than ten days.

⁷³ *Goss*, 419 U.S. at 567-68, 584.

⁷⁴ *Id.* at 576, 584.

⁷⁵ N.Y. EDUC. LAW § 3214(3)(c)(1).

⁷⁶ *Ross v. Disare*, 500 F. Supp. 928, 934 (S.D.N.Y. 1977).

competent and substantial evidence that the student participated in the charged misconduct.⁷⁷ The hearing must be recorded, and a hearing officer must make findings of fact and recommendations as to the appropriate measure of discipline.⁷⁸

NYC DOE Discipline Policy

The DOE Chancellor's Regulations require district public schools seeking to suspend a student for more than five days to provide parents with the right to have a hearing before a hearing officer at an independent DOE office and include more detailed procedures than the state law and regulations regarding these hearings.⁷⁹ At the hearing, the parent and student have the right to be represented by an attorney, question witnesses, and present evidence.⁸⁰ In addition, among other rights, they have the right to review, in advance, the evidence the school intends to present at the hearing, including a list of the names of potential witnesses.⁸¹

NYC Charter School Policies

While most of the charter school discipline policies we reviewed include the right to a hearing for students facing long-term suspensions, 25 of the charter school discipline policies that we reviewed do not include the right to a hearing prior to a long-term suspension.

Of the charter school discipline policies that *include* the right to a hearing prior to a long-term suspension, a number of policies fail to include all of the rights outlined in Section 3214. For example, 15 policies that include the right to a hearing fail to include the right to question witnesses and 14 policies fail to include the right to present evidence at the hearing.

Furthermore, a number of policies that we credited as including the right to a hearing for students facing long-term suspension provide for a hearing only when students face suspensions of more than ten days, in violation of Section 3214, which requires a hearing when students face suspensions of more than five days.

Unlike DOE district public school suspension hearings, which have independent hearing officers with experience in suspension procedures, charter schools often have a member of the charter school staff preside over the hearing. Thus, detailing the required hearing procedures in the charter school's discipline policy is particularly important to provide guidance to parents, students, and charter school staff.

AFC has represented parents whose children did not receive adequate due process prior to a long-term suspension or expulsion from their charter schools. We have heard from parents who were merely told, without any explanation of the right to due process, that their children were no longer

⁷⁷ *Bd. of Educ. of Monticello Cent. Sch. Dist. v. Comm'r of Educ.*, 91 N.Y.2d 133, 140-41 (N.Y. App. Div. 1997); *Bd. of Educ. of the City Sch. Dist. of the City of N.Y. v. Mills*, 293 A.D.2d 37, 39 (N.Y. App. Div. 2002).

⁷⁸ N.Y. EDUC. LAW § 3214(3)(c)(1).

⁷⁹ See N.Y.C. D.O.E. CHANCELLOR'S REG. A-443 § III.B.3.

⁸⁰ *Id.* §§ III.B.3(n)(12), (15).

⁸¹ *Id.* §§ III.B.3(n)(6), (7), (14).



DAVID is a student with a disability at a charter school. His charter school suspended him by sending a notice home to his mother stating that her son was suspended and could not return to school for 30 days. There was no opportunity for a hearing. In violation of the law, the school's discipline policy allows the school to suspend students, without advanced notice or a hearing, for up to 30 days upon approval of the school leader.

allowed to attend the charter school or encouraged to withdraw their children from the school to avoid expulsion. We have also heard from parents whose schools held a meeting where the school leader simply informed the parent that the student would be suspended or expelled. There was no presentation of the school's evidence and no opportunity for the parent or student to question witnesses or present his or her own evidence.

Charter school discipline policies should require schools to provide parents and students with the opportunity for a hearing prior to a suspension of more than five days with all of the rights and procedures outlined above.

FINDING 6 • 59 of the 164 NYC charter school discipline policies we reviewed fail to include the right to appeal charter school suspensions or expulsions, even though state law establishes a distinct process for charter school appeals.

What's Required

Parents and students may appeal charter school suspensions and expulsions.⁸² In 2012, the New York State Supreme Court held that parents or students seeking to appeal a charter school suspension decision must follow the grievance procedure set out in the Charter Schools Act.⁸³ This process requires parents wishing to appeal charter school suspension or expulsion decisions to submit a complaint to the charter school's Board of Trustees, and then, if not adequately addressed, to the charter school's authorizer, and then, if not adequately addressed, to the Board of Regents.⁸⁴ The Board of Regents has delegated to the Education Commissioner its authority to investigate and respond to charter school grievances.⁸⁵

NYC DOE Discipline Policy

The suspension appeals process for students in district public schools differs from the process for students in charter schools because the Charter Schools Act outlines a distinct process for charter

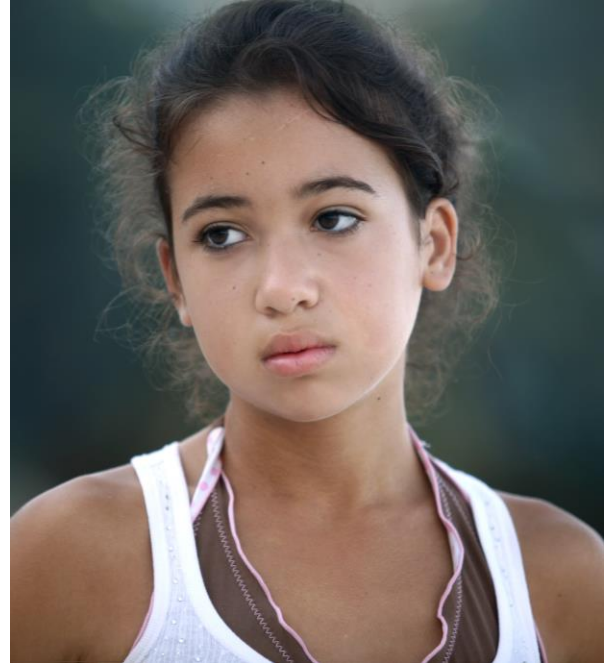
⁸² See N.Y. EDUC. LAW § 2855(4); see *G.L. v. King*, No. 695-12 (N.Y. Sup. Ct. Sept. 18, 2012).

⁸³ *G.L. v. King*, No. 695-12 (N.Y. Sup. Ct. Sept. 18, 2012).

⁸⁴ N.Y. EDUC. LAW § 2855(4).

⁸⁵ N.Y. COMP. CODES R. & REGS. tit. 8, § 3.16(a); see *G.L. v. King*, No. 695-12 (N.Y. Sup. Ct. Sept. 18, 2012).

school complaints. The DOE Chancellor's Regulations on school discipline require the written notice to parents about proposed short-term and long-term suspensions to include the right to appeal the suspension decision.⁸⁶ The Chancellor's Regulations include the address for the DOE's Office of Legal Services,⁸⁷ and the sample suspension notices in the Chancellor's Regulations also include contact information.⁸⁸ The DOE Discipline Code includes the right to appeal, directs parents to the applicable Chancellor's Regulations for more information about the appeals process, and provides the website for the Chancellor's Regulations.⁸⁹



NYC Charter School Policies

Although the New York State Supreme Court has made clear the appeals process that parents must follow in charter school suspension or expulsion cases, the vast majority of charter school discipline policies do not include a complete and accurate description of this process. Fifty-nine of the 164 charter school discipline policies that we reviewed do not discuss a suspension appeals process at all. Only 20 of the 164 charter school discipline policies that we reviewed have an accurate and complete description of the appeals procedure outlined in the Charter Schools Act.

We have received calls from parents who want to challenge a charter school suspension or expulsion decision but do not know the process for doing so. Moreover, we have found that contact information for the Board of Trustees is rarely provided to parents and students, making it difficult for parents to exercise their right to appeal even when the school's discipline policy explains that right.

Charter school discipline policies should explain the right to appeal and outline the appeals process, including contact information for each level of appeal.

ELAINE's mother contacted AFC because she wanted to appeal the charter school's decision to expel her daughter from school for making an inappropriate comment about another student. The charter school had been the only school Elaine had ever attended. The charter school's discipline policy stated that parents could appeal expulsion decisions pursuant to the grievance procedure in the Charter Schools Act, but the discipline policy failed to explain this procedure. The school's expulsion decision letter stated that Elaine's mother could appeal the decision by writing to the school's Board of Trustees, but the letter failed to provide names and contact information for the Board members. The school's website did not list contact information for the Board of Trustees; nor was this information provided in the school's family handbook.

⁸⁶ N.Y.C. D.O.E. CHANCELLOR'S REG. A-443 §§ III.B.2(k), III.B.3(n)(23).

⁸⁷ *Id.* §§ IV.A.1 n.17; IV.B.1; IV.B.3 n.18; VI.

⁸⁸ *Id.* Appendix C, Appendix E, Appendix F.

⁸⁹ N.Y.C. D.O.E. DISCIPLINE CODE at 15.

Students with Disabilities

FINDING 7 • 36 of the 164 NYC charter school discipline policies reviewed fail to include any additional procedures for suspending or expelling students with disabilities, in violation of federal and state law.

What's Required

Federal and state law prohibits schools, including charter schools, from discriminating against students with disabilities. When it comes to discipline, federal and state law requires school districts and charter schools to follow certain procedures to protect students with disabilities from being punished for behavior related to their disabilities.⁹⁰ When a school has suspended a student with a disability for more than ten days in a row, or for ten cumulative days resulting from shorter suspensions for a pattern of similar behavior, then the parent must receive a copy of the state's procedural safeguards,⁹¹ which lists the rights and protections that students with disabilities have when suspended or expelled, and the student has the right to a Manifestation Determination Review (MDR).⁹² When the student has an Individualized Education Program (IEP), the NYC DOE is responsible for conducting the MDR, even for students in charter schools.⁹³ When the student has a Section 504 plan, and not an IEP, the charter school itself must hold the MDR.⁹⁴

At the MDR, the participants, including the parent, must discuss the student's disability, the supports recommended on the student's IEP or Section 504 plan, and the behavior leading to the student's suspension(s) from school.⁹⁵ If the behavior leading to the student's suspension(s) was caused by or had a direct and substantial relationship to the student's disability or was the direct result of the school's failure to provide supports required by the student's IEP or Section 504 plan, then the student's behavior was a "manifestation" of his or her disability.⁹⁶ When the student's behavior is determined to be a manifestation of his or her disability, the student has the right to return to school immediately.⁹⁷ In addition, the team must conduct a Functional Behavioral Assessment (FBA) in order to evaluate the student's behavior and create a Behavior Intervention Plan (BIP) for the student based on the evaluation or revise the student's existing

⁹⁰ See 20 U.S.C. § 1415(k); N.Y. EDUC. LAW § 3214(3)(g).

⁹¹ See 20 U.S.C. § 1415(k)(1)(H); 34 C.F.R. §§ 300.530(h), 300.536(a); N.Y. COMP. CODES R. & REGS. tit. 8, §§ 200.5(f)(3)(iv), 201.2(e), 201.7(a).

⁹² See 20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. §§ 300.530(e)(1), 300.536(a); N.Y. COMP. CODES R. & REGS. tit. 8, §§ 201.2(e), 201.4.

⁹³ N.Y. EDUC. LAW § 2853(4)(a) (assigning certain responsibilities under the Individuals with Disabilities Education Act (IDEA) to the school district in which a charter school student resides); see also N.Y. STATE EDUC. DEP'T, CHARTER SCHOOLS AND SPECIAL EDUCATION, <http://www.p12.nysed.gov/psc/specialed.html>.

⁹⁴ Charter schools must comply with all federal and civil rights laws, including Section 504 of the Rehabilitation Act. See N.Y. EDUC. LAW § 2854(1)(b); see also N.Y. STATE EDUC. DEP'T, CHARTER SCHOOLS AND SPECIAL EDUCATION, <http://www.p12.nysed.gov/psc/specialed.html>. Under Section 504, schools, including charter schools, are required to hold manifestation meetings for students with disabilities whenever a "change in placement" occurs. *Johnston County (NC) Sch.*, 56 I.D.E.L.R. 305 (2011); see *Waln v. Todd County Sch. Dist.*, 388 F.Supp.2d 994, 999-1000, n.6 (D.S.D. 2005).

⁹⁵ See 20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e); see *Johnston County (NC) Sch.*, 56 I.D.E.L.R. 305 (2011).

⁹⁶ 20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e)(1)-(2); N.Y. COMP. CODES R. & REGS. tit. 8, § 201.4(c)-(d); see also *Johnston County (NC) Sch.*, 56 I.D.E.L.R. 305 (2011).

⁹⁷ 20 U.S.C. § 1415(k)(1)(F)(iii); 34 C.F.R. § 300.530(f)(2); N.Y. EDUC. LAW § 3214(3)(g)(3)(viii); N.Y. COMP. CODES R. & REGS. tit. 8, § 201.4(d)(2)(ii); see also *Johnston County (NC) Sch.*, 56 I.D.E.L.R. 305 (2011).

plan to improve supports.⁹⁸ Functional Behavioral Assessments and Behavior Intervention Plans are tools that, when used correctly, may reduce a student’s unwanted behaviors and increase positive, desirable behavior in school. If the student’s behavior is a manifestation of his or her disability, the student may be excluded from school only if, based on specific criteria, the student has been placed temporarily in an interim alternative education setting determined by the IEP team, convened by the NYC DOE’s Committee on Special Education, or through the special education impartial hearing system.⁹⁹

If the student’s behavior is found *not* to be a manifestation of his or her disability, the school may discipline the student in the same manner that it would discipline a student who does not have a disability.¹⁰⁰ However, the student is still entitled to receive educational services that will enable the student to continue to participate in the general education curriculum and make progress on the goals listed on his or her IEP, as well as a Functional Behavioral Assessment and Behavior Intervention Plan.¹⁰¹

A parent has a right to an expedited hearing through the special education impartial hearing system if he or she disagrees with the MDR decision or disagrees with the decision to place the child in an interim alternative education setting.¹⁰²

The procedure outlined above should occur for students with disabilities as well as students whom the school has reason to believe may have a disability, when certain criteria are met, such as when the parent has already requested a special education evaluation.¹⁰³ In addition, if a parent of a student who is not presumed to have a disability requests a special education evaluation during a suspension, the student has the right to an expedited evaluation from the NYC DOE.¹⁰⁴

NYC DOE Discipline Policy

The NYC DOE policy follows the federal and state law and regulations for disciplining students with disabilities. The DOE Chancellor’s Regulations on school discipline include procedures for conducting expedited evaluations, conducting MDRs, providing procedural safeguards, conducting Functional Behavioral Assessments and developing Behavior Intervention Plans, providing alternative instruction that meet the requirements of state and federal law, placing students in an interim alternative education setting, determining which students are eligible for these protections, and requesting expedited impartial hearings.¹⁰⁵ The DOE Discipline Code also

⁹⁸ 20 U.S.C. § 1415(k)(1)(F)(i)-(ii); 34 C.F.R. § 300.530(f)(1); N.Y. COMP. CODES R. & REGS. tit. 8, §§ 201.3, 201.4(d)(2)(i).

⁹⁹ 20 U.S.C. §§ 1415(k)(1)(G), (k)(2), (k)(3)(b); 34 C.F.R. §§ 300.530(g), 300.531, 300.532; N.Y. EDUC. LAW § 3214(3)(g)(3)(iv); N.Y. COMP. CODES R. & REGS. tit. 8, § 201.7(e).

¹⁰⁰ 20 U.S.C. § 1415(k)(1)(C); 34 CFR § 300.530(c); N.Y. EDUC. LAW § 3214(3)(g)(3)(vi); N.Y. COMP. CODES R. & REGS. tit. 8, § 201.9(c)(2); *Johnston County (NC) Sch.*, 56 I.D.E.L.R. 305 (2011).

¹⁰¹ 20 U.S.C. § 1415(k)(1)(D); 34 CFR § 300.530(d)(1); N.Y. COMP. CODES R. & REGS. tit. 8, § 201.10(c), (d).

¹⁰² 20 U.S.C. § 1415(k)(3)(A), (k)(4)(B); 34 C.F.R. § 300.532; N.Y. COMP. CODES R. & REGS. tit. 8, § 201.11.

¹⁰³ 20 U.S.C. § 1415(k)(5); 34 CFR § 300.534; N.Y. EDUC. LAW § 3214(3)(g); N.Y. COMP. CODES R. & REGS. tit. 8, § 201.5.

¹⁰⁴ 20 U.S.C. § 1415(k)(5)(D); 34 C.F.R. § 300.534(d)(2)(i); N.Y. COMP. CODES R. & REGS. tit. 8, §§ 201.5(e), 201.6.

¹⁰⁵ N.Y.C. D.O.E. CHANCELLOR’S REG. A-443 §§ II, IV.C.

When ISAIAH was in the second grade, his charter school sought to expel him for impulsive behavior. Isaiah’s charter school had a letter from Isaiah’s neurologist diagnosing him with Asperger syndrome, as well as a copy of a letter his mother had written requesting special education evaluations so that he could receive services. When Isaiah’s mother contacted AFC, he had already been out of school for more than ten days as he awaited an expulsion hearing. Isaiah’s mother had not received the procedural safeguards or information about any of her rights related to the discipline of students with disabilities. The school had not contacted the DOE to expedite evaluations or schedule an MDR. The school’s policy did not include any of the protections required by law for students with disabilities or students presumed to be students with disabilities. After AFC got involved, Isaiah began receiving services to address his behaviors. His behavior improved and he was able to succeed at his charter school.

includes information about MDRs, procedural safeguards, and Functional Behavioral Assessments and Behavior Intervention Plans.¹⁰⁶

NYC Charter School Policies

Despite the detailed federal requirements for students with disabilities, 36 of the 164 charter school discipline policies reviewed fail to include procedures that charter schools must follow when suspending or expelling a student with a disability. While the other policies mention procedures for students with disabilities, many of these policies describe the procedures incorrectly or do not provide sufficient guidance to charter schools about the steps they must take.

AFC has received calls from parents where the charter school failed to follow the required procedures when suspending students with disabilities. We have heard from many parents whose students with disabilities have been suspended for more than ten days with no MDR because the charter schools have not notified the DOE of the need to hold this required meeting. In these cases, AFC or the parent has had to contact the DOE to initiate the MDR despite the charter school’s obligation to do so. In one case, a student with an IEP was out of school for more than a month without an MDR until AFC contacted the DOE to hold one for him. In another case, the DOE scheduled the MDR after the parent walked into a DOE office looking for help because her eight-year-old son, who had an IEP, was receiving only a few hours of tutoring per day at a public library during his three-month suspension from his charter school. The charter school had never contacted the DOE to conduct an MDR and had never informed the parent of the right to an MDR.

Charter school discipline policies should include complete, accurate information about the rights of students with disabilities when facing repeated class removals, or suspension or expulsion from school, and these policies should offer sufficient guidance for charter school staff to implement the required procedures properly.

¹⁰⁶ N.Y.C. D.O.E. DISCIPLINE CODE at 4, 7, 13, 15.

Alternative Instruction

FINDING 8 • 52 of the 164 NYC charter school discipline policies we reviewed fail to include the right to alternative instruction during the full suspension period, in violation of state law.

What's Required

Section 3214 states that, when a student is suspended, “*immediate* steps shall be taken for his or her attendance upon instruction elsewhere.”¹⁰⁷

While Section 3214 does not specify the degree or exact nature of the alternative instruction, decisions of the Education Commissioner have explained that schools must provide a student suspended from school with instruction that is “substantially equivalent” to the instruction the school provided to the student prior to suspension¹⁰⁸ and allow students to complete all of their required academic courses.¹⁰⁹ Alternative instruction must consist of actual instruction, and may not consist solely of homework assignments or study hall.¹¹⁰ While the Education Commissioner has found two hours of instruction to be acceptable in certain cases, the key question is whether or not the instruction provided is “substantially equivalent.”¹¹¹ As noted with respect to Key Finding #7, above, there are additional alternative instruction requirements for students with disabilities.

NYC DOE Discipline Policy

The DOE Chancellor’s Regulations on school discipline require NYC district public schools to provide all students who are serving suspensions of more than five days with *full-time* alternative instruction.¹¹² For the first five days of suspension, the DOE is required to provide full-time instruction to elementary and middle school students and a minimum of two hours per day of alternative instruction to high school students.¹¹³ In addition, the DOE is required to provide information about the location of alternative instruction in its suspension notice.¹¹⁴ The DOE’s alternative instruction policy recognizes that students who are suspended from school need access to adequate instruction during suspension if they are going to be successful when they return to school.

NYC Charter School Policies

While most charter school policies include the right to alternative instruction, 52 of the 164 charter school discipline policies reviewed fail to include the right to alternative instruction for the length of the student’s suspension. Of the policies that mention a student’s right to alternative

¹⁰⁷ N.Y. EDUC. LAW § 3214(3)(e).

¹⁰⁸ *Appeal of M.W. and L.W.*, 50 N.Y. Educ. Dep’t Rep., Decision No. 16,238 (2011).

¹⁰⁹ *Appeal of Lee D.*, 38 N.Y. Educ. Dep’t Rep., Decision No. 14,029 (1998) (admonishing school board for failing to comply with alternative instruction requirement where student was offered alternative instruction in mathematics, chemistry, and English, but no instruction in history and Spanish).

¹¹⁰ *Appeal of Miller*, 35 N.Y. Educ. Dep’t Rep., Decision No. 13,598 (1996) (internal citations omitted).

¹¹¹ See, e.g., *Appeal of M.W. and L.W.*, 50 N.Y. Educ. Dep’t Rep., Decision No. 16,238 (2011).

¹¹² See N.Y.C. D.O.E. CHANCELLOR’S REG. A-443 § III.B.1(e)-(g).

¹¹³ *Id.*

¹¹⁴ *Id.* §§ III.B.2(k), III.B.3(n)(3).

instruction, 27 policies state that students will receive only two hours per day of alternative instruction during suspension, regardless of the length of the suspension. Some policies require the school to provide as little as one hour per day of instruction.

We have received calls from parents where the charter school has suspended their child and failed to offer any alternative instruction during the suspension, as well as calls where the alternative instruction has been inadequate under the law. For example, in one case, a ninth-grade charter school student was suspended, without notice or the opportunity for a hearing, for more than a month. His school failed to provide him with any alternative instruction during this time. In another case, a four-day suspension placed a family living in a homeless shelter in crisis because the school did not provide alternative instruction. The family's shelter did not allow teenagers to remain in the shelter unsupervised, and the parent was unable to take off from work. In a third case, in which a student was suspended for 30 days, the charter school merely sent assignments home with the student.

In more than two-thirds of AFC's cases in which charter schools have provided alternative instruction, the charter schools have offered only two hours of instruction per day. Therefore, some charter school students serving long-term suspensions are receiving several hours of instruction per day less than the DOE Chancellor's Regulations require for district public school students. It should be noted that a number of the charter schools offering only two hours per day of alternative instruction have extended school days, thereby making the alternative instruction much less than "substantially equivalent" to the instruction the student would normally be receiving in school.

Charter school discipline policies should inform students and parents of their right to receive actual alternative instruction, not simply assignments, immediately upon suspension or expulsion from school. Furthermore, charter schools should provide full-time alternative instruction, or at a minimum, should provide instruction that is substantially equivalent to the instruction provided to students prior to suspension.

A charter school sought to expel WILLIAM, a 15-year-old student with a disability. For 14 days, while waiting for the DOE to conduct a Manifestation Determination Review, the charter school sent William to meet with a paraprofessional for two hours per day at a public library. The paraprofessional was not qualified to provide instruction and did not attempt to do so. Rather, William worked independently on class assignments while the paraprofessional listened to music and played games on his cell phone. William asked the paraprofessional for help, explaining that he did not understand how to complete the work on his own. The paraprofessional told William to try his best to complete the work. Although William started the school year doing well in school, he quickly began to fall behind in his class work. The charter school began providing William with actual instruction only after AFC intervened.



RECOMMENDATIONS

- (1) Charter school authorizers and the Board of Regents should ensure that charter school discipline policies meet the requirements of the law and are aligned with federal guidance. They should not approve or renew charter schools unless they have discipline policies that comply with the law.

Specifically, as discussed in this report, charter school authorizers and the Board of Regents should ensure that charter school discipline policies: align infractions with penalties to help ensure proportionate disciplinary responses; reserve expulsions for the most severe and dangerous infractions that meet the standard established by the Education Commissioner; prohibit suspensions and expulsions for absence, lateness, or skipping class; require written notice prior to a suspension of any length; provide the opportunity for an informal conference prior to a suspension of five days or less; provide the opportunity for a formal hearing prior to a suspension of more than five days; include the appeals process and contact information; include a complete description of the rights of students with disabilities; and include adequate, and, preferably full-time, alternative instruction. Additionally, authorizers and the Board of Regents should strongly encourage charter schools to include positive approaches to discipline, as recommended in federal government guidance.

Charter school authorizers have expressed to us the limited capacity they have to review and revise the discipline policies of the schools they authorize. Ensuring such capacity must be part of any discussion about lifting the cap on the number of charters in New York State.¹¹⁵

- (2) The State Legislature should amend state law to affirm that charter schools must abide by the requirements of Section 3214 of the New York Education Law and its regulations, ending any perceived ambiguity in the law.
- (3) The State Legislature should amend state law to include explicit standards for expelling students to ensure that expulsions for all schools, including charter schools, are limited to the most severe and dangerous behaviors in accordance with decisions of the Education Commissioner.

¹¹⁵ It is notable that in a recent round of New York City charter renewals, the DOE, as authorizer, recommended renewal for multiple charter schools despite finding that their discipline policies were out of compliance with federal law, and made revising the discipline policy a condition of renewal for only one charter school. See N.Y. STATE EDUC. DEP'T, CHARTER SCHOOLS: CHARTER RENEWAL RECOMMENDATIONS FOR SIX CHARTERS AUTHORIZED BY THE CHANCELLOR OF THE NEW YORK CITY DEP'T OF EDUC. (Dec. 2014), available at <http://www.regents.nysed.gov/meetings/2014/December2014/1214p12a3Revised.pdf>. The Charter Schools Act makes clear that charter authorizers *shall not* approve an application for a charter school unless the application, including the discipline policy, meets the requirements of the law. See N.Y. EDUC. LAW §§ 2852(2)(a), 2851(2)(h). Furthermore, the Charter Schools Act requires the Board of Regents to review charter school applications to ensure they meet the requirements of the law and to approve the applications or return them to the authorizer with comments and recommendations. *Id.* § 2852(5-a).

- (4) The State Legislature should amend state law to require all public schools, including charter schools, to provide full-time alternative instruction when students are suspended or expelled. Pursuant to the DOE Chancellor's Regulations, New York City public school students are currently entitled to full-time alternative instruction when they are suspended for more than five days.
- (5) The State Legislature should amend state law to require charter schools to report suspension and expulsion data. Data should be disaggregated by race and by the number of students with and without disabilities and should include the number of Manifestation Determination Reviews held for students with disabilities. Charter school authorizers and the Board of Regents should consider suspension and expulsion data, as well as student attrition data, in charter school renewal applications.
- (6) Because charter schools and the DOE both have responsibilities to students with disabilities who face suspension or expulsion, charter school authorizers should collaborate with the DOE to develop a memorandum of understanding delineating their respective responsibilities to ensure that these students are receiving protections required by federal and state law.
- (7) Charter school authorizers and the Board of Regents, with input from parents, advocates, and students, should develop a model discipline policy to provide guidance to charter school leaders. In addition, authorizers should provide training for charter school leaders and staff in suspension procedures, discipline of students with disabilities, and positive approaches to discipline, such as restorative justice, peer mediation, social-emotional learning, or positive behavior interventions.
- (8) Charter school authorizers and the Board of Regents should identify and promote best practices and innovative, positive approaches to discipline, as encouraged by the U.S. Departments of Education and Justice.
- (9) NYSED should post the Education Commissioner's charter school suspension and expulsion appeal decisions on the NYSED website, alongside the district public school appeal decisions that are already posted. Currently, only the Education Commissioner's district public school suspension appeal decisions are available publicly. Posting suspension appeal decisions would allow charter school parents, schools, and advocates to review the Education Commissioner's interpretation of charter schools' obligations in discipline cases.
- (10) The State Legislature should amend the Charter Schools Act to require all charter schools to distribute their discipline policies to students and parents at the beginning of the school year and post the policies on their websites along with contact information for the appeals/grievance process.



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

151 West 30th Street, 5th Floor
New York, NY 10001

www.advocatesforchildren.org