

Protecting the Rights of Students at State Charter Schools

Sarah Beck
Associate
General Counsel
& Operational
Accountability
Manager



Objectives

- Understand the parameters of “broad flexibility.”
- Understand the role of the governing board in protecting student rights.
- Understand the student disciplinary process.

Broad Flexibility

Broad Flexibility

State charter schools may waive state education laws (Title 20 of Georgia code and State Board of Education Rules), except provisions related to:

- Civil rights
- Insurance
- Health and safety
- Statewide academic accountability system
- Conflicts of interests
- Prevention of unlawful activity

Mandatory Compliance:

State charter schools must comply with:

- State laws and regulations unspecific to education (i.e., any laws outside of Title 20 and SBOE Rule)
- Federal laws and regulations
- SCSC rules
- State Board of Education rules regarding charter schools
- School's charter contract

Federal Laws (Mandatory Compliance)

- **The Individuals with Disabilities Education Act (IDEA)*;**
- Every Student Succeeds Act (ESSA);
- **The Civil Rights Act of 1964*;**
- **The Equal Educational Opportunities Act of 1974*;**
- The Americans with Disabilities Act (ADA);
- Section 504 of the Rehabilitation Act;
- Title IX of the Educational Amendments Act of 1972;
- Age Discrimination Act of 1975;
- Family Educational Rights and Privacy Act (FERPA); and
- Protection of Pupil Rights Amendment (PPRA).

Individuals with Disabilities Education Act (IDEA)

- Under IDEA, each child with a disability is entitled to a free appropriate public education (FAPE), often provided through an Individualized Education Program (IEP) in the least restrictive environment (LRE).
- State charter schools must provide each student with a disability FAPE without regard to the cost or if the services needed by the student are traditionally provided by the school.
- **A state charter school may not turn away a student with a disability because the state charter school does not typically provide services needed by the student.**

20 U.S.C. § 1400 et. seq.

Special Education as an LEA

- A state charter school must ensure the availability of a continuum of alternative placements to meet the needs of children with disabilities.
- The continuum of placements includes both class placement (general education, special classes, etc.) and supplementary services and aids to be provided in the class or other settings.

20 U.S.C. § 1412

What is the Least Restrictive Environment?

- To the maximum extent appropriate, students with disabilities must be educated with non-disabled students; and
- Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability requires such removal in order to provide FAPE.

34 C.F.R. § 300.114

Child Find as a State Charter School

- Child Find is an affirmative, ongoing LEA obligation to identify, locate, and evaluate all children with disabilities or children suspected to have disabilities residing *within their jurisdiction* and need special education as a result of those disabilities.
- GaDOE guidance confines Child Find obligations for charter schools to students “actually enrolled” in the charter school.

[Link to GaDOE Guidance](#)

Covered Disabilities Under IDEA

- To be eligible for special education services pursuant to IDEA, a student must:
 - Have a disability specifically identified in IDEA; and
 - As a result of the disability, require special education services to make *progress* in school.

English Language Learners

- From enrollment, English Learners (EL) must receive an equal opportunity to participate in all programs as determined eligible.
- We are going to briefly cover:
 - The identification of EL students
 - Waiver of EL services
 - Assessment requirements
 - Ongoing obligations for EL students who have exited the program

Identification of English Language Learners

- Home Language Survey – [LINK](#)
 - Title III of ESSA requires uniform statewide entrance and exit procedures for ESOL programs.
 - This necessitates the use of a universal, state-required Home Language Survey (HLS).
- The answers from the HLS determine if a student is eligible for EL screening using the World-class Instructional Design and Assessment (WIDA) screener.

Waiver of EL Services

- Families have the right to opt their student out of EL services if their student is identified as EL.
 - Families must waive services in writing on an annual basis and schools must maintain written documentation.
 - ELs whose families have waived services are still eligible for accommodations on standardized tests and their English language proficiency skills must be assessed on an annual basis until they meet eligibility criteria.
- Even if a family opts out of EL services, state charter schools are still responsible for providing language support by finding alternate means of providing the student with support for language development and proficiency outside of structured English to Speakers of Other Languages (ESOL) classes.

Assessment of EL Students

- ACCESS for ELLs 2.0 is administered annually to all English learners in Georgia to test EL proficiency.
 - It assesses social and instructional English as well as the language associated with language arts, mathematics, science, and social studies within the school.
- Personnel must be specially trained in order to administer the ACCESS assessment.
- Students must meet a specific composite/overall score based on their grade-level to exit the program.
 - If they do not meet this composite/overall score, then the student remains qualified for language support services.

20 U.S.C. § 6823

[GaDOE ESOL Resource Guide](#)

Monitoring Exited EL Students

- Schools are required to monitor ELs' academic performance for two calendar years following exit from language assistance services.
 - If an exited student transfers from another state or a private school and the two-year monitoring was not completed prior to enrollment, the district is required to monitor the student's academic progress for the remainder of the monitoring period.
- The district must maintain documented evidence that the student was monitored throughout the two-year monitoring phase.
- Purpose of monitoring is to examine if the student still has a lack of *language proficiency* – NOT content knowledge, cognitive issues, or a disability.

Protecting and Ensuring the Health and Safety of Students

- State charter schools must keep and maintain certain student records.
- Be aware of required policies and/or procedures, including, but not limited to:
 - Infectious diseases – [SBOE Rule 160-1-3-.03](#)
 - A school nursing program - O.C.G.A. § 20-2-771.2
 - Emergency management - O.C.G.A. § 20-2-1185
 - Informational meetings for cardiac arrest awareness - O.C.G.A. § 20-2-324.5
 - Care for diabetic students - O.C.G.A. § 20-2-779 and [SBOE Rule 160-4-8-.18](#)

Bullying Prevention Policies

- Schools must adopt a policy that prohibits student-on-student bullying and incorporate the policy into the code of conduct.
- Georgia law requires schools to maintain a bullying policy that requires alternative school assignment for any student in grades six through twelve found by a disciplinary hearing officer, panel, or tribunal to have committed the offense of bullying for the third time in a school year.

[SBOE Rule 160-4-8.15](#)
O.C.G.A. § 20-2-751.4

Alternative School Assignment

- As the need arises, you are required to provide an alternative education program or alternative school.
- Schools should remain mindful of due process, special education, and Section 504 obligations, among others, when assigning students to alternative settings.

O.C.G.A. § 20-2-751.4(b)

Suicide Prevention

- State charter schools must adopt a student suicide prevention policy. The policy must be developed in consultation with school and community stakeholders, school employed mental health professionals, and suicide prevention experts, and shall, at a minimum, address procedures relating to suicide prevention, intervention, and postvention.
- All certificated school staff must be trained annually in suicide awareness and prevention.

Reporting Child Abuse and Neglect

- State charter schools must conduct training for all staff on the identification and reporting of child abuse and neglect.
- Volunteers have the same reporting obligations as school staff.
- Under no circumstances shall any school leader or delegate to whom notice of child abuse or neglect is made exercise any control, restraint, or modification or make any other change to the information provided by the reporter. A school leader or delegate may be consulted prior to the making of a report and may provide additional, relevant, and necessary information when making the report.

Staff-on-Student Abuse

- School must implement and include in student and employee handbooks or policies, the state mandated process governing student reports of alleged inappropriate behavior by school employee(s) toward a student.

Summary of State Mandated Process:

- Any person who has been the victim of inappropriate behavior by school employee must make an oral report to any teacher, counselor, or administrator, who shall thereafter, immediately make a report to the school principal (or leader).
- Any school principal (or school leader) who receives a report of child abuse or neglect shall make a report to DFCS (or local law enforcement when DFCS is not available) no later than 24 hours from the time there is reasonable cause to believe that suspected child abuse occurred.
- Reports of acts of sexual misconduct against a student by a teacher, administrator or other employee not covered by the state's child abuse and neglect statute shall be investigated immediately by school or system personnel. If the investigation of the allegation of sexual misconduct indicates a reasonable cause to believe that the report of sexual misconduct is valid, the school principal or principal's designee shall make an immediate written report to the superintendent and the Professional Standards Commission Ethics Division.

O.C.G.A. § 20-2-751.7

Student Discipline Due Process



- State charter schools must have, follow, and give families notice of their student discipline policies and procedures.
- Student codes of conduct must contain provisions that address a variety of categories listed in the statute.
- Any student handbook which is prepared by a LEA must include a copy of the student code of conduct for the school.
 - When distributing the student handbook/code of conduct, the school must include a form for acknowledgment of the student's parent or guardian's receipt of the code, and the LEA shall solicit or require that the form be signed and returned to the school.

Student Discipline Due Process

Student must be afforded due process before being removed from the education environment. Due process standards differ based on the length of intended removal.

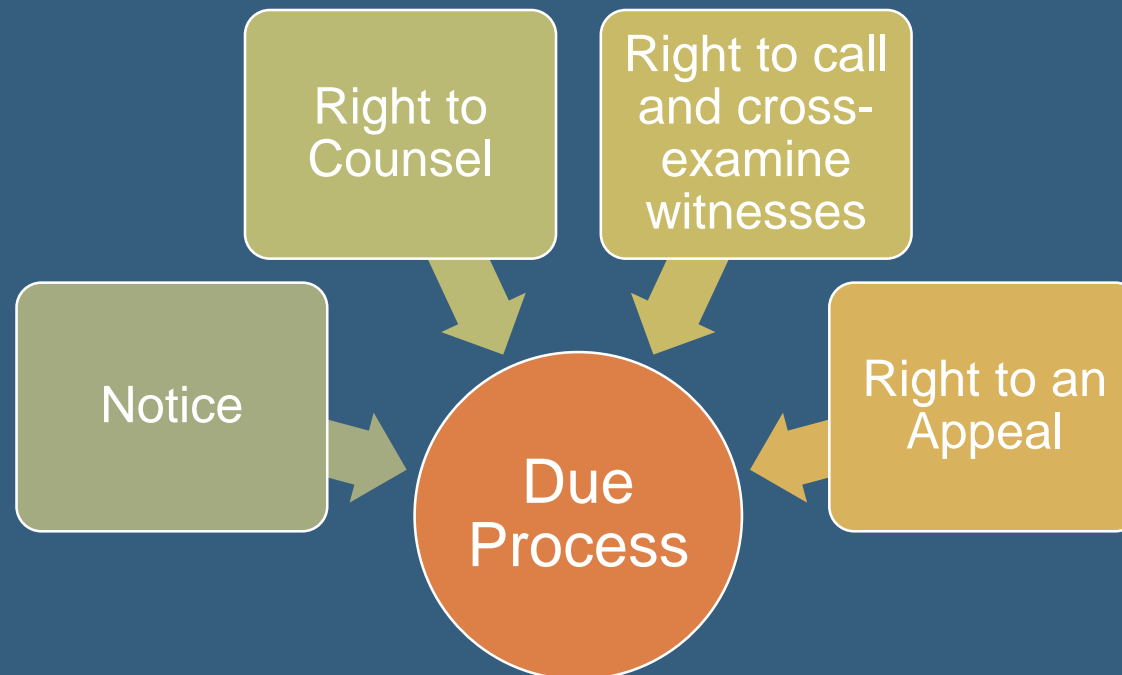
For disciplinary removal of ten days or less, prior to removal the student should receive:

- Notice of alleged code of conduct violation;
- Explanation of the evidence and,
- Opportunity to respond.

Due Process

Long-Term Suspensions

- More formal procedures are required for disciplinary removals of greater than ten (10) days. Schools should designate which school staff member(s) have the authority to recommend expulsions and suspensions greater than ten days.



Due Process

Hearing Officers and Tribunal Panels

- Requirements for disciplinary hearing officers (includes disciplinary tribunal or panel members) as provided by [SBOE rule 160-4-8-.15](#):
 - Qualifications:
 - In good standing with the State Bar of Georgia; or
 - Has experience as a teacher, counselor, or administrator in a public school system.
 - In addition to meeting one of the above qualifications, each governing board must make available to all qualified disciplinary hearing officers the initial and ongoing tribunal training course prior to the individual(s) serving in such capacity. The school governing board shall ensure initially trained student discipline hearing officers undergo continuing education so as to continue to serve in such capacity.

Due Process for Students with Disabilities

Manifestation Determination

- Students subject to IEP or 504 plans are entitled to certain procedural safeguards when long-term disciplinary removal is recommended:
- Within 10 school days of any decision for disciplinary removal exceeding ten school days, the IEP, Section 504, or other team of persons knowledgeable about the student review all relevant information to determine:
 - If the misconduct was caused by, or had a direct and substantial relationship to, the child's disability.
 - If the misconduct was the direct result of the LEA's failure to implement the IEP or Section 504.

Final Thoughts

- When in doubt, have a policy and procedure.
- Read the [SCSC's Legal Obligations Guidance document!](#)
- Questions? Email me: sarah.beck@scsc.georgia.gov