

# IVY PREPARATORY ACADEMY

## Board Policy Scholar Hearing Procedures

### **Short Term Suspensions**

A short-term out of school suspension (removal from school for 10 school days or less) does not require a disciplinary due process hearing except as required for physical offenses against school officials; however, a scholar facing a short term suspension is entitled to oral or written notice of the accusation; an explanation of the evidence the school has; and an opportunity to refute it.

In most cases, this procedure can occur almost immediately following the misconduct. As a general rule, this discussion should precede the removal of the scholar from school. If this is not feasible, as where the scholar's presence endangers persons or property or threatens disruption of the academic process, the scholar may be immediately removed from school. In such cases, the scholar should be afforded an explanation of the action against him and an opportunity to refute allegations as soon as practicable.

A scholar may be allowed to provide his or her side of the story with a written statement. Scholars may refuse to provide a written or oral statement. Scholars are not entitled to the legal counsel during this process.

Although there is no appeals process for short-term suspensions, the parent/guardian may discuss the suspension with the Administration

### **Scholar Disciplinary Hearings**

Where a disciplinary hearing is required by law or when an administrator recommends a long-term out of school suspension/expulsion (more than 10 school days of out of school suspension) and a disciplinary hearing is scheduled, a meeting which includes the principal/designee and the parent/guardian, will be offered to the parent/guardian within three (3) school days of the first day of suspension. The scholar may be invited where practicable.

The administration should be prepared to offer and discuss the witness/scholar statements; current status of the scholar's academic and conduct grades in all classes (progress reports); days present and absent (excused and unexcused absences); number of tardies and class cuts; discipline records; and interventions offered and supports given at the local school including SST referral, counseling sessions and parent/guardian conferences; copy of police report; and any other information or evidence relevant to the incident. Documentation of the above should be shared as appropriate and permitted by law.

The purpose of this meeting is for the parent and school to discuss the investigation completed by the school, the discipline procedures afforded, and any information provided by the scholar and/or the parent/guardian. As this is a parent conference, legal

counsel for scholar and/or parent may not attend. The administration may set a reasonable time limit for the meeting, and may end the meeting if it is evident that resolution is not imminent. If the parent/guardian and school are able to reach an agreement about the disciplinary outcome and the parent/ guardian wishes to waive the hearing in writing, then the parent will contact the Director of Operations. Unless the parent/guardian comes to a decision that results in a hearing waiver, the disciplinary hearing will proceed as scheduled. If the meeting does not occur and there is no hearing waiver by the parent/guardian, the hearing will proceed as scheduled.

### **Composition, Functions, and Conduct of Scholar Disciplinary Hearings**

The Director of Operations shall under the immediate supervision of an administrator designate the day-to-day functioning of scholar disciplinary hearings. This administrator shall be responsible for the on-going operation of scholar disciplinary hearings, including such activities as receiving requests/cases for hearings, providing for the physical arrangements for hearings, assembling and having in place the persons to hear a case or series of cases, scheduling hearings, preparing and serving subpoenas and handling other correspondence concerning hearings, monitoring the actual conduct of hearings, communicating decisions to the respective parties, preparing and maintaining necessary records, and processing appeals to the Board.

#### **Composition**

Disciplinary hearings will be heard by a Chief Hearing Officer. Retired school personnel with current educational certification, other certificated individuals including social workers, school counselors and licensed attorneys that are designated as school officials may sit as a member of a tribunal or panel. The administrator will maintain a pool of such persons to serve as committee members as need dictates.

When utilized, a disciplinary tribunal will be comprised of three (3) persons. One of the three shall be identified as the Chief Hearing Officer. The Director of Operations may serve as a tribunal member and act as the Chief Hearing Officer. If not serving as the Chief Hearing Officer, the Director of Operations shall designate the Chief Hearing Officer.

When utilized, a panel will be comprised of at least two (2) persons. One of the persons shall be identified as the Chief Hearing Officer. The Director of Operations may serve as a panel member and act as the Chief Hearing Officer. If not serving as the Chief Hearing Officer, the Director of Operations shall designate the Chief Hearing Officer.

The Chief Hearing Officer shall preside over all hearings. The Chief Hearing Officer will be appointed by the Board and may or may not be a school system employee. The Chief Hearing Officer must be trained according to requirements in SBOE rule 160-4-8-15. In the absence of the stated Chief Hearing Officer, the Director of Operations will appoint a substitute. The Substitute Chief Hearing Officer must be trained per the requirements established by the State of Georgia in SBOE rule 160-4-8-15 for all hearing officers.

#### **Waivers**

Parents or scholars may elect not to contest the charges or the discipline imposed, and in such cases, an agreement may be negotiated which would include the parents' or

student's waiver of a right to a hearing. Such an agreement and waiver must be approved by the Director of Operations.

### **Timing and Continuance**

The hearing should be held within ten (10) school days after the first day of suspension unless the Director of Operations and the parent/guardian mutually agree to an extension. If good and sufficient cause exists, Director of Operations may reschedule a hearing.

**Written Notice of Hearing:** When a disciplinary hearing is required, the Director of Operations shall provide written notice of the relevant procedures to the scholar's parent/guardian. The notification shall include the following:

- a. A brief statement of the act(s) the scholar is alleged to have committed, along with the portion of the Code of Conduct allegedly violated.
- b. The maximum penalty which may be administered for the alleged misconduct, and a recommendation for discipline.
- c. A copy of this document or a reference to this document.
- d. The date, time and place of the hearing.
- e. The names of witnesses expected to be called at the hearing and a short summary of evidence that may be presented.
- f. A statement that a hearing is required
- g. A statement that at the hearing the scholar is entitled to be represented by an advocate (spokesperson) of her choice
- h. A statement that all parties are afforded an opportunity to present and respond to evidence and to examine and cross-examine witnesses.

**Delivery of Notification:** The notice of hearing shall be delivered to the scholar and her parent/guardian either in person or by mail to the last known address of the parent or guardian. Service shall be deemed to be perfected when the notice is deposited in the United States mail with sufficient postage addressed to the last known address of the parent/guardian.

**Group Hearing:** When scholars are charged with violating the same rule(s) and have acted in concert, and the facts are similar for all scholars a group hearing may be conducted for them if the Chief Hearing Officer believes that no scholar will have her interests substantially prejudiced by a group hearing.

Any scholar who objects to participation in a group hearing should notify the Director of Operations in writing no less than 48 hours before the hearing.

If during the disciplinary hearing, the hearing officer finds that a scholar's interests will be substantially prejudiced by the group hearing, he/she may order a separate hearing for that scholar.

**Record of Proceedings:** A verbatim record of the hearing shall be made and shall be available to all parties upon request. A written transcript will be prepared by the district if the Governing Board so requests; or if the decision of the Governing Board is appealed to the State Board of Education. If a written transcript is not prepared by the district, the parent/guardian/ scholar may obtain a written transcript at their own expense.

**Hearing Attendees:** Scholar disciplinary hearings are confidential and are not open to the public. The Director of Observations may observe scholar disciplinary hearings for administrative purposes. The Chief Hearing Officer may exclude individuals who are not a party, witness or a representative in the proceedings.

**Burden of Proof:** The burden of proof is a preponderance of the evidence (more likely than not) and shall be on the school.

**Decisions:** Decisions of two member panels must be unanimous. Decisions of Tribunals will be determined by a 2/3 majority.

**Legal Representation/Involvement of an Attorney at the Disciplinary Hearing:** If the scholar is represented by an attorney, the Board attorney may be present and may advise the hearing officer, tribunal or panel as necessary. The scholar/parent/guardian must notify the Director of Operations not less than 48 hours prior to the hearing if the scholar may be represented by an attorney. Failure to give such notice can result in the hearing being continued.

**Presentation of Evidence:** The evidence for the school and scholar/scholar representative (if present) shall be presented to the tribunal, hearing officer or panel. The administrator representing the school, the Board attorney, the scholar's representative, and the tribunal, hearing officer and panel are entitled to question witnesses about any matters which are relevant to the charges against the student or the appropriate discipline. The Chief Hearing Officer has the authority to limit unproductively long or irrelevant questioning.

**Procedural Objections:** Objection to the sufficiency of the notice and/or other procedural objections shall be waived unless written notice thereof is filed with the Director of Operations no less than 24 hours prior to the time the hearing is scheduled to begin. The hearing may be postponed until such defects have been removed or remedied.

**Presiding Officer:** The Chief Hearing Officer or individual Hearing Officer will serve as the presiding officer and may rule on issues of procedure and admissibility of evidence presented during the hearing.

**Decisions:** The hearing officer, panel or tribunal, after conducting the hearing and receiving all evidence, shall render a decision based solely on the evidence received at the hearing and shall determine what, if any, disciplinary action shall be taken. Such action may include, but is not limited to, assignment to alternative school, short-term suspension, long-term suspension, expulsion or permanent expulsion.

If the scholar is found guilty, the hearing officer, panel or tribunal shall determine the appropriate punishment or sanction to be imposed. In determining the punishment, the hearing officer, panel or tribunal may consider the student's entire student record to include the academic, disciplinary and attendance records of the student. The hearing decision shall be final unless appealed to the Ivy Preparatory Academy.

**Appeals:** Any party may appeal the hearing decision to the Board by filing a written notice of appeal within twenty (20) calendar days of the date of decision. The appeal should be addressed to the attention of the Head of School Appeals by the

administration must be approved by the Head of Schools. The Head of Schools shall have the authority to suspend the hearing decision during the period of appeal to the local Board. Upon the appeal of a decision of the disciplinary hearing officer to the Board, the Board will render its decision as required by law. The decision shall be in writing and a copy shall be provided to the scholar/parent/guardian, the Academy Leader, and Head of School.

The Board will discuss the appeal in Executive Session. The parties shall have the right to be represented by legal counsel during the appeal. The Board's review will be based solely on the record. The Board shall not hear any oral arguments as part of any appeal nor shall it consider any evidence that was not presented at the disciplinary hearing. The Board may take any action it deems appropriate and has the power to affirm, reverse, or modify in any respect the decision reached.

Any party may appeal the Board's decision to the State Board of Education pursuant to O.C.G.A. § 20-2-1160 (b) through (f) and regulations of the Georgia Board of Education governing such appeals. If an appeal to the State Board is requested, a written transcript of the disciplinary hearing will be prepared and submitted to the State Board. The decision of the Board will not be suspended during the State Board appeal period.

### **Hearings regarding Special Education Scholars**

- Leading up to the meeting
  - Once it has been determined that a scholar with disabilities (SWD) is going to be recommended for expulsion or be issued a ten or more days suspension the school **must** send a prior written notice, invitation to a manifestation determination meeting, along with the suspension/expulsion notice. The parent has the right to request a different date for the meeting if our proposed date does not work for them, however, it must be held within ten days of the notice.
  - The school has **ten days**, from the date determined to suspend/expel the scholar, to conduct a manifestation determination meeting. This recommendation for suspension beyond ten days or for expulsion is considered a change in placement – thus the aforementioned documents
  - The manifestation determination meeting must be held with **relevant** IEP team members. This will be determined between the school and parent. The district's Scholar Services Director, school administrator, scholar case manager, parent and scholar must be at the meeting.
  - Preparing for the meeting
    - i. Assure that the IEP is current.
    - ii. Case manager must have a copy of the incident report and review it for details – clear up any questions prior to the meeting. This information will be available during the meeting.
    - iii. If there is a behavior plan in place or an IEP goal that addresses behavior, documentation should be brought to the meeting to support that the school has followed the plan/goal.
    - iv. Case manager should review the scholars discipline record to determine how many behavioral incidents have occurred during the school year.

- The Manifestation Meeting
  - All identified IEP members should have been notified of the meeting and they are to be present at the meeting on time.
  - All IEP information, progress reports, attendance, behavior reports, police reports, should be available at the meeting.
  - During the meeting review the incident that has led up to the manifestation meeting, and then begin to work through the manifestation determination form.
  - The IEP team must consider any new information that the parent brings to the meeting. This is related to medication issues, home issues, new diagnosis issues, etc.
  - The IEP must determine if the behavior in question was caused by or had a direct and substantial relationship to the scholar's disability .
  - Have all individuals present in the meeting sign the manifestation determination form. If the parent, or another person in the meeting, disagrees with the decision, they still need to sign the form, and indicate their disagreement. The only parties that have any rights in a disagreement are the parents, not a staff person. If the parent disagrees they have appeal rights through the supt. office or can file for a due process hearing.
- The Behavior Was a Manifestation of the Scholar's Disability
  - The scholar is returned to her original placement, the next day.
  - The IEP team must convene within ten days and conduct an FBA and write a Behavior Plan.
  - If the scholar has a behavior plan the IEP team would need to review the plan and determine if it needs to be updated.
  - All members of the team must be given a copy of the Behavior Plan and clearly understands their role in its implementation.
  - If the incident involved serious bodily injury, drugs or weapons the school can suspend up to 45 days.
- The Behavior Was Not a Manifestation of the Scholar's Disability
  - The school may issue the suspension, as specified on the original suspension notice. The Office of Scholar Services will be notified.
  - The IEP team will convene to consider whether or not there is a need to amend the IEP if there is a pattern of behavior that is starting to reflect a problem.

**Effective Date:** 10/18/18

**Last Revised:** 04/17/19

**Authority and/or Cross-Reference**