



Student Handbook and Discipline 2016



- **Charter schools have broad discretion in determining a student discipline policy:**
 - ✓ Type of prohibited behavior and possible disciplinary consequences subject to local discretion.
 - ✓ Whereas ISDs heavily regulated by state law.
- **Each governing body of an open-enrollment charter is required to adopt a code of conduct.**
- **The Code of Conduct adopted by the Board must:**
 - ✓ Outline generally the types of prohibited behaviors;
 - ✓ Outline the possible consequences for those prohibited behaviors;
 - ✓ Specify the conduct that may result in expulsion from the school;
 - ✓ Outline the school's due process procedures with respect to expulsion.

Tex. Educ. Code § 12.131

A Student Code of Conduct **Must** . . .

Align with your charter

**Include the elements required by
Tex. Educ. Code § 12.131**

**Comply with state and federal law
applicable to charters.**

Be adopted by your charter board.

A Student Code of Conduct ***Should*** . . .

Be distributed to and signed by parents and students annually, acknowledging receipt and understanding of the Code.

Establish the school's jurisdiction to address student misconduct and enforce the Code.

Establish expectations for student conduct.

Identify those authorized to administer disciplinary action pursuant to Code.

Be tailored specifically to the mission, culture, and practices of the School.

A Student Code of Conduct **Should Not** . . .

Be so rigid as to prevent use of discretion by school administrators in light of unique facts and circumstances of a given situation.

Be copied from an ISD or another school.

Be implemented without proper training of administrators and teachers.

Be silent on corporal punishment. State the policy of the school clearly along with any procedures (ex: parental consent).

Student Code of Conduct Guide for Texas Charter Schools

The Student Code of Conduct Guide is a starting point for schools seeking to create or revise their Code of Conduct, and includes:

- **MODEL LANGUAGE**

- It incorporates the elements required under Tex. Educ. Code §12.131, as well as other legal requirements under state and federal law.

- **TIPS & CONSIDERATIONS**

- Includes legal tips and practical suggestions for use in development of a legally defensible Code tailored to your school's needs.

- **MODEL FORMS**

- Helpful forms for use in the discipline process
- Ensures consistency charter-wide

Admissions &
Enrollment

Discipline for
Online Speech:
On & Off-
Campus

Searching a
Student's
Person or
Property

Discipline of
Students with
Disabilities

Expulsion and
Due Process

- A charter school may exclude from admission a student who has a documented history of a criminal offense, a juvenile court adjudication, or discipline problems under Subchapter A, Chapter 37 (*TEC § 12.111(a)(6)(A)*).
 - ✓ Your charter must **specifically authorize** this exclusion.
 - ✓ Admission application should inform parents/students of this exclusion.
 - ✓ Admission to the school should be conditioned upon confirmation of disciplinary history, which should be clearly stated on the admissions application.
- State the School's policy regarding denial of admission on this basis in the Code.
 - ***Not all disciplinary "problems" are necessarily grounds for denial of admission.***
- State clearly whether denial of admission on this basis is mandatory or discretionary, in accordance with the charter.
 - **What if an otherwise ineligible student provides false information?**
 - **Should the school withdraw or not withdraw the student?**
 - **Should the school take disciplinary action pursuant to the Code?**

- **Eligibility for Re-Admission:** Is a student be eligible for readmission to the charter school after an expulsion from the charter school?
 - ✓ If your charter requires denial of admission on the basis of a documented disciplinary history, the student is not eligible for readmission.
 - ✓ If your charter permits denial of admission on the basis of a documented disciplinary history, the Code should state whether or not the student is eligible for readmission or what factors will be considered in readmitting the student.
 - ✓ The Expulsion Order should state whether or not student is eligible for readmission.
- **May a student with a disciplinary history at the charter be eligible for readmission if the student withdraws from the school?**

Discipline for Online Speech: On & Off-Campus

- The U.S. Supreme Court held that students do not shed their constitutional rights at the school house gate. Safe to assume applies to public charter schools as well.
 - **First Amendment Freedom of Speech**
 - The school may put reasonable restrictions on student speech as long as those restrictions are viewpoint neutral and consistent with a legitimate school purpose (*for example, ensuring a quiet learning environment*).
- Some student speech is **NOT** protected by the 1st Amendment if the speech:
 - ✓ Vulgar, sexually-explicit, lewd, or encourages drug use;
 - ✓ Materially or substantially disrupts normal school operations or the rights of other students and teachers or there is reasonable cause to believe such expression would cause material and substantial disruption; or
 - ✓ Is a “true threat” of intent to harm or cause injury, made at home or at school.

Discipline for Online Speech: On & Off-Campus

- **ON-CAMPUS SPEECH:**

- Student speech that occurs within the school's disciplinary jurisdiction, as detailed by the Code of Conduct, is subject to discipline if it violates the Code or other laws or rules.

- **OFF-CAMPUS SPEECH:**

- Off-campus speech falls OUTSIDE of the school's normal jurisdiction for discipline!
- When off-campus speech or conduct results in a “**material or substantial disruption or interference with school operations**” then the student *may* be subject to disciplinary action.
 - This is a HIGH standard for disruption or interference.
 - School personnel cannot be the cause of the disruption (teachers talking about it at school) but student conduct may cause others to disrupt the school (many parents calling to complain).

Searches & Students' Rights

- **The 4th Amendment protects citizens, including students, from unreasonable searches conducted by the government (*including public schools*).**
- **Legal Standard:** A reasonable belief must exist that the search will result in the discovery of evidence of a violation of the Code or law (less than probable cause)
 - ✓ **Must be reasonable at the outset, before the search begins** – finding evidence during the search does not make the search lawful if a reasonable belief didn't exist before the search.
 - ✓ **Must be reasonable in scope** – the search must be reasonably related to the circumstances which justified the search. Consider these questions:
 - Is there a logical relationship between the suspicion and the place I want to search?
 - Could the evidence be hidden there?
 - Is the nature or place of the search excessively intrusive into personal privacy (*e.g., strip search*)?
 - Seriousness of the potential harm if search not conducted?

What is a “search” subject to the 4th Amendment?

Yes

- Drug testing
- Student's Car
- Personal computer
- Cell phone
- Student's person
- Drug dog sniff of person
- Backpack, purse
- Metal detectors
- Any other place a student has a reasonable expectation of privacy

No

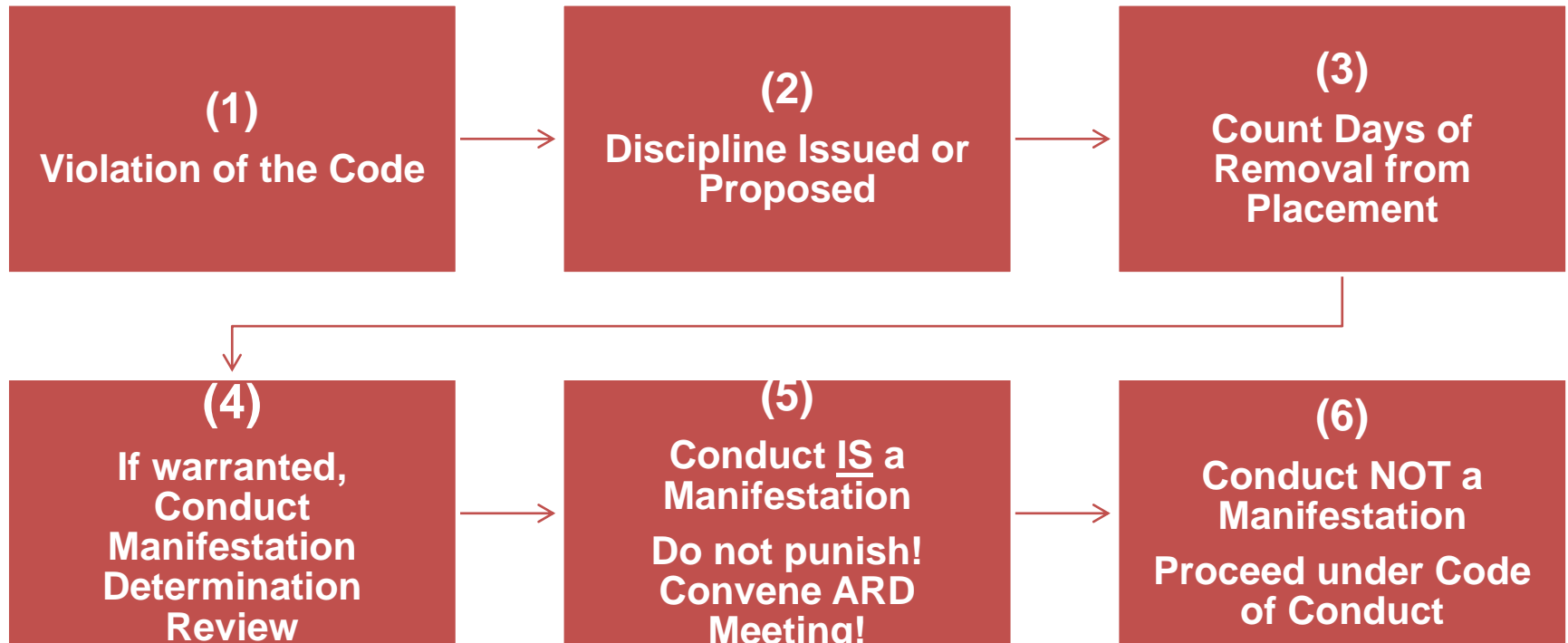
- Lockers
- Desks
- School equipment
- Objects or items in open view
- Drug dog sniff of cars and lockers and personal property while not in student's possession

Maybe

- Remember that every situation is different!
- When in doubt about your right to search person or property contact your school's legal counsel for guidance.

- **Your Code of Conduct should state clearly that students have no expectation of privacy in school owned property, such as:**
 - ✓ lockers,
 - ✓ desks,
 - ✓ school computers, email, and other technology equipment and resources, and
 - ✓ other items provided by the school for temporary student use.
- Train your school administrators and other disciplinarians on lawful student searches under the 4th Amendment.
- **Other considerations for student searches:**
 - ✓ Verify a student tip before using it to support a search;
 - ✓ Student and parent consent issues;
 - ✓ Searching cell phones is tricky.

- **Students eligible for services under the IDEA and Section 504 are subject to discipline under those laws. Your Code of Conduct should recognize this and incorporate these requirements.**



- So long as a disciplinary removal does not constitute a **change in placement**, the school may remove a student without notice of procedural safeguards, a manifestation determination review or ARD meeting.
- ***A disciplinary change of placement occurs if:***
 - the removal is for more than 10 consecutive school days; or
 - the child has been subject to a series of removals that constitute a pattern of more than 10 school days in a school year.
- ***There must be a “pattern” for a series of removals to constitute a change in placement. A “pattern” consists of:***
 - Behavior that is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and
 - Additional factors such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- Special circumstances may permit removal from placement for 45 days where conduct involves: weapons, drugs, or serious bodily injury. MDR still required but outcome does not determine placement.

- ***Manifestation Determination Review (MDR)***
 - If the school is recommending a disciplinary removal that would constitute a change in placement, the school must hold an MDR meeting
 - MDR must determine two questions:
 - Whether the behavior in question was caused by, or had a direct and substantial relationship to the student's disability; or
 - If the conduct in question was the direct result of the school's failure to implement the IEP
 - If the answer to EITHER question is Yes, then it is a manifestation and a student cannot be removed any longer.
 - IF the answer is NO to both, then it is not a manifestation

What if a regular education student subject to disciplinary action claims protections under the IDEA?

- If the school had **“knowledge”** that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred, the student may assert protections under the IDEA or Section 504.
- A school has “knowledge” when:
 - ✓ The parent **expressed concern in writing** to supervisory or administrative personnel or a teacher that the child is in need of special education and related services;
 - ✓ The parent of the child **has requested an evaluation** of the child pursuant to the IDEA; or
 - ✓ The teacher, or other personnel, has expressed specific concerns about a **pattern of behavior** demonstrated by the child, **directly** to the director of special education or to other supervisory personnel.
- **If the student falls into one of these categories, proceed under your Code of Conduct for students with disabilities.**

What about Section 504 students?

- **Similar change in placement rule.** A child's removal from the normal placement for more than ten (10) days constitutes a change in placement if a material and significant alteration in the services provided to the child, or the setting where they are provided occurs.
- **Similar "pattern of exclusions" rule** for a series of removals in a school year that total more than 10 days.
- Thus, so long as the removal of a § 504 eligible student does not constitute a change in placement, the school may remove a student without the need to convene a § 504 committee meeting, without a manifestation determination and generally, without worrying about any § 504 procedure or safeguards.
- **"Special Circumstances" Rule Differs:** Students eligible under § 504 lose the right to a MDR and due process hearing if they violate drug or alcohol rules and are determined to be a "current" user.

No longer a criminal offense of “Failure to Attend School” under Tex. Educ. Code § 25.094

➤ **New expunction procedure for individuals convicted of former violation**

Compulsory Attendance (Tex. Educ. Code § 25.085): Children age 6-18 are required to school.

Truant Conduct:

Fails to attend school without excuse on 10 or more days or parts of days within a 6 month period of the same school year.

(No longer 3 unexcused absences within 4 week period, but notice to parents required and Truancy Prevention Measures must be implemented).

Truancy Court:

Students 12-18 years old may be referred to truancy court within 10 days of the student’s 10th unexcused absence.

No Referral to Truancy Court: Students 19 and Older; or Truancy is a the result of foster care, homelessness, or being the principal income earner for the student’s family.

- When **may** a charter school expel a student?
 - ✓ For any reason listed in Tex. Educ. Code §37.007; or
 - ✓ For any reason **specifically listed** within the school board adopted Student Code of conduct.
- When is expulsion **mandatory** for a charter school?
 - ✓ If mandatory under the school's Code; or
 - ✓ For possession of a firearm on school premises (federal Gun Free Schools Act),
- When **should** a student be expelled from a charter school?
 - ✓ Local discretion
- Are there any limitations/requirements on the **length** of an expulsion?

CONSTITUTIONAL DUE PROCESS:

- What due process is **required** for expulsion of a charter school student?
- What due process rights can a parent **waive**?
- **Who** must conduct the expulsion hearing?
- What **documentation** is required—or necessary—for an expulsion to satisfy due process?
- What procedures **must** be set forth in the Code of Conduct regarding expulsion and due process?
- What must the **appeal process** look like for an expulsion?



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