

## Student Discipline



- Charter schools have broad discretion in determining a student discipline policy:
  - Type of prohibited behavior and possible disciplinary consequences subject to local discretion.
- Each governing body of an open-enrollment charter is required to adopt a code of conduct, including
  - types of prohibited behaviors;
  - 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 *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.**

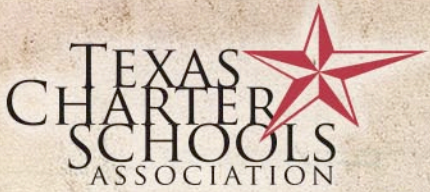
## A Student Code of Conduct **Should Not** . . .

**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).**



# First Amendment



## • **First Amendment Freedom of Speech**

- 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.
- 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 1<sup>st</sup> Amendment:
  - 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.

- Cyberbullying (David's Law)
  - Expands the definition of bullying
    - single significant act or a pattern of acts that exploits an imbalance of power through written or verbal expression, electronic means, or physical conduct that causes:
      - physically harm, damaging a student's property, or placing a student in reasonable fear of harm or damage to the student's property;
      - severe, persistent, or pervasive that the action or threat creates an intimidating, threatening or abusive educational environment for a student;
      - Materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or
      - Infringes on the rights of the victim at school

- Bullying off campus
  - Bullying includes on campus, school activity, or off school property
  - Cyberbullying occurs off campus or outside of a school event that interferes with student's educational opportunity or substantially disrupts school operation
  - Includes ALL electronic communication

- District Policies
  - Must adopt a policy
    - Procedures to notify parents of victim and alleged bully's parents
      - within 3 business days
    - Procedures for students to anonymously report
    - Assist in prevention of bullying
- Discipline
  - May expel, may send to DAEP, may report to law enforcement

- Remedies
  - Creates civil remedy for parents of victim of bullying against alleged bully
- Penal Code
  - Creates a Class A misdemeanor for harassment if,
    - Against a minor
    - Intent to cause serious bodily harm
    - Intent to cause suicide

# 4<sup>th</sup> Amendment



- **Unreasonable searches**
  - **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**
    - 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** –search must be reasonably related to the circumstances which justified the search.
  - 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?

- **Your Code of Conduct should state clearly that students have no expectation of privacy in school owned property:**
  - 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.
- **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.

## What is a “search” subject to the 4<sup>th</sup> 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.

# Due Process and Removals



- 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?

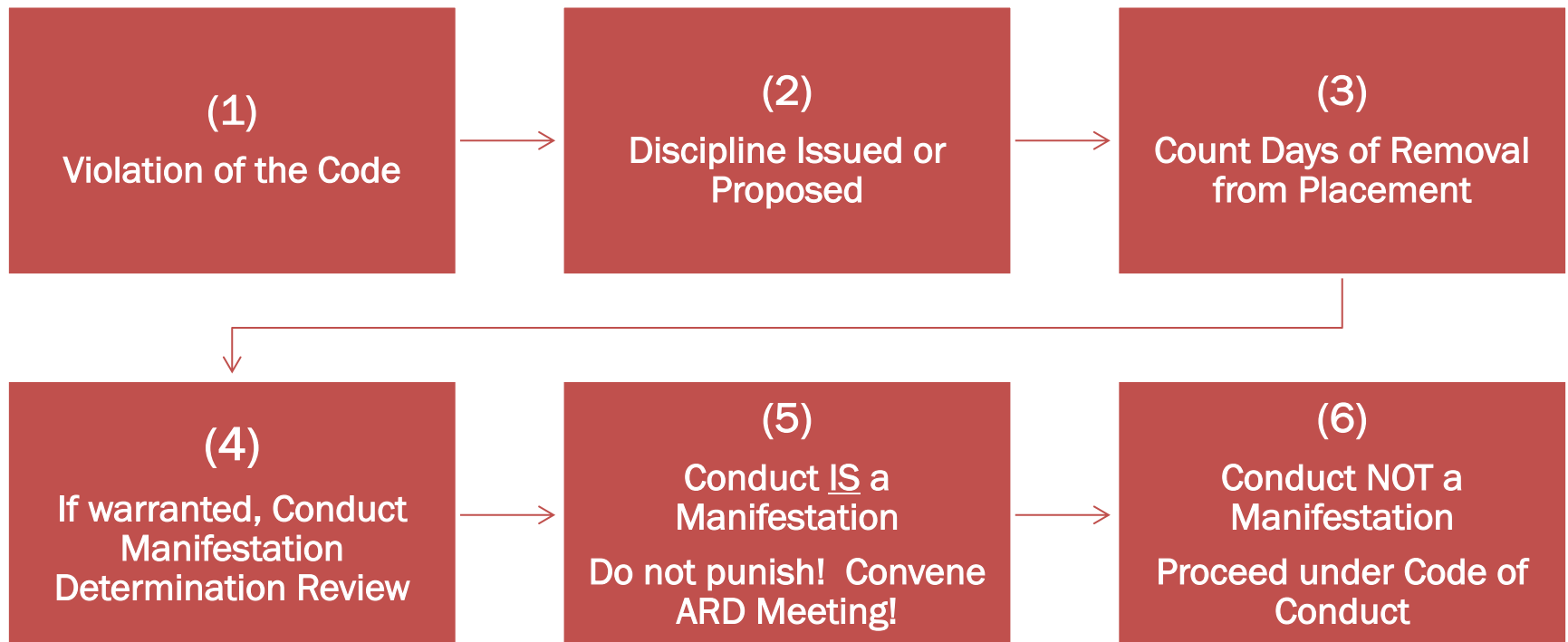
- Suspension
  - Schools are prohibited from suspending students in 2<sup>nd</sup> grade or lower
    - Exceptions for weapons, violent offenses, or possession, sale, use, or of drugs on campus
  - Schools may create a disciplinary alternative
    - Can't rely on OSS or ISS
    - Must use PBIS
    - Researched based

- Threaten to exhibit or use a firearm
  - Chapter 37 offense
  - School property or bus
  - Exhibits
    - 3<sup>rd</sup> degree felony
  - Threatens
    - Class A misdemeanor



# Special Education

- 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.**



## Special Education Students

- 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.

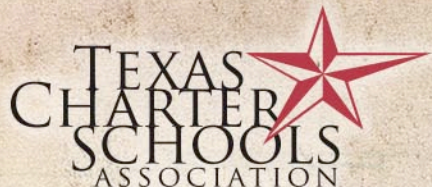
- *Manifestation Determination Review (MDR)*
  - If the school is recommending a disciplinary removal that would constitute a change in placement, the school must hold an MDR meeting
  - MDR must determine two questions:
    - Whether the behavior in question was caused by, or had a direct and substantial 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.



**Lindsey Gordon**  
General Counsel

[lgordon@txcharterschools.org](mailto:lgordon@txcharterschools.org)

**Christine Nishimura**  
Deputy General Counsel

[cnishimura@txcharterschools.org](mailto:cnishimura@txcharterschools.org)

