

Chandler Unified School District
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A School Administrator's Guide to Student Discipline

Updated by Cathleen M. Dooley, Esq.

Disclaimer

The information provided in this document is for informative purposes only and should not be used in place of legal advice.

What is Misconduct?

Know all of the Board
Policies that might
apply



Governing Board Policy: Conduct Expectations

- **JIC, Student Conduct**
- JICA/JICA-R, Student Dress
- JICC, Student Conduct on School Buses
- JICD, Student Conduct in School
- JICF, Secret Societies/Gang Activity
- JICG, Tobacco Use
- JICH, Drug & Alcohol Use
- JICFA, Hazing
- JICFB, Harassment of Students
- JICI, Weapons
- JICK, Student Violence/Harassment/Intimidation/Bullying
- ACAA, Sexual Harassment

Governing Board Policies Re: Discipline

- JK/JK-R, Student Discipline-will be updated soon
- JKB/JKB-R, Student Detention
- JKD/JKD-R, Student Suspension
- JKDA, Removal of Students from School Sponsored Activities
- JKE, Expulsion of Students

Discipline according to the procedures set out in Policy

Requirement to Inform Students

The principal of each school shall ensure that all rules pertaining to the discipline, suspension and expulsion of pupils are communicated to students at the beginning of each school year, and to transfer students at the time of their enrollment in the school.

- Provide link to Governing Board policies in student handbook
- Make sure you get the handbook receipts back

When Can the School Discipline?



When Can You Discipline?

School officials may discipline students for conduct that occurs:

- On school property, including school buses and vehicles;
- When traveling to and from school;
- At school-sponsored events;
- Outside of school and off school property, if school authorities can demonstrate that there was **a nexus (including a disruption)** to the educational environment. Be wary of this—check with District administration

Can You Discipline for Speech?

Generally, no because of First Amendment Rights. School administrators cannot discipline students for the content of their speech unless content it is:

- Obscene, lewd, or plainly offensive;
- Promotes illegal activity; or
- Creates a substantial disruption to the school environment.

Ask yourself first-does the speech violate a District conduct policy or do you just not like it?

Take a Knee?

- If the student is engaged in a protest or doing it for religious reasons, 1st Amendment right will generally prevail over school policy requiring standing during national anthem, saying pledge, etc.
- Free speech rights extend to extracurriculars and other non-school hour events
 - Ex: new Supreme Court case-*Mahanoy Area Sch. Dist. v. B.L.* (June 2021). Court found that a student who posted 2 images on Snapchat toward the school and cheerleading squad that were vulgar and included an obscene gesture should NOT have been suspended because discipline in that case was a violation of her 1st Amendment free speech rights. Posted through non-school internet and during non-school hours.

Can We Limit This Speech?

- BLM tee-shirts?
- MAGA clothes?
- #RedforEd?

Fact specific analysis

- Is there a history of violence or disruption related to the speech?
- Is limit to speech tailored to avert violence?
- Greater latitude to suppress speech than punish for it

When is Discipline Permissible?

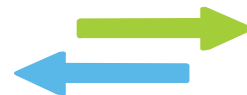
- Is the speech vulgar, profane, advocating disruption to the school environment?
- Is it expressing a threat to an individual or school generally?
 - Is it a viable threat? Ex: a 3rd grader saying aliens will blow up the school is not going to be considered discipline worthy
- Whether the speech occurred on campus or during non-school hours will matter.

Can You Discipline for Online Speech?

- A school cannot discipline a student for off-campus expression that is merely offensive or obscene.
- Schools officials must be able to articulate the nexus between the off-campus expression and a material disruption of the school environment.
- “Ordinary rules” of 1st Amendment protection include protecting speech that is critical of the school/staff and even other students where it is not a threat and occurs OFF CAMPUS

Can You Discipline Off-Campus Conduct/Speech?

- There must be some nexus between the misconduct and the educational environment in order to discipline a student for off-campus conduct.
- Prior to initiating discipline, administration must be able to articulate how the student's off-campus conduct caused a substantial disruption to the educational environment.



9th Circuit Case Set out Factors for Establishing a Nexus

- The degree and likelihood of harm to the school caused by the speech
- Whether it was “reasonably foreseeable” that the speech would reach and impact the school
- The relation between the content and context of the speech and the school
- But be aware of the newer Supreme Court case discussed above
- The 9th Circuit stated quite clearly that there is ALWAYS a nexus where the speech is a credible, identifiable threat of school violence. The new Supreme Court case does not change this analysis.

Investigation



Investigation

- Even when it seems clear that a Student violated district policy, there needs to be a thorough investigation.
- If the behavior involved a threat of harm to the student or other students or staff, notify District administration immediately so they can coordinate communication with other parents and be aware of the situation.

Don't forget that other, non-discipline policies might be relevant—is harassment implicated? Don't forget the rule about notice of possible sexual harassment

Steps for Investigation

- Talk to student/get a written statement as soon as possible
- Interview witnesses
- Obtain written witness statements that are signed and dated
- Photograph evidence
- Ensure the witnesses include all relevant facts and details in the witness statement
- Take a screenshot to preserve text, online messages and/or postings UNLESS involving sexual exploitation of minor

Student Interrogations/Searches

- School officials may question students regarding matters incident to school without limitation.
- School officials have the right to search and seize property when there is a reason to believe that something detrimental to health, safety, and welfare of student(s) exists.
- Parent must be contacted if student that is interviewed is then subject to discipline for serious offense.

Student Searches



Standard for Searches

In a school setting, administrators need **reasonable suspicion** of a violation of student code of conduct or law to conduct a search of a student's person or belongings.

When Can The School Search?

1) Justified at inception

School officials must have reasonable grounds to believe that a search will turn up evidence of a student's wrongdoing (i.e. a violation of law or school rules). Requires a "moderate chance of finding evidence of wrongdoing"

2) Reasonable in scope

The search must be related to the circumstances that justified the search in the first place and not excessively intrusive in light of age and sex of the student and the nature of the infraction.

The more intrusive the search, the more it will be scrutinized.

Justified at Inception?

School official must have a reasonable suspicion:

- that the particular student to be searched is
- violating a school rule or a local, state, or federal law
- and that a search will yield proof of the wrongdoing.

Reasonable in Scope?

Related in scope to the circumstances that prompted the reasonable suspicion of wrongdoing in the first place.

- Students have a reasonable expectation of privacy in possessions they own (backpacks)
- Don't EVER strip search a student

What Can Be Searched?

Lockers and Desks

- Students have very little expectation of privacy in places owned by the school, such as in lockers or desks.
- Schools should put students on notice that the school retains ownership of the lockers or desks and may search the lockers at any time.



What Can Be Searched?

Cars/Purses/Backpacks

- Students have a greater privacy interest in their own property, including an automobile, purse, pocket, back pack, etc.
- A school official should have an individualized and reasonable suspicion that the search of a student's effects will yield evidence of misconduct.
 - Be able to articulate your suspicion

Search – Cell Phones

- Same two-part test for other searches:
 - Justified at inception
 - Reasonable in scope



Tips for Investigation

- Keep accurate records—principals must establish and retain complete records of student discipline.
- Document, document, document!
- Review student witness statements with the students and ensure:
 - Does the statement make sense?
 - Can the student add detail or elaborate?
 - DATE AND SIGN.

Properly Disciplining a Student



Due Process Rights

Students have a right to due process as follows:

- Substantive due process
 - 5th and 14th amendments of US Constitution
 - Article 2, Section 4 of AZ Constitution
 - “Right to life, liberty, and property...”
- Procedural due process
 - The process that must be followed before taking away a person’s right to life, liberty, and property.

Informal Due Process

Always required:

- Student is told what he/she is accused of and the evidence to support the allegation.
- Student is given the opportunity to explain his/her version of events.
- School administrator makes reasonable efforts to investigate, such as obtaining witness statements, photographs, etc.

Due Process – Short-Term Suspension

- A written record of the decision shall be kept in the student's discipline file.
- Notify parent before student is allowed to leave campus and send parents a letter explaining discipline and asking for a meeting.
- There is no appeal from the imposition of a short term-suspension.

Due Process – Long-Term Suspension or Expulsion

Follow same steps as for short-term AND:

- Send Administration written recommendation.
- Administration will arrange a hearing.
- Send parent notice of the recommendation for long-term suspension or expulsion.
- Formal notice of hearing.
- Formal hearing.
- Appeal.

Cannot Suspend or Expel Students in Grades K-4 Except Under Specific Circumstances

There will be a change to Governing Board Policy JK based on new Arizona statute re: young students. Once it is in effect, the following applies:

- Can only suspend or expel K-4 students if ALL of the following are true:
 - 1) Student is aged 7 or older
 - 2) Behavior occurred on school grounds that meets one of the following:
 - Involves possession of dangerous weapon
 - Involves possession, use, or sale of dangerous drug or narcotic drug
 - Immediately endangers the health or safety of others

Cannot Suspend or Expel Students in Grades K-4 Except Under Specific Circumstances

- Behavior occurred on school grounds that meets one of the following (continued):
 - Involved “aggravating circumstances” as that term is (will be) defined by GB and MUST include
 - Persistent behavior that has been documented by school that prevents other students from learning or the teacher from maintaining control of classroom
 - Documentation exists that ongoing behavior is unresponsive to targeted interventions
 - Parent/Guardian has been notified and consulted about ongoing behavior
 - Student has been screened for disability and the behavior issues were determined to NOT be a result of disability

Cannot Suspend or Expel Students in Grades K-4 Except Under Specific Circumstances

- 3) Failing to suspend or expel the student would create a safety threat that cannot otherwise be reasonably addressed OR the behavior qualifies as “aggravating” as described above
- 4) Before suspending or expelling, district considers and employs alternative behavioral and disciplinary interventions
- 5) District has a readmission procedure

This is brand new—the takeaway is DO NOT suspend or expel a student in k-4 grades without contacting District administration for guidance.

Disciplining Students with Disabilities



Short Term Removals

(Out of/In-school Suspension, Detention, etc.)

- School officials can implement short-term suspensions for students with disabilities in the same manner as students without disabilities.
- When the removal from school is for 10 school days or less, there is no requirement to provide services, unless services are provided to students without disabilities who have similarly been removed.

Disciplinary Change in Placement

A disciplinary “change in placement” occurs for a student with a disability when:

1. The removal is for **more than 10 consecutive days**; or
2. The student has been subjected to a **series of removals that constitute a pattern...**

A disciplinary change in placement **REQUIRES** a Manifestation Determination Review

- Every time it occurs in the same school year
- Holding an MDR once does not mean you get 10 more days before the next one

Long-Term Removals

(Long-Term Suspensions and Expulsions)

School personnel may apply the same long term disciplinary procedures to children with disabilities as would be applied to children without disabilities, so long as the behavior that gave rise to the violation of the school rules is determined not to be a manifestation of the student's disability.

Manifestation Determination Review

- The school must conduct a MDR if:
 1. The school is contemplating a disciplinary removal of more than 10 consecutive school days, or
 2. The removal will constitute a change in placement.
- The MDR must occur within 10 school days of any decision to make a change in placement for disciplinary reasons.

Manifestation Determination Review

If the MDR Team determines the conduct WAS a manifestation of the Student's disability:

- The Disciplinary change in placement is not imposed; and
- The student must be returned to the placement from which he/she was removed, unless the parent and the School agree to a change of placement.

Manifestation Determination Review

If the MDR Team determines the conduct WAS NOT a manifestation of the Student's disability:

- The School can impose the disciplinary change in placement, i.e., long-term suspension or expulsion.
- However, the District must continue to provide services to students under the IDEA.

45-Day Removals

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the student's disability, if:

- The student carries or possesses a weapon;
- Knowingly uses, possesses, sells or solicits the sale of a controlled substance; or,
- Has inflicted serious bodily injury upon another person.

What Does “Serious Bodily Injury” Mean?

Serious bodily injury has the same meaning as the term “serious bodily injury” under 18 U.S.C. 1365(h)(3). The term means bodily injury that involves:

- (a) substantial risk of death;
- (b) extreme physical pain;
- (c) protracted and obvious disfigurement; or
- (d) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Educational Services During Periods of Removal

Educational services during periods of removal in excess of 10 school days must:

- Enable the student to continue to participate in the general education curriculum, and to progress toward meeting the goals set out in the student's IEP; and
- Receive, as appropriate, an FBA, and behavioral intervention services and modifications that are designed to address the behavior so that it does not recur.

Discipline of Section 504 Students

- Discipline under Section 504 is treated in the same manner as the IDEA.
- This includes both students who are on a 504 Plan and those that have a disability, but do not need a 504 Plan.

Distinct differences from the IDEA as to:

- Drug and Alcohol Offenses
- Stay Put
- Provision of Services
- Change in placement

QUESTIONS?



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