

Document No. _____
STATE BOARD OF EDUCATION
CHAPTER 43

Statutory Authority: 1976 Code Sections 1976 Code Sections 59-5-60, 59-5-65, and
59-59-10 et seq.

43-279. Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts.

Preamble:

The State Board of Education (SBE) proposes to amend R.43-279, Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts to include the changes recommended by the Safe Schools Taskforce, which was established by State Superintendent of Education, Molly M. Spearman, in November 2015. The amendments will include changes in the levels of misconduct, acts of misconduct, disciplinary enforcement procedures, and possible consequences.

Notice of Drafting for the proposed amendments to the regulation was published in the *State Register* on June 24, 2016.

Section-by-Section Discussion

Section I.	Adds “The mission of the SCDE is to provide leadership and support so that all public education students graduate prepared for success in citizenship, college, and careers as envisioned by the Profile of the South Carolina Graduate.”
Section III(B)	Changes “disorderly conduct” to “behavioral misconduct”
Section III(C)	Adds “consequences and/or”
Section III(D)	Changes “sanctions” to “consequences”; changes “in-school suspension” to “detention”; deletes “while”
Section III(E)	Adds “and consequences”
Section IV(A)	Changes “Disorderly conduct” to “Behavioral misconduct”
Section IV(A)(1)	Changes “Disorderly conduct” to “Behavioral misconduct”; adds a hyphen
Section IV(A)(2)	Changes “disorderly conduct” to “behavioral misconduct”
Section IV(A)(2)(d)	Deletes “d. Acting in a manner as to interfere with the instructional process” and renumbers items “e.–k.” to items “d.–k.”
Section IV(A)(2)(e)	Renumbered (A)(2)(d)
Section IV(A)(2)(f)	Renumbered (A)(2)(e) and replaces “Failure to complete assignments or carry out directions” with “Failure to comply with directives from school/district personnel or agents (to include volunteer aides or chaperones)”
Section IV(A)(2)(g)	Renumbered (A)(2)(f)
Section IV(A)(2)(h)	Renumbered (A)(2)(g)
Section IV(A)(2)(i)	Renumbered (A)(2)(h)
Section IV(A)(2)(j)	Renumbered (A)(2)(i) and adds “(three consecutive unlawful absences from school or a total of five unlawful absences)”
Section IV(A)(2)(k)	Renumbered (A)(2)(j) and becomes a new section “Possession of an electronic communication device (including, but not limited to, cell phones, tablets, computers, and iPods) inconsistent with school board policy;. an electronic communication device is a device that emits an

	audible signal, vibrates, displays a message, image or otherwise summons or delivers a communication to the possessor.”
Section IV(A)(2)(l)	Renumbered (A)(2)(k) and deletes “disorderly”; and adds “of behavioral misconduct” and “and communicated”
Section IV(A)(3)	Changes “disorderly conduct” to “behavioral misconduct”
Section IV(A)(3)(a)	Changes “an offense” to “acts”; change “apply” to “impose”; changes “sanction” to “consequence”; deletes “should”; and changes “sanction” to “consequence.”
Section IV(A)(3)(c)	Adds “impose the appropriate consequence and/or establish an intervention plan and/or behavioral contract”; deletes “effect the appropriate disciplinary action”
Section IV(A)(4)	Changes “sanctions” to “consequences”; changes “disorderly conduct” to “behavioral misconduct”
Section IV(A)(4)(d)	Adds “(silent lunch, after school, weekends, or another time that does not interfere with the instructional day)”
Section IV(A)(4)(e)	Former (A)(4)(e) deleted
Section IV(A)(4)(f)	Former (A)(4)(f) deleted
Section IV(A)(4)(g)	Renumbered (A)(4)(e) and changes “sanctions” to “consequences”; add “and communicated”
Section IV(B)(1)	Changes “Disorderly conduct” to “Behavioral misconduct”; adds a hyphen
Section IV(B)(2)(a)	New (B)(2)(a) which states “Violation of a Level I intervention plan and/or behavioral contract” and renumber items “a–o”
Section IV(B)(2)(a)	Renumbered (B)(2)(b)
Section IV(B)(2)(b)	Renumbered (B)(2)(c)
Section IV(B)(2)(c)	Renumbered (B)(2)(d)
Section IV(B)(2)(d)	Renumbered (B)(2)(e)
Section IV(B)(2)(e)	Renumbered (B)(2)(f)
Section IV(B)(2)(f)	Renumbered (B)(2)(g)
Section IV(B)(2)(g)	Renumbered (B)(2)(h)
Section IV(B)(2)(h)	Renumbered (B)(2)(i) and changes “Refusal to obey” to “Repeated refusal to comply with directives from”; deletes “whose responsibilities include supervision of students”
Section IV(B)(2)(i)	Renumbered (B)(2)(j) and adds “and”
Section IV(B)(2)(j)	Renumbered (B)(2)(k)
Section IV(B)(2)(k)	Renumbered (B)(2)(l)
Section IV(B)(2)(l)	Renumbered (B)(2)(m)
Section IV(B)(2)(m)	Renumbered (B)(2)(o) and adds “and communicated”
Section IV(B)(2)(n)	New section “Inappropriate use of technology (e.g., bullying, harassing, or intimidating other students or district employees, plagiarizing copyrighted materials, and accessing inappropriate websites)”
Section IV(B)(3)(b)	Deletes “effects” and adds “impose”
Section IV(B)(3)(c)	New wording “The administrator may refer the student to the appropriate intervention team to establish behavioral management strategies (e.g., restorative justice, counseling, service learning projects) and propose the appropriate disciplinary action”
	Former (B)(3)(c) is renumbered (B)(3)(e)
Section IV(B)(3)(d)	New wording “If the misconduct appears to rise to a level of criminality, the administrator must refer the matter to the School

Section IV(B)(4)(i)	Resource Officer or other local law enforcement authorities” Deletes “an” and adds “and communicated”
Section IV(C)(1)	Adds “the School Resource Officer or other” and “during”; adds a hyphen
Section IV(C)(2)(i)	Adds “by law and/or”
Section IV(C)(2)(k)	New section and adds “Illegal use of technology (e.g., communicating a threat of a destructive device, weapon, or event with the intent of intimidating, threatening, or interfering with school activities and transmitting sexual images of minors)”
Section IV(C)(3)(a)	Deletes “an” and adds “a criminal” and “the administrator must contact the School Resource Officer or local law enforcement authorities immediately”; deletes “should confer with the staff involved, should effect the appropriate disciplinary action, and, if appropriate, should meet with the student”
Section IV(C)(3)(b)	New section “An administrator should notify the student’s parent or guardian as soon as possible”
Section IV(C)(3)(b)	Renumbered (C)(3)(c), and adds “An administrator should impose the appropriate disciplinary action”; deletes “A parent or guardian should be notified as soon as possible”
Section IV(C)(3)(c)	Former (C)(3)(c) deleted
Section IV(C)(3)(e)	Changes “procedures” to “incident”; adds “in accordance with district policy”
Section IV(D)	Former paragraph (D) has been renumbered (D)(1), and adds “or”; deletes “or aggravating”, and adds “excluding criminal conduct”. A second section, (D)(2), has been added and states “A local school board may confer upon the appropriate administrator the authority to consider aggravating circumstances which may exist in a particular case of misconduct or criminal conduct. Such circumstances should be considered in determining the most appropriate sanction to be used”
Section VI(A)(4)	Delete
Section VI(A)(5–8)	Renumbered (4–7)
Section VI(A)(8)	Add “as approved and communicated by the local school authorities”
Section VI(B)	Replace current language with “Rules of student conduct are required by state and federal law to be reasonable exercises of the local school board’s authority in pursuance of legitimate educational and related functions and must not infringe upon students’ constitutional rights”

Notice of Public Hearing and Opportunity for Public Comment:

A public hearing will be held on October 11, 2016, at 1:00 p.m. in the Rutledge Conference Center, 1429 Senate Street, Columbia, SC 29201. The proposed amendments to the regulation will be posted on the State Board of Education Web site for review and comment. To review the regulation click on the attached link <http://ed.sc.gov/scdoe/assets/File/policy/state-board/Regulations/RegReviewedbySBE16-17.pdf>.

Written comments should be submitted to Sabrina Moore, Director, Office of Student Intervention Services, Division of Federal, State, and Community Resources, 1429 Senate Street, Suite 805, Columbia, SC 29201 or by e-mail to smoore@ed.sc.gov on or before 5:00 pm on September 26, 2016.

Preliminary Fiscal Impact Statement:

No additional state funding is requested. The South Carolina Department of Education estimates that no additional costs will be incurred in complying with the proposed revisions to R.43-279.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts.

Purpose: The proposed amendments will incorporate the recommendations of the Safe Schools Taskforce, established by State Superintendent of Education Molly M. Spearman.

Legal Authority: 1976 Code Sections 59-5-60, 59-5-65, and 59-59-10 et seq.

Plan for Implementation: The proposed amendments would be incorporated within R.43-279 upon publication in the State Register as a final regulation.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The proposed changes will improve the consistency of language used by educators and law enforcement officials and clarify the types of infractions associated with each level of misconduct and the range of acceptable consequences or sanctions.

DETERMINATION OF COSTS AND BENEFITS:

There will be no increased cost to the state or its political subdivisions, nor will the proposed amendments result in any increased cost to the school districts. The proposed amendments will benefit students, schools, districts, and the state by providing increased guidance and clarity to student disciplinary procedures.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the cost to the State or its political subdivisions.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The proposed regulation has no effect on the environment or on public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There will be no detrimental effect on the environment or public health if the regulation is not implemented.

Statement of Rationale:

The proposed changes are designed to promote more consistent discipline practices statewide by reducing the amount of subjectivity involved in discipline decisions.

~~Indicates Matter Stricken~~

Indicates New Matter

Text:

43-279. Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts.

I. Expectations for Student Conduct in South Carolina Public Schools

The mission of the SCDE is to provide leadership and support so that all public education students graduate prepared for success in citizenship, college, and careers as envisioned by the Profile of the South Carolina Graduate. Students in the public schools of South Carolina enjoy the same basic rights of United States citizenship as do other United States citizens. The rights of students are supported by the responsibility to insure that the rights of others are respected. This regulation is adopted with the intent to better assure that the opportunity to enjoy the benefits of public education is available to all those attending the public schools of the state of South Carolina.

II. Previously Adopted School District Discipline Policies

This regulation is established as a uniform system of minimum disciplinary enforcement for the school districts of South Carolina. School districts that previously have adopted discipline policies that are consistent with and contain the elements included in this regulation may retain their local policies as adopted.

III. Levels of Student Misconduct

A. The levels of student misconduct considered in this regulation are arranged by degrees of seriousness. The levels are arranged from the least serious to the most serious.

B. Three levels of student misconduct are identified: ~~disorderly conduct~~ behavioral misconduct, disruptive conduct, and criminal conduct. The levels are defined in this regulation.

C. This regulation includes a listing of possible consequences and/or sanctions for the three levels of student misconduct. As the levels increase in seriousness, the severity of possible disciplinary consequences and/or sanctions increases.

D. Suggested ~~sanctions~~ consequences within the Level I misconduct category range from verbal reprimand to ~~in-school suspension~~ detention. Level II misconduct includes sanctions ranging from temporary removal from class to expulsion, ~~while~~. Level III misconduct includes sanctions ranging from out-of-school suspension to appropriate action within the criminal justice system.

E. A local school board, in its discretion, may authorize more stringent standards and consequences than those contained in this regulation.

IV. Minimum Standards

A. ~~Disorderly Conduct~~ Behavioral Misconduct-Level I

1. ~~Disorderly conduct~~ Behavioral misconduct is defined as those activities engaged in by student(s) which tend to impede orderly classroom procedures or instructional activities, orderly operation of the school, or the frequency or seriousness of which disturb the classroom or school. The provisions of this

regulation apply not only to within-school activities, but also to student conduct on school bus transportation vehicles, and other school-sponsored activities.

2. Acts of ~~disorderly conduct~~ behavioral misconduct may include, but are not limited to:

- a. Classroom tardiness;
- b. Cheating on examinations or classroom assignments;
- c. Lying;
- ~~d. Acting in a manner so as to interfere with the instructional process;~~
- ed. Abusive language between or among students;
- fe. Failure to complete assignments or carry out directions; comply with directives from school/district personnel or agents (to include volunteer aides or chaperones);
- gf. Use of forged notes or excuses;
- hg. Cutting class;
- ih. School tardiness;
- ji. Truancy (three consecutive unlawful absences from school or a total of five unlawful absences);
- kj. Possession of an electronic communication device (including, but not limited to, cell phones, tablets, computers, and iPods) inconsistent with school board policy. An electronic communication device is a device that emits an audible signal, vibrates, displays a message, image or otherwise summons or delivers a communication to the possessor.
- lk. Other disorderly acts of behavioral misconduct as determined and communicated by local school authorities.

3. The basic enforcement procedures to be followed in instances of ~~disorderly conduct~~ behavioral misconduct are:

a. Upon observation or notification and verification of ~~offense acts~~ of behavioral misconduct, the staff member should take immediate action to rectify the misconduct. The staff member should ~~apply~~ impose an appropriate consequence sanction, and ~~should~~ maintain a record of the misconduct and the ~~sanction~~ consequence.

b. If, either in the opinion of the staff member or according to local school board policy, a certain misconduct is not immediately rectifiable, the problem should be referred to the appropriate administrator for action specified by local school board policy.

c. The administrator should meet with the reporting staff member, and, if necessary, the student and the parent or guardian, and impose the appropriate consequence and/or establish an intervention plan and/or behavioral contract. ~~effect the appropriate disciplinary action.~~

d. A complete record of the procedures should be maintained.

4. Possible ~~sanctions~~ consequences to be applied in cases of behavioral misconduct may include, but are not limited to:

- a. Verbal reprimand;
- b. Withdrawal of privileges;
- c. Demerits;
- d. Detention (silent lunch, after school, weekends, or another time that does not interfere with the instructional day);
- e. ~~Corporal punishment~~;
- f. ~~In school suspension~~;
- g. ~~Other sanctions~~ consequences as approved and communicated by local school authorities.

B. Disruptive Conduct-Level II

1. Disruptive conduct is defined as those activities engaged in by student(s) which are directed against persons or property, and the consequences of which tend to endanger the health or safety of oneself or others in the school. Some instances of disruptive conduct may overlap certain criminal offenses, justifying both administrative sanctions and court proceedings. ~~Disorderly conduct~~ Behavioral misconduct (Level I) may be reclassified as disruptive conduct (Level II) if it occurs three or more times. The provisions of this regulation apply not only to within school activities, but also to student conduct on school bus transportation vehicles, and other school-sponsored activities.

2. Acts of disruptive conduct may include, but are not limited to:

- a. Violation of a Level I intervention plan and/or behavioral contract;
- b. Use of an intoxicant;
- c. Fighting;
- d. Vandalism (minor);
- e. Stealing;
- f. Threats against others;
- g. Trespass;
- h. Abusive language to staff;
- i. Repeated refusal to comply with directives from ~~Refusal to obey~~ school personnel or agents (such as volunteer aides or chaperones) ~~whose responsibilities include supervision of students~~;
- j. Possession or use of unauthorized substances, as defined by law and/or local school board policy;

jk. Illegally occupying or blocking in any way school property with the intent to deprive others of its use;

kl. Unlawful assembly;

lm. Disrupting lawful assembly;

n. Inappropriate use of technology (e.g., bullying, harassing, or intimidating other students or district employees, plagiarizing copyrighted materials, and accessing inappropriate websites)

mo. Other acts as determined and communicated by local school authorities.

3. The basic enforcement procedures to be followed in instances of disruptive conduct are:

a. Upon observation or notification and verification of an offense, the administrator should investigate the circumstances of the misconduct and should confer with staff on the extent of the consequences.

b. The administrator should notify the parent or guardian of the student's misconduct and related proceedings. The administrator should meet with the student and, if necessary, the parent or guardian, confer with them about the student's misconduct and ~~effect~~ impose the appropriate disciplinary action.

c. The administrator may refer the student to the appropriate intervention team to establish behavioral management strategies (e.g., restorative justice, counseling, service learning projects) and propose the appropriate disciplinary action.

d. If the misconduct appears to rise to a level of criminality, the administrator must refer the matter to the School Resource Officer or other local law enforcement authorities.

e-e. A complete record of the procedures should be maintained.

4. Possible sanctions to be applied in cases of disruptive conduct may include, but are not limited to:

a. Temporary removal from class;

b. Alternative education program;

c. In-school suspension;

d. Out-of-school suspension;

e. Transfer;

f. Referral to outside agency;

g. Expulsion;

h. Restitution of property and damages, where appropriate, should be sought by local school authorities;

- i. Other sanctions as approved and communicated by local school authorities.

C. Criminal Conduct-Level III

1. Criminal conduct is defined as those activities engaged in by student(s) which result in violence to oneself or another's person or property or which pose a direct and serious threat to the safety of oneself or others in the school. These activities usually require administrative actions which result in the immediate removal of the student from the school, the intervention of the School Resource Officer or other law enforcement authorities, and/or action by the local school board. The provisions of this regulation apply not only to within-school activities, but also to student conduct on school bus transportation vehicles, and during other school-sponsored activities.

2. Acts of criminal conduct may include, but are not limited to:

- a. Assault and battery;
- b. Extortion;
- c. Bomb threat;
- d. Possession, use, or transfer of dangerous weapons;
- e. Sexual offenses;
- f. Vandalism (major);
- g. Theft, possession, or sale of stolen property;
- h. Arson;
- i. Furnishing or selling unauthorized substances, as defined by law and/or local school board policy;
- j. Furnishing, selling, or possession of controlled substances (drugs, narcotics, or poisons).

k. Illegal use of technology (e.g., communicating a threat of a destructive device, weapon, or event with the intent of intimidating, threatening, or interfering with school activities and transmitting sexual images of minors).

3. The basic enforcement procedures to be followed in instances of criminal conduct are:

a. Upon observation or notification and verification of ~~an~~ a criminal offense, the administrator must contact the School Resource Officer or local law enforcement authorities immediately. ~~should confer with the staff involved, should effect the appropriate disciplinary action, and, if appropriate, should meet with the student.~~

b. An administrator should notify the student's parent or guardian as soon as possible.

~~b~~ c. An administrator should impose the appropriate disciplinary action. If warranted, the student should be removed immediately from the school environment. ~~A parent or guardian should be notified as soon as possible.~~

~~c. If appropriate, school officials should contact law enforcement authorities.~~

d. Established due process procedures shall be followed when applicable.

e. A complete record of the ~~procedures incident~~ should be maintained in accordance with district policy.

4. Possible sanctions to be applied in cases of criminal conduct may include, but are not limited to:

a. Out-of-school suspension;

b. Assignment to alternative schools;

c. Expulsion;

d. Restitution of property and damages, where appropriate, should be sought by local school authorities;

e. Other sanctions as approved by local school authorities.

D. Extenuating, Mitigating or Aggravating Circumstances

1. A local school board may confer upon the appropriate administrator the authority to consider extenuating or mitigating ~~or aggravating~~ circumstances which may exist in a particular case of misconduct, excluding criminal conduct. Such circumstances should be considered in determining the most appropriate sanction to be used.

2. A local school board may confer upon the appropriate administrator the authority to consider aggravating circumstances which may exist in a particular case of misconduct or criminal conduct. Such circumstances should be considered in determining the most appropriate sanction to be used.

V. Discipline of Students with Disabilities

For additional information regarding Disciplinary Procedures for students with disabilities, see R.43-243.

VI. Other Areas of Student Conduct Which May Be Regulated by Local School Board Policy

A. Other areas of student conduct which are subject to regulation by local school boards include, but are not limited to:

1. School attendance;

2. Use of and access to public school property;

3. Student dress and personal appearance;

~~4. Use of tobacco in the public schools;~~

~~5. Speech and assembly within the public schools;~~

65. Publications produced and/or distributed in the public schools;

76. The existence, scope and conditions of availability of student privileges, including extracurricular activities and rules governing participation;

87. Other activities not in conflict with existing state statutes or regulations as approved and communicated by the local school authorities.

B. Rules of student conduct are required by state and federal law to be reasonable exercises of the local school board's authority in pursuance of legitimate educational and related functions and must not infringe upon students' constitutional rights. Other areas of student conduct may be regulated within legal limits by local school boards as they deem appropriate to local conditions. The term "legal limits" signifies the requirements of the federal and state constitutions and governing statutes, standards and regulations, the fundamental common law requirement that rules of student conduct be reasonable exercises of the school's authority in pursuance of legitimate educational and related functions, and special limitations arising from constitutional guarantees.