



## School Discipline and Its Legislation in China

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### Abstract

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School disciplinary measures have been controversial for a long time in China. However, on March 1st, 2021, the "Disciplinary Rules for primary and secondary education (Trial)" published by China's Ministry of Education came into effect, and it will guide teachers at elementary, middle, and high schools in China. This article examines the background of the new rule for school disciplinary measure and analyzes its content. In addition, it introduced the different types of measures and their procedural requirements in "Disciplinary Rules for primary and secondary education" and discussed the implications for future disciplinary practice. We advised that the schools should make their codes of conduct public and transparent; teachers should keep the rule of discipline in mind, applying it fairly; educators should implement disciplines following the procedural requirement.

**Keywords:** School, disciplinary, rules, right, student.

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## **Introduction**

In China, disciplinary measures educators take in schools have been controversial for a long time. On March 1<sup>st</sup>, 2021, the "*Disciplinary Rules for primary and secondary education*" was formally implemented, guiding elementary as well as high school teachers to proper discipline in classroom. Educators are forbidden to use improper approaches to discipline their students, including corporal punishment, verbal abuse, collective punishment for individual violations and other methods that could harm students' physical and mental health, according to a set of rules issued by the Ministry of Education (Trial, 2020).

This article examines the background of the new rules, pointing out the increase of controversial school-related discipline incidents calls for clearer definitions and clarification on school disciplinary measures in China. By textual analyzing the regulation, the paper introduces the conditions under which educators can exercise disciplinary measures, as well as the scope of the punishments. Finally, the article presents some implications for future disciplinary practice in China.

### **The legislation background of Education Disciplinary Rules in China**

The Chinese Constitution (1982) grants the central government "unified leadership," meaning that its officials have the ultimate say on educational issues. Consequently, orders of the central government operate in a top-down manner (Russo, 2017). At the same time, the right to education is a fundamental right of citizenship under the Constitution (Jihong, 2003).

***Statutory law provides general rights and obligations in education.*** There are some statues regulate educational disciplinary in China. The legislation forbids corporal punishment and prohibits the school from expelling students during compulsory education, grades one to nine. Article 27 of the *Compulsory Education Law of the people's republic of China (1986)* states that students who violate school rules may be disciplined other than expelled. Article 21 of *Law of the people's Republic of China on Protection of Minors (1991)* states that the teaching and administrative staff of schools, kindergartens, and nurseries shall respect the personal dignity of minors, and may not enforce corporal punishment, disguised corporal punishment, or other acts that humiliate the personal dignity of minors. For instance, teachers can criticize students under the law but may not punish students for doing heavy physical work or expelling them from school (Ministry of Education of the People's Republic of China, 2021).

***Conflicts caused by educational disciplinary measures between schools and parents are increasing.*** Some surveys find that after criticizing students for misbehavior, some teachers get troubles by the complaints from parents or guardians (Lin, 2015). When the disputes on disciplinary actions arise, school officials in rural areas may encourage teachers to pay monetary compensation personally to settle conflicts, even if the teachers are without fault (NetEase, 2019). This kind of poor practice made educators unwilling to point out and correct students' misbehaviors, which is not only a violation of teachers' rights but also a detriment to the students' educational rights.

Besides, how the courts can get involved protecting the rights of students and teachers is a question closely related to disciplinary practices. Because Chinese public schools are defined as public enterprises rather than part of the state, the administrative division of the courts sometimes refuse to hear cases (Russo, 2017).

***Schools are asking for guidance on how to enforce educational discipline.*** Prohibition of corporal punishment used to be the top priority for regulating teachers' behaviors (Yong, Pan, Li, Jiaxian & Yulin, 2017). As the authority to punish is no longer accepted as a natural right, well-educated teachers in China are increasingly prone to avoid strict educational disciplinary measures at schools. They are

asking for a guidance on how to enforce educational discipline legally. It's found that parents were worried since they were not well informed, while teachers become unwilling to structure students since they are not sure about the procedural requirement (Luyao, 2018).

In order to address the issue, Ministry of Education of the People's Republic of China established the "Education Disciplinary Rule" to reaffirm the legality of teachers' disciplinary actions and clarify the procedural requirements for enforcing the measures (2021).

### **The main content of the new Education Disciplinary Rules**

The Education Disciplinary Rules released by the Chinese Ministry of Education will govern teachers' behavior nationwide and will apply to elementary, middle, and secondary vocational schools (Trial, 2020).

***Scope and principles of the Discipline Rule apply.*** According to Article 7 of the Disciplinary Rules for primary and secondary education, in any of the following situations, the school and its teachers shall stop the students' wrongdoings. In addition, if it is necessary, they may implement educational disciplinary measures:

- a . Deliberately failing to complete the teaching task requirements or disobey instructions.
- b . Disrupting the order of classrooms and school education and teaching.
- c . Smoking, drinking, or abusing words and deeds in violation of the student code.
- d . Carrying out dangerous behaviors harmful to the physical and mental health of oneself or others.
- e . Beating and scolding classmates or teachers, bullying classmates, or infringing on others.
- f . Other violations of school rules and disciplines.

When discipline is needed, they should be implemented under the following principles. First, the purpose of disciplinary actions is educating students to correct their mistakes, building self-discipline, and respecting the rules, so these actions should obey the rule of education activity. Second, disciplinary measures should implement under the law. Punitive measures shall be based on rules announced in advance, respecting students' basic rights and personal dignity while complying with due process and objective justice. Third, disciplinary actions and fault must match with each other. The punitive measures used shall be based on the degree of fault or ignorance. Before they take punitive measures, educators should take the motives and nature of students' misbehavior into account while paying attention to prevent risks that might emerge as imposing punishment.

***The categories of disciplinary actions and their procedural requirement.*** According to Article 8, 9 and 10 of the Disciplinary Rules for primary and secondary education, educational disciplinary actions can be divided into three categories based on their severity: general measures, heavier measures, and severe measures (Trial, 2020):

a .*General measures* are commonly used. When misbehavior is relatively minor, teachers can implement the following disciplines:

- 1. Criticism by name;
- 2. Order to make an apology, or make an oral or written review;
- 3. Add public service tasks;

4. Standing in the classroom no longer than one class time;
5. Additional structure after class;
6. Other appropriate measures established in class conventions or school rules.

After the teacher implements those measures, he or she may inform the parents of the students in an appropriate manner.

b. *Medium measures* apply to more severe misbehaviors. Suppose a student violates school rules and disciplines. In that case, the circumstances are severe, or the school refuses to make corrections after on-the-spot education disciplinary action, the school can implement the following educational disciplinary actions and shall promptly notify the parents:

1. Instructed by the person in charge of school moral education.
2. To undertake the task of public welfare service within the school.
3. Arrange to receive special instruction on school rules, disciplines, and behavior rules.
4. Suspend or restrict students from participating in tours, off-campus activities, and other out-of-school activities. The other appropriate measures are prescribed in the school rules.

c. *The most severe measures* apply when students violate school codes repeatedly or very severely, thereby affecting normal classroom operations or teaching activities. If the wrongdoers are in the upper grades of elementary school, junior high school, and high school, the school may implement the following educational punishments, and parents should be notified in advance:

1. Suspension of classes or school for no more than one week, and requires parents to educate and discipline at home;
2. Admonishment by the vice principal of the rule of law or the rule of law counselor;
3. Arrange special courses or educational venues, and social workers or other professionals provide psychological counseling and behavioral intervention.

For students whose violations of rules and disciplines are serious, or who fail to make corrections after repeated education and punishments, the school may give disciplinary sanctions such as warning, serious warning, demerit, or detention. High school students can also be given disciplinary sanctions for expulsion. For students with serious bad behaviors, the school can follow legal procedures to cooperate with parents and relevant departments to transfer them to specialized schools for education and correction.

### **Implications for future disciplinary practice in China**

Although the Chinese Ministry of Education is eager to strengthen the authority of teachers, it is unrealistic to pin this hope on promulgation of one single regulation. Even if the regulation was formally enacted, it must be consistent with the Constitution and other superior statutes. In addition, its implementation must serve the purpose of educating students, and it must also be supervised by parents and other administrators.

***School codes of conduct should be made public and transparent.*** Schools must pay special attention to the publicity and promulgation of student codes of conduct. The Codes of Conduct should be included in school handbooks, with educators explaining their contents to students plus their parents or guardians at the beginning of school years. It will serve as an important stepping-stone towards fostering a culture of learning mutual respect, accountability, personal development within the school and its

surroundings. Only if students know the consequences of their misbehavior, can one hope they will be more likely to follow the guide. Further, students and their parents or guardians should be encouraged to take part in establishing the code of conduct that combines both rewards and discipline (Lukman & Hamadi, 2014).

***Teachers should keep the rule of discipline in mind, applying it fairly.*** Effectiveness of top-down disciplinary rules depends on specific teachers in charge of classroom. Ignorant of school discipline policies, many teachers in China almost make no plan for disciplining (Junyan, 2018). If teachers did not know the rules of school discipline, it would not only threaten the rights of students, but also compromise themselves.

Teachers should have the policy of punitive discipline in mind, applying it fairly to all students. For example, teachers should realize that using abusive, discriminatory words to criticize students is not only offensive, but also violates the school discipline policies. Teachers should make disciplinary decisions according to students' ages, mental health, and the severity of misbehaviors. The disciplinary rules may not specify everything, but they provide the boundary for teachers to avoid unnecessary lawsuit.

***Educators should implement disciplines following the procedural requirement.*** The regulation of disciplinary measures set up clauses of hearing, which indicates that for the first time the Ministry of Education determines to protect the procedural rights of students in elementary, middle, and high schools. According to this rule, school officials may conduct hearings in the following two situations: 1) Officials decide to take other educational disciplinary measures instead of the rules already established, they may conduct hearings after conducting risk assessments and legal counseling. 2) Before educators intend to impose the most severe disciplinary measures on students such as suspension, they should offer them chances to make statement, and give their opportunity to defend themselves, and hold hearings if necessary.

Unfortunately, the necessary instructions about the time limit for disciplinary actions are missing in the issued rule. For example, there is no provision addressing how long the notice should be delivered to guardians after spending the student from off-campus activities.

## **Conclusion**

In general, it is a crucial step into administering schools by law that the Chinese Ministry of Education attempts to regulate disciplinary measures through established regulation. The regulation responds to the needs of schools and parents and has made progress in clarifying the specific form of education punishment, teachers' rights, the boundaries of administering discipline, and relief methods for the students. There is a negative list for teachers to take punitive measures, which, as the bottom line, allows educators to make their own disciplinary decisions in line with different kinds of situations.

It is expected that managing schools by rules will be more and more deeply rooted among the people in China. For students, only raised in an environment that fairly upholds dignity and human rights can they be truly inspired and grow up into trustworthy, law-abiding citizens. In this sense, the regulation has taken the initiative in achieving mutual respect among teachers and students.

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