

Getting Sent to the Principal's Office

An Overview of the Legal and Procedural Issues Governing the Discipline of Students in Public Schools

by Vittorio S. LaPira

While a free public school education is guaranteed to all New Jersey residents within a certain age range, that right is not unlimited, and students attending public schools are required to “comply with the rules established in pursuance of law for the government of such schools, pursue the prescribed course of study and submit to the authority of the teachers and others in authority over them.”¹ When students fail to abide by school rules, they are subject to discipline, which can range from a punishment as benign as admonishment to something more serious, such as suspension from school or potentially expulsion and a waiver of the student’s right to a free public education. This article provides a broad overview of the legal and procedural issues governing the discipline of students in public schools.

General Principles

Public school teachers, school administrators, and/or any public school staff members who have authority over students (including bus drivers) are required to hold every student “accountable for disorderly conduct in school and during recess and on the playground of the school and on the way to and from school.”² To that end, each public school district maintains a code of student conduct, “which establishes standards, policies and procedures for positive student development and student behavioral expectations on school grounds, including on school buses or at school-sponsored functions, and, as appropriate, for conduct away from school grounds.”³

The code of student conduct provides students and parents with notice of (among other things) the expectations for student conduct, a description of the behaviors that will result in suspension or expulsion, a description of students’ rights, a listing of behavioral supports to promote positive student

development, and a description of school responses to violations of behavioral expectations.⁴ The school district’s responses to behavior violations must, at a minimum, be “graded according to the severity of the offenses,” and must “consider the developmental ages of the student offenders and students’ histories of inappropriate behaviors.”⁵ Corporal punishment, of course, is prohibited,⁶ but staff members *are* permitted to use reasonable amounts of force as may be necessary “to quell a disturbance, threatening physical injury to others; to obtain possession of weapons or other dangerous objects within the control of a pupil; for the purpose of self-defense; and for the protection of persons or property.”⁷

Suspensions, Expulsions and Students’ Due Process Rights

School districts are authorized to suspend or expel any student who is “guilty of continued and willful disobedience, or of open defiance of the authority of any teacher or person having authority over him, or of the habitual use of profanity or of obscene language, or who shall cut, deface or otherwise injure any school property.”⁸ New Jersey law enumerates 11 categories of conduct that specifically constitute good cause for suspension or expulsion, including the offenses referenced above; any conduct that constitutes a continuing danger to the well-being of other students; assault upon other students; taking (or attempting to take) money or property from another student through force or fear; willfully damaging school property; participating in unauthorized occupancy of a school building after the principal has directed the student(s) to leave; inciting the unauthorized occupancy of a school building; inciting truancy; knowingly possessing, consuming or being under the influence of alcoholic beverages or controlled dangerous substances while on school property; and harassment, intimidation or bullying.⁹ That list, while lengthy, is by no means exhaustive, and students may be sus-

pended for other reasons as well (generally those set forth in the code of student conduct).

In situations governing the actual removal from school (e.g., suspension), certain rules apply, designed to provide students with procedural rights of due process. When a school administrator wishes to impose a short-term suspension from school (defined as 10 consecutive school days or less) upon a student, it must, as soon as practicable, provide the student with oral or written notice of the charges.¹⁰ In the event the student denies the charges, the administrator must provide the student with an explanation of the evidence forming the basis of the charges.¹¹ Before imposing the suspension, a school administrator or his or her designee must provide the student with an “informal hearing,” where the student may present his or her version of the events.¹²

The informal hearing, which should take place even when a school staff member has personally witnessed the conduct forming the basis of the charge,¹³ is not an onerous requirement; it can take place at the same time the student is given notice of the charges,¹⁴ and need only take as much time as necessary to allow the student to explain or present his or her side of the story.¹⁵ Notably, students *do not* have the right to have counsel (or their parents) present, nor do they have the right to cross-examine witnesses or call their own witnesses; they may only provide school officials with their version of the events.¹⁶

In certain circumstances, a school official may impose a suspension *without* first conducting the hearing, namely when the “student’s presence poses a continuing danger to persons or property or an ongoing threat of disrupting the educational process.”¹⁷ In such cases, the informal hearing should be held as soon as practical after the suspension.¹⁸

Before the end of the school day on which the administrator decides to sus-

pend the student, the school must provide the student’s parents with oral or written notification of the suspension, which must include an explanation of the specific charges, the facts on which they are based, the specific provision of the code of conduct the student is accused of violating, the student’s due process rights, and the terms and conditions of the suspension.¹⁹ For suspensions that are effectively for five school days or greater, the school must provide academic instruction, often in the student’s home. Home instruction must commence no later than five school days after the start of the student’s suspension from school.²⁰

In the case of a long-term suspension from school (defined as more than 10 consecutive school days), the school must essentially follow the same procedures concerning the notice of charges, informal hearing and notice to the student’s parents regarding the removal from school.²¹ However, within two school days after the long-term suspension begins, the chief school administrator (or his or her designee) must provide the student’s parents with a detailed written notice setting forth the specific charges; the facts on which they are based; the specific provision of the code of conduct the student is accused of violating; and an outline of the student’s due process rights (set forth in detail *infra*), which in the case of a long-term suspension includes a formal hearing before the board of education.²² The notification must also include a statement that “further engagement by the student in conduct warranting expulsion, pursuant to N.J.S.A. 18A:37-2, shall amount to a knowing and voluntary waiver of the student’s right to a free public education, in the event that a decision to expel the student is made by the district board of education, pursuant to N.J.S.A. 18A:37-2 and N.J.A.C. 6A:16-7.5,” and the school district must request written acknowledgment of that

statement from the student and his or her parents.²³ The board must also provide information on the right of the student to secure an attorney and legal resources available in the community (which are generally identified in the code of student conduct).²⁴

The formal disciplinary hearing, which must take place no later than 30 calendar days following the day the student is suspended,²⁵ must include the opportunity for the student to confront and cross-examine witnesses (when there is a question of fact), and present his or her own defense and produce oral testimony or written supporting affidavits.²⁶ Students also have the right to be represented by counsel.²⁷ These rights must be spelled out in the chief school administrator’s notice referenced above. The school district must also provide the student with a list of witnesses and their statements or affidavits—as well as any other evidence it may rely upon—no later than five days prior to the formal hearing.²⁸

While the hearing itself *may* be conducted by the full board of education, the board can also delegate the responsibility to a board committee, a school administrator (e.g., the superintendent of schools) or an impartial hearing officer, for the purpose of determining facts and/or making recommendations, as long as the board of education as a whole receives and considers either a transcript or detailed report of the hearing before taking final action.²⁹

Once the board of education has either conducted the hearing or reviewed the report, it must reach a decision based upon the preponderance of competent and credible evidence,³⁰ and must provide the student’s parents with a written statement setting forth the board’s decision no less than five school days after the close of the hearing.³¹ The statement must include the charges considered; a summary of the documentary or testimonial evidence

from both the student and the administration that was brought before the district board of education at the hearing; factual findings relative to each charge and the district board of education's determination of each charge; identification of the educational services to be provided to the student; the terms and conditions of the suspension; and the right to appeal the district board of education's decision regarding the student's general education program to the commissioner of education.

Suspensions of general education students are not to be continued beyond a board of education's second regular meeting following a suspension, *unless* the board determines to continue the suspension based upon the recommendation of the chief school administrator.³² In the event a board elects to continue the suspension, it must, in consultation with the chief school administrator, determine when the student is prepared to return to the general education program, whether the student should receive either home/out-of-school instruction or attend an alternative education program, and whether or not to initiate expulsion proceedings.³³

True expulsion proceedings are rare, since expulsions are only permitted for a general education student where: 1) a long-term suspension has previously been imposed; 2) the student has received notice that further engagement in conduct warranting expulsion shall amount to a knowing and voluntary waiver of his or her right to a free public education in the event the board decides to expel the student; 3) the student engages in such conduct; 4) the board conducts a formal hearing in accordance with the requirements for a long-term suspension; and 5) the board finds the student to be guilty of the offense and decides to expel the student.³⁴

On a related note, student offenses may, on occasion, warrant referral to local police authorities, and students

may be separately prosecuted under criminal laws for such violations. In the event a student is subject to criminal prosecution, a school district may not keep him or her suspended indefinitely while awaiting the outcome of the criminal trial; it must provide the student with a formal hearing for any suspension greater than 10 days, which must take place no later than 30 days after the suspension has commenced (except, of course, when the student is incarcerated). Importantly, in nearly all cases the time during which the board of education must conduct a hearing predates any disposition of the criminal charges.

It is also important to note that the adjudication of the criminal charges need not have any bearing on the board's decision.³⁵ Board of education hearings utilize a different burden of proof; criminal charges may have different elements than a code of student conduct violation; and criminal charges are often disposed of through 'stationhouse adjustments,' dismissals due to prosecutorial discretion, or plea bargains.³⁶ None of these situations affect a board of education's responsibility or ability to determine whether or not the student has violated the code of student conduct, and/or whether or not discipline should be imposed for such a violation.

Mandatory Removals and Hearings

In certain cases, a board of education *must* conduct a hearing following an immediate suspension from school. For example, a student who "commits an assault...upon a teacher, administrator, board member or other employee of a board of education, acting in the performance of his duties and in a situation where his authority to act is apparent," must be *immediately* removed from school pending suspension or expulsion hearings.³⁷ When a weapon (other than a firearm) is involved in the assault, and the student is found guilty, he or she must be immediately removed from the

general education program for a period not exceeding one calendar year (which the chief school administrator may modify on a case-by-case basis).³⁸

Under the Zero Tolerance for Guns Act, students who are "convicted or adjudicated delinquent for possession of a firearm or a crime while armed with a firearm or found knowingly in possession of a firearm on any school property, on a school bus, or on a school sponsored function," must also be *immediately* removed from school pending suspension or expulsion hearings.³⁹ In the event the student is found guilty of such charges, he or she must be removed from the general education program for *not less than one calendar year*, subject to modification on a case-by-case basis by the chief school administrator.⁴⁰

Hearings for the offenses listed above are subject to the same notice and due process requirements as suspension or expulsion hearings.⁴¹

Conduct Away from School Grounds

Although controversial among some, school authorities are empowered to impose consequences upon a student for conduct away from school grounds, but only when "it is reasonably necessary for the student's physical or emotional safety, security and well-being or for reasons relating to the safety, security and well-being of other students, staff or school grounds, and when the conduct which is the subject of the proposed consequence materially and substantially interferes with the requirements of appropriate discipline in the operation of the school."⁴² Such consequences must be consistent with the school's code of student conduct, and, in the cases of suspensions or expulsions, in accordance with all required due process procedures.⁴³ One category of student conduct away from school grounds that the New Jersey courts have found meets the standard set forth above is a student's possession of a controlled dangerous substance

off school premises.⁴⁴

Harassment, Intimidation and Bullying

Cases involving harassment, intimidation and bullying (HIB), as defined by the Anti-Bullying Bill of Rights Act,⁴⁵ are unique, inasmuch as both the victim and the offending student possess the right to a hearing before the board of education with respect to the investigation of any allegation of HIB.⁴⁶ Such hearings, however, are *not* formal hearings like those required when a student is facing suspension or expulsion. However, if the disciplinary consequence for a HIB violation will potentially result in a suspension greater than 10 school days, the offending student must be afforded all due process rights as required by N.J.A.C. 6A:16-7.3.

Students With Disabilities

The discipline of students eligible for special education and related services under the Individuals with Disabilities in Education Act is subject to certain limitations. While school officials may remove a student from his or her educational placement, or suspend a student for up to 10 consecutive or cumulative school days in a year, with notice to the child's case manager⁴⁷ (and subject to the same due process procedures for nondisabled students), a removal of more than 10 consecutive school days will generally be considered a "change in placement," which may only take place as long as the conduct in question is not a manifestation of the child's disability.⁴⁸ A removal for 10 or more non-consecutive school days *may* constitute a change in placement if the series of short-term removals constitute a pattern because of factors such as the length of time of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.⁴⁹

Boards of education contemplating the suspension of students with disabili-

ties for more than 10 days must still follow all of the necessary due process procedures outlined here, but must also conduct a manifestation determination review meeting with the student's parent and relevant members of the individualized education program (IEP) team to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the school's failure to implement the student's IEP.⁵⁰ If the conduct meets either of the above criteria, it is determined to be a manifestation of the student's disability, and he or she may not be disciplined for the conduct. Instead, the board must follow certain procedures to either develop a behavioral intervention plan for the student or to revise an existing plan.⁵¹

In certain limited circumstances, a student with disabilities may be removed to an interim alternative educational setting for no more than 45 school days *without* regard to whether the behavior is determined to be a disability. This is namely when the student: 1) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a state or local educational agency; 2) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency; or 3) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency.⁵² These regulations recognize the school's right to safeguard all of its students and staff from a potentially dangerous student, regardless of the student's disability, while still respecting the rights of the student and protecting him or her from

indefinite suspension. ⁵³

Endnotes

1. N.J.S.A. 18A:37-1.
2. N.J.S.A. 18A:25-2.
3. N.J.A.C. 6A:16-7.1.
4. N.J.A.C. 6A:16-7.1(c).
5. N.J.A.C. 6A:16-7.1(c)(5).
6. N.J.S.A. 18A:6-1.
7. *Id.*
8. N.J.S.A. 18A:37-2.
9. N.J.S.A. 18A:37-2(a)-(k).
10. N.J.A.C. 6A:16-7.2(a)(1).
11. N.J.A.C. 6A:16-7.2(a)(1)(i).
12. N.J.A.C. 6A:16-7.2(a)(2).
13. N.J.A.C. 6A:16-7.2(a)(2)(iii).
14. N.J.A.C. 6A:16-7.2(a)(2)(iv).
15. *See, e.g., Goss v. Lopez*, 419 U.S. 565, 581-82 (1975).
16. *Id.* at 583; *see also M.N. v. Bd. of Educ. of the Borough of Dumont*, EDU-11658-98 (Comm'r Educ. Aug. 13, 1999)(no legal requirement for an administrator to notify the parent or guardian of a student prior to questioning a student, or have a parent or guardian present).
17. N.J.A.C. 6A:16-7.2(a)(2)(ii).
18. *Id.*
19. N.J.A.C. 6A:16-7.2(a)(3).
20. N.J.A.C. 6A:16-7.2(a)(5)(i).
21. N.J.A.C. 6A:16-7.3(a)(1)-(4).
22. N.J.A.C. 6A:16-7.3(a)(5).
23. N.J.A.C. 6A:16-7.3(a)(5)(iv).
24. N.J.A.C. 6A:16-7.3(a)(8).
25. N.J.A.C. 6A:16-7.3(a)(10)(iii).
26. N.J.A.C. 6A:16-7.3(a)(10)(ii).
27. *R.R. v. Bd. of Educ. of the Shore Reg'l High Sch. Dist.*, 109 N.J. Super. 337, 349 (Ch. Div. 1970).
28. N.J.A.C. 6A:16-7.3(a)(6).
29. N.J.A.C. 6A:16-7.3(a)(10)(i).
30. N.J.A.C. 6A:16-7.3(a)(10)(iv).
31. N.J.A.C. 6A:16-7.3(a)(11).
32. N.J.S.A. 18A:37-5; N.J.A.C. 6A:16-7.3(c).
33. N.J.A.C. 6A:16-7.3(e).
34. N.J.A.C. 6A:16-7.5(a).
35. *See B.T. o/b/o S.T. v. Bd. of Educ. of Twp. of Neptune*, 72 S.L.D. 555

- (1972)(juvenile or criminal proceedings have no bearing on board of education hearings).
36. Certain minor juvenile delinquency offenses may be resolved by police departments by way of a station house adjustment, which is a voluntary process that, if successful, diverts the case from formal processing and avoids creating a delinquency record for the juvenile. *See* Uniform State Memorandum of Agreement between Education and Law Enforcement Officials, §2.4.
 37. N.J.S.A. 18A:37-2.1; *see also* N.J.S.A. 18A:37-2.2; N.J.A.C. 6A:16-5.6; N.J.A.C. 6A:16-5.7; N.J.A.C. 6A:16-7.4(c).
 38. N.J.A.C. 6A:16-5.6(b).
 39. N.J.S.A. 18A:37-8; *see also* N.J.A.C. 6A:16-5.5; N.J.A.C. 6A:16-7.4(a).
 40. N.J.S.A. 18A:37-8; N.J.A.C. 6A:16-5.5(b).
 41. *See, e.g.*, N.J.S.A. 18A:37-2.4; N.J.S.A. 18A:37-10.
 42. N.J.A.C. 6A:16-7.6; *see also Shore Reg'l High Sch. Dist., supra*, 109 N.J. Super. at 343-44 (Ch. Div. 1970).
 43. N.J.A.C. 6A:16-7.6(a)(3).
 44. *M.P. for A.P. v. Paramus Bd. of Educ.*, EDS 9304-99 (October 14, 1999); *P.G., o/b/o M.G., v. Bd. of Educ. of the Borough of Woodcliff Lake*, EDU 7495-03, 2006 WL 2468675 (June 28, 2006).
 45. N.J.S.A. 18A:37-14.
 46. N.J.S.A. 18A:37-15(b)(6)(d).
 47. N.J.A.C. 6A:14-2.8(a).
 48. 20 U.S.C. § 1415 (k)(1)(E); N.J.A.C. 6A:14-2.8.
 49. N.J.A.C. 6A:14-2.8(c)(2).
 50. 20 U.S.C. § 1415 (k)(1)(E)(i).
 51. 20 U.S.C. § 1415 (k)(1)(F).
 52. 20 U.S.C. § 1415 (k)(1)(G); N.J.A.C. 6A:14-2.8(f).

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