



Student suspensions and expulsions

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Today's Topics

- Student code of conduct
- Types of discipline
 - Suspensions
 - Expulsions
 - Alternative placements
 - Community service
- Discipline of special education students
- Cases and hypotheticals



Student code of conduct

- Requires BOE to create and maintain a student code of conduct.
- District must post its code of conduct in a central location and make copies available to students upon request.
- May extend to actions by student off-campus or while attending a school activity provided there is a reasonable nexus between student misconduct and school operations.



Student code of conduct

- Must include a reference to firearm prohibitions and the reasons that a one year expulsion may be reduced by the Superintendent.
- BOE may adopt a resolution to expel a student for a period not to exceed one year for:
 - The possession of knives
 - Commission of act that is a criminal offense when committed by an adult that results in serious physical harm to persons or property
 - Making a bomb threat



Due process

- No state shall...deprive any person of life, liberty, or property, without due process of law.
- Before taking away a student's liberty or property interest, school must provide:
 - Notice of charges
 - Opportunity to explain, deny or admit the charges or evidence
 - Decision based on evidence presented



Suspensions

- SU/principal may suspend a pupil for a period not to exceed 10 school days
 - Policy may grant assistant principals or other administrators this authority
 - What if fewer than 10 days left?



Suspensions

- Student must receive the following:
 - Written notice of intention to suspend
 - Reasons for intended suspension
 - Notice of potential permanent exclusion if proposed violation of RC 3313.662(A) and 16+ years old
 - Informal hearing
 - Notice of suspension and right to appeal



Expulsions

- Superintendent may expel a pupil for a period not to exceed 80 school days
 - What if fewer than 80 days left?
- Must expel for one year for bringing a firearm to school.
- May expel for one year for:
 - The possession of knives
 - Commission of act that is a criminal offense when committed by an adult that results in serious physical harm to persons or property
 - Making a bomb threat



Expulsions

- Student must receive the following:
 - Written notice of intention to expel
 - Reasons for intended expulsion
 - Notification of opportunity to appear before superintendent to challenge the expulsion
 - Notification of time/place to appear
 - Notice of potential permanent exclusion if proposed violation of RC 3313.662(A) and 16+ years old
 - Informal hearing
 - Must occur between 3-5 days after giving notice
 - Superintendent may grant an extension
 - Notice of expulsion and right to appeal



Notice of suspension and appeal

- Within one school day after discipline, superintendent must send a written notice to parent and treasurer.
- Notice must include:
 - Student has been suspended/expelled (w/dates)
 - Reasons for suspension/expulsion
 - Student has right to appeal to BOE
 - Manner/date by which student must notify BOE of intent to appeal
 - Student has right to be represented by counsel at appeal
 - Student may request appeal be held in executive session
 - Notice of potential permanent exclusion if proposed violation of RC 3313.662(A) and 16+ years old



Notice of suspension and appeal

- If student is being expelled for 20+ days, or expulsion will carry over into the following year, the notice must include:
 - Information about services/programs offered by public and private agencies
 - Work toward improving those aspects of pupil's attitudes and behavior that contributed to the incident that gave rise to pupil's expulsion
- Must include names, addresses and telephone numbers.



Appeal to BOE

- Student has right to representation
- At request of student/parent, must hold hearing in executive session
- Verbatim record of appeals hearing
- Formal action must be taken in open session
 - Affirm, reverse, vacate or modify discipline
 - No statutory deadline for when decision must occur
- Communicate final decision in writing by certified mail. Demonstrate receipt of final order.



Appeal to Common Pleas Court

- BOE decision may be appealed to common pleas court of county in which district is located.
- Student must file notice of appeal with BOE w/in 30 days.
- Court's scope of review is typically limited to transcript of appeal.
- Court may affirm, reverse, vacate, or modify the decision.
- Court must affirm unless decision is “unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable and probative evidence on the whole record.”



Alternative placements

- District may provide educational services in an alternative setting during expulsion period.
- Available for students in grades 6-12
- Students assigned may include those who:
 - Are on suspension
 - Are having truancy problems
 - Are experiencing academic failure
 - Have a history of class disruption
 - Are exhibiting other academic/behavioral issues



Alternative placements

- Alternative school plan
 - Specific reasons for which students may be assigned
 - Criteria of admission
 - Criteria to be used to return students back to regular education program
 - Evaluation plan for assessing the effectiveness of the program
 - *Requirement that all students attend school or other programs specified in the plan for a minimum number of hours
 - *Restrictions on student participation in extracurriculars
 - *Requirement that students wear uniforms



Community service

- BOE may establish a program and adopt guidelines that require the performance of community service in conjunction with or in place of discipline.
- Not applicable for expulsion for bringing a firearm to school.
- Must permit SU to impose a community service requirement beyond end of the school year in lieu of applying discipline into following school year.



Special Education Students

- In general, students with disabilities may be suspended for up to ten days in the same manner as students without disabilities.
- Suspension of student for cumulative period exceeding 10 days may be a “change in placement”
 - Does the series of removals constitute a pattern?
 - Review:
 - Pattern of child’s behavior
 - Length of each suspension
 - Total amount of time child is removed
 - Proximity of removals to one another



Special Education Students

- Change in placement
 - Manifestation determination must be conducted w/in 10 school days after decision to take disciplinary action is made
 - IEP conference: was the student's behavior a manifestation of the student's disability?
 - Was the student's conduct the direct result of the district's failure to implement IEP
 - Was the student's conduct caused by or have a direct and substantial relationship to child's disability?



Special Education Students

- Not a manifestation?
 - May apply relevant disciplinary procedures in same manner as students w/o disabilities
- Manifestation?
 - No discipline may be imposed.
 - Exceptions for drug and weapon offenses and serious bodily injuries
 - Requires completion of functional behavioral assessment w/in 10 days of manifestation determination



CASES & HYPOTHETICALS



Case #1: in-school suspensions

- Code of conduct prohibits students' cell phones on school property during school hours.
- Zack Morris phone rings during class.
- Phone confiscated and Zack is given a one-day in-school suspension.
- Parents did not receive notice or right to appeal.
- Violation of due process?



Case #1: in-school suspensions

- “In-school suspension:” pupil will serve all of the suspension in the school setting.
- “In-school suspension does not exclude the student from school and consequently a student’s property interest in a public education is not implicated.”
- No due process procedures are required for in-school suspensions.



Case #2: extracurriculars

- Jen Lindley was a cheerleader at Capeside High.
- Arrested for underage drinking and possession of alcohol.
- Prohibited from cheering during 40% of Capeside's football season.
- Violation of due process?



Case #2: extracurriculars

- Boards may adopt policies permitting the district to suspend/expel students from extracurricular activities.
- Statutory right to appeal only curricular decisions. No constitutional right to participate in extracurricular activities.
- Consider providing written notice to student regarding intent to deny privileges, suspend and give opportunity to appear in front of an administrator to challenge the reasons for the suspension.



Case #3: off-campus conduct

- Jordan Catalano was disciplined for:
 - Leaving school grounds at lunchtime
 - Smoking in the parking lot at an away game
 - Making an out-of-school threat to shoot and kill fellow students
 - Assaulting a neighbor during winter break



Case #3: off-campus conduct

- BOE may adopt codes of conduct that discipline for off-campus conduct if:
 - Misconduct is connected to activities or incidents that have occurred on property owned/controlled by BOE OR
 - Misconduct, regardless of where it occurs, is directed at district official or employee or property of official/employee
- School discipline rules may extend to school functions such as athletic contests.



Case #3: off-campus conduct

- Off-campus criminal conduct will not typically justify discipline unless there is a reasonable connection between conduct and the safe and orderly functioning of the schools.
- Some courts have refused to punish (non-athlete) students for the consumption of drugs/alcohol off-campus where there is no evidence of misconduct occurring on school grounds.



Case #3: off-campus conduct

- Off-campus speech
 - Did student’s off-campus speech “materially or substantially” disrupt the school or a school-sponsored event?
 - Is the student’s off-campus speech “lewd, vulgar, threatening, or advocating illegal or dangerous behavior?”



Case #4: guns

- Principal Feeny finds a gun in Stuart Minkus' locker.
- What happens now?



Case #4: guns

- Ohio law requires that any student who brings a firearm to school must be expelled for a period of one year.
- Superintendent may reduce expulsions on a case-by-case basis in accordance with board policy.
- Potential for immediate removal
- Superintendent must notify Registrar of Motor Vehicles and juvenile judge w/in two weeks.
- Policies prohibiting “look-alike” guns have been upheld.



Case #5: bus riding privileges

- Nelson Muntz engages in bad bus behavior including:
 - Throwing objects
 - Distracting the driver
 - Fighting
 - Using profanity
 - Damaging the bus
- May the district suspend Nelson's bus privileges?



Case #5: bus riding privileges

- BOE may adopt policy authorizing SU/designee to suspend a student from bus riding privileges.
- Immediate removal is authorized when pupil's presence poses a danger to persons/property or a threat to safe operation of the school bus.
- Student must receive:
 - Notice of intended suspension
 - Opportunity to appear before SU/designee
- Post policy in each building and make available to students upon request



Case #6: impact on grades

- Kimmy Gibbler is suspended from school for 9 days.
- The district has adopted a policy that gives students zeros on all graded class work during the suspension.
- Is the district required to let Kimmy make up the work she missed during her suspension?



Case #6: impact on grades

- Ohio law does not require districts to provide disciplined students with an alternative form of education or opportunity to make up work.
- Courts have viewed scholastic penalties with mixed results.
- Students with disabilities are entitled to a continued education even during a suspension/expulsion.



Case #7: honoring discipline

- Will Smith is expelled from his high school in West Philadelphia.
- During his expulsion, he transferred into the Bel-Air school district.
- Is the Bel-Air school district allowed to uphold his expulsion?



Case #7: honoring discipline

- After offering an opportunity for a hearing, a school district may temporarily deny admittance to any student who has been expelled or otherwise removed for disciplinary purposes from a public school in another state.
- Continue to enforce expulsions for students who have withdrawn from school



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