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LEGAL ISSUES PERTAINING TO STUDENT HANDBOOKS

by

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ABSTRACT

A student handbook should be designed to let the student know what behavior is expected, as well as to answer all questions concerning the school's educational program. The purpose of this project was to develop proposed guidelines to follow when writing a student handbook. A list of possible areas to include in the handbook are given. From this list of 59 areas, seven issues of substantive and procedural due process rights are reviewed concerning their present status in the courts. From this review, guidelines are listed on how to write these areas in the student handbook to conform to federal and state laws. Those areas which are reviewed and for which guidelines are given are the substantive due process areas of symbolic expression and free speech, hair and dress codes, student publications, student marriages and/or parenthood, search and seizure of students and/or lockers, discipline (corporal punishment), and the procedural due process area of suspension and expulsion.

Chapter I

INTRODUCTION

All student bodies are governed by a set of policies either set up by the school board or the administration and enforced by the administration and teaching staff. These policies may differ from school to school, but they generally are quite similar. One difference between schools is the way in which these policies are presented to the student. One of the more common procedures is to use what is called a "Student Handbook", which lists all of the policies, guidelines, and discipline rules adopted. For the past quarter-century, leading authorities in the field of school management have urged that schools reduce their rules and policies to writing in order to have guides for their own actions, as well as to have a means for keeping employees, students and the public informed of those regulations (Wilson 1976).

The purpose of education and educators is to prepare children for life in a social system. As the school and its staff prepare students for life, the guidelines and policies of school operation must be well known and consistently carried out. Educators should be concerned about the rights of each of their students and equally concerned about their own rights and the legal rights of the other members of the school system. With well written legal handbooks, the school, its educators, the student population and parents are prepared to understand and work together towards the goal of preparing students to take

their place in society. Essentially what has taken place is that within the last decade or more a set of constituencies of the school system has challenged authority and decisions long imposed by the education profession and mutely accepted by an indifferent community (Wirt, 1976). Often each constituency focuses upon a single, distinctive policy which it wants altered to accommodate a new distribution of resources and values.

An obvious fact about policy makers is that they are not free to make whatever policy seems good to them. Board members are elected or appointed, and are accountable to their constituencies. McDonald (1976) stated, "Board members are a part of an institution or agency with prescribed or limited powers." Administrators are in an even more precarious position as they are accountable to the Board members, as well as the general public of the school district. Whatever policies school boards or administrators make, they must keep in mind their constitutional rights and the constitutional rights of the students they are trying to govern (Levinson, 1969). Only the United States Supreme Court has the authority to have its decisions enforced all over the country, and even they sometimes have a difficult time in securing compliance on nationwide guidelines. An important fact to remember is that a person's constitutional rights do not end when he starts school and mysteriously reoccur after graduation, nor do students leave their constitutional rights at the boundary of the school grounds (Purtle,

1976). In particular, the application of law by the courts has changed the role of school officials in policy making (Riley, 1975). School board decisions are becoming increasingly open to challenges from the public, courts, staff and the student body.

Recent court decisions have tended in the directions of restraining the school from exercising many of the forms of control over student conduct which it and the community formerly accepted as normal and proper (Ackerly, 1976). Whatever the reasons for these legal actions and whatever their outcomes are, the impact of court decisions relating to the control of student behavior is felt more immediately and heavily by the building principal than by anyone else in the administrative or teaching hierarchy.

This brief introduction leads to the commanding reason for preparing this document--to provide principals and other administrators with information and guidance on their duties and powers as determined by constitutional and statutory interpretation in the hope that such information will help them stay out of the courts.

STATEMENT OF PROBLEMS

The purpose of this project is to develop proposed guidelines to follow when writing a student handbook. Specifically, the objectives are to (1) outline the necessary parts of a student handbook, and (2) to design a student handbook conforming to general state and

federal law since it is assumed that those schools having a written student handbook conforming to general state and federal law will have fewer misunderstandings of what is policy or procedure than those that don't.

LIMITATIONS

A primary concern was the determination of how far back the literature search should go. Since most of the conflicts have occurred in the courts within the past decade, it was decided to search back to 1970, except on some issues of earlier importance.

This study was subject to the following limitations:

1. The review of literature was confined to the Montana State University Library, Bozeman, Montana and the Northern Montana College Library, Havre, Montana.
2. Even when laws remain unchanged, interpretations of them and their applications often vary from one area to another (Riley, 1975). Cases decided by the courts in one state are not necessarily binding on the courts in other jurisdictions (Levinson, 1969). The cases selected for this paper have the merit of being recent decisions, and have come from various places, so they are at the same time the law of everywhere and the law of nowhere. In a federal system, such as found in the

United States, there is the problem of differences between state and federal laws and the applicability of each (Riley, 1975).

DEFINITION OF TERMS

In order to insure clarity for the reader, certain terms are defined. Hooker (1976) stated, "In its simplest form, a board policy is a statement of expectation." It indicates what the board desires and, if necessary, specifies the extent, degree, amount, etc. McDonald (1976) feels that a policy is always aimed at taking action and should take one or all of several forms.

1. Statement of a principle: e.g., "teacher education programs will be a mixture of theoretical and practical courses."
2. Prescription of a definite course of action which is to guide present and future decisions
3. Specifies both what is to be done and how to do it
4. States an objective and a program of action to achieve that objective.

A dictionary defines policy in such statements as these: "Management or procedures based primarily on material interest rather than on higher principles." "Shrewdness." "A settled course adopted and followed by government, institution, body, or individual." "Any system

of management based on self-interest as opposed to equity; finesse; artifice." "Policy is often used as equivalent to expediency."

Bergen Evens' popular A Dictionary of Contemporary American Usage discussed policy in these words: "Policy refers not to permanent principles, but to courses of action. Primarily, it means a definite course of action adopted as expedient or from other considerations . . ."

Probably the best definition of policy for a Board of Education may be found in a 1955 American Association of School Administrators publication. Wilson (1976) feels that this definition has not been improved upon in treatises dealing with board policy since that date, and has been almost universally accepted by authorities in the field. It reads:

> School board policies are statements which set forth the purposes and prescribe in general terms the organization and program of the school system. They create a framework within which the superintendent and his staff can discharge their assigned duties with positive direction. They tell what is wanted. They may also indicate why and how much.

The Encyclopedia of Modern Education defines a handbook as "A handbook is a compact compilation of important facts, principles, theories, and data in each of the various phases of education . . . to stimulate teachers and others interested in the profession to further study in the field of education . . . consisting of a list of directions, suggestions, statements of policy, and rules of a school system, a guide, not a textbook" (Baker, 1958, 42:125).

Chapter 2

PROCEDURE

The literature relative to student handbooks for the students and the schools was reviewed to determine: (1) the purposes of student handbooks, (2) the desired contents of a student handbook, (3) the legal issues most common in a student handbook, and (4) guidelines to follow in stating those rules of the student handbook which are of legal importance. The review of literature concerning determination of the purposes for student handbooks follows.

PURPOSE FOR A STUDENT HANDBOOK

Society today is characterized by a continuing conflict between individuals and the institutions which have been given the right to make and enforce regulations (Riley, 1975). This conflict is also evident in the continuing challenge of traditional rules and regulations governing the students that attend public schools.

This conflict is further complicated by the United States Constitutional Amendment X which states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This puts the public schools in a very unique setting as compared to society as a whole. Although it has been firmly established that a pupil does not lose any fundamental rights by virtue of his status as a student, it

seems judicially settled that the rights of students are not coexistent with those of adults (Foldesy, 1978). In differentiating between students and adults, the courts in applying constitutional principles to the school setting must consider the student's maturity, level of education, compulsory education laws, and parental expectations. One example of this is individual students seeing school laws governing compulsory attendance as an infringement on their individual rights; individual rights as provided for by the United States Constitution. This, as well as other situations, is a major cause for the increase in the number of cases reaching the State and Federal courts in recent years (Foldsey, 1978).

Traditionally, the administration of the public schools has been primarily within the domain of local administrators; however, over the past two decades, the courts have become involved more and more in decisions which affect daily operational procedures of the schools (Fogarty, 1976). The majority of the decisions have upheld the policies of the schools, but an increasing number of courts have upheld the student in his challenge (La Mrote, 1971:3).

> "The power and status of institutions . . . are being challenged as never before in the history of our country. The rights and privileges of administrators are being questioned by students, faculty members, and by members of the public in general. Actions and attitudes of students . . . are raising serious questions about the relevancy of many of the existing policies for student discipline . . . (Andes, 1969).

The United States Supreme Court in Tinker vs. Des Moines Independent Community School District established that school officials cannot deny students inherent rights in order to avoid discomfort that may accompany an unpopular point of view. The Court expanded this legal principle by stating:

> First Amendment rights, applied in light of special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the school house gate. This has been the unmistakable holding of the Court for almost 50 years . . .
>
> In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect. just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views . . .

Many school officials and teachers have misinterpreted this Tinker decision, resulting in the belief that the courts have shackled their authority to control students. Contrary to this belief, students can be appropriately disciplined when <u>reasonable</u> policies regulating pupil conduct are disobeyed. Should a student become so unruly that his behavior disturbs the educational process or threatens the constitutional rights of others, school personnel are not only expected, but are authorized to abate the student's misbehavior (Foldesy, 1978). Even as far back

as 1924 the court in Tanton vs. McKenney (1924) recognized the authority of the school when it stated:

> . . . the right of attending the public schools is necessarily conditioned on compliance by pupils with the reasonable rules, regulations, and requirements of the school authorities, breaches of which may be punished . . . Ordinarily the school authorities have the right to define the offenses for which the punishment . . . may be imposed, and to determine whether the offense has been committed, the limitation on this authority being that it must in both respects be reasonably exercised . . . In the school, as in the family, there exists on the part of the pupils the obligation of obedience to lawful commands, subordination and civil deportment, respect for the rights of others, and fidelity to duty. These obligations are inherent in any proper school system, and constitute . . . the common law of the school.

The courts have long recognized the importance of rules and regulations in governing the schools. These rules must reasonably relate to the purposes for which schools are established. The purpose of the rule must be to facilitate an educational objective that would otherwise not be accomplished in the absence of the rule (Foldsey, 1978). It is felt by many that many school policies and regulations that govern student behavior are arbitrarily drafted and have little relationship to valid educational objectives. Benton (1971) felt that many of these regulations are still in force because they have not been questioned by the legal forces. One of the more noted cases challenging just such a policy was the Tinker Vs. Des Moines School District cited earlier. The Tinker case, in essence, confirms the privilege of a student in a high school or in a junior high school to disobey a school principal if the principal has promulgated a rule which violates rights protected by the

United States Constitution. This case is just an example of the ability of the courts to impose some kind of control on school administrators in extreme situations. Written policies of the student handbook can never be guaranteed to keep you out of Court; however, they may very well reduce the number of suits filed and even vindicate you when you are compelled to appear in court (Purtle, 1976). It is, therefore, the purpose of this paper to cover the following legal aspects of issues in student handbooks: substantive due process rights of symbolic expression and free speech, hair and dress codes, student publications, student marriages and/or parenthood, search and seizure of students and/or lockers, discipline (corporal punishment), and procedural due process rights of suspension and expulsion. The analysis will be directed toward how these issues should be addressed in a student handbook of policies and how the courts have been ruling. This is a difficult assignment, as it is well known that decisions made in one state do not always carry over to other states. It is not the writer's intent to give an in-depth coverage of any one topic; but, rather, to provide legal insight in setting up policies to be used in a student handbook.

DESIRED CONTENTS OF A STUDENT HANDBOOK

A student handbook must be designed to let the student know what behavior is expected, as well as to answer all questions concerning the

school's educational program. It would be impossible to make concrete recommendations since each school is unique, and the final determination as to what should be included within the handbook rests with those closely associated with the situation. This project will review those areas of a student handbook which will be of legal question, but a student handbook might also contain some or all of the following areas:

1. Student Fee Arrangements - Library Fines
2. High School League
3. Field Trips - Supervision - Liability
4. Student Errands - Supervision - Liability
5. Title IX
6. School Records - Permanent, Cumulative, Personal Evaluations
7. Juvenile Court
8. Auto and Bus Rules - Student Parking
9. Classroom Regulations
10. Open and Closed Noon Hours
11. Severe Weather, Communications and Program
12. School Board Adoption of Handbook - School Board Policies
13. Sexist Terms
14. National Honor Society
15. Small Claims Court
16. Detention Halls
17. Report Cards
18. Commencement
19. Fire Drills and Escape Routes
20. Activity Funds
21. Accidents: Handling and Reporting
22. Honor Rolls
23. Year Book Pictures
24. Open School re Automobiles
25. Grading System
26. Course Offerings
27. Library Procedures
28. Lockers
29. Lost and Found
30. Make-up Work
31. Scheduling
32. Reports, Interim Progress
33. School Day Defined

34. School Song
35. Student Activities
36. Student Council
37. Withdrawal
38. Required Subjects to Graduate
39. Credit Offering for Subjects Taught
40. Credit Requirement for Graduation
41. School Phone Use
42. Deficiency Reports
43. Extracurricular Opportunities
44. Independent Study Programs
45. Insurance
46. Leaving the Building
47. Lunch Program
48. Senior Privileges
49. Out-of-town trips
50. Vocational Education
51. Study Halls
52. Attendance and Truancy
*53. Symbolic Expression and Free Speech
*54. Hair and Dress Codes
*55. Student Publications
*56. Student Marriages and Parenthood
*57. Search and Seizure
*58. Discipline (Corporal Punishment)
*59. Procedural Due Process - Suspension and Expulsion

As previously stated, many of the above areas may not pertain to each and every school setting, rather, it is a list of general topics. Those areas noticed by an asterisk are those which are most often of legal question and are open to question by the general public.

Chapter 3

REVIEW OF LITERATURE

Until recent years, it was pretty clear and rarely challenged that school authorities could establish regulations, so long as the rules had a reasonable purpose and were fairly administered. The courts of the 1950s and early 1960s were generally unsympathetic to students' complaints about school rules (Graul, 1976). Today's courts are more willing to listen, but they still support school rules if the school can prove that they are "reasonable." However, the rules must be based on better grounds than someone's idea of what should or should not be merely to avoid a controversial or embarrassing situation.

LEGAL ISSUES MOST COMMON IN A STUDENT HANDBOOK

The courts have frequently been called upon to decide if the constitutional rights of the student have been violated. It is the intent of this paper to examine those areas of a student handbook which the writer feels are most open to challenge by the social system and the related issue of due process in the field of education.

Due process can be divided into two parts - substance and procedure (Purtle, 1976). The Supreme Court of the United States has stated clearly that students in elementary and secondary schools enjoy the same general constitutional rights, including rights relative to substantive and procedural due process, as do other citizens.

Substantive due process involves the subject matter of a regulation (Oakland County Office of Prosecuting Attorney, 1975). It goes to the essence of fundamental rights and principles of justice that limit the government power to deprive a person of his life, liberty, or property (South Carolina State Dept. of Education, 1976). In administering discipline, due process is concerned with both the property and sometimes liberty interests of students (Woods vs. Strickland, 1975). Procedural due process is essentially concerned with the mechanics or step-by-step operation of a particular hearing (South Carolina State Dept. of Education, 1976). It may be defined as a course of legal proceedings in accordance with the rules and principles established for the enforcement and protection of individual rights (Ackerly, 1969). The first area to be reviewed will address those questionable sections of a student handbook involving substantive due process.

SUBSTANTIVE DUE PROCESS

Symbolic Expression and Free Speech

> "First Amendment rights, applied in the light of the special characteristics of the school environment, are available to . . . students. It can hardly be argued that . . . students shed their constitutional rights to freedom of speech or expression at the school house gate," (Tinker vs. Des Moines Independent Community School District, 1969).

The statement above comes from the first case the Supreme Court decided involving freedom of expression and speech for high school students. The Tinker case became a landmark, in which the courts had to

balance the First Amendment freedoms of students against the authority of school officials (Deane, 1974).

The Tinker case is popularly known as "the Black Armbands Case" because it involves the suspension of three teenage students from school because they wore black armbands protesting the Vietnam War and declaring the imperative need for a truce. The youths wore the armbands in defiance of a school regulation drawn up two days before the students' action. The regulation expressly forbade wearing armbands. The parents of the three students sought a federal injunction to prevent school officials from disciplining them, but lower federal courts upheld the school administrators' decision on the basis that the officials had acted "reasonably" to prevent a disturbance which might have resulted from the wearing of the armbands.

The high court came out strongly for the First Amendment rights of students in its reversal of the lower courts' decision. The Court summarized its ruling by stating that the "record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities." The Court pointed out "no disturbances or disorders on the school premises in fact occurred." It also made note that the principals did not ban "the wearing of all symbols of political or controversial significance, but only a particular symbol--black armbands worn to exhibit opposition to this nation's involvement in Vietnam." Such a

position on "one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with school work or discipline, is not constitutionally permissable" (Reutter, 1975).

From this landmark case of free expression has evolved a series of other Supreme Court decisions concerned with the First Amendment rights of the student. Among these are free speech, political rights, and the right to wear insignias and emblems. From the Tinker case to the present, the position of the Supreme Court has been: (1) Freedom of expression cannot legally be restricted unless its exercise interferes with the orderly conduct of classes and school work, and (2) The restrictions on the wearing of buttons and armbands and distribution of literature have been upheld only where the practice materially and substantially interfered with school discipline. In order to challenge the First Amendment rights of students, an administrator must show sufficient evidence indicating the specific behavior actually created a material and substantial disruption of school activities (Foldsey, 1978).

In a number of cases since the Tinker decision, various courts have addressed themselves to the question of whether or not particular instances of symbolic expression intruded upon the orderly process of the school or the rights of others. For example, a court has ruled that the wearing of armbands could not be restricted merely because the possibility of disruption existed (Burnside vs. Byars, 1966).

Courts have upheld restrictions on symbolic expression where evidence established that actual disruption or clear danger of disruption existed. For example, a court ruled against the wearing of buttons where evidence established that the ban was necessary to preserve discipline in a racially tense high school (Blackwell vs. Issaquina County Board of Education, 1966).

Still another court affirmed suspension of students for wearing black berets where the beret was worn as a symbol of the power to disrupt and there was evidence of actual disruption. Also buttons, armbands and other badges of symbolic expression must not contain material which is obscene or libelous (Connecticut State Department of Education, 1976). In all cases, the Courts have based their judgments on the premise of reasonableness and/or the forecast or actual disruption of or material interference with school activities.

Hair and Dress Codes

Court decisions relating to the appearance of students have increased in recent years. Students and parents have been challenging the right of school administrators to regulate styles of student dress or appearance (Riley, 1975). School administrators have taken the position that they are entitled to establish rules and regulations to maintain order in the everyday operation of the schools. Students, on the other hand, take the position that they are people and, thus, have certain

rights even though they are students. One of these rights, they emphasize, is to choose how they want to look--hair length, dress, etc.

Some very interesting decisions by our courts have arisen concerning hair and dress codes. About half of the federal courts of appeal have refused to hear student complaints on hair and dress based on constitutional rights. Other federal courts of appeal have accepted students' constitutional claims and ruled that a school districts' regulations concerning hair were not important enough to override them (Graul, 1976).

Generally, the United States Supreme Court will take a case if the federal courts of appeal disagree on the issue involved. However, the United States Supreme Court hasn't ruled on the issue of hair, and the courts directly below the Supreme Court have ruled differently in different areas (Anchondo, 1977). Eventually, the United States Supreme Court will have to decide this issue for the courts, but for now, the law of the circuit court is the law for that area of the country (Graul, 1976).

Beginning in about 1965, appellate courts began to receive cases dealing with a school board's right to regulate the dress and appearance of students as a condition to attending school. Reutter (1975) said that there are few areas of school law in which so many cases dealing with the same topic have been handled by so many courts in such a short period of time. The courts have clearly warned that freedom of speech

or expression is essential to the preservation of democracy and that this right can be exercised in ways other than talking or writing. From this generalization, Ackerly (1976) states that it follows that there should be no restriction on a student's hair style or his manner of dressing unless these present a "clear and present" danger to the student's health and safety, cause an interference with work, or create classroom or school disorder. A reasonable regulation concerning dress, hair style, and cleanliness will stress that such regulation is vital not only to the individual student, but also to those with whom he shares a classroom or locker. Some of the most difficult cases have been where schools have claimed that males' long hair (and sometimes beards or moustaches) disrupts students' education. Students have claimed that such rules interfere with their constitutional rights.

Where school authorities have been able to demonstrate the need for hair regulations on the basis of health, safety, damage to public property, or disruption of the educational process, they have often been sustained (National Association of Secondary School Principals, January, 1976). It can be reasonably contended, for example, that hair over a certain length causes damage to the filtration system of the school swimming pool or poses a danger to students operating certain equipment in shops or labs. Such contentions are weakened, however, when hair length restrictions are applied to boys seeking to use the

pool, but not to girls, or where girls are permitted to wear hair nets in the labs (Crews vs. Cloncs, 1970).

The legal point that has entangled the courts in most of these cases has been whether or not the student's interest in the length and style of hair is one protected by the United States Constitution--and if so, by what specific provision. It is interesting to note that at least five different sections of the Bill of Rights have been invoked. Four sections of the Bill of Rights have actually been identified by appellate courts as sources of constitutional protection; namely the First, Fifth, Ninth, and Fourteenth Amendments (National Association of Secondary School Principals, January, 1976).

In regard to extracurricular activity rules over hair length, most courts have looked at the basis for the rule and the reason of its application to the specific activity involved. But even then, the results differ and are difficult to generalize.

In regard to school rules governing student dress, most courts still back rules designed to ensure some minimum degree of modesty--if not to prevent arrests for indecent exposure. then at least to prevent "disruption of the educational process." Even in schools without a formal "code," the principal has authority to impose restrictions for the reasons given above as long as they are applied fairly (Gluckman, 1977).

No reliable trend in decisions was found by Reutter (1975) in his study of law suits for or against school boards prior to 1975. He did point out that courts during this period have accepted jurisdiction and have inquired into the reasons for the regulations. Also, the closeness of the scrutiny of the rules by the courts as a whole has definitely increased and will probably continue to do so. The number of cases in the late 1960s and early 1970s dealing with a student's personal appearance seems to have abated somewhat, perhaps because schools allow more latitude in style and manner of student dress. Detailed dress codes, complete with elaborate restrictions on length of hair and skirts, seem to be on the way out (Shoefield, 1975).

Student Publications

Most schools have some form of student publication, and at many schools controversy has arisen concerning these. Since 1968, the courts have been dealing with a number of cases concerned with students' rights to free expression through student publications. "The common legal thread throughout the cases is that school authorities have attempted to restrict in some manner written communications received by students on school premises" (Reutter, 1975). That school authorities can control the time, place, and manner of student publications (Grayned vs. City of Rockford, 1972) and within the area of school property where it would be appropriate to distribute approved material has been well

established (Eisner vs. Stanford Board of Education, 1971). But Reutter (1975) states "such control must not be deceptively used as a guise for restricting production and distribution of literature deemed undesirable by school authorities."

"Approved material" is probably the most fought over issue of student publications. Whether the publication be school or independent of school resources or personnel, it enjoys all of the same standards of the Tinker case. The Tinker (1969) ruling held that students do not lose their right to free expression under the First Amendment to the Constitution when they enter school. Using Tinker as a basis, courts have held that "approved material" of school and non-school publications should be free from policy restrictions outside of the normal rules for responsible journalism. These publications should be as free as other newspapers in the community to report the news and editorialize (Ackerly, 1976). From this premise then, student journalists, editors, and writers must observe certain legal restrictions imposed upon all citizens and the established media. "Thus students must refrain from publication of material which is obscene, libelous, or creates a clear and present danger of the immediate material and substantial physical disruption of the school" (Nelson, 1974).

Obscenity is a complex legal term that refers to the content of an entire writing, not the specific language used. In order for a publication to be termed obscene, it must meet all three tests of obscenity

as established under a recent Supreme Court decision referring to literature about sex (Miller vs. California, 1972). The three tests for obscenity are:

1. predominantly appeals to prurient, shameful interests of minors;
2. patently offends community standards regarding suitable sexual materials for minors;
3. taken as a whole lacks serious literary, artistic, political or scientific value for minors (Nelson, 1974).

The Supreme Court has held that to libel a public figure, the material printed must be known by the author to be false or printed with reckless disregard of whether it was false or not. Nothing that you say that is true is libelous (Nelson, 1974).

In order to censor a student publication because of its disrupting the school, the censoring official must reasonably forecast that the publication will, in fact, cause disruption as noted by the Supreme Court in the Tinker case (National Association of Secondary School Principals, April, 1977).

If a student publication does not fall within one of the three listed legal limitations which govern all news media, then the publication cannot be prohibited because it is "unpleasant" or in "bad taste" or "controversial" and is, therefore, "approved material." Any system of prior review is inconsistent with the traditional guarantees of the

First Amendment. Students may not be required to submit unofficial school publications to school authorities prior to distribution. The responsibility for the contents of the student publication shall be that of the student staff and not the school administration or district (Ackerly, 1976). The practice of prior review seems to be condoned by most courts if done properly (Foldesy, 1978).

Student Marriages and/or Parenthood

Because of the high increase of junior-senior high school student marriages and/or pregnancies, many public school districts have adopted policies for the purpose of discouraging teenage marriages. Schools attempted to justify their actions on the grounds that these policies have reduced dropout rates, prevented moral corruption of unmarried students, allowed married students to spend more time with their families, and prevented moral decay and discipline problems within the school. These newly enacted policies fall within one or more of the following four categories: (1) compulsory attendance; (2) explusion; (3) suspension; and (4) restrictions in school activities (Foldesy, 1978).

Compulsory education statutes require that children within a specified age range attend school. Occasionally a problem arises in which a student burdened with the responsibilities of marriage attends school infrequently or does not attend at all. This action seemingly violates the compulsory education statute promulgated by the appropriate state.

Those courts which have ruled on such cases have held that a student marriage emancipates a minor from the compulsory school attendance laws. State vs. Priest (1946) set a precedent for the compulsory education act when the court said:

> The marriage relationship, regardless of the age of the persons involved, creates conditions and imposes obligations upon the parties that are obviously inconsistent with compulsory school attendance or with either the husband or wife remaining under the control of parents or other persons. Though young, the husband is nonetheless required to support his wife and family. The wife, in the event there should be a child in the family, could hardly be expected to attend school during the weeks preceding or following its birth.

A married couple of compulsory school attendance age who are being supported by either or both parents would probably not be free from the obligation of school attendance (Anchondo, February 1977).

There has not been an appellate court that has disagreed with the 1929 Mississippi and Kansas Supreme Court decisions which clearly pronounced that no student shall be excluded from obtaining an education for the sole reason of being married.

From these two cases and others since then, it is quite clear that the courts are reluctant to uphold school board policies which permanently exclude a student from school solely because of marriage or parenthood. The courts have stated, however, that a student can be excluded if there is sufficient evidence to indicate that the student is of licentious or immoral character (Nutt vs. Board of Education of City of Goodland, 1929).

In the past, school board policies related to suspension of married students and/or parenthood have either; (1) provided suspension for a designated time period with a promise of readmission; or (2) suspended students from normal school activities while providing an alternative education.

The decisions of the courts involving these suspensions are very contradictory. The legal status of a school policy requiring even temporary suspension of a student because of marriage or parenthood is slight at best. Foldesy (1978) states: "The emerging case law seems to indicate that suspension or expulsion of a pregnant girl from school will not be sustained by the courts."

Up until 1972, the courts upheld school board regulations which limited or prevented married students from participating in extracurricular activities. Davis vs. Meek (1972) showed the first changing attitude of the courts toward the restriction of married students in extracurricular school activities. This case involved a high school honor student, who was sought by several colleges and major league professional teams, who was not allowed to participate in athletics because of his recent marriage. The student challenged the regulation on the basis that "he has a constitutional right to get married, and the rule which deprives him of an important part of the school's program because his marriage is an action taken under cover of state law which

interferes with his civil liberties." The court invalidated the rule by stating:

> . . . it is difficult to refute the argument that a secondary school that deprives a student of the opportunity to develop his full potential for entering the field of professional baseball is not functioning as it should. When this deprivation is not because the system is impoverished or limited in its educational offerings, but is because it desires to use the deprivation as a disciplinary measure in an attempt to obtain objectives . . . the problem becomes somewhat more sharply in focus.

The cases from 1972 on indicate that a student cannot be restricted from extra-curricular activities because of marriage or parenthood (Foldesy, 1978). It should be noted, however, that if the school can prove that a married student's participation would cause serious problems for other students, the student may then be suspended from participating in extra-curricular activities. Schools are very rarely able to meet this strict test (Gluckman, 1977).

Search and Seizure of Students and/or Lockers

Until a few years ago, inspection and/or search of students and their lockers had rarely been questioned. School authorities acted *in loco parentis* and assumed the role of the parent to the student. The Fourth Amendment's exclusionary rule against unreasonable searches and seizures applied only to searches and seizures by law officials.

In recent years, however, the United States Supreme Court has modified the *in loco parentis* doctrine most notably in the cases: *In re Gault* (1967) and *Tinker vs. Des Moines School District* (1969). By

these cases, the courts have begun to recognize that the Fourth Amendment's protection against unreasonable searches and seizures applies to school officials as well as law officials.

The Fourth Amendment to the United States Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized.

This guarantee is not absolute, since "reasonable" search and seizures are permitted, although reasonableness must be determined by the facts of each case (National Association of Secondary School Principals, March 1973). The Supreme Court has not set any precedents in a students' freedom from "unreasonable" searches and seizures; therefore, decisions from lower courts are conflicting and confusing (Schofield, 1975). It is interesting to note, however, that no courts have held evidence inadmissible in a school disciplinary preceeding on the basis that the method of its procurement violates the Fourth Amendment (Phey, January 1975). The most fought over term dealing with the Fourth Amendment rights of students has been the definition of "reasonable." In State vs. Young (1975) the court concluded that a furtive gesture of a student quickly placing something into his pocket was reasonable suspicion and grounds for the search of his person. On the other hand, a New York court in People vs. Scott D. (1974) concluded that two quick trips to the bathroom by a student who had been a

suspected drug dealer did not constitute reasonable suspicion, even though the administration had information from a confidential source.

The Fourth Amendment prohibition against unreasonable searches without probable cause, and the use of search warrants has been dealt with in various ways. In general, a primary holding has been that school officials act as state officials in conducting searches but the doctrine of in loco parentis also applies. This means that a balance must be found which allows the individual some degree of protection as would be the case when a policeman or other government agent searches the student and the concept that the school official still operates in loco parentis, having a greater degree of control over the student in order to maintain a proper environment. The prevailing concept which applies to school searches is that of reasonable suspicion rather than probable cause. In this case, the search is generally conducted by a school official. In People vs. Jackson (1971), the court concluded that the compelling interests of in loco parentis justify any search taken under reasonable suspicion. They said that public school officials need flexibility in achieving goals of public education and that it would not be fair to try to impose the probable cause standard. In general, if the evidence has been seized by a school official acting alone, it is also admissable in criminal proceedings against the student. Thus, when a school search is conducted upon "reasonable suspicion" by school officials in furtherance of school purposes, the search

is considered to be reasonable under the Fourth Amendment and evidence seized at the time of the search is admissible in a criminal trial or juvenile court proceedings, as well as in school disciplinary proceedings (Phay, January 1975).

Also of important consideration in search and seizure cases is a determination of who initiated the search and for what reason. If a joint search using the police is conducted for school purposes, the reasonable suspicion standard applies (Phay, January 1975). However, if the police initiate the search to secure evidence for criminal prosecution, Fourth Amendment protection seems to apply as was the case in State vs. Young (1975). That court made the point that the reasonable suspicion standard will pass constitutional requirements only if the search is free from involvement of law enforcement personnel.

One last issue is the determination of whether or not evidence found in the search of a student and/or his locker can be used in a criminal court. In Overton vs. New York (1971), the court ruled that any contraband discovered as the result of a student or locker search could be turned over to the police for use in criminal prosecution. In reaching its decision, the Court placed particular emphasis on the relationship between students and school officials:

> Not only have the school authorities a right to inspect, but this right becomes a duty when suspicion arise that something of an illegal nature may be secreted there. When the vice principal learned of the detective's suspicion, he was obligated to inspect the locker. This interest, together with the nonexclusive nature

> of the locker, empowered him to consent to the search by the officers.

In the famous State vs. Stein (1970) and other cases since then, attempts have been made to invalidate the search and to suppress evidence on the grounds that the Miranda warning was not given to the students. The Miranda warning requires that an individual subject to arrest has the right to remain silent; that anything he says may be used against him in a court of law; and that, if he cannot afford an attorney, one will be appointed before any further questions be asked. However, the court stated in Stein:

> . . . the Miranda rule is not applicable to a search and seizure situation; that the validity of a consent to the search of private premises does not depend on the owner's having first been given the warning delineated in Mirands vs. Arizona . . .

The court sustained the legality of the search based on the following two premises: (1) the student gave his consent prior to the search, and (2) the student may "own" his locker as against other students, but he does not have "ownership" exclusive against the school. The court's ruling agreed with the Overton case when it defined the legal nature of a school locker:

> Although a student may have control of his school locker against his fellow students, his possession is not exclusive against the school and its officials. A school does not supply its students with lockers for illicit use in harboring pilfered property or harmful substances. We deem it a proper function of school authorities to inspect the lockers under their control and to prevent their use in illicit ways or for illegal purposes. We believe this right of inspection is inherent in the authority vested in school administration and that the same must be

> retained and exercised in the management of our schools if their educational functions are to be maintained and the welfare of the student body preserved.

The Overton and Stein decisions appear to say that school officials may search a student's locker when there is reasonable grounds for such a search without a warrant or the student's permission. Additionally, it seems clear that police have a right to conduct a search when they have "reasonable suspicion" to believe that a crime has been committed and that such action would aid in the resolution of the crime (Phay, January 1975).

Discipline (Corporal Punishment)

One area of student discipline in which in loco parentis still obtains is the area of corporal punishment. While the primary disciplinary penalties relied upon at the secondary school level are suspension and expulsion, corporal punishment continues to be used in some school systems. It is often the subject of considerable debate in those communities, and legal actions to discontinue the use of this form of punishment continue to arise.

Historically, corporal punishment was permitted and applied very generally by teachers, as well a principal, at all levels of school, but the twentieth century saw a severe reduction of its use as the result of new attitudes toward treatment of children in the home, as well as in the school.

At present, only four states--New Jersey, Massachusetts, Maine, and Hawaii--prohibit the use of corporal punishment by school officials. There are also 58 school districts, including the large ones of New York City and Chicago, that have banned corporal punishment (Hentoff, March 18, 1979). Also, the country's largest teachers' union, the National Education Association, has opposed corporal punishment, but there is not much backing for that view among teachers and school officials (Hentoff, March 18, 1979). Where its use is permitted, the courts have usually limited corporal punishment to those kinds and amounts of treatment that seem reasonable in relation both to the offense and to the particular persons involved. The force used cannot be excessive and it must be free from wantonness or notice (Fogarty, 1976).

Recent court cases have held corporal punishment is not in violation of the Eighth Amendment to the United States Constitution as a cruel and unusual punishment. However, if the punishment is unreasonable and excessive, it is no longer lawful, and the person administering it can be held criminally liable. The court may regard the incident as negligence or even assault and battery (National Association of Secondary Principals, May 1976).

The following two court rulings give an example of the trend school systems are following today:

> So long as the force used is reasonable--and that is all the statute here allows--school officials are free to employ corporal punishment for disciplinary purposes until in the exercise of

> their own professional judgment, or in response to concerted pressure from opposing parents, they decide that its harm outweighs its utility (Baker vs. Owens, 1975).
>
> While a recorded suspension can indeed have a permanent adverse impact on a person's reputation and could conceivably harm that person's chance to obtain employment or higher education, we find it difficult to contend that a paddling, a commonplace and trivial event in the lives of most children, involves any such damage to reputation.
>
> It seems to us that the value of corporal punishment would be severely diluted by elaborate procedural process imposed by this court . . . a hearing procedure could effectively undermine the utility of corporal punishment for the administrator who probably has little time under present procedures to handle all the disciplinary problems which beset him or her (Ingraham vs. Wright, 1976).

Corporal punishment cases seem to hinge on three questions: (1) Was the punishment reasonable and not inviolation of the Eighth Amendment? (2) Was the punishment free from wantonness or malice? and (3) Did the punishment meet due process requirements? The courts have, so far, upheld the right of schools to practice physical punishment, within reasonable limits, as a disciplinary measure. The court rulings are based on two major principles: (1) the state educational baords have a certain degree of autonomy in their educational policies and; 2) the constitutional rights that apply to adults do not apply to children (Peitman, September 1975).

PROCEDURAL DUE PROCESS

If due process can be defined in one word, it means fairness. More specifically, it is fairness applied to the process of judging someone's actions. It applies to freedom of speech, right of assembly, violations of laws, rules and regulations and just about anything including policies of the school. However, this fundamental fairness may vary from one situation to another and may depend upon factors in issue, the quality and quantity of the offense, the age of the child, the severity of the punishment required for the offense, and the amount of time and expense involved by school authorities who could otherwise be occupied with different school matters. More specifically, procedural due process relates to the means or methods involved in implementing and enforcing a regulation (Purtle, 1976).

Suspension and Expulsion

Procedural due process rights first came into question in the schools in the areas of the suspension or expulsion of students as a means of punishment. Until the 1960s, schools and school authorities were not regarded by the courts as subject to due process requirements. The historic precedent for this was the idea that the relationship of the school to its students, like that of parents to children, was a special one. Courts seldom interfered with the decisions of school authorities, who generally resolved conflicts in their schools as they saw fit--usually without due process. The Brown vs. Board of Education

(1954), was the landmark case in which the delicate balance between the administrators' traditional rights and responsibilities and the rights of students in general began to shift (Patterson, 1976). The Court said in Brown:

> In these days, it is doubtful that any child may reasonably be expected to succeed in life who is denied the opportunity of an education. Such an opportunity, where the state had undertaken to provide it, is a right which must be made available to all on equal terms.

From this has developed the concept that students have rights to due process just as adults do, as guaranteed under both the Fifth and Fourteenth Amendments. Those amendments provide that neither the United States nor any state or local government may deprive a person of "life, liberty or property without due process of law."

In January, 1975, the United States Supreme Court spelled out what it meant by due process of law as it applies to the suspension and expulsion of public school students. Goss vs. Lopez held that a student who is suspended for up to 10 days without a hearing has been denied due process of law. The United States Supreme Court then went on to establish "minimum procedures" to be used in the suspension of a student.

> At the very minimum, therefore, students facing suspension and the consequent interferences with a protected property interest must be given some kind of notice and afforded some kind of hearing . . . The student must be given oral or written notice of the charges against him, and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. There need be no delay between

> the time "notice" is given and the time of the hearing. In most cases, the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred. We hold . . . that the student first be told what he is accused of doing and what the basis of the accusation is.

Therefor, a procedure should give at least (1) notice of the charges, (2) an opportunity to be heard and offer explanation, and (3) the opportunity to present witnesses on behalf of the student. Reasonable time should be allowed for the process unless there are compelling reasons for an immediate suspension and in such event, notice and hearing should be granted as soon as the atmosphere permits. Private and parochial students are not guaranteed these procedural rights.

Expulsions are of a more severe nature than suspensions. From Goss it can be seen that the more severe the penalty, the more elaborate the procedure should be. One thing to remember is the procedural due process does not guarantee a correct decision, it merely enhances its likelihood (Iowa State Department of Public Instruction, May 1975).

Chapter 4

GUIDELINES FOR WRITING THE POLICIES OF A STUDENT HANDBOOK

In the past, the school's authority was heavily grounded in common law. Although recent court decisions have seemed to diminish its importance, common law still frequently surfaces in various forms--the most notable being the *in loco parentis* doctrine. This doctrine has been interpreted to mean that school officials stand in the place of the parent while the student is at school. Inherent within this concept lies its own vulnerability in that school officials cannot be a substitute parent in some circumstances. Issues concerning religious preference, or the meting out of punishment, for example, are among the prerogatives legally reserved for the natural parents or guardians. Nevertheless, the formulation of rules and the application of appropriate discipline for the benefit of the child are usually held to be valid by the courts on the basis of common law doctrine.

Rules governing the efficient operation of a school are imperative. The prudent school official should not only draft appropriate rules, but also take necessary steps to insure that these regulations will withstand judicial scrutiny. As formulated by E. Edmund Reuter (1975), the following are essential considerations in designing regulations for the purpose of controlling student conduct;

1. The rule must be publicized to students. Whether it is issued orally or in writing, school authorities must take reasonable

steps to bring the rule to the attention of students. A major exception is where the act for which a student is to be disciplined is obviously destructive of school property or disruptive of school operation. Foldesy (1978) recommends that school policy regulating student conduct be in written form, because "if the rule would ever be questioned in court, the precise language of the rule could then be easily ascertained."

2. The rule must have a legitimate educational purpose. The rule may affect an individual student's learning situation or the rights of other students in the educational setting.

3. The rule must have a rational relationship to the achievement of a stated educational purpose.

4. The meaning of the rule must be reasonably clear. Although a rule of student conduct need not meet the strict requirements of a criminal statute, it must not be so vague as to be almost completely subject to the interpretation of the school authority invoking it.

5. The rule must be sufficiently narrow in scope so as not to encompass constitutionally protected activities along with those which constitutionally may be proscribed in the school setting.

6. If the rule infringes on a fundamental constitutional right of students, a compelling interest of the school (State) in the enforcement of the rule must be shown.

7. An additional suggestion by Reuter (1975) states that care should be exercised in drafting a school rule against misbehavior off-campus, for such conduct proscribed must directly relate to and affect the management of the school and its efficiency.

All over the United States, pamphlets and handbooks have been written to inform students of their rights and responsibilities. While students have been informed of their legal rights, nothing much has been done to provide educators with equivalent knowledge to effectively deal with students. The purpose of this project is to provide a guide which delineates appropriate case law to help administrators who are writing or who wish to write a student handbook, not to infringe upon the legal rights of students.

SUBSTANTIVE DUE PROCESS

Symbolic Expression and Free Speech

From the case law presented in Chapter 3 under the above heading, certain facts arise that should be used as guidelines to follow when writing a policy covering this area of a student handbook. The guidelines for this area are:

1. The policy must be reasonable so as not to infringe upon the constitutional rights of the student.

2. Symbolic expression of the students can be stopped if there is a forecast of a substantial disruption of or a material interference with school activities.

3. Symbolic expression cannot be restricted merely because the possibility of disruption exists. Activities of the students which seriously interfere with school activities or other students' rights can be grounds for suppressing a specific behavior.

4. If the school environment contains racial, ethnic, social or other influences which might be upset because of the symbolic expression or free speech, the activity may be curtailed because of the possibility of causing a disruption.

5. The material or symbolic expression cannot be obscene or libelous. This is a difficult situation because of the unsettled definition of what is obscene.

6. If there is no evidence of potential or actual disruption, the student can use his First Amendment rights to freedom of expression.

An example of a policy covering this area follows:

> Symbolic expression and free speech comprising political rights, the distribution of literature, and the right to wear insignias and emblems will be granted all students providing it does not interfere with the orderly conduct of classes and school work and does not cause any disturbance or disorder on the school premises.

Hair and Dress Codes

This is a difficult area to give guidelines for since the Federal Circuit Courts of Appeals differ in their interpretations across the country. However, here are some general guidelines derived from case law.

1. Probably the best legal basis for hair, grooming and dress regulations is where there is a clear and present danger to the student's health, safety, or the educational performance of the students. It is probably better to use other methods of protection, such as bathing caps, hair nets, aprons, etc., rather than use prohibitions that affect appearance outside of school.

2. If other methods of protection are to be used, make sure they are not based on sexual stereotypes which cannot be defended against charges of sex discrimination.

3. Clothing that is so suggestive, revealing or obscene as to distract the opposite sex can be prohibited from the schools.

4. If the rules regulating a student's appearance are based on preventing a disruption, be prepared to meet the Tinker case tests: i.e. proving a reasonable forecast of a substantial disruption of or a material interference with school activities.

5. The school policy regulating student appearance should be in written form. It should be as narrow and specific as possible, and should be clearly related to the educational purposes of the school.

Finally, remember that preparation or adoption of hair and/or dress codes by the student body or its representatives does not insulate such rules from legal challenge by individual students. Support of the majority of students as evidenced by their involvement may tend to discourage challenges, however, and does promote acceptance of any school rule (National Association of Secondary School Principals, January 1976).

Student Publications

School authorities can control the time, place, and the manner of distribution of student publications. School officials also have the authority to choose the area of school property where it would be appropriate to distribute approved material. School authorities must be careful not to use the foregoing as a means of restricting production and distribution of literature deemed undesirable by them.

2. Approved publications should be free from policy restrictions outside of the normal rules for responsible journalism. School publications must meet the same legal restrictions as are imposed upon all citizens and the established media. Therefore, the materials students publish and/or distribute cannot be obscene, libelous, or create a clear and present danger of a material or substantial physical disruption of the school.

3. In order for a publication to be termed obscene, it must meet all of the following tests of obscenity:

a. predominantly appeals to prurient, shameful interests of minors;

b. patently offends community standards regarding suitable sexual materials for minors;

c. taken as a whole lacks serious literary, artistic, political or scientific value for minors (Nelson, 1974).

4. In order to libel a public figure, the material printed must be known by the author to be false or printed with reckless disregard of whether it was false or not. If what is said is true, it is not libelous.

5. In order to censor a student publication because of its possibility of disrupting the school, the school authority must reasonably forecast that the publication will in fact cause disruption.

6. The fact that the school may finance the publication does not mean it has the power to curtail what is printed. Only when the publication falls into one of the three legal limitations do the school authorities have the power to prohibit it.

7. The publishing and/or distribution of printed material on school property for commercial purposes may be prohibited.

Student Marriages and/or Parenthood

1. The compulsory school attendance laws do not govern a student, even if they are a minor, once they are married. It is felt that

marriage creates family obligations upon both parties such as providing for the family. A married couple of compulsory school attendance age, who is living with either set of parents, would probably not be exempt from the law.

2. The married student may be excluded from school if there is sufficient evidence to indicate that the student is immoral or that the student's presence causes a disruption or interference with school activities or poses a threat of harm to others. The married student cannot be disciplined solely by reason of the mere fact of marriage.

3. Pregnancy cannot be used as a means for suspension or expulsion, even for a short period of time.

4. A student cannot be restricted from extra-curricular activities because of marriage or parenthood, unless their attendance would cause serious problems for other students.

5. Married or pregnant students may voluntarily take alternative educational programs.

6. There can be no requirements made of married and/or pregnant students that are not also made of other students.

Search and Seizure of Students and/or Lockers

1. The Fourth Amendment's protection against unreasonable searches and seizures applies to school officials as well. The protection has not applied to school officials in the same way it applies to police officials. Reasonableness is the key word in this protection.

2. So far, no courts have held evidence inadmissible in a school disciplinary proceeding on the basis that the method of its procurement violates the Fourth Amendment rights.

3. School officials act as state officials in conducting searches, but the doctrine of in loco parentis also applies. This allows for a greater degree of control over the student in order to maintain a proper environment. Reasonable suspicion rather than probable cause has been the prevailing concept.

4. If the evidence has been seized by a school official acting alone, it is also admissible in criminal proceedings against the student.

5. If there is a joint search between school officials and the police conducted for school purposes, evidence obtained in the search can be used for criminal prosecution.

6. If it is a joint search for police purposes, the First Amendment protection applies requiring a warrant and reasonable suspicion.

7. The Miranda warning does not have to be given to search a student or his locker in a school initiated search.

8. In the search of a student, it is always a good idea to have a witness present. In the search of a student's locker, both the student and a witness should be present.

9. Any rules or regulations governing use of the locker, including the right by the school to conduct searches for good cause or reason, should be made known to the students when assigned a locker and should also be made a part of the student handbook.

Discipline (Corporal Punishment)

1. The states of New Jersey, Massachusetts, Maine, and Hawaii forbid corporal punishment. There are also 58 school districts which prohibit its use. Be sure to check the policy of your district before considering its use.

2. Corporal punishment must be limited to those kinds and amounts of treatment that are reasonable in relation both to the offense and to the particular persons involved. If the punishment is unreasonable and excessive, the person administering it can be criminally liable.

3. Corporal punishment is based on three premises:

   a. The punishment must be reasonable and not in violation of the Eighth Amendment.

   b. The administering of the punishment must be free from wantonness or malice.

   c. The punishment must meet due process requirements.

4. The following guidelines as set forth in Baker vs. Owens (1975) should be adhered to prior to use of corporal punishment:

a. Corporal punishment must be generally approved by the principal before it may be used in a particular school.

b. Except for those acts of misconduct that are so anti-social or disruptive in nature as to shock the conscience, corporal punishment may never be used unless the student was informed beforehand that specific misbehavior would result in its use.

c. Corporal punishment must be administered by a teacher or principal in the presence of another teacher or official, who must be told in the student's presence the reason for the punishment before the punishment is administered.

d. An official who has administered corporal punishment and the second official who was present must upon request provide the child's parents a written explanation of reasons.

PROCEDURAL DUE PROCESS

Suspension and Expulsion

1. Neither the Fifth nor Fourteenth Amendments depriving a person of "life, liberty or property," can be violated without due process of law. Students have rights to due process just as do adults.

2. States and school districts differ in their laws as to the number of days a student can be suspended without Board action. Be sure to check school and state policies.

3. When suspending a student, the following procedures as stated in Goss vs. Lopez should be followed in order to guarantee procedural due process:

a. You must give notice of the charges.

b. The student must be given an opportunity to be heard and offer explanation.

c. The student must be given the opportunity to present witnesses on his or her behalf.

4. The more severe the punishment, the more elaborate the due process procedures should be. Fielder vs. Board of Education (1972), recommends the following due process procedure in expulsions in order to fulfill the minimal standards required by the due process clause of the Fourteenth Amendment to the Federal Constitution:

a. an opportunity to be heard at a meaningful time and in a meaningful manner;

b. timely and adequate written notice detailing the reasons for a proposed termination;

c. an effective opportunity to defend by presenting arguments and evidence orally;

d. an opportunity to confront and cross-examine adverse witnesses;

e. the right to retain an attorney;

f. a decision resting solely on the legal rules and evidence adduced at the hearing;

g. a statement by the decision maker of the reasons for his determination and the evidence he relied on; and

h. an impartial decision maker.

5. School officials can be held liable for financial damages if it was known or reasonably should have been known that the action would violate the constitutional rights of a student, or if it was undertaken with malicious intent.

6. If a student's presence would create a danger to others, property or a continual disruption of the educational process, his or her removal can be immediate. Procedures for suspension should begin as soon as possible.

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