

Safe Schools Legal and Policy Issues

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I. Contents of board policy.

A. Mandated policies.

1. Federal law.

- a. Gun-Free Schools – Federal law mandates that states pass laws prohibiting students from bringing firearms to school. The law also states that violations will result in 12 month expulsion. For example, if a student was expelled in March, 1998, that student could not return until at least March, 1999. Only "firearms," i.e. guns and bombs, trigger the mandatory expulsion requirement. The superintendent has the discretion to recommend expulsion on a case-by-case basis. Bringing firearms to school must also be reported to law enforcement.

Iowa law further states that school districts must also adopt procedures for suspending or expelling students for possession of dangerous weapons, for continuing students' school involvement and for reintegrating the students into school following the suspension or expulsion.

- b. Student records - Family Education Rights and Privacy Act (FERPA), 20 U.S.C. 1232(g) (1994). 34 C.F.R. Pt. 99 (1996). Student records containing personally identifiable information, other than that listed as directory information, are confidential. Parents and eligible students have access to the records and there are also certain exceptions for individuals or agencies named in the law.

Until 1996, school districts could not share student information with law enforcement officials unless they received parental consent or a court order. School officials did not have the right to turn over student records to law enforcement officers without parental permission or court order. Federal law now permits states to pass laws addressing the sharing of information with the juvenile justice system. In order to share confidential student information without parental consent or a court order, school districts must have an Information Sharing Agreement in place which states which juvenile justice agencies can see the confidential information without parental consent or a court order. The information can only be used to help the student, not to prosecute.

- c. Special education - Honig v. Doe, 484 U.S. 305 (1988).
 - (1) Special education students cannot have a change in placement if it is determined that the behavior stemmed from the student's disability. "Stay put" provisions in the Individuals with Disabilities Education Act (IDEA), provide that the child remains in the current educational placement until the current educational placement has been reviewed. The "stay put" provisions can be set aside if parents and the school district agree. This provision does not apply until a student has been suspended for more than 10 days or is in danger of being suspended for more than 10 days.
 - (2) If a special education student's continued presence poses an immediate threat to the safety of others, or if the student possessed a weapon or drugs at school, the school district may place the child in an alternative interim placement for up to 45 days without violating the change in placement provision of the IDEA.
- d. Drug-Free Schools Zone, 20 U.S.C. § 3192 (1994) authorized the establishment of Drug-Free School Zones.
- e. Harassment – A policy is not specifically required by federal law but strongly recommended by the United States Department of Education.

Harassment is defined as verbal or physical conduct imposed on the basis of race, color, creed, religion, sex, national origin or disability that denies, limits or provides different aid, benefits and services, or conditions the provision of aid, benefits, services or treatment which are protected under the law. Sexual orientation is not protected, but a board has the discretion to add sexual orientation to the list of protected characteristics. Bullying should also be addressed including cyber-bullying.

- (1) The case law on student-to-student harassment is still developing. It appears that for a student to have an actionable case against the school district, the harassment must affect academic-related decisions or create a hostile or offensive learning environment. In other words, a student would have to be the victim of conduct on the basis of some protected characteristic that denies, limits or provides different aid, benefits or services, or conditions the provision of aid, benefits, services or treatment in the educational program.
- (2) School boards have a responsibility to eliminate and prevent harassment in the school district.
 - (a) A school board needs to adopt a policy prohibiting harassment and stating that the board is serious about prohibiting harassment.
 - (b) A school board also needs to adopt a complaint procedure.
 - (c) A board needs to ensure that employees and students are educated about sexual harassment including how to recognize it and how to report it.
- f. Gun Free School Zone – the zone is mandated by federal law but no policy is required.

2. State law.

a. Student conduct and discipline policies are mandated by the educational standards.

(1) General philosophical statement.

The board believes inappropriate student conduct causes material and substantial disruption to the school environment, interferes with the rights of others, or presents a threat to the health and safety of students, employees, and visitors on school premises.

(2) General behavioral statement.

Students shall conduct themselves in a manner fitting to their age level and maturity and with respect and consideration for the rights of others while on school district property or on property within the jurisdiction of the school district; while on school owned and/or operated school or chartered buses; while attending or engaged in school activities; and while away from school grounds if misconduct will directly affect the good order, efficient management and welfare of the school district.

Students who fail to abide by this policy and the administrative regulations supporting it may be disciplined for conduct which disrupts or interferes with the education program; conduct which disrupts the orderly and efficient operation of the school district or school activity; conduct which disrupts the rights of other students to obtain their education or participation; or conduct which interrupts the maintenance of a disciplined atmosphere. Disciplinary measures include, but are not limited to, removal from the classroom, detention, suspension, probation, and expulsion.

(3) Types of discipline to be imposed - need to notify students.

(a) Suspension

- in-school
- out-of-school
- Saturday
- before or after school

(b) Expulsion

- through end of semester
- through end of year
- twelve months (ESEA and state law)
- twelve months plus end of semester (for example, student expelled in Oct. 1998 does not return until Jan. 1999 so student does not come back mid-semester)

(c) Other

- community service
- treatment/intervention - if treatment is an option, make sure the student knows it is at the student's expense and require the student to sign a waiver of confidentiality so the school district can monitor the student's progress

- (4) Good Conduct Rule - expanded jurisdiction to cover students participating in extra-curricular and co-curricular activities. Make sure to incorporate general student conduct and discipline policies and procedures into Good Conduct Rule.
- (5) Due Process - required by the 14th amendment to the U.S. Constitution.
 - (a) Balance the interest of the school, in maintaining an orderly environment conducive to learning, with the rights of the student.
 - (b) What process is due? Due process is a flexible concept.
 1. The greater the right being denied, the more due process required.
 2. Minor infractions resulting in detention or other lesser punishments need only require minimal due process.
 - Notify student of the charges.
 - Explain the evidence supporting the charges against the student.
 - Give the student the opportunity to explain his or her side of the story.
 3. The United States Supreme Court has stated that major infractions resulting in suspensions over 10 days require a hearing before the board. According to Iowa law only the school board can expel a student.
 - Student must be notified in writing of the charges against the student.
 - Student has a right to be represented by counsel and to present evidence and witnesses on the student's behalf.
 - Student should be given the names of the witnesses against him or her unless the witnesses are other students. If the witnesses are other students, the school district may want to withhold the students' names.
 - Student should receive the board's decision in writing.
 4. Infractions somewhere between major and minor require due process procedures somewhere between the minimal process and the formal hearing procedure.
 - Some schools have an appeals board to which students can appeal. An appeals board is generally made up of teachers, administrators, students or parents. Board members should not be members of the appeals board. Board members need to remain impartial in the case of a hearing before the board.
 - Some schools allow students to present their side of the story to administrators with supporting evidence in an informal hearing process.
- (6) Iowa law requires mandatory suspension for assault on school employees in a school building, on school grounds or at a school-sponsored function.

- (7) Iowa Educational Standards require the use of a committee when developing or revising student responsibility and discipline policies. The committee must be comprised of parents, students, instructional and noninstructional professional staff and community members. 281 I.A.C. 12.3(8).
- b. Alcohol, tobacco, drugs - prohibition of use, possession or being under the influence of alcohol, tobacco, tobacco products, drugs or look-alike substances.
- c. Corporal punishment - banned in Iowa, but there are times when it may be appropriate for an employee to use physical force upon a student. For example, to disarm a student or quell a disturbance.
- d. At-risk programs - at-risk programs are designed to identify students who may have difficulty in school. Plans generally accommodate and identify students who may be negatively affected by stereotypes linked to race, national origin, language, income or family status. At-risk programs should include:
 - (1) in-service training for school employees,
 - (2) strategies and activities for involving and working with parents,
 - (3) provisions for monitoring the behavioral, social and academic improvement of at-risk student,
 - (4) strategies for coordinating school programs and community-based support services.
- e. Admission of suspended or expelled students - Iowa law allows school districts to deny admission to resident students if the student has been expelled or suspended from the student's previous district and the student has not yet met the requirements for readmission to that school district. In order for the resident school district to admit the suspended or expelled student, who has not met the readmission requirements, the board must vote to enroll the student.
- f. Compulsory attendance - School districts must have attendance policies defining excused and unexcused absences. Board policies on excused and unexcused absences will vary from school district to school district.
- g. Emergency Preparedness Records – As of July 1, 2006, boards are required to have policies stating which school district emergency preparedness records the board considers to be confidential records exempt from public disclosure. Items to be considered are
 - (1) Evacuation procedures
 - (2) Safety procedures
 - (3) Security codes and passwords
 - (4) Emergency preparedness procedures.Boards should add other items that fit their unique situations.

B. Recommended policies.

1. Diversity - incorporate multiculturalism into the education program which fosters knowledge of, and respect and appreciation for, the contributions of diverse cultural groups to society.
2. Search and seizure.
 - a. New Jersey v. T.L.O., 469 U.S. 325 (1985).
 - (1) The fourth amendment protection against unreasonable searches and seizures applies to searches conducted by school officials.
 - (2) Balance the students' privacy expectations against the school's need to maintain security. In order to conduct a search, a school official must have a reasonable belief that a school policy, rule or law has been violated or a search is necessary to maintain discipline. Factors to consider when determining reasonableness:
 - student's age
 - student's record
 - prevalence and seriousness of the problem in school
 - school official's prior experience with the student
 - (3) When law enforcement officers initiate or are involved in a search conducted by school officials, the law enforcement officer must have probable cause.
 - b. In order to conduct random, periodic locker inspections, Iowa law requires school districts to annually notify students and parents about the potential for random locker inspections. The law also requires another individual be present when lockers are being inspected.
 - c. Metal detectors - not addressed by the Supreme Court in T.L.O. Metal detectors present a different issue because it is a generalized search, generally school-wide in scope, rather than individualized. Although a search, they are minimally intrusive. Courts will probably uphold the search after balancing the school's interest in maintaining a safe environment with a student's privacy interest.
 - d. Automobile searches - no real guidance from the courts yet. It is anticipated that the reasonableness test will also apply. One way to limit the need for searches is to prohibit access to cars during the school day.
 - e. Drug dogs - The U.S. Supreme Court has held that generalized sniffing of luggage in an airport did not constitute a search. However, when the sniffing is individualized it may constitute a search for which the reasonableness standard applies.
 - f. Breathalizers - Use of a breathalyzer is individualized and constitutes a search for which the reasonableness test applies.
3. Use of video cameras - Generally video cameras are used on school buses or hallways where student should not have an expectation of privacy. Therefore, the Fourth Amendment would probably not apply. However, use of video cameras in restrooms or locker rooms will

probably invoke the protection of the fourth amendment. School districts using video cameras should have a policy stating that the board approves of the use of video cameras.

4. Gangs - a lot of gang regulations border on First Amendment issues.
 - a. If a school district wants to have a gang policy prohibiting gang behavior, it should document the presence of gang activity in the school district by getting statements from:
 - (1) law enforcement
 - (2) students
 - (3) employees
 - b. Statements should focus on the intimidation present due to gang presence or activity and the fact that the intimidation could lead to a disruption of school activities.
 - c. Statements should also include references to safety and that by curbing gang activity the learning environment will be safer for students and employees.
 - d. A policy should define gang activity and give specific examples of gang activity in the school district.
5. First Amendment - hate speech, student appearance.
 - a. Hate speech - loosely defined as speech which is highly offensive and may cause intimidation. The speech can be based on race or any other of a number of characteristics including religion or sex. The speech does not have to be verbal, it can be written or in the form of a tattoo, as well. School districts cannot specifically or arbitrarily prohibit hate speech. The First Amendment limits a school district's authority to pass judgment or which types of speech are and are not acceptable.
 - (1) Sample language

Students will be allowed to express their viewpoints and opinions as long as the expression is responsible. The expression shall not, in the judgment of the administration, encourage the breaking of laws, cause defamation of persons, be obscene or indecent, or cause a material and substantial disruption to the educational program. The administration, when making this judgment, shall consider whether the activity in which the expression was made is school-sponsored and whether review or prohibition of the students' speech furthers an educational purpose.

Further, the expression must be done in a reasonable time, place, and manner that is not disruptive to the orderly and efficient operation of the school district.

- (2) If school district officials can prove that the speech violated the policy because it would cause a material and substantial disruption to the educational program, the speech, or hate speech, can be regulated.

b. Student appearance - the same First Amendment free speech concerns also apply.

(1) Sample language

The board believes inappropriate student appearance causes material and substantial disruption to the school environment or presents a threat to the health and safety of students, employees and visitors on school property or on property within the jurisdiction of the school district.

(2) In order to regulate student appearance, the school district must be able to show that the clothing or other apparel violated board policy or regulations.

c. Distribution of unofficial student-produced materials - again, the same First Amendment concerns apply.

(1) Sample language

Students have the right to exercise freedom of speech. This includes the right to distribute, at reasonable times and places, unofficial written material, petitions, buttons, badges or other insignia, except expression which:

- (a) is obscene to minors;*
- (b) is libelous;*
- (c) contains indecent, vulgar, profane or lewd language;*
- (d) advertises any product or service not permitted to minors by law;*
- (e) constitutes insulting or fighting words, the very expression of which injures or harasses other people (e.g., threats of violence, defamation of character or of a person's race, religion, gender, disability, age or ethnic origin);*
- (f) presents a clear and present likelihood that, either because of its content or the manner of distribution, it will cause a material and substantial disruption of the proper and orderly operation and discipline of the school or school activities, will cause the commission of unlawful acts or the violation of lawful school regulations.*

Distribution on school premises of material in categories (a) through (d) to any student is prohibited. Distribution on school premises of material in categories (e) and (f) to a substantial number of students is prohibited.

(2) Time, place and manner restrictions also apply.

6. Sex Offenders – again, a policy is not required but boards and administrators need to know about the law. Recent Iowa law prohibits school districts from enrolling students on the sex offender registry until the board has taken action. The board takes action to determine the appropriate educational placement of the student.

III. What Boards Need to Do.

A. Adopt a set of expected behaviors for both students and employees.

B. Adopt board policy and give administrator's authority to implement.

- C. Develop a crisis plan that addresses prevention and post-incident plans.
- D. Sponsor staff development programs.
 - 1. Inform employees of content of board policy and administrative regulations.
 - 2. Give employees practical skills on how to recognize potential for violence in the schools, i.e. what types of students are more likely to be violent, how to disarm a student, etc.
- E. Notify students of board policy and how policies will be implemented and enforced. Notify students of potential discipline, including suspension and expulsion.
- F. Run a security check of the school facilities. Implement a procedure where visitors to the facilities have to check in at a central office.
- G. Get the community involved.
 - 1. Parents - enlist parents in a partnership to keep the schools safe.
 - 2. Law Enforcement - set procedures for dealing with violent incidents. Look into the state law and federal law for sharing of information about minors involved in criminal activities.
 - 3. Let the whole community know that safe schools effect everyone, not just students and employees.
- H. Adopt a plan to utilize in the case there is a violent incident.
 - 1. How to deal with counseling needs of students.
 - 2. How to deal with and notify the parents, press, and community.