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ABSTRACT

To establish effective school discipline policies, educators need to understand (1) the nature of and reasons for misbehavior, (2) social and legal attitudes toward the school's disciplinary function, (3) acceptable responses to disciplinary problems, and (4) what effective policies cover. This booklet's first chapter considers the need for discipline in schools and recent trends in student behavior and national concern. The second chapter examines the changing role of the school and the application of tort law, criminal law, parental responsibility law, and state constitutional law in the school setting. Chapter 3 distinguishes between criminal and noncriminal behavior, reviews appropriate sanctions for each, and discusses the school's responsibility for keeping records and developing responses to patterns of misbehavior. This chapter also defines terms used to describe criminal acts. The fourth chapter presents 10 rules to follow when developing student discipline regulations. Chapter 5 selects typical regulations from student handbooks from 713 secondary schools to provide a model code of conduct. The special problems of disciplining students in special education are considered in the sixth chapter. Chapter 7 lists student handbooks from around the United States, books discussing student discipline, and relevant films, filmstrips, and videotapes. (PGD)

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School Discipline Notebook

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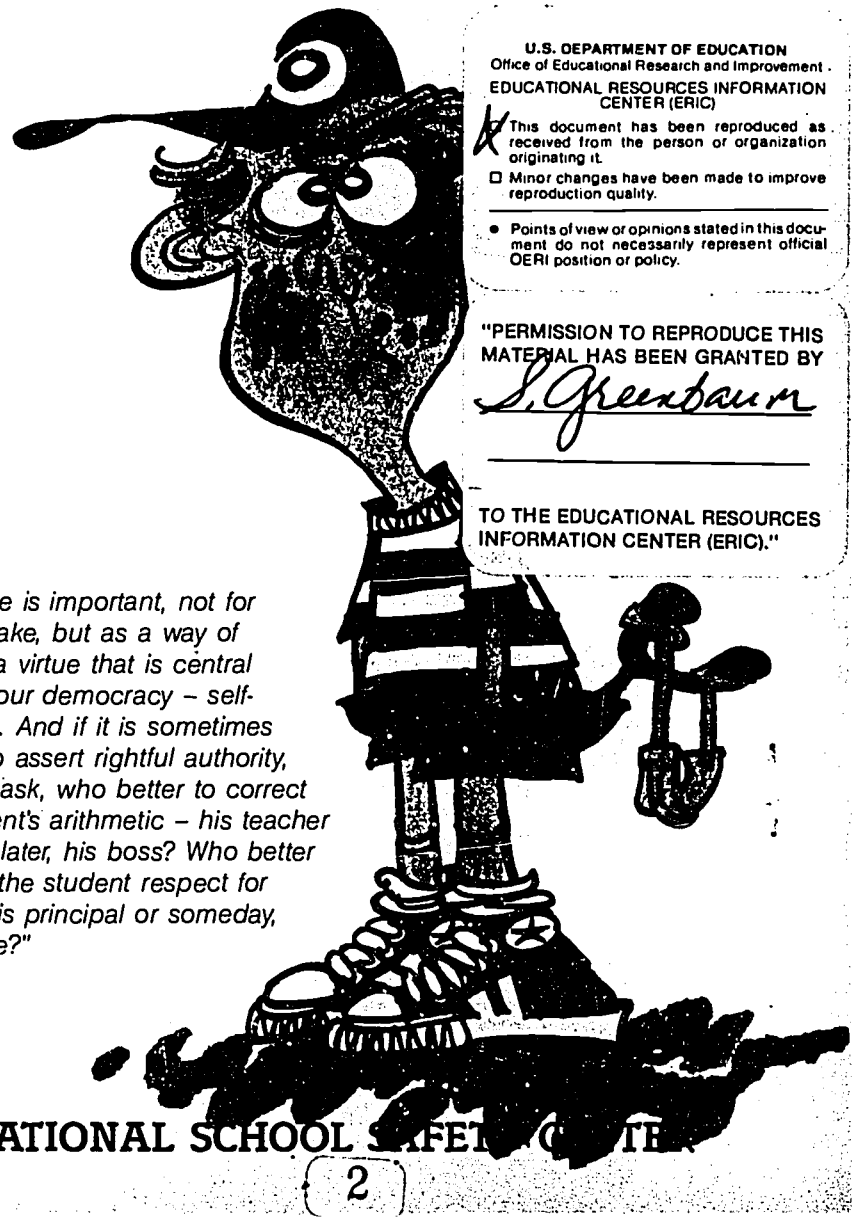

"Discipline is important, not for its own sake, but as a way of instilling a virtue that is central to life in our democracy – self-discipline. And if it is sometimes difficult to assert rightful authority, we must ask, who better to correct the student's arithmetic – his teacher or, years later, his boss? Who better to teach the student respect for rules – his principal or someday, the police?"

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NATIONAL SCHOOL SAFETY CENTER

School Discipline Notebook

NATIONAL SCHOOL SAFETY CENTER

Cover quotation by President Ronald Reagan, 1985.

Introduction

So many of today's young people are in a hurry to grow up. They're anxious to enjoy what they perceive as the benefits of adulthood. They envision trying new things, helping decide the direction of the future, and, of course, enjoying that magical commodity, freedom.

When you think about it, schools were established to prepare young minds for these very goals. Perhaps education's primary function is to transfer the knowledge and learning of the past to new generations. But this goal includes the transmission of positive social values and self-discipline, attributes which make all learning possible.

Self-discipline must be taught and nurtured. And while students are mastering this critical skill, it falls to educators to provide an orderly learning environment. School discipline is simply a means to an end, the system which will make it possible for young people one day to try new things, determine the future and enjoy personal freedom.

Self-discipline by students and teacher-imposed discipline in classrooms deter school disruptions. Schools in which discipline is emphasized have an inherent order and sense of safety and security without being oppressive. Discipline is a preventive approach to check student misbehavior before it becomes delinquent or criminal. In addition, properly managed classes produce learning and satisfaction and avoid frustration and anxiety – unproductive conditions for students and faculty.

President Reagan recognized this when he said to educators:

> Discipline is important, not for its own sake, but as a way of instilling a virtue that is central to life in our democracy – self-discipline. And if it is sometimes difficult to assert rightful authority, we must ask, who better to correct the student's arithmetic – his teacher or, years later, his boss? Who better to teach the student respect for rules – his principal or, someday, the police?

This book will help educators establish fair and effective discipline. It reviews student responsibilities and rights, including the right to safe schools. The correlation between orderly, disciplined schools and safe, productive schools is examined. This publication also explains legal policies which regulate discipline methods used in schools.

In addition, suggestions are offered for the many practical tasks required of educators, including preparing discipline codes, defining and tracking rule infractions and disciplining special education students. A comprehensive resource section suggests publications, policies and films providing further assistance with school discipline.

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As a national clearinghouse, the Center communicates the latest trends and effective programs in school safety to educators, law enforcers, the legal community, government officials, the media and the public.

Center activities include producing print and multimedia informational materials for practitioners; creating public service advertising to promote public awareness; providing technical assistance; developing legal and legislative resources; and presenting training conferences.

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Chapter 1

Student rights and responsibilities

Discipline has been defined as "training that is expected to produce a specific character or pattern of behavior, especially training that produces moral or mental improvement." It has been described by educators as "ordered behavior that leads to better learning."

Within this context, discipline is not something that simply does or does not exist in school; it is the essential matrix of learning. Clearly, discipline is something which must be consciously and energetically pursued and taught. It is the means by which students are nurtured to learn, to develop responsibility and, ultimately, to control their own actions. Discipline is a social necessity; it is the essence of learning.

Unfortunately, behavioral ideals are not always achieved. Thus, campus and classroom discipline are not always maintained. Most incidents of school misbehavior are petty, disorderly infractions. While these incidents generally are nonviolent, they can still exact a heavy toll on the psychological health of a school and directly affect faculty, staff, administration, students and the community at large.

Research indicates violent crime in the schools constitutes a relatively small, but nonetheless serious, portion of total campus misbehavior problems. Morally speaking, any physical injury, theft, property damage, drug traffic or abuse, or similar misbehavior in a school is unacceptable. Such misbehavior creates distractions and, at times, disabling fears for innocent students and staff.

Not only is student misbehavior socially undesirable, frequently it also produces destructive side effects. Lost instructional time which is devoted to behavior management and lost progress in student achieve-

ment make discipline problems extremely wasteful of human resources and energy. Every student has a basic, if not legal, right to attend a school with a safe, secure and peaceful learning environment.[1] Additionally, even when students and staff are not personally endangered, costs of replacement or repair to damaged, destroyed or stolen school or personal property diverts essential resources from learning. Misconduct, whether by student or interloper, is detrimental to the academic progress of everyone in a school.

According to the most recent Gallup Poll, the lack of student discipline is viewed by the public as the most pressing problem in America's public schools.[2] This concern has been foremost in 16 of the 17 most recent, annual Gallup Polls.

The National Institute of Education (NIE) in its 1978 report, *Safe Schools – Violent Schools*, found 40 percent of the robberies and 36 percent of the assaults on urban teenagers occur in schools. The risks are especially high for youngsters between 12 and 15 years old. NIE data further indicate approximately 68 percent of the robberies and 50 percent of the assaults on youngsters between 12 and 15 years old occur at school. By contrast, only 17 to 19 percent of the violent offenses against urban youths in this age group occur in the streets.[3]

In 1983 a distinguished presidential commission was appointed to study the condition of the American school system. Its report, *A Nation at Risk: The Imperative for Educational Reform*, not only recognized student discipline as a major problem in the nation's schools but also stated the burden imposed on teachers for maintaining discipline could be reduced through the development of firm and fair codes of conduct which are enforced consistently. The commission also advised school administrators to consider alternative classrooms, programs and schools to meet the needs of continually disruptive students.[4]

Three documents produced by the United States Senate provide additional benchmarks in the contemporary history of student discipline in our nation's schools. All three were produced by investigations by the Senate's Committee on the Judiciary to Investigate Juvenile Delinquency.

This committee's final report, published in 1977, *Challenge for the Third Century: Education in a Safe Environment*, addressed the nature and prevention of school violence and vandalism. This report included National Education Association estimates that more than 70,000 teachers are physically attacked in school each year and more than 100,000 have their personal property vandalized. The report also

contained estimates by the president of the National Association of School Security Directors that our schools experienced 12,000 robberies and 204,000 aggravated assaults in 1974.[5] (It is logical to conclude that since crime has increased substantially in our nation's communities since 1974, it has similarly increased in our schools.)

The seriousness of the problem was demonstrated by the results of the first hearing on school violence and vandalism by the Senate's Committee on the Judiciary to Investigate Juvenile Delinquency, reported in *The Nature, Extent and Cost of Violence and Vandalism in Our Nation's Schools*, published in 1975. This document confirmed earlier reports that there are approximately 70,000 physical assaults on teachers annually in the United States. It relates the shooting of an elementary school principal in Chicago by one of his students and the beating of a high school math teacher in Omaha. During the period it took to gather the data for this investigation, 362 teachers were assaulted in schools in Dayton, Ohio, and 252 were attacked in Kansas City, Missouri, schools. Obviously, these are only a small fraction of the national figures for the same period.

The studies, however, identify most victims of school crime as students, not teachers. The number of students who died in the schools between 1970 and 1973 exceeded the number of American soldiers killed in combat during the first three years of U.S. involvement in the Vietnam War.[6] And, alarmingly, student slayings are increasing, not decreasing. To cite only a few tragic examples, five students were shot during the first week of school in Los Angeles in 1984, and a student in Oakland, California, and a school janitor in Portland, Connecticut, were shot and killed the same day, December 10, 1985.

Models and Strategies for Change, the third report from the investigation, published in 1975, relates testimony by Marian Wright Edelman of the Children's Defense Fund, a privately financed child advocacy organization. She stated a study of suspensions in the 1972-73 school year showed more than one million children were suspended for more than four million school days. (These figures do not include expulsions, temporary dismissals or children sent home for short "cooling-off" periods.) While the study found most suspensions were for nonviolent offenses, such as truancy or tardiness, the loss of instructional time was significant.[7]

The most recent congressional investigation into inappropriate student behavior revealed the most common disciplinary problems were identified as absenteeism, cutting, and drug traffic and abuse. Fewer than

10 percent of the surveyed schools reported moderate or serious conflicts between teachers and students. Fewer still described student possession of weapons, verbal abuse of teachers, or more serious crimes as moderate problems.[8] The validity of these figures is open to question because it is indisputable that campus crime and disruption statistics are notoriously inadequate, and sometimes even intentionally misreported. In fact, very few systematic campus crime tracking programs exist in America.

Although there are fewer incidents of dangerous misconduct than non-dangerous misconduct, any threat or incident of misbehavior which poses a risk of harm to students or teachers or their property must not be tolerated in the educational setting. As President Ronald Reagan said in his 1984 address to the National Association of Secondary School Principals: "As long as one teacher is assaulted, one classroom is disrupted or one student is attacked, . . . I can't say it too forcefully, to get learning back to our schools, we must get crime and violence out!"

The report of the President's Cabinet Council on Human Resources declared no increase in paychecks will increase educational quality or opportunity if the teachers who receive them are too afraid or too distracted to teach. Improved buildings, materials or curriculum will be of no benefit if students are too fearful or too distracted to learn. In addition, the Council said crime in our schools must be recognized, admitted and confronted before cures can be sought and implemented. If the problem continues to be ignored, our nation will be the ultimate loser.[9] Unfortunately, despite the Council's stern admonition, it is clear too many educators continue to ignore the problem.

The 1984 publication *Toward Better and Safer Schools* by the National School Boards Association, provided a positive guide for creating better schools. According to this book, a better school is a safer school, a school in which students and teachers feel safe when doing their jobs. A better school is one dedicated to working with all segments of the constituent community, one committed to effectively educating all students and responding to local needs and priorities. A better school is one consumed with the goal to graduate self-confident, self-sufficient young people who are prepared to work, vote and function as productive citizens.[10] Accordingly, the primary goal of this notebook is to share ideas which will help school officials to create and maintain effective safe school campuses.

Endnotes

1. Sawyer, Kimberly A. "The Right to Safe Schools: A Newly Recognized Inalienable Right." Sacramento, CA: National School Safety Center, reprinted from *The Pacific Law Journal*, McGeorge School of Law, University of the Pacific, Vol. 14, No. 4, July 1983.
2. Gallup, G. H., "The 17th Annual Gallup Poll of Public's Attitudes Toward Public Schools," *Phi Delta Kappan*, September 1985, pp. 35-47.
3. National Institute of Education. *Violent Schools-Safe Schools: The Safe School Study Report to the Congress, Executive Summary*, U.S. Department of Health, Education and Welfare. Washington, D.C.: U.S. Printing Office, 1977, p. 2.
4. National Commission on Excellence in Education. *A Nation at Risk: The Imperative for Educational Reform*, U.S. Department of Education. Washington, D.C.: U.S. Printing Office, April 1983, p. 29.
5. United States Congress, Senate Committee on the Judiciary. *Challenge for the Third Century: Education in a Safe Environment – Final Report on the Prevention of School Violence and Vandalism.* Hearing, 95th Congress, 1st Session, February 1977. Washington, D.C.: U.S. Government Printing Office, 1977, pp. 11-12.
6. United States Congress, Senate Committee on the Judiciary. *The Nature, Extent and Cost of Violence and Vandalism in Our Nation's Schools.* Hearing, 94th Congress, 1st Session, April and June 17, 1975. Washington, D.C.: U.S. Government Printing Office, 1975, p. 2.
7. United States Congress, Senate Committee on the Judiciary. *School Violence and Vandalism: Models and Strategies for Change.* Hearing, 94th Congress, 1st Session, September 17, 1975. Washington, D.C.: U.S. Government Printing Office, 1975, p. 173.
8. United States Congress, Senate Committee on the Judiciary. *The Scope and Severity of Crime and Violence in Schools and Our Proposed Initiatives to Combat Juvenile Crime in the Schools.* Hearing, 98th Congress, 2nd Session, January 25, 1984. Washington, D.C.: U.S. Government Printing Office, 1984, p. 78.
9. Cabinet Council on Human Resources. *Memorandum for the Cabinet Council on Human Resources: Disorder in Our Public Schools*, Washington, D.C., 1983, pp. 1-23.
10. National School Boards Association. *Toward Better and Safer Schools: A School Teacher's Guide to Delinquency Prevention.* Alexandria, VA: National School Boards Association, 1984, p. 3.

Chapter 2

Right to safe schools

Few will deny our schools must, of necessity, develop, implement and enforce effective student discipline policies. This need is recognized, in part, because of widely disseminated reports of crime and violence on school campuses.[1] But the need for discipline policy also is based on an evolving element of the student-school relationship – the *right* to safe schools.

In *loco parentis* and *parens patria* doctrines

A school traditionally has been considered to act *in loco parentis* for its students; that is, the school acts *in the place of a parent or guardian* and with almost the same rights, duties and responsibilities.[2] Under this theory, school officials could act as if they were parents and do anything they deemed appropriate for the supervision or betterment of students. Whether actions thus taken were wise or the aims worthy was a matter left solely to the discretion of school officials. In the exercise of that discretion, the courts were not expected to interfere.[3]

Applying the *in loco parentis* doctrine, a school had no specific duty to assure safe schools, although it has been suggested a school was expected under the doctrine to protect students from harmful and dangerous influences.[4] Indeed, in the very few places where the doctrine is still in force, teachers are immune to suit by students unless claims are based on willful and wanton misconduct which seldom can be established.[5]

The rights of parents, guardians and schools have nevertheless been subject to the overriding interest of the state. The state, as *parens*

patriae, or "guardian of minors," may restrict parental discretion and impose specific school obligations. While this authority has been used to require attendance at school,[6] mandate curriculum[7] and impose other requirements, it has, heretofore, generally not been used to afford students the right to safe schools other than to require schools to follow minimum fire and building codes[8] and require student immunizations.[9] In the absence of a state constitutional right to an education, the United States Supreme Court has stated there is actually no constitutional right to an education at all – safe or unsafe.[10]

Tort liabilities

With the abrogation of governmental tort immunity,[11] general tort law served as the avenue for claims to a right to safe schools. Whereas the *in loco parentis* doctrine prevented claims other than for intentional injuries, general tort law allowed for claims based merely on negligence. This is significant because in practically any situation where non-intentional injury to a person or property occurs, a potential negligence claim exists against the person who caused the damages.[12]

Negligence involves four elements: (1) a duty or obligation, recognized by law, requiring an individual to conform to a certain standard of conduct for the protection of others against unreasonable risks; (2) failure to conform to a reasonably required standard; (3) a reasonably close causal connection between the conduct of the individual responsible for the person under supervision and the resulting injury, that is, proximate cause; and (4) an actual loss or damage resulting to the interests of another.[13]

Applying these elements, courts have no hesitancy imposing liability on a school when a student is injured as the result of the direct negligence of a school employee.[14] Courts have been less inclined, however, to impose liability where claims are based on injuries by fellow students because, ordinarily, there is no relationship of *respondent superior,* or "agency," between the school and the student.[15] Similarly, liability seldom has been imposed as the result of criminal activities because generally there is no duty to control the conduct of another and no duty to warn those who may be endangered by the conduct.[16]

Where injuries by fellow students or criminal activities are involved, courts generally have imposed liability only if it is established the injuries were foreseeable and there was an opportunity for school officials to prevent them.[17] For example, school officials will not be liable when a 10-year-old youngster is abducted and slain where there was no

evidence of potential criminal conduct in the area.[18] However, they will be liable when a 12-year-old student is raped in a gymnasium during noon recess where the incident should reasonably have been anticipated because there was unrestricted access to the darkened room in an out-of-the-way location,[19] or where a student is assaulted after school officials had learned of similar incidents in the same area.[20]

In requiring that injuries be foreseeable, courts have held a school is not an insurer of the safety of students[21] or a guarantor that students will be protected from harm.[22] Accordingly, liability has not generally, heretofore, been imposed simply because of a common recognition that crime and violence are problems in the nation's schools. At most, schools previously have had only an obligation under general tort law to reasonably supervise the conduct of students[23] and to respond to dangers and risks it can or should reasonably foresee.[24] However, in at least one state, California, there is now a constitutional right to safe schools which may in that jurisdiction affect a change in all this.[25] Growing school exposure to liability is being demonstrated in legal and legislative actions throughout the nation.

Criminal law protections

To deal with crime and violence in schools, many states have enacted criminal law protections for students and teachers.[26] For example, some states statutorily enhance the penalty or classification for a criminal battery against teachers or legislatively prohibit students from abusing teachers. Although many of these statutes are upheld in the face of equal protection or other constitutional challenges, a number have been held unconstitutional for being overbroad.[27] Further, while it is the goal of such laws ultimately to deter misconduct, they focus on punishment rather than on prevention or actual redress for crimes or violence directed against students or staff.

Parental responsibility laws

While at common law parents or guardians generally were not liable for damage caused by their children,[28] statutes have been adopted in many states making parents responsible for damages of their unemancipated children, particularly when the damage results from some intentional conduct.[29] These statutes are enacted to serve two goals: (1) to compensate victims of crimes by imposing vicarious liability on parents or guardians of youngsters who intentionally or maliciously harm the person or property of another; and (2) to deter crime by encouraging

increased parental supervision.[30] The effectiveness of these statutes to serve either of these worthy purposes has been curtailed because the damages which may be recovered typically are limited to about $750.[31]

A constitutional right to safe schools

In response to a perceived inadequacy in current legal protections and remedies and in an effort to give constitutional parity between the rights of victims and perpetrators of crime and violence, the voters of California in 1982 approved Proposition 8 which is commonly known as "The Victims' Bill of Rights." In its preamble, the measure declares that safeguards for victims' rights are necessary "so that public safety is protected and encouraged . . . ."[32] In addition, the provision states "such public safety extends to public . . . school campuses, where students and staff have the right to be safe and secure in their persons."[33] Among the specific rights guaranteed is the inalienable *right to safe schools.*[34]

Prior to the approval of "The Victims' Bill of Rights," the California Department of Justice sought to establish a constitutional right to safe schools in a lawsuit filed against the Los Angeles Unified School District.[35] The underlying premise of the claim was quite simple. Students and teachers have the constitutional right to learn and teach in a peaceful environment.

Five arguments were raised in the case against the district, all of which relied on the view that violence and crime at schools deny constitutional rights: (1) when students are required to attend school by compulsory education laws, an excessive level of crime and violence violates students' rights against cruel or unusual punishment; (2) when that crime and violence disrupts the learning environment, students are denied the right to a free public education as provided in the state constitution; (3) crime and violence at school deny students a fundamental right to personal security; (4) students are denied equal protection when substantial disparities exist in the level of violence between one district and other school districts; and (5) students are denied substantive due process rights when they do not receive proper education at the school to which they are assigned due to crime and violence.[36] Notwithstanding these claims, the courts refused to hold a school had an affirmative duty to make schools safe.[37] As a result, such a constitutional right was thereafter amended into the state constitution by "The Victims' Bill of Rights."

That safe school provision states: "All students and staff of public

primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful."[38] The California Supreme Court has upheld the validity of the initiative,[39] but has limited the law's scope to safety from criminal behavior.[40] The drafters' declared intention is that the right is mandatory and self-executing.[41] This new protection will, at a minimum, enable students and staff to redress injuries arising from crime and violence occurring at school.[42] More optimistically, it should afford students and staff safe schools by promoting efforts to assure that schools are, in fact, safe.[43]

Local initiatives for safe schools

California's lead, in providing a constitutional right to safe schools, has not yet been followed by other states. But it has encouraged schools throughout the nation to make school safety a priority.[44] The primary goal, after all, should not be to provide a remedy to students and staff who are victims of crime and violence, but to prevent them from becoming victims.

Courts are increasingly inclined to provide schools the constitutional tools to deal with crime and violence.[45] Governmental agencies are poised to organize[46] and fund[47] safety efforts. The responsibility now rests with schools to provide teachers and students safe environments in which to teach and learn. If for no other reason, that responsibility should be met to avoid the liabilities which might otherwise be imposed on schools. More appropriately that responsibility should be met to assure students an atmosphere that is "safe and welcoming,"[48] one conducive to the orderly process of classroom learning. The time has come for the right to safe schools to be a part of the student-school relationship.

Endnotes

1. See, e.g., 1 NIE, U.S. Depart. of Health, Education and Welfare, *Violent Schools-Safe Schools: Safe School Study Report to the Congress* (1978).
2. In addition to this theory, there are a number of other theories of the student-school relationship, each with its own concept of rights and responsibilities. See J. Rapp, *Education Law* (Matthew Bender & Co., Inc.) § 8.01.
3. J. Rapp, *Education Law* § 8.01[2][b].
4. See, e.g., *Bradshaw v. Rawlings*, 612 F.2d 135 (3rd cir. 1979); *People v. Jackson*, 65 Misc.2d 909, 319 N.Y.S.2d 731 (App.Term. 1971) *aff'd*, 30 N.Y.2d 734, 284

N.E.2d 153, 333 N.Y.S.2d 167 (1972); *Eiseman v. State of New York*, 109 A.D.2d 46, 489 N.Y.S.2d 957, 25 *Educ. L. R.* 876 (1985). At common law, a parent was not under a duty to control his child from intentionally harming others unless that parent knows or has reasons to know that he has the ability to control the child, and knows or should know of the necessity and opportunity for exercising that control. Restatement (Second) of Torts, § 316.

5. See, e.g., *Kobylanski v. Chicago Board of Education*, 63 Ill.2d 165, 347 N.E.2d 705 (1976); *Clay v. Chicago Board of Education*, 22 Ill.App.3d 437, 318 N.E.2d 153 (1974); *Gammon v. Edwardsville Community Unit School District*, 82 Ill.App.3d 586, 403 N.E.2d 43, 38 Ill.Dec. 28 (1980).
6. See generally J. Rapp, *Education Law* § 8.03.
7. See J. Rapp, *Education Law* § 11.01.
8. See J. Rapp, *Education Law* § 4.01[4][f].
9. *Zucht v. King*, 260 U.S. 174, 45 S.Ct. 24, 67 L.Ed. 194 (1922).
10. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed. 2d 16 (1973).
11. The Supreme Court of Illinois eliminated the doctrine in 1959. *Molitor v. Kaneland Community District*, 18 Ill.2d 11, 163 N.E.2d 89 (1959). Since that time, the majority of states have done so.
12. J. Rapp, *Education Law* § 12.02[4][a].
13. W. Keeton, *Prosser and Keeton on the Law of Torts* 164-65 (5th Ed. 1984).
14. See generally J. Rapp, *Education Law* § 12.02.
15. See generally Annot., 36 A.L.R.3d 330 (1971) (regarding tort liability of public schools for injuries caused by acts of fellow students). *Respondeat superior* is a maxim which means that one person, such as an employer, is liable in certain cases for the wrongful acts of another, such as an employee.
16. Restatement (Second) of Torts, § 315.
17. See generally J. Rapp, *Education Law* § 12.02[5][e], [k].
18. *Chavez v. Tolleson Elementary School District*, 122 Ariz. 472, 595 P.2d 1017 (Ariz.Ct.App. 1979).
19. *McLeod v. Grant County School District*, 42 Wash.2d 316, 255 P.2d 360 (1953).
20. See, e.g., *Peterson v. San Francisco Community College District*, 36 Cal.3d 799, 205 Cal.Rptr. 842, 685 P.2d 1193 (1984) (college may be liable for failure to warn its students of known dangers posed by criminals on campus).
21. *Patterson v. Orleans Parish School Board*, 461 So.2d 386, 22 Educ. L. R. 662 (La.Ct.App. 1984).
22. *Rodriguez v. Inglewood Unified School District*, 199 Cal.Rptr. 524, 16 *Educ. L. R.* 201 (Cal.Ct.App. 1984). *(The court has reconsidered this case.)*
23. *Daily v. Los Angeles Unified School District*, 2 Cal.3d 741, 87 Cal.Rptr. 376, 470 P.2d 360 (1970).
24. The typical response is to suspend or expel an offending student *after* an incident occurs. K. Sawyer, "The Right to Safe Schools: A Newly Recognized Inalienable Right," 14 *Pacific L.J.* 1309, 1325 (1983).
25. See Cal. Const. art. 1, § 28(c); K. Sawyer, "The Right to Safe Schools," 14 *Pacific L.J.* 1309 (1983); and Carrington and Nicholson, "The Victims' Rights Movement: An Idea Whose Time Has Come," 11 *Pepperdine L.Rev.* 1, 11-12, especially footnote 31, (Symposium edition, 1984).
26. See generally J. Rapp, *Education Law* § 12.05.

27. See, e.g., *State v. Reyes*, 700 P.2d. 1155, 25 *Educ. L. R.* 908 (Wash. 1985) (statute prohibited insulting or abusing a teacher anywhere on the school premises while the teacher was carrying out his official duties).
28. But see Restatement (Second) of Torts, § 316.
29. See J. Goldman, "Restitution for Damages to Public School Property," 11 *J. of L. & Educ.* 147 (1984); D. Prescott and C. Kundin, "Toward a Model Parental Liability Act," 20 Cal.W.L.Rev. 187 (1984), both reprinted in National School Safety Center, *School Safety Legal Anthology* (1985). See generally Annot., 8 A.L.R.3d 612 (1966) (regarding the validity and construction of statutes making parents liable for torts committed by their minor children).
30. Note, "The Iowa Parental Liability Act", 55 Iowa L.Rev. 1037 (1970).
31. J. Goldman, "Restitution for Damages to Public School Property," 11 *J. of L. & Educ.* 147, 152 (1984).
32. Cal.Const. art. I, § 28[a].
33. *Id.*
34. See Cal.Const. art. I, § 28.
35. *People ex rel. George Deukmejian*, No. C323360 (Super.Ct. County of L.A., filed May 21, 1980).
36. See K. Sawyer, "The Right to Safe Schools: A Newly Recognized Inalienable Right," 14 *Pacific L.J.* 1309, 1313 (1983).
37. *Id.* at 1313-1314. The Superior Court of Los Angeles County dismissed the case and this was upheld by the appellate court. The California Supreme Court refused to hear the case. By that time Proposition 8 had been approved and the case was effectively rendered moot.
38. Cal.Const. art. I, § 28(c).
39. *Brosnahan v. Brown*, 32 Cal.3d 236, 186 Cal.Rptr.30, 651 P.2d 274 (1982).
40. *Id.*
41. See Barrett, *Education Source Book: The State Legislator's Guide for Reform*, American Legislative Exchange Council, Washington, D.C., 46 (1985); Ullman, "After T.L.O.: Civil Liability for Failure to Control Substance Abuse," 24 *Educ. L. R.* 1099, 1104-1105 (1985); Carrington and Nicholson, "The Victims' Movement: An Idea Whose Time Has Come," 11 *Pepperdine L.Rev.* 1, 11-12, (1984, Symposium); Nicholson, et al., eds., *School Safety & the Legal Community*, Pepperdine University Press, Sacramento, 6-7 (1984); Van de Kamp, *Law in the School*, Fourth Edition, California Department of Justice, Sacramento, 9-19 (1984); and K. Sawyer, "The Right To Safe Schools: A Newly Recognized Inalienable Right," 14 *Pacific L.J.* 1309 (1983).
42. It has been suggested that the constitutional right to safe schools will better allow for tort claims against schools and, perhaps, claims for the deprivation of a constitutional right. See K. Sawyer, "The Right to Safe Schools: A Newly Recognized Inalienable Right," 14 *Pacific L.J.* 1309, 1335-1340 (1983).
43. See *Brosnahan v. Brown*, 32 Cal.3d 236, 186 Cal.Rptr.30, 651 P.2d 274 (1982) (recognizing that the fact that the implementation of a broad constitutional right might entail substantially increased expenditures for school security guards, safety devices, and payments of tort damages and legal fees is not a proper ground for invalidating the measure approving it).
44. For example, in an amendment to its Standards of Behavior, the Boston Public School District recognizes: Students have the right to an education and to all rights

guaranteed by the Constitution including the right to personal safety.

45. See, e.g., *New Jersey v. T.L.O.*, 469 U.S. ____, 105 S.Ct. 733, 83 L.Ed.2d 720, 21 *Educ. L. R.* 1122 (1985) (easing the standard for searches in a school setting to one of reasonable grounds rather than probable cause).
46. A leader in this organization has been the National School Safety Center. The Center promotes a continued exchange of information related to school safety and delinquency prevention among school boards, educators, judges, lawyers, law enforcers and other public and private officials, agencies and organizations.
47. Because in California there is now a constitutional right to safe schools, funding is probably mandatory in much the same way as funding of desegregation to assure equal protection is mandatory. See K. Sawyer, "The Right to Safe Schools: A Newly Recognized Inalienable Right," 14 *Pacific L.J.* 1309, 1332-1335.
48. *In re William G.*, 40 Cal.3d. 550 , P.2d ____, ____ Cal.Rptr. ____ (1985).

Chapter 3

Criminal and non-criminal acts

In the school setting the distinction between violations of criminal codes and school rules sometimes become blurred. For instance, a school disciplinarian may be unaware that the fight for which he has suspended both participants actually was an assault and battery, a criminal offense in which one of the parties was an unwilling victim. When school administrators are unable to differentiate between criminal and school rule violations, the usual outcome is the offense is handled by school staff. If the violation actually is a criminal act, this response is incorrect. When a crime is committed on campus, school administrators are required to contact community law enforcers to enable them to take appropriate action.

Naming events

The label given to a misdeed often determines how school staff perceive and respond to it. Administrators should be aware of the technical definitions of criminal acts and understand how these acts are distinct from non-criminal behavior.

For example, a school has experienced a burglary if property has been removed from the building after the school has been closed at night or on weekends or holidays. An appropriate response to this crime is the installation of an intruder alarm system. On the other hand, if the property was removed from a building during school hours, then the problem likely is student or employee theft. Appropriate response actions in this case include better inventory control, tighter supervision of areas of potential loss, and perhaps the introduc-

tion of instructional units on ethics and morality. To choose the appropriate strategy, school officials need to know if the crime is burglary or theft.

Criminal intent is another important consideration in responding to some student misbehavior. Administrators frequently encounter cases of apparent theft of student property which, if fact, are not truly crimes. Generally stated, an offense at school is *criminal* if the offender had *criminal intent* when the act was committed.

To determine if offenses are criminal or non-criminal, administrators should ask these questions: (1) Was one student an unwilling victim who had tried unsuccessfully to avoid the incident? If this is true, then it is likely the offender committed a crime. (2) Did the youngster who committed the act *borrow* a classmate's expensive science project without permission in order to copy it? In this incident, while the offender lacked good judgment, the act is considered non-criminal and handled by school officials. (3) Did the student take someone's camera from the gym locker room after repeated similar, but less serious, offenses and warnings? Barring exceptional circumstances, this act would be treated as a crime and referred to local law enforcers for prosecution as a theft. In these situations, the operative factor is the criminal intent of the student offender at the time the misdeed occurred.

A special evaluation must be made when the offender is a student classified within the framework of P.L. 94-142, the Education for All Handicapped Children Act of 1975. The misdeeds of these children, including acts of violence, at first may appear to be criminal. Further investigation, however, may reveal the action resulted from frustration related to the youngster's handicap rather than from an intent to commit a crime. (See Chapter 6, *Special education student discipline.*)

Determining consequences for violations

While the district school board is responsible for adopting student discipline codes and sanctions, in many districts the board allows school site administrators substantial discretion in the sanctions they may impose on student offenders. This policy can lead to inequality of dispositions. For example, a student found to be truant for one day may be suspended by one administrator, while at a neighboring school, a student referred for an identical offense may be excused with only a warning that future truancy will result in a more serious penalty.

Usually in-school drug use is recognized as a violation of law and treated by educators as a serious offense. The same cannot always be

said of vandalism, fights and petty theft. Sometimes in an attempt to help troubled students educators downplay the seriousness of these acts. In some schools any altercation, even those which are not truly mutual, are treated as fights, rather than as assaults and battery. Similarly, there is a tendency to treat all acts of vandalism alike. Often no distinction is made between minor or costly acts or between vandalism directed against the school and acts directed against staff or other students. Grand and petty theft frequently also go undifferentiated. Combining disciplinary and criminal offenses also adds to an administrator's confusion about the seriousness of student misdeeds. When fights are not distinguished from assaults, thefts are not separated from burglaries, and crimes against persons and property are combined, appropriate administrative response is unclear.

Administering sanctions

Frequently school administrators are adequately prepared to deal with minor criminal incidents on campus, and in many cases community law enforcers will work with educators, allowing them to respond to a first, minor offense. Local police may believe it is inappropriate to make contact with a juvenile for the first offense of a crime the law enforcers consider inconsequential. Once a school administrator has identified an incident as being a criminal offense, contact must be made with the local law enforcement agency, and the appropriate course of action can be mutually decided. The school district needs the assistance of local law enforcers when developing a written discipline policy and procedures to clarify issues. School and law enforcement officials jointly should determine: (1) the types and seriousness of acts to be addressed by the school, by law enforcers and cooperatively; (2) the procedure for joint review of operative policies for dealing with student school crime; and (3) the system to initiate change in policies for disciplining students involved in school crime.

If the discipline for specified minor criminal acts has been referred to school administrators with the concurrence of law enforcers, it is imperative educators act appropriately and without bias. For example, a school administrator may believe students should not bring expensive personal property to school. Accordingly, if there is a theft of costly student property, the educator may express concern and yet dismiss the incident based on the belief the owner was at fault for bringing the property to school. While this view may seem reasonable, it misses the point. A crime has been perpetrated against a schoolchild, and the

victim is looking to adult school authorities to do what is right and help resolve the problem. When the appropriate response is taken, school administrators establish a positive, caring atmosphere in the school. To achieve this positive campus climate, it is important that minor school crimes are not ignored and left to grow into more serious disturbances.

Record keeping, analysis and response

A well-designed information management system helps educators recognize patterns of misconduct and enables them to focus their energies on selecting appropriate response strategies. The most useful information management system provides administrators with complete data and an overview of school disruption patterns. A properly developed system answers: (1) What happened? (2) What are the characteristics of the victim(s) and offender(s)? (3) Where did the incident occur? (4) How serious was the incident? (5) What was the response taken?

For years school officials have been keeping what amounts to "offender files." Commonly, school administrators maintain student records on index cards. The name of a student is written at the top of each card and teacher referral, offenses and disciplinary responses are recorded. Traditionally, offender files are kept in the school's central office, and the cards are updated with each new incident. This filing system effectively provides school administrators with a quick overview of an individual student's misconduct and helps determine an appropriate response to the latest offense.

Offender file systems are not very useful, however, to the administrator seeking to evaluate patterns or trends of student misconduct. For this reason, more and more schools and school districts are turning to computers to record and evaluate campus problems. Computer programs designed to run an information management system or *incident profiling system* have been written for computers ranging in size and sophistication from microcomputers to mainframes. Brief incident reports can be completed during the normal processing of students referred to the central office for a violation of laws or school rules. Once incidents are entered, a meaningful analysis of data can be accomplished quickly by simple manipulation of the computer keyboard.

An important advantage of this system is that frequent analysis of data can reveal minor, but potentially important, changes in the characteristics of violations of school rules and criminal codes. For

example, a close analysis of racial or group affiliations of victims and offenders of certain crimes may reveal a systematic pattern of victimization. With this analysis, an alert administrator is able to anticipate future problems, plan intervention strategies and determine if the situation requires law enforcement involvement.

Developing a solution: Prevention and response strategies

When an information management system is in place, school administrators are in a better position to determine if there is a pattern of infractions directed against school property or persons. This enables school staff to decide appropriate prevention and response strategies.

If the analysis of data indicates the dominant problem is crime against property, administrators should determine the specific issue and examine available data.

If the problem is theft: (1) What key-control system is being used? (2) From what location is the property being taken? (3) Is the lost property likely to be more attractive to students, adults or both? (4) Does the theft qualify as a felony under state and local law?

If the problem is vandalism: (1) Are students acting cohesively to destroy school property? (2) If so, to what are they objecting? Is it the administration, faculty, physical condition of the school, curriculum or other identifiable issue?

If the problem is burglary: (1) Should an alarm system be installed? (2) Is the existing system inadequate or in need of repair? (3) Are custodians and other staff properly securing the buildings and related school property? (4) Are community members using the building after school hours? (5) If the buildings are used by the community after school hours, is the security provided adequate for the entire facility? (6) Is there a need to increase law enforcement patrols around and near the school? (7) Are teachers properly storing equipment at night? (8) Could the situation be improved by increasing or eliminating interior and exterior lighting?

An analysis of campus problems may reveal a pattern of acts of theft, vandalism or violence that are directed against students or teachers. If this is the case, the school administrator should try to determine if there is a pattern of victimization. Is it possible to identify the victims as belonging to a student or ethnic subgroup? Is one school subgroup victimizing another group on campus? The data analysis should reveal problem patterns.

There are many good books which provide specific response strate-

gies to school problems, and it is not the intent of this publication to duplicate them. Peter D. Blauvelt's *Effective Strategies for School Security*, published by the National Association of Secondary School Principals (NASSP) in Reston, Virginia, successfully addresses this topic. *Promoting Effective Discipline in School and Classroom*, also published by NASSP, is also recommended as a source of specific strategies to maintain school discipline.

Definitions of criminal terms*

Assault/attack/menace: *Assault* is defined as "an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another." *Attack* (battery) is the "willful and unlawful use of force or violence upon the person of another." *Menace* is an act performed in a threatening manner or done to show intention of harm.

Assault/attack with a deadly weapon: *Assaults* or *attacks with a deadly weapon* are defined as acts or attempted acts by one person on another with the intent to kill, maim or inflict severe bodily injury with the use of such items as firearms; knives or other cutting instruments; clubs; bricks; bicycle chains; nunchakus; bottles; explosives; acids; fire; and bodily parts, such as hands, fists and feet. (Note: Crimes involving hands, fists and feet should be included in this category if their use results in serious injury requiring medical care by a health practitioner.)

Homicide: *Homicide* is the killing of a person by another person.

Sex offenses: *Sex offenses* include an act or attempted act initiated by a person against the chastity, common decency, morals and the like of another person and accompanied by threat, fear or danger. The offenses include misdemeanors (e.g., indecent exposure, obscene phone call) and felonies (e.g., rape, sodomy, child molestation).

Robbery: *Robbery* is defined as "the taking of property in possession of another, from his person or immediate presence against his will, accomplished by means of force or fear."

Extortion: *Extortion* is defined as "obtaining or attempting to obtain

property from another person, with that person's consent, through the wrongful use of force or fear. Usually, extortion does not involve the element of immediate danger inherent in robbery.

Substance/chemical/alcohol abuse: *Substance/chemical/alcohol abuse* refers to possession, use or sale of any chemical, alcoholic or intoxicating substance.

Possession of weapons: *Possession of weapons* includes the unauthorized presence or use of dangerous weapons, which include, but are not limited to, all kinds of guns, knives, bombs, explosives and firecrackers.

Property crimes: *Property crimes* include arson, burglary, theft and vandalism. *Arson* is the malicious burning of or attempt to burn property belonging to another, regardless of the value of the property. *Burglary* is any unlawful entry to commit a felony or theft, even though force may not have been used to gain entry. This classification also includes attempted burglary. *Theft* (larceny) is the taking and carrying away of property belonging to another with intent to deprive the rightful owner of its use, regardless of the value of the property. This classification also includes attempted theft. *Vandalism* (to school or private property) is the intentional defacing or destroying of school property or another person's property.

**These definitions are from California penal and education codes. For corresponding crime definitions in other states, consult school district legal advisors or the district attorney or state attorney general.*

Chapter 4

Discipline policies and procedures

Today there is an increasing need to be specific in student discipline policies and procedures. Clarity in campus and classroom rules is needed to govern a school setting complicated by the practical concern that crime and violence have become major social problems in this nation's education system.[1] Schools are expected to operate in compliance with constitutional and statutory restrictions which are often complex and hard to delineate.

Student disciplinary rules should be developed by a team composed of board members, educators, parents and guardians, students, law enforcers and other interested community members. As student discipline regulations are developed, ten basic rules should be followed.

Rule one: Have student disciplinary rules

As surprising as it might seem, most school districts either have no student discipline policies and procedures or have not universally communicated them to students, faculty and staff.[2] Laws in most states require schools to prescribe rules governing the discipline of students.[3] In those states which do not require schools to have behavioral regulations, it remains essential for schools to have such rules to assure students due process and other rights.[4] Thus, an initial rule is to have student disciplinary rules.

Rule two: Conform to applicable statutes

Schools are not autonomous. Rather, they are subject to a multitude of statutes, rules and regulations. Typically, state statutes will, to some

extent, regulate student disciplinary matters.[5] To a more limited extent, federal statutes also may have an effect on student disciplinary matters.[6] Being legally subordinate to these levels of government, schools must adopt student disciplinary rules which are in harmony with state and federal statutes and related rules and regulations.

Rule three: Conform to constitutional requirements

Student disciplinary rules must conform with constitutional requirements. Indeed, if a rule violates constitutional law, it is invalid, even if the rule is pursuant to a statute or specific grant of power. In the school setting certain common and fundamental rights often are implicated. Stated in simplest form, the problem is to reconcile the liberty of the individual student with public, school or student welfare.

The first ten amendments to the United States Constitution protect individual liberties against invasion by the federal government. The equal protection clause of the Fourteenth Amendment protects these liberties against state impairment, which includes the schools. The constitutions of most states to a large extent mimic federal law and protect individual liberties as a matter of state law. Thus, what is said about the federal constitution also typically applies to state constitutions. In some instances, however, state constitutions may afford additional protections. California's constitution, for example, guarantees students and staff the right to safe schools. It is appropriate to review some of the specific constitutionally mandated rights relevant to school discipline regulations.[7]

Due process: One of the fundamental constitutional precepts assured by the Fifth and Fourteenth Amendments is that no rule can deprive a person of liberty or property without due process of law. The United States Supreme Court and other courts consistently have refrained from defining "due process" with precision. Rather, these courts have followed the policy of determining each case, as presented, upon its own merits.

Substantively, due process prohibits regulations from being unreasonable, arbitrary or capricious. It also requires the use of means of enforcement which bear a real and substantial relationship to the object of a relevant rule. Accordingly, it would be unreasonable, and therefore a violation of due process, to suspend a group of students who wore "freedom buttons" to school[8] or to suspend a student indefinitely because of difficulties between the student and the student's parents or guardian.[9]

Procedurally, due process requires notice and an opportunity to be heard prior to depriving a person of a liberty or property interest. Student disciplinary rules most often will raise questions of procedural rights. For example, in the landmark case of *Dixon v. Alabama State Board of Education*,[10] the Fifth Circuit Court of Appeals held students have a sufficient interest in remaining as students in good standing at a public institution of higher education to require notice and the opportunity for a hearing before they could be expelled for misconduct.

Similarly, in *Goss v. Lopez*,[11] the United States Supreme Court extended minimal due process protection to all students being suspended from a public elementary or secondary school for as few as ten days. This due process, however, can be informal and may not need to be in writing. As the seriousness of the misconduct and the potential institutional response increase, more procedural formality will be required.[12]

Equal protection: Another common or fundamental right is equal protection of the law guaranteed by the Fourteenth Amendment. As with due process, each case is determined upon its own facts. The general rule is that equal protection of the law is denied when a rule is applied differently to different persons, without rational justification, under the same or similar circumstances. Constitutional equality requires impartiality between persons similarly situated. For example, schools may violate equal protection by imposing more stringent disciplinary sanctions to one racial group than are applied to another.[13]

Freedom of religion: A common and fundamental right raised by the First Amendment of the United States Constitution is that of freedom of religion. Under its umbrella, no rule may be adopted respecting the establishment of religion or prohibiting the free exercise thereof. Under this restriction, for example, a school may not require a student to participate in voluntary prayer[14] or pose in a flag salute.[15] On the other hand, there is no prohibition against an individual student engaging in silent prayer.

Freedom of speech and press: The First Amendment also protects freedom of speech and of the press. In the significant case of *Tinker v. Des Moines-Independent School District*,[16] the United States Supreme Court found, under the First Amendment, that a school regulation prohibiting the wearing of armbands to protest the Vietnam War was invalid. Similarly, except perhaps in the context of school sponsored publications, activities or curricular matters, restraints on student newspapers and publications generally are prohibited.[17] Extracurricular

freedom of speech and of the press may be restricted only when their exercise materially and substantially would disrupt the work and discipline of the school, or where the facts might reasonably lead school authorities to foresee such disruption.[18]

Assembly: Another First Amendment right permits individuals to freely associate in order to further their personal beliefs. While rules affecting this right must be reasonable, courts have been inclined to uphold such rules as forbidding membership by students in fraternities, sororities and other secret societies.[19] A school may even require a signed statement to this effect prior to allowing a student to participate in extracurricular activities.[20] Rights of association must be subordinated to the orderly conduct of classes and other curricular affairs on campus.

Search and seizure: The Fourth Amendment prohibits unreasonable searches and seizures. In *New Jersey v. T.L.O.*,[21] the United States Supreme Court held this protection applies to searches conducted by public school officials. However, while students have a legitimate expectation of privacy, a search will be considered valid, even if probable cause does not exist, if there was a reasonable suspicion at its inception that the search will discover evidence of a violation of a school rule or the law and the search was conducted reasonably. Even so, highly intrusive invasions of privacy, such as strip searches, are viewed quite unfavorably by the courts.[22] Schools are best advised to adopt carefully drawn regulations defining when, where, by whom, and under what circumstances searches of students may be conducted. Such rules go far in determining what will be reasonable conduct and stand the best chance of reconciling the student's legitimate privacy interests with orderly school management in the campus environment.[23]

Self-incrimination: The Fifth Amendment grants the right against self-incrimination. It has generally, although not uniformly, been held that students may be required to testify in student disciplinary proceedings because this right applies only to criminal cases.[24]

Rule four: Rules must be reasonable

Student disciplinary rules must be reasonable and not oppressive. Reasonableness requires that a rule accomplish the purposes for which it was adopted and for which the school exists. If there is no reasonable connection between the purpose of the rule and the end to be accomplished, it is unenforceable.

The reasonableness issue often has been raised with regard to student attire. A school has authority to establish a dress code if it bears a reasonable relationship to the safety, order or discipline of the school. Thus, a rule regulating dress on the basis of modesty would be considered valid,[25] but a ban of blue jeans would be viewed as invalid.[26]

Because reasonableness is a matter of judgment, courts vary in their opinions. For example, the United States Courts of Appeal for the Fifth, Sixth, Ninth, Tenth and Eleventh Circuits generally have supported the validity of rules regarding hairstyles and grooming, while the First, Third, Fourth, Seventh, and Eight Circuits generally have found such rules unconstitutional.[27] The United States Supreme Court has yet to share its view of reasonableness.

Rule five: Rules should be clear

A student disciplinary rule that is vague to the extent its precise meaning cannot be ascertained is invalid, even if it is otherwise constitutional. The basis for this rule is that due process imposes a necessity for notice to those affected by the operation and effect of a rule. Thus, for example, while a school may adopt rules regarding campus speakers and other usages of campus facilities,[28] they may not be so vague that persons of common intelligence must out of necessity guess at their meaning and differ as to their application.[29]

Rule six: Adopt rules in good faith

A student disciplinary rule must not be a guise to do what a school cannot legally do or designed to serve some ulterior motive. The adoption of a rule in bad faith is, in effect, an abuse of public power. For example, a student having a right to attend school may not be suspended as a means of collecting textbook rental fees due from the student's parent or guardian[30] or in retaliation to a parent or guardian who assaulted a school official.[31]

Rule seven: Rules must achieve school functions

Student disciplinary rules must serve a public purpose and enable the school to perform its function. A rule may not be adopted for private purposes unrelated to the school's proper functions. For example, while a school likely would have the authority to prevent students from patronizing a particular business or merchant during school hours or, perhaps, while on the way to or from school,[32] it may not do so merely to destroy a business which competes with the school or one of its board members.[33]

Rule eight: Rules should be in appropriate form

While a school is generally not required to adopt rules in a particular form, such as a comprehensive code of student disciplinary policies and procedures, it is advisable. Certainly, the law is concerned with substance; however, clearly expressed regulations are a helpful protection to school officials if the validity of a rule is brought into question.

Rule nine: Duly approved student disciplinary rules

School district governing bodies typically are directed or empowered to adopt student disciplinary rules. That power usually cannot be delegated to school superintendents, principals or staff unless authorized by statute or the local governing board itself. When the authority is exercised, it must be at duly constituted board meetings held in accordance with the requirements of law. Student discipline rules must, accordingly, be approved in the manner required by law.

Rule ten: Disseminate student disciplinary rules

A final rule is that schools should disseminate the student disciplinary regulations adopted by the district's governing board. As a matter of due process and common sense, letting students, parents and guardians know what is expected is essential to the proper implementation and enforcement of a school's behavioral guidelines. Some schools actually require students, parents and guardians to acknowledge in writing they have received a copy of the student handbook. Others not only provide copies of the student handbook, but also provide instruction regarding the regulations.[34]

School officials may at times forget the importance of developing and reviewing student behavioral guidelines. On the other hand, the proper development and review of disciplinary policies and procedures must become a priority as this is a significant step toward making this nation's schools safe, secure and peaceful.

Endnotes

1. See *New Jersey v. T.L.O.*, 469 U.S. ____, 105 S.Ct. 733, 83 L.Ed.2d 720, 21 *Educ. L. R.* 1122 (1985.)
2. K. Sawyer, "The Right to Safe Schools: A Newly Recognized Inalienable Right," 14 *Pacific L.J.* 1309, 1325 (1983).
3. See, e.g., Cal.Educ.Code § 35291.
4. See J. Rapp, *Education Law* (Matthew Bender & Co., Inc.) § 9.01[4].

5. For example, many states regulate the use of corporal punishment. See *Ingraham v. Wright*, 430 U.S. 651, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977) (upholding the use of corporal punishment).
6. The Family Educational Rights and Privacy Act of 1974 (10 *U.S.C.* § 1232g), for example, protects the privacy of students and may prevent group disciplinary hearings where personally identifiable information will be disclosed during the course of the hearing. See generally J. Rapp, *Education Law* § 13.04.
7. Cal.Const. art. 1, § 28(c).
8. *Burnside v. Byars*, 363 F.2d 744 (5th Cir. 1966).
9. *Cook v. Edwards*, 341 F.Supp. 307 (D.N.H. 1972). See also *Petrey v. Flaugher*, 505 F.Supp. 1087 (E.D. Ky. 1981).
10. 294 F.2d 150 (5th Cir.), cert. denied, 368 U.S. 930, 82 S.Ct. 368, 7 L.Ed.2d 193 (1961).
11. 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975).
12. See generally J. Rapp, *Education Law* § 9.05
13. *Hawkins v. Coleman*, 376 F.Supp. 1330 (N.D.Tex. 1974). See also L. Rossow, "Administrative Discretion and Student Suspension: A Lion In Waiting," 13 *J. of L. & Educ.* 417 (1984).
14. See *Wallace v. Jaffree*, ____ U.S. ____, 105 S.Ct. 2479, 86 L.Ed.2d 29, 25 *Educ. L. R.* 39 (1985).
15. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed.2d 1628 (1943).
16. 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969).
17. See J. Rapp, *Education Law* § 9.02[5].
18. See, e.g., *Blackwell v. Board of Education*, 363 F.2d 749 (5th Cir. 1966). See generally J. Rapp, *Education Law* § 9.02.
19. See, e.g., *Burkitt v. School District*, 195 Or. 471, 246 P.2d 566 (1952).
20. See, e.g., *Passel v. Ft. Worth Independent School District*, 429 S.W.2d 917 (Tex.Civ.App. 1968).
21. 469 U.S. ____, 105 S.Ct. 733, 83 L.Ed.2d 720, 21 *Educ. L. R.* 1122 (1985).
22. See, e.g., *Bellnier v. Lund*, 438 F.Supp. 47 (N.D.N.Y. 1977).
23. *D.R.C. v. State*, 646 P.2d 252 (Alaska Ct.App. 1982).
24. J. Rapp, *Education Law* § 9.05[3][f].
25. *Wallance v. Ford*, 346 F.Supp. 156 (E.D. Ark. 1972) (ban of excessively tight skirts or skirts more than six inches above the knee).
26. *Bannister v. Paradis*, 316 F.Supp. 185 (D.N.H. 1970).
27. J. Rapp, *Education Law* § 9.02[8][b].
28. See generally J. Rapp, *Education Law* § 9.02[6].
29. See, e.g., *Dickson v. Sitterson*, 280 F.Supp. 486 (M.D.N.C.), *aff'd*, 415 F.2d 228 (5th Cir. 1969).
30. *Carder v. Michigan City School Corporation*, 552 F.Supp. 869, 8 *Educ. L. R.* 318 (N.D. Ind. 1982).
31. *St. Ann v. Palisi*, 495 F.2d 423 (5th Cir. 1974).
32. J. Rapp, *Education Law* § *9.03[10].*
33. *Hailey v. Brooks*, 191 S.W. 781 (Tex. Civ. App. 1916).
34. *Smith v. Little Rock School District*, 582 F.Supp. 159, 17 *Educ. L. R.* 161 (E.D.Ark. 1984) (handbook taught to students in English classes for the first two weeks of each school year).

Chapter 5

Model codes of conduct

It is not the intent of this chapter to present all the various examples of student codes of conduct. An attempt has been made, however, to present the most frequently mentioned regulations included in student handbooks obtained from a survey of 713 secondary schools in 48 states. Also included are additional student regulations pertaining to student behaviors related directly or indirectly to acts against persons or property. These student codes are presented in a format similar to that of a student handbook.

Legal authority to discipline students

The legal authority for school discipline, usually designated by state law, rests with the board of trustees. In most states trustees are directed to adopt standards of conduct which must be met by all students as a condition for attending the public school district. The regulations are to take into account the necessity of proper conduct on the part of all students to ensure the opportunity for scholastic progress for the greatest number of students. The discipline code established by the trustees may stipulate sanctions for youngsters who fail to observe the required standards. Penalties increase according to the severity or frequency of the student's offense. The ultimate sanctions are suspension or expulsion.

Introduction to discipline policy

The primary purpose of a school is to insure youngsters develop to their full potential academically, socially and physically. This develop-

ment can best take place in an environment which protects student rights. Student responsibility is required to provide the orderly framework within which individual goals can be realized. Accordingly, the school is charged with the task of educating all school-age members of the community. Thus, it follows that students are not free to wander about the school's facilities at will, disrupt the educational process or interfere with the rights of others.

To deal effectively with school discipline, it is advised that the superintendent will appoint a discipline review advisory committee which includes teachers, students, principals, central administrative staff, and parents and guardians. This committee will meet at least annually to recommend changes in general policy and guidelines for the school district. Suggestions from the committee will be forwarded to the superintendent of schools for his review. After reviewing the committee's suggestions, the superintendent will consider these ideas as possible recommendations to present to the school board.

Each school's administrative staff and faculty will establish and implement rules necessary for governing the conduct of students within the policy and general guidelines provided by the school board. Each school's rules will be approved by the school board and will be on file in the superintendent's office. In addition, student handbooks published by individual schools will be formally adopted by the board of education. Examples of issues included in these handbooks are cited below.

General standards of conduct

A. Health and safety
   1. Running, shoving and other forms of rowdiness often cause accidents and are prohibited. Students are to walk in the corridors and on the stairways at all times.
   2. To improve hall traffic students are to keep right, especially at corners, keep entrances and exits clear, take authorized routes to all classes.
   3. Fire drills are required to ensure emergency readiness. Students are to remain quiet during drills.
   4. Food shall be eaten only in designated areas, and students are to leave tables and the surrounding area clean.

B. Difference of opinion
   1. Physical attacks or verbal threats against faculty or staff members or fellow students are unacceptable. Such behavior

will result in suspension, expulsion or other disciplinary action.

2. Use of profanity is not acceptable. Such behavior will result in disciplinary action.

C. Classroom and study hall conduct
   1. It is a student's responsibility to study the bell schedule, be inside the assigned classroom before the tardy bell rings and refrain from talking after the bell rings.
   2. Only one person at a time may be out of a class or study hall. That person should have a hall pass issued by his teacher.
   3. Students must come to class and study hall prepared for the period's activities. In other words, they must bring textbooks, pencils, paper, notebooks and other educational materials needed for class.

D. Care and use of public property
   1. Students are responsible for taking care of textbooks, library books and personal belongings.
   2. Students and parents or guardians may be held financially responsible for damage to lockers, desks, walls and other school property. Students responsible for damage may be subject to disciplinary action.
   3. Students are to remain on sidewalks when entering and leaving all school facilities.
   4. To keep the building and grounds clean and attractive, food and drinks shall be consumed only in designated areas during authorized eating breaks.

E. General
   1. No student will be permitted to leave school without written permission from home and/or permission from the principal.
   2. No student shall be in the principal's office or outer office at any time except on official business.
   3. No student will be permitted in the corridors during classes without proper permission.
   4. No one will be permitted to chew gum or eat candy inside school facilities except in designated areas during breaks.

Attendance

School attendance is an essential part of a student's educational record.

Employers, schools of all types, the armed services and other organizations and individuals are interested in the attendance record a student has established. Regular and punctual attendance by all students is necessary for the proper functioning of the entire school. It is the responsibility of each student to make up classwork missed during an excused absence. The principal or the principal's designee reserves the right to determine if the absence is "excused" or "unexcused" in accordance with the policies of the school board.

Excused absences include:

1. Personal illness;
2. Quarantine of the individual or home;
3. Death in the immediate family;
4. Very unusual weather conditions;
5. Educational trip with the student's parent or guardian with prior approval of the principal;
6. Exceptionally urgent reasons, such as home damaged by fire or storm;
7. Church attendance or religious holiday with prior approval of the principal;
8. Required court appearance;
9. College/university visitation with prior approval of the principal; or
10. Other unusual circumstances deemed appropriate by the principal.

When a student returns to school after an absence, a written excuse stating the reason for the absence must be provided by the youngster's parent or guardian. Unless a written excuse is presented within two school days after the student returns to school, the absence will be recorded as "unexcused." A licensed physician's excuse shall be required for any absence of three or more consecutive school days when it is due to illness or injury. A student who is consistently absent from school also may be required to provide a physician's excuse. If a student's absence is unexcused, the student shall receive a zero for any assignment, examination or class activity scheduled for the day when the absence occurred.

Unexcused absences include:

1. Truancy from school or from individual classes or study halls;
2. Trips not approved in advance by the principal;
3. Looking for employment without prior approval from the principal;

4. Staying home to avoid an examination in a given subject or to study for an examination;
5. Leaving the school building during the school day without signing out in the principal's office;
6. Student suspension;
7. Oversleeping;
8. Remaining on or near school grounds, but not attending assigned classes; or
9. Any other absence which has not been agreed upon by the youngster's parent or guardian and principal.

When a student is at school, the student is under the supervision of all teachers and school authorities and must get permission from the office to leave early. Any student who does not check out of school from the office before leaving will be unexcused and will receive no credit in all class activities or assignments missed. Whenever possible, dental or medical appointments should be scheduled during non-school hours. When school is missed because of medical appointments, students must provide certification of the appointments in writing by the physician or dentist.

Any student legally absent from school or classes has the privilege of making up the class assignments. If the make-up work is satisfactory, the student will receive full credit for the activity. A student will be permitted one day for make-up for each day of absence unless special arrangements have been made which satisfy the needs of the student and teacher.

The parent or guardian of a student who is legally absent for more than five school days must notify the school so that arrangements for home assignments can be offered. The parent or guardian of any student who will have a prolonged absence (2 weeks or longer) due to illness or injury must notify the school to make the necessary arrangements for homebound instruction.

Guidance services

Guidance services are available for every youngster in the school. These services include assistance with educational planning, interpretation of test scores, occupational and career information, study helps, assistance with home, school or social concerns, or any other matter a student would like to discuss.

Each student is assigned a counselor who meets with the student, as needed, throughout the student's attendance. All students are scheduled

for at least one conference each year with their counselor. In addition, students are encouraged to consult with their counselor or another member of the counseling staff whenever they need assistance.

Parents or guardians are invited to consult with a counselor concerning their youngster. Conferences with the student's parent or guardian, teachers and counselor often are helpful in sharing information and planning and formulating goals. Services offered by the guidance department include:

1. Information pertaining to careers;
2. Information concerning college, universities and vocational schools;
3. Individual and group counseling about problems with teachers, fellow students, schedules and other concerns;
4. Counseling pertaining to home difficulties;
5. Developing ways to build self-confidence;
6. Information concerning grades, transcripts and report cards;
7. Information pertaining to various types of tests; and
8. Information concerning what scholarships are available and how to obtain them.

All counselors will be available to work with graduates and dropouts. However, currently enrolled students will have priority.

Library

The primary goal of the library is to provide an environment where students, working independently with a variety of materials, can develop the necessary skills to search for the unknown and find meaningful answers. It is a resource center in which each student is given an opportunity to be exposed to different media. Accordingly, the student is free to explore, organize and achieve the highest degree of satisfaction in his pursuit of learning or of simply enjoying reading as a pleasurable pastime.

Library hours:

The library is open beginning one-half hour before morning classes begin, throughout the school day and for 45 minutes after school. Students who arrive at school early and wish to study or read may use the library; however, they must remain in the library until the passing period bell rings before first period. At other times during the school day, students may use the library in groups accompanied by a teacher or individually when permission is given by a teacher. Students who

come to the library individually must show the librarian a pass signed by the teacher indicating that permission to come has been given.

Library rules:
The following library rules are necessary in order to provide students with adequate library services. Failure to comply with these rules may cause the loss of library privileges.

1. All students are entitled to use the library and check out books and other related library materials.
2. No books, magazines or other library materials will be taken from the library without being checked out.
3. Books may be checked out for two weeks and renewed for another week.
4. Encyclopedias and certain reference books may be checked out on a limited basis by making arrangements with the librarian.
5. Books and other library materials on reserve must be checked out with the librarian. These materials can be picked up by the borrower at the end of the school day and are due at the next morning before school begins, unless other arrangements have been made with the librarian.
6. All magazines, except current issues, can be checked out for a week and renewed for a second week.
7. A fine of ten cents per day (Saturday, Sunday and official school holidays are not counted) will be charged for overdue books and other library materials. A fine will continue until the value of the book has been reached. At that time, the student will pay for the book and it will become his property. A replacement will be purchased for the library.
8. Damage to books and other library materials beyond reasonable wear will be paid by the borrower.
9. Books and other library materials may be used by students when they are in the library without checking them out.
10. Library materials are the responsibility of the student who has checked them out and should not be left unattended within the school setting.
11. Students wishing to check out old periodicals from the storage room for research must obtain them from the librarian.

Visitors

Visitors to school facilities or classrooms are welcome and encouraged.

However, for the protection of all persons, a visitor's pass must be obtained from a school administrator who may request to see proper identification. Any visitor without this pass must report immediately to the principal's office.

Parents and guardians wishing to meet with a teacher or school administrator are requested to call the office for an appointment.

Students wishing to bring a visitor to school are to make arrangements with the school administration and each of their teachers at least one day prior to the visitation. All authorized visitors will be asked to sign a guest book along with the assigning of a visitor's pass.

Students rights and responsibilities

Students have the basic constitutional rights guaranteed to all United States citizens. In exercising these rights, students have a responsibility to respect the fundamental rights of others. One purpose of school is to encourage the responsible use of these rights and to develop good citizenship within the framework of an educational society.

The school is a community, and the rules of a school are the laws of that community. To enjoy the right of citizenship in the school you must also display the responsibilities that pertain to citizenship. The following are examples of rights that are guaranteed youngsters in a school setting along with accompanying responsibilities:

Right	Responsibility
Obtain an education at public expense and participate in the school program. (This right extends to handicapped, married or pregnant students.)	Attend all classes daily and be on time. Pursue courses of study prescribed by state and local authorities and carefully select electives based upon interest and need.
Expect schools to be a safe place for all students to gain an education.	Assist and cooperate with the school faculty, staff and administrators who are responsible for providing a safe school.
Assist in making school rules and other decisions affecting the student's life in school.	Be aware of all rules and regulations for student behavior and act in accordance with them.

Right *(Continued)*	**Responsibility** *(Continued)*
Be represented by an active student government selected by school elections.	Take an active part in student government by running for office or voting for the best candidates; make student problems known through the student council.
Express opinions orally or in writing.	Express opinions in a respectful manner and in ways which will not offend or slander others.
Receive a fair hearing with the opportunity to call witnesses and appeal the decision in the event of disciplinary action.	Be willing to volunteer information and cooperate with school staff in disciplinary cases.
File a grievance with the appropriate school official when accused of misconduct.	File the grievance at the proper level. First seek a remedy at the school site. If it is necessary, take the problem to district level. If there is still no resolution, court action may be required.
Expect the student's name to remain confidential to the extent legally possible.	Exhibit responsible behavior in ensuring the orderly operation of the school.
Attend and participate in school meetings, assemblies and other co-curricular activities conducted for business or entertainment.	Be on time, participate and show consideration for performers, and remain until the event is finished.
Use school equipment, books and materials.	Take care of them and return them upon request.
Attend classes in which teachers are providing proper learning environments, materials and instruction and in which grades are fairly assigned.	Attend school until the age established by state law.

Right *(Continued)*	**Responsibility** *(Continued)*
Receive the benefits of education programs without restrictions based on race, color or national origin.	Take discrimination grievances to officials according to the grievance procedure.
Observe any religion without the school requiring, establishing or conducting religious exercises.	Respect the religious beliefs and observances of others.
Benefit from any educational program without restriction based sex discrimination.	Take any discrimination grievance to the appropriate person according to the school's grievance procedure.

Care of school property

The education of youngsters represents a large investment of money provided by the nation's citizens. Every time someone mishandles a book, carves on a desk, writes on a wall, breaks a window, destroys equipment or damages materials, some of this investment is wasted. Any student responsible for these actions will be held responsible for repair or replacement. Any student deliberately damaging school property shall have the necessary repairs made or be assessed a sum sufficient to pay for the damages and also will be subject to disciplinary action.

Weapons and dangerous instruments

No student knowingly shall possess, handle or transmit any knife, razor, ice pick, explosive, loaded cane, sword cane, machete, pistol, rifle, shotgun, pellet gun, metal knuckles or other object that reasonably can be considered a weapon or dangerous instrument in any school building, on any school premises, on any school bus or off the school grounds at any school related activity, event or function.

Search and seizure

Students possess the right of privacy as well as freedom from unreasonable search and seizure of property. This individual right is balanced by the school's responsibility to protect the health, safety and welfare of all persons within the school community. Although school authorities will respect the rights of students, their lockers and property, it

should be made clear that lockers are the property of the school. Accordingly, school officials reserve the right to search lockers or desks whenever there are reasonable grounds or suspicions for such.

A general search of lockers or desks may be conducted to repossess school property. Whenever possible the administration will advise students in advance of the search. A search in the absence of student notification may be made in cases where suspected items pose a clear and present danger to the health and safety of people within the school community.

Items which may be used to disrupt or interfere with the educational process may be removed from a student's possession.

Search and seizure by law enforcement officials may be made on presentation of a search warrant describing the items to be seized or with the valid consent of the student's parent or guardian who has been advised of his rights and of the legal consequences of the search. When the student is of legal age, valid consent shall be defined as consent given by the student.

Students shall not use their lockers or property:

1. For illegal purposes or for storing illegal materials;
2. In such a way as to interfere with school discipline or the normal operation of the school, including the storage of overdue library books or the unauthorized possession of other school property; or
3. In a manner which endangers the health and safety of others.

Fighting

Severe, immediate disciplinary action will be taken against individuals who participate in a fight or encourage it in any way. Absolutely no disruptive behavior of this kind will be allowed because it infringes and reflects upon the educational process.

The penalty for this unacceptable behavior is one to 10 days suspension from school for the first and second offenses. If a student is involved in a third fight, a referral will be made to the superintendent of schools with the recommendation that the punishment be at least a 10-day suspension from school along with the possibility of expulsion. A student who has made an effort to avoid a fight by bringing the situation to the attention of a teacher, counselor, assistant principal, principal or some other school official will be given more consideration regarding any punishment that might be received. A student may be readmitted to school only after a conference between the student,

parent or guardian and principal. Any student suspended or expelled from school will receive an unexcused absence for the suspension time.

Narcotics, alcohol beverages and stimulant drugs

A student shall not possess, use, transmit or be under the influence of any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, alcoholic beverages or intoxicant of any kind: (a) on the school grounds, during and immediately before or immediately after school hours, (b) on the school grounds at any time when the school is being used by any school group, or (c) off the school grounds at a school activity, function or event.

Use of drugs or medications authorized by a valid medical prescription from a registered physician shall not be considered a violation of this regulation when the drug or medication is taken by the person for whom the drug is prescribed.

Gambling

Gambling in any form is prohibited on school grounds or at any school-related activity. Gambling is defined as risking something of value in the hopes of winning something of value and includes such things as dice, cards, pitching coins, betting and so forth.

Assault, battery or harassment of school personnel

Students are prohibited from assaulting, battering or harassing any school employee. These behaviors may be defined as:

1. Intentionally, knowingly or recklessly causing bodily injury to another;
2. Intentionally or knowingly threatening another with imminent bodily injury; or
3. Intentionally or knowingly causing physical contact with another when the student knows or should reasonably believe that the other will regard the contact as offensive or provocative.

Chapter 6

Special education students discipline

The educational opportunities of handicapped children have been greatly enhanced since the early 1970s.[1] At that time, several cases held that handicapped children could not be excluded from public schools and must be provided a suitable education.[2] As the constitutional debate over the educational rights of handicapped children was just beginning to develop, Congress enacted specific statutes to assure those rights to handicapped children. Of these, Section 504 of the Rehabilitation Act of 1973[3] and the Education for All Handicapped Children Act of 1975 (P.L. 94-142)[4] are most significant. Both affect the disciplining of handicapped or special education students.

Right to free, appropriate public education

Section 504 provides that no otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.[5] P.L. 94-142 specifically implements this right by requiring states receiving federal funds to establish a plan ensuring all handicapped children have available to them a free, appropriate public education which includes special education and related services to meet their unique needs.[6]

P.L. 94-142 accomplishes its worthy purposes by requiring handicapped children be identified, located; evaluated and, ultimately, placed in an appropriate educational program. Essential to the process is the development of an individualized education program, an "IEP," for

each handicapped child prior to placement. A child's placement essentially implements the IEP. Although placements may range from regular classes to residential institutions, P.L. 94-142 requires children be placed in the least restrictive environment, or "mainstreamed," to the extent possible. Throughout the process, parents and children are entitled to participate and are afforded extensive procedural and due process safeguards.[7]

Suspension and expulsion as sanctions

Once a handicapped child is placed, that placement may not be changed unless the parents and school agree or P.L. 94-142 procedures are followed.[8] In situations when a school has attempted to discipline a handicapped student by suspension, alternative placement or expulsion, parents have argued successfully that the discipline constitutes a change in placement and may not be imposed without affording the procedural safeguards required for a change in placement by P.L. 94-142. These procedures are more elaborate and time consuming than those generally required when disciplining non-handicapped students.[9] Accordingly, except for brief periods of exclusion,[10] the suspension[11] or expulsion[12] of a handicapped student has been held to be a change in placement requiring compliance with the procedural safeguards afforded by P.L. 94-142.[13]

Administrators do, however, retain these disciplinary options to deal with special education students. In-school suspension is an accepted mechanism for helping a child overcome inappropriate behavior. If the need for behavior modification can be anticipated, it is important that the strategy be included in the IEP as a means of assisting the student improve social or emotional skills. Disabled children are not immune from the school discipline process, nor are they entitled to participate in programs when their behavior impairs the education of other students or represents an immediate physical danger to themselves or others.

Suspension and expulsion also remain legitimate penalties for special education students when situations warrant these sanctions and when they are executed in compliance with P.L. 94-142 procedural safeguards. It should be noted, however, that following suspension or expulsion of special education students, the district's responsibility differs from its position when a student in the regular program is sanctioned these same ways. While a regular student is not legally entitled to instruction during a term of the suspension or expulsion, this usually

is not the case with special education students. If suspended for long periods of time or expelled, the school district usually is legally responsible for providing handicapped students with continued educational services, such as homebound instruction. This limits the educational impact of these disciplinary actions.[14]

Responding to misconduct by handicapped children

In view of the safeguards afforded by P.L. 94-142, it is important a school anticipate the possibility of misconduct when developing a child's IEP. Behavioral or social adjustment problems, if any, must be identified and documented. The IEP then should include discipline and management strategies and placement be made accordingly.[15] If the IEP includes the possibility of disciplinary action, such as suspension, the handicapped student's placement would not then be changed but rather implemented by discipline.

Where disciplinary measures are not contemplated by an IEP, it is important to recognize that a school is not precluded from using its normal procedures for dealing with children who are endangering themselves or others, although this may be indicative of an improper placement which warrants review.[16] Prior to imposing a sanction, the school should determine if the misconduct was due to the student's handicap. If the misconduct was not due to the handicap, the student may be disciplined as any other student. If the misconduct was due to the handicap, a change in placement may be made in accordance with P.L. 94-142 procedures.[17] The court may intercede and modify a student's placement until designated procedures are completed.[18]

Enforcement strategies

Educators are responsible for the consistent enforcement of school regulations and student discipline, and this responsibility includes sanctions for students enrolled in special education programs. In responding to the misconduct of special education students, educators should consider the following: (1) It is important to be sensitive to the rights of handicapped children under P.L. 94-142 and be aware of the disciplinary limitations imposed by this law and state and local regulations. (2) Whenever possible, student misconduct should be anticipated and documented, and appropriate response strategies should be included when preparing the IEP. (3) Educators must not feel they are unable to enforce school regulations simply because the student challenging the rules is enrolled in the the special education program. No

student should disrupt the educational process. Action also is required when the handicapped child represents an immediate physical danger to himself or others.[19] (4) Because legislation and procedures regulating the treatment of handicapped students are subject to change, school administrators are advised to keep informed about recent legislative changes and current policies in their districts.

Endnotes

1. See generally J. Rapp. *Education Law* (Matthew Bender & Co., Inc.) § 10.03.
2. See, e.g., *Pennsylvania Association for Retarded Children v. Commonwealth*, 334 F.Supp. 1257 (E.D.Pa. 1975).
3. 29 U.S.C. §§ 701 *et seq.*
4. 20 U.S.C. §§ 1400 *et seq.*
5. 29 U.S.C. § 794.
6. 20 U.S.C. § 1400(c).
7. A discussion of these safeguards is beyond the scope of this Notebook. EAHCA and state statutes should be consulted. See generally J. Rapp, *Education Law* § 10.03[4]; M. Schoof, *The Application of P.L. 94-142 to the Suspension and Expulsion of Handicapped Children. Specialty Law Digest: Education* (August 1983).
8. 20 U.S.C. § 1415(e)(3). It is very important for schools to develop good relationships with parents as many procedural problems which arise when disciplining handicapped students can be avoided by reaching agreements.
9. See Chapter 5, *supra.*
10. *Board of Education v. Illinois State Board of Education*, 531 F.Supp. 148, 2 *Educ. L. R.* 1032 (C.D.Ill. 1982) (five days).
11. *Stuart v. Nappi*, 443 F.Supp. 1235 (D.C.Conn. 1978) (10 days).
12. *School Board of Prince William County v. Malone*, 762 F.2d 1210, 25 *Educ. L. R.* 141 (4th Cir. 1985).
13. Prior to being classified as a handicapped child, the protections of EAHCA generally do not apply. However, if a child is handicapped, although as yet unidentified or unevaluated, and the handicap resulted in the misconduct, Section 504 may well limit disciplinary action. Parents and children, if they raise the issue, should be allowed to present evidence of the handicap and its relationship to the misconduct. EAHCA should then be used to provide a more appropriate placement for the child if it is ultimately decided that the child is handicapped.
14. See S. Simon, "Discipline in the Public Schools: A Dual Standard for Handicapped and Non-handicapped Students?" 13 *J. of L. & Educ.* 209, 224 (April 1984).
15. Some schools, realizing that discipline is important for all children, include language allowing customary disciplinary actions in virtually every IEP. Where children are being placed specifically for behavioral disorders, greater specificity is obviously warranted.
16. 34 C.F.R. § 300.513, comment. See, e.g., *S-1 v. Turlington*, 635 F.2d 342 (5th Cir.), cert. denied, 454 U.S. 1030 (1981).
17. See *Doe v. Koger*, 480 F.Supp. 225 (N.D.Ind. 1979).

18. *Jackson v. Franklin County School Board*, 765 F.2d 535, 25 *Educ. L. R.* 1080 (5th Cir. 1985).
19. There should be little doubt that schools may respond to clear and present dangers or emergencies irrespective of what procedural safeguards might otherwise be available. Of course, those safeguards should thereafter be provided as soon as possible. See *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed. 2d 729 (1975).

Chapter 7

Resources

Written Policies

Adams County School District 14, *Adams City High School Student Handbook.* Commerce City, Colorado.

Alcester Public Schools, *Alcester Cubs 7-12 Handbook.* Alcester, South Dakota.

Alliance Public School System, *Alliance Middle School Student-Parent Handbook.* Alliance, Nebraska.

Arapahoe County School District No. 6, *Isaac Newton Junior High School: A Handbook for Students and Parents.* Littleton, Colorado.

Athens City Board of Education, *Athens High School Student Handbook.* The Plain, Ohio.

Billings Public Schools, *Castle Rock Junior High School Handbook.* Billings, Montana.

Board of Education of Frederick County, *Brunswick High School Student/Parent Handbook.* Brunswick, Maryland.

Brady Independent School District, *Brady Junior High School Student and Parent Handbook.* Brady, Texas.

Burlington Community School District, *Burlington Community High School Student Handbook.* Burlington, Iowa.

Canton Township School District, *Canton South High School Student Handbook.* Canton, Ohio.

Central Dauphin School District, *Central Dauphin School District Handbook and School Calendar.* Harrisburg, Pennsylvania.

Champaign Community Unit School District No. 4, *Champaign Central High School - A Handbook for Students, Parents and Teachers.* Champaign, Illinois.

Cincinnati Public Schools, *Aiken Senior High School Student/Parent and Teacher Handbook.* Cincinnati, Ohio.

Clarkston School District, *Lincoln School Student Handbook.* Clarkston, Washington.

Clay County School Board, *Orange Park High School Student-Parent-Teacher Handbook.* Orange Park, Florida.

Community Unit School District No. 300, *Harry D. Jacobs High School Parent-Student Guide.* Algonquin, Illinois.

Cumberland Department of Education, *Cumberland High School Student Handbook.* Cumberland, Rhode Island.

Cuyahoga Falls City Schools, *Cuyahoga Falls High School Student Handbook.* Cuyahoga Falls, Ohio.

Duval County Public Schools, *Code of Student Conduct.* Jacksonville, Florida.

Forest Grove Public School District No. 15, *Forest Grove High School Student Handbook.* Forest Grove, Oregon.

Frederick County School System, *Walkersville High School Student Handbook.* Walkersville, Maryland.

Fremont County School District No. 25, *Riverton High School Student-Parent Handbook.* Riverton, Wyoming.

Grand Island Public Schools, *Student Handbook for Grand Island Senior High School.* Grand Island, Nebraska.

Greater Albany Public Schools, *Students' Rights and Responsibilities Handbook.* Albany, Oregon.

Greenville Public Schools, *Greenville High School Student Handbook.* Greenville, Mississippi.

Hempfield Area School District, *Hempfield Area Senior High School Student Handbook.* Greensburg, Pennsylvania.

Hononegah Community School District No. 207, *Hononegah Community High School Student-Parent Handbook.* Rockton, Illinois.

Independent School District No. 659, *Northfield Senior High School Student Handbook.* Northfield, Minnesota.

Jackson Municipal Separate School District, *Hardy Junior High School Student Handbook.* Jackson, Mississippi.

Kenai Peninsula Borough School District, *Kenai Junior High School Student Handbook.* Soldotna, Alaska.

Lafayette School Corporation of Tippecanoe County, *Sunnyside Junior High School Handbook.* Lafayette, Indiana.

LaGrange Public Schools, *Student Handbook of LaGrange Public Schools.* LaGrange, Texas.

Lakewood Board of Education, *Lakewood High School Student Handbook.* Lakewood, Ohio.

Libby Public Schools, *Libby Junior High School Handbook.* Libby, Montana.

Lincoln High School, *Lincoln High School Student Handbook.* McClellanville, South Carolina.

Maconaquah School Corporation, *Maconaquah High School Handbook.* Bunker Hill, Indiana.

Maumee Public Schools, *Maumee Senior High School Student-Parent Handbook.* Maumee, Ohio.

McComb Public Schools, *McComb Junior/Senior High School Handbook of Policies and Procedures.* McComb, Mississippi.

Mendota Township High School District No. 280, *Mendota Township High School Student Handbook.* Mendota, Illinois.

Mississinawa Valley Schools, *Mississinawa Valley Middle School: Parent-Student Handbook.* Mississinawa, Ohio.

Morris School District, *Morristown High School Handbook and Curriculum Guide.* Morristown, New Jersey.

Mount Olive Township, *Mount Olive High School Student Handbook.* Flanders, New Jersey.

New Haven Public Schools, *New Haven High School Student Handbook.* New Haven, Missouri.

North Clackamas No. 12 School District, *Rex Putnam High School Student Handbook.* Milwaukee, Wisconsin.

Orleans Parish Schools, *Francis T. Nicholls Senior High School Student Handbook.* New Orleans, Louisiana.

Palm Beach County School Board, *North Shore High School Student-Parent Handbook.* West Palm Beach, Florida.

Papillion-LaVista School District No. 27, *Papillion Junior High School Student Handbook.* Papillion, Nebraska.

Phoenix-Talent School District No. 4, *Phoenix-Talent Schools Student Services and Standards for Student Conduct and Discipline.* Phoenix, Oregon.

Poland Local School District, *Poland Junior High Student Handbook.* Youngstown, Ohio.

Queen Bee Public Schools, District No. 16 - Dupage County, *Glenside Junior High School Parent-Teacher-Student Handbook.* Glen Ellyn, Illinois.

Randolph Central School Corporation, *Driver Junior High School Handbook.* Muncie, Indiana.

Regional High School District No. 1 - Litchfield County, *Housaconic Valley Regional High School Student Handbook.* Falls Village, Connecticut.

Rockridge Community Unit School District No. 300, *Rockridge High School Handbook.* Taylor Ridge, Illinois.

Robinson Independent School District, *Robinson High School Student Handbook.* Robinson, Texas.

School Administrative Unit No. 16, *Exeter Area High School Handbook for Students-Teachers-Parents.* Exeter, New Hampshire.

School District No. 2 of Billings, Montana, *Lewis and Clark Junior High School.* Billings, Montana.

School District No. 2 of Billings, Montana, *Billings Senior High School Handbook.* Billings, Montana.

School District No. 26 of Billings, Montana, *Lockwood Junior High Student Handbook.* Billings, Montana.

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