

The Principal's Legal Handbook

Third Edition

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Dedicated ...

To Leticia Smith-Evans, graduate assistant at the University of Wisconsin-Madison, who conducted cite verifications for the chapters.

To Ida Mae Richardson, mother of Mark A. Gooden, who passed away suddenly during the completion of this book.

To Patty, Tyler, Megan, and Austin Lane; Hoyt and Dorena Lane; Bill and Etta Galloway for their support and because I treasure my family.

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Section 1

Students and the Law

1 Student Discipline Law

Jeffrey J. Horner and Richard S. Vacca

Introduction

Most of today's public school systems have formal policies and rules specifically covering student discipline. Generally, such documents, often referred to as "Student Codes of Conduct," specify the nature and severity of the student offense, and include the alternatives of punishment available for each. Written carefully to avoid vagueness, these documents typically enumerate the procedures to be followed in dealing with student offenders, and often designate the person(s) responsible for enforcing each rule and implementing each procedure.

In enforcing a public school system's disciplinary code, the severity of the punishment of a student is an important factor to consider.¹ Typically, the more serious the punishment—an expulsion from school rather than a one-day suspension—the more formalized and extensive the requirements of procedural due process. For example, the Seventh Circuit Court of Appeals held that a high school senior who had been suspended from school for three days because of drinking and subsequently missed final exams and did not graduate, was not entitled to the same level of due process as a student being expelled from school.² Courts have consistently held that confrontation and cross-examination of witnesses against a student, and a student's representation by counsel may not be mandatory though "desirable when the possible discipline of a student is severe."³ The age of the student or student group will affect the formality of the procedural due process to be afforded.⁴ In addition, whether or not a student has an educational disability will impact the nature of the process.⁵

Legal Issues

Introduction

Basic fairness is the main precept of contemporary procedural due process. Fairness should undergird every decision made by a governmental entity, especially public schools. Over the past thirty years, courts have

been very active in extending to public school students procedural rights under the United States Constitution when they are involved in disciplinary situations.

Corporal Punishment

An age-worn mode of student punishment available in public schools is corporal punishment, the affliction of physical pain upon a student for misconduct. The legal justification for using corporal punishment is found in state statutes. Some states specifically allow it, some states forbid it, while others do not mention it but by implication authorize or allow its use. The law on corporal punishment has not changed significantly in recent years, and both federal and state courts consistently upheld its reasonable use where the state allowed it. However, due to liability concerns, a growing number of states and localities now forbid its use. At this time more than twenty states forbid corporal punishment in public schools.

Where corporal punishment is used, it must conform to the laws of the state, local school board policy, and the common law standard of reasonableness. Courts have, over the years, spelled out nine general guidelines as to what constitutes reasonable corporal punishment. These guidelines suggest that corporal punishment:

- Must be allowed by state statute (either directly or by inference).
- Must be implemented consistent with state statutory requirements.
- Must be used as a method of correction.
- Must not be cruel or excessive.
- Must not involve anger or malice.
- Must suit the age, gender, and physical condition of the child.
- Must involve use of an appropriate instrument.
- Must not leave permanent or lasting injuries.
- Must be appropriate for the offense.⁶

*Baker v. Owen*⁷ was the first case in this area to come before the United States Supreme Court. It allowed teachers to administer corporal punishment, and did not require prior parental approval for such punishment. The following four procedural guidelines were approved in the decision: (1) students were warned in advance of the specific kinds of behavior that could result in their being corporally punished, (2) corporal punishment was not to be the “first-line” of punishment, (3) when corporal punishment was administered to a student, a second school official was present to witness the act, and (4) parents of a punished student were furnished with a written statement on request about the act, including reasons for it and the names of the witnesses.

In *Ingraham v. Wright*,⁸ the United States Supreme Court decided that the use of corporal punishment in a public school does not fall within the Eighth Amendment's prohibition regarding cruel and unusual punishment. The Eighth Amendment applies only to situations involving criminal punishments. The Court held further that a student is not entitled to notice and a hearing prior to corporal punishment. In the Court's opinion, if children are subjected to unreasonable applications of corporal punishment, they may obtain a remedy by filing a civil suit.⁹

*Hall v. Tawney*¹⁰ was a post-*Ingraham* case decided by the Fourth Circuit Court of Appeals. The court in *Hall* faced three basic issues: the legality of corporal punishment, the procedural due process guarantee of a hearing prior to the punishment, and the student's constitutional right to ultimate bodily integrity. In the Fourth Circuit, corporal punishment does not violate a child's protected rights. However, the force used by a disciplinarian must not be disproportionate to maintaining order and discipline in the school, nor should it be the product of malice, sadism, or brutality. The court believed that not every violation of state tort law or criminal assault law amounts to a violation of a constitutional right. In *Hall*, the court did address the substantive due process issue of a student's right to ultimate bodily integrity, and held that this right applies to situations of corporal punishment.

Two years later, the Supreme Court of West Virginia addressed the procedural guarantees available to students in that state prior to the administration of corporal punishment. According to the court, the following minimal due process procedures should be utilized: a student should be given an opportunity to explain his or her version of the disruptive event "as such an explanation may convince a fair-minded person that corporal punishment is not warranted," and absent some extraordinary factor, the administration of corporal punishment should be done in the presence of another adult, "to protect both the student and the person administering corporal punishment by providing a neutral observer."¹¹

Student Discipline Hearings and Due Process

Introduction

In general, students have the right to freedom from bodily restraint cognizable under the Fourteenth Amendment of the United States Constitution.¹² As stated earlier, this right does not extend so far as to implicate the Eighth Amendment prohibition on cruel and unusual punishment.¹³ The courts have held that the Eighth Amendment applies only in the criminal context, not student discipline proceedings.¹⁴ With respect to the Fourteenth Amendment concern, courts have recognized the rights of students to be informed of prohibited behavior and afforded certain procedural safeguards prior to the imposition of punishment. The extent