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**STUDENT DISCIPLINE AND SPECIAL EDUCATION LAW****Overview**

Over the years, courts of law have consistently held that public school officials and administrators possess the authority to do what is necessary to establish and maintain a positive and productive learning environment where “teachers can teach and students may learn.” Vacca and Boshier (2003) To enable this important task, statutes in the various states grant local school boards considerable discretion in setting policies and regulations controlling student conduct. For example, the Code of Virginia enables local school boards to adopt bylaws and regulations for the management of official business and for the supervision of schools, “including but not limited to the proper discipline of students, including their conduct going to and returning from school.” Code of Virginia, 22.1-78 (2003)

*In Loco Parentis.* The authority to discipline students in public schools is deeply rooted in the age-worn doctrine of *in loco parentis*. In its traditional form and meaning, *in loco parentis* was viewed as a delegation of unlimited parental authority to school personnel (i.e., acting as a temporary guardian of a child, in place of the parent) to do what is necessary to restrain and correct misbehaving children. Thus, in the early years of American public education, courts of law consistently applied *in loco parentis* and were reluctant to interfere with the student disciplinary authority of local school boards, administrators, and classroom teachers. While the doctrine has not entirely disappeared from today’s legal scene, Hamilton v Unionville-Chadds Ford School District (1998), *in loco parentis* has, however, undergone considerable modification.

*The Era of Student Rights.* Beginning in the late 1960’s (In Re Gault [1967], Tinker v Des Moines [1969]) through the mid-1970’s (Wood v Strickland [1975], Goss v Lopez [1975]), the once unlimited disciplinary authority of school officials and administrators was balanced against the emerging legal and constitutional rights of students.

While court decisions of the 1960’s and 1970’s launched a “modern era of student rights,” local school boards and administrators never lost their disciplinary authority. The key question asked in deciding the outcome of student disciplinary cases was whether educational officials provided students with adequate procedural due process protections.” Russo (2004)

Courts do not insist that students be provided with the same procedural requirements available in a court of law. For example, students involved in school disciplinary matters are not entitled, as a matter of right, to a *Miranda*-type warning Boynnton v Casey (1982). What is more, a student is not entitled to a *Miranda*-type warning when questioned by a public school administrator in a situation where a school resource officer is present during the questioning. J.D. v Commonwealth (Va. App. 2004) Nor are students automatically entitled to the names of their accusers and an opportunity to cross-examine the administrators who investigated the incident that led to the disciplinary action being taken. Newsome v Batavia (6th Cir. 1988)

It was during the 1980's that more than half the States passed statutes to forbid the use of corporal punishment as a disciplinary option in public schools. Vacca and Boshier (2003) In Virginia, however, the corporal punishment ban did not prevent the use of incidental, minor, or reasonable physical contact, or reasonable and necessary force to maintain order and control, quell a disturbance, remove a disruptive student or a student who threatens harm to himself/herself or others, or to obtain possession of weapons or controlled substances, or as a means of self-defense. Code of Virginia, 22.1-279.1 (1988)

*Student Discipline and Basic Fairness.* It remains a basic tenet of public education law that school officials “may exclude from school, class, or any school activity any student whose conduct disrupts the educational environment, or who willfully defies school board policy of school rules, or who poses a threat of harm to himself /herself or to others or who defaces or destroys school property.” Vacca and Boshier (2003) No student is immune from school disciplinary policies, regulations, and rules. Bernstein v Menard (E.D. Va 1982) However, it is well established that, “[a]t the very least, when students are subject to the imposition of significant disciplinary penalties, they are entitled to notice and an opportunity to respond to a fair and impartial third party decision-maker.” Russo (2004) As a general rule, judges are reluctant to substitute their judgment for those of school officials and teachers where (1) students have been afforded basic procedural due process and (2) disciplinary actions are based on substantive evidence. Johnson v Collins (N.H. 2002)

In recent years, the United States Supreme Court itself has expressed a reluctance to interfere with state and local student disciplinary authority. In such decisions as United States v Lopez (1995) regarding the authority to control of weapons on public school grounds, and Board of Education v Earls (2002) where the Court held that the privacy interests of students are “limited in a public school environment where the state is responsible for maintaining discipline, health, and safety.... Securing order in the school environment sometimes requires that students be subjected to greater controls than those appropriate to adults.”

*Discipline and Special Education Law.* Beginning in the mid-1970's, a new set of student disciplinary issues began to emerge, as more and more students with educational disabilities were included in public school systems across the country. As Boyle and Weishaar remind us, prior to the passage of the *Education for All Handicapped Children Act (EHCA, 1975)*, “More than one-half of the children with disabilities in the United States did not receive appropriate educational services....” And, “One million of the children with disabilities in the United States were excluded from the public school system and did not go through the educational process with their peers.” Boyle and Wisner (2001) In the 1980's and 1990's this situation drastically changed as a philosophy of “mainstreaming” students with educational disabilities with their general education peers in all classrooms and school activities grew in popularity and gained judicial support. Oberti v Board of Education (3rd Cir. 1993)

## **Emerging Issues and Case Law**

This commentary is limited to emerging issues involving the *Individuals with Disabilities Education Act (IDEA)*. The discussion that follows does not include issues involving *Section 504 of The Rehabilitation Act of 1973*.

As the population of students with educational disabilities in the general education grew public school boards and administrators were faced with the following question: “Are students covered by special education law subject to the same disciplinary policies, regulations, rules, and punishments (e.g., suspension or expulsion from school) as are their age appropriate peers? This question had no clear answer because student discipline did not appear in federal statutory law until 1997. *IDEA Amendments of 1997*, 20 U.S.C. 1415, et seq. Thus, during the late 1970’s and the 1980’s public school policy-makers and administrators had to rely on court decisions (involving misbehaving special education students) for direction. *Stuart v Nappi* (D. Conn. 1978), *Doe v Koger* (N.D. Ind. 1979), *S-1 v Turlington* (5th Cir. 1982), et al.

*The Supreme Court Speaks on “Stay Put” and “Causal Connection.”* In 1988 the United States Supreme Court decided a Ninth Circuit case involving the indefinite suspensions and proposed expulsions of two emotionally disturbed students. Both students had exhibited violent and disruptive behavior. Calling the students’ behavior “dangerous,” school officials immediately suspended them from school. The high court held in *Honig v Doe* (1988), that the “stay put” provision of the Education for All Handicapped Children Act of 1975 prohibits state or local education agencies from unilaterally excluding students with disabilities from classes or from school for disruptive conduct growing out of their disability (*causal connection*), while a review of their situation is pending. However, school officials have options available to them (e.g., study carrels, time outs, detention). Moreover, in situations where students endanger themselves or pose an immediate threat to others the Court said that a temporary suspension from school for up to 10 school days was reasonable.

*Special Education Discipline 1988-1997.* In addition to interpreting the “stay put” provision and the critical need to explore the possibility of a causal connection existing between a student’s disability and his/her misbehavior, the *Honig* decision is important for two other reasons. First, it did not negate the prerogative of school officials to immediately remove from classes or school students with disabilities who engage in disruptive or dangerous behavior (especially where weapons or drugs are present). Second, it set a ten-day window in place within which a student with disabilities is subject to the same disciplinary rules and procedures as are all other students. The opinion stressed that excluding a student from a class, activity, or from school for longer than 10 school days should be treated as a change of placement. In such situations the procedural requirements of federal and state law must be followed. How many 10-day suspensions could be applied to the same student in the same year remained an unanswered question.

*Student Discipline Post-Honig.* While the United States Supreme Court’s decision in *Honig v Doe* (1988) served as student disciplinary guide to be followed by public school system policy-makers and school administrators for almost a decade, legal issues continued to emerge. One such issue involved the possibility of discontinuing all services to a student who had been either long-term suspended or expelled from school. *Virginia D.O.E. v Riley* 4th Cir. 1994) It was not until 1997 that Congress amended and reauthorized the *Individuals With Disabilities Education Act (IDEA)* to include specific provisions covering school discipline that this issue was addressed. Whatever the disciplinary penalty, at no time shall a student’s services be terminated. 20 U.S.C. 1415, et seq.

The new IDEA provisions stress a need to: (1) conduct a manifestation determination, (2) review the existing IEP, (3) create behavioral management plans, (4) implement intervention strategies, (5) mitigate existing problems, and (6) prevent future disciplinary infractions. Finally, legal scholars stress the importance of

determining whether or not the student's disability impaired his/her "ability to understand the impact and consequences of their misbehavior along with whether it limited their ability to control their behavior." Russo (2004)

In 1997, the disciplinary aspects of IDEA were extended to students who have not yet been formally declared eligible under the law, where school officials have "prior knowledge" that a particular student might have a disability. 34 C.F.R. 3000.527 (a) In this writer's opinion the prior knowledge should be more than mere speculation. It should be interpreted to mean "actual knowledge" that a particular student should be in special education.

*Serious Disciplinary Problems.* It is important to note that the following two options for dealing with special education students involved in serious disciplinary situations currently exist: (1) assigning a student to an interim alternative education setting (IAES) for such offenses as weapons and drugs, and (2) seeking a court order "to remove a student with a disability from school or to change the student's current educational placement if the school district believes that maintaining the student in the current educational placement is substantially likely to result in injury to the student or to others." *Federal Laws and Regulations* (LexisNexis, 2004) Finally, *IDEA* does not prevent school officials from reporting special education students who engage in criminal activities to law enforcement agencies. Commonwealth v Nathaniel N (Mass. 2002

## **Policy Implications**

The policy implications present when dealing with the naturally complex area of special education discipline are several. While confusion still exists over the exact meaning of statutory language and procedural requirements, it is possible to glean helpful information from past court decisions and the body of professional literature. In reviewing existing school system policies and in drafting new ones, school policy-makers are encouraged to consider the following suggestions. Local school boards must make it clear that:

- Student discipline is a necessary element in establishing and maintaining a positive, safe, and productive learning environment.
- Disciplinary policies, regulations, and rules apply to all students.
- The school system's *Code of Student Conduct* clearly and accurately spells out all expectations for student conduct and the disciplinary procedures and alternatives that attach to disciplinary infractions.
- Students who are dangerous to themselves or to others, or who pose an actual threat to themselves or to others, or who materially disrupt the learning environment will be dealt with immediately.
- Basic procedural due process will be followed in every disciplinary matter.
- All principals, teachers, and other staff members are duty bound to carry out and enforce student disciplinary policies, regulations, and rules.
- All parents will be promptly informed of and involved in disciplinary matters involving their child.
- All parents will be afforded an opportunity to inspect, review, and challenge the accuracy of disciplinary records regarding their child.
- Confidentiality and security of all information will be protected.
- Every student disciplinary matter will be looked at for its potential ramifications in special education law.
- Where students are already covered by special education law, or are in the process of being evaluated for eligibility, or are suspected of having educational disabilities, the substantive and procedural requirements of federal and state law (e.g., the ten-day rule, stay-put, manifestation determination,

behavioral interventions, 45-day alternative setting, expedited hearings, mediation, etc.) will be strictly followed, and at no time will services to eligible special education students be terminated.

- Law enforcement agencies will be immediately contacted in every student disciplinary matter where criminal activity is involved.

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Note: The views expressed in this commentary are those of the author.