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STUDENT DISCIPLINE 2006-2007: VIOLENCE IN SCHOOLS**Overview**

At the beginning of his recently published monograph, *Death Threats by Students* (Education Law Association, 2006), Rutgers University Professor Ron Hyman offers the following sad but true observations: “We live today in a period of indisputable violence. The daily newspapers, radio stations, and television channels tell us often about violent events that occur on a regular basis—murders, suicides, bombings—in our country and the world at large.... Violence exists in some of our schools, too, in the forms of shootings, extreme hazing, rape, gang fights, and death threats.” Hyman (2006)

Last fall’s horrible situation in Pennsylvania’s Amish community refocused our attention on the safety and security of innocent children while they are at school. While much has been done in recent years (at the federal, state, and local levels of government) to make public school buildings safe, secure, and free from disruption (most noteworthy is the *Persistently Dangerous Schools* mandate of the federal *No Child Left Behind Act*), Professor Hyman is correct when he concludes that violence in public schools remains ever present. As my colleague Professor Bill Boshier and I have observed, “[s]chool officials report an increasing climate of fear in which young people and their teachers wonder if, on a given day, they will be victims of unforeseen violent acts.” Vacca and Boshier (1993) Nationwide reports of increased gang activity involving young people (at all socioeconomic levels) also increases the potential for criminal activity and violent outbursts in schools.

Up-to date School Violence Statistics. According to a recent FBI report, our nation “is in the midst of a prolonged increase in murder, assaults and violent offenses.” *Richmond Times-Dispatch* (December 19, 2006) Similarly, no region of our country has been spared or is immune from the ruinous damages of violent episodes in public school buildings. As a Bureau of Justice Statistics study recently indicated, the number of people killed in school during the 2004-2005 school year increased from the previous year (the shootings in Wisconsin, Colorado, and Pennsylvania were not included), and four of every 1,000 students reported being the victims of violent crimes while at school. *Richmond Times-Dispatch* (December 4, 2006)

The National Center for Education Statistics recently reported the results of a comprehensive survey of this nation’s pre-kindergarten through grade twelve students. The figures show that while victimization rates of

thefts and violent crimes per 1,000 students slightly declined over the previous year other aspects of crime did not improve. For example, the number of homicides of school-age youth (ages 5 years old through 18 years old) at school was higher in 2004-2005 than in 2000-2001. Violence, drugs, and weapons are reported as continuing to pose serious problems in public schools. In 2005, 25 percent of students in grades nine through twelve reported that drugs were made available to them on school property and eight percent of students were either threatened or injured by a weapon on school property in the previous twelve months. National Center for Education Statistics (December, 2006)

The reader is cautioned that statistics on school crime and violence are often not reliable. As recently stated by the National School Boards Association, in [NSBA Legal Clips](#) (October 19, 2006), “The federal mandate to identify ‘persistently dangerous’ schools under the No Child Left Behind Act (NCLB) is plagued with inaccuracies because local school officials underreport criminal activity on campus and states have established definitions for dangerous schools so high that few, if any, schools are identified.”

The purpose of this commentary is to discuss a growing trend in statutory law, local policy, and court decisions expanding the discretionary authority of public school officials enabling an immediate disciplinary response in situations where student misbehavior creates a climate of fear and insecurity on school property. Randomly selected examples of case law are presented to demonstrate this trend, and suggestions are made for local school board policy formulation and implementation.

Statutory and Policy Steps to Curb Violence in Schools. Over the past decade, in an effort to combat a potential escalation of violent acts in public schools, states have enacted new and comprehensive statutes. While some states have by law increased penalties for making threats against school staff and students, other states have granted legal authority to school principals to immediately suspend and/or seek expulsion of any student who possesses a firearm or other weapon on school property or at school sponsored events. At the same time, other states have toughened anti-trespassing prohibitions in an effort to keep potentially dangerous third parties off-school property.

At the community level local school boards across this nation have taken affirmative and proactive steps through the enactment of new policies and procedures to curb violence in their schools. For example, many local school systems have formal agreements with local law enforcement agencies to furnish a constant on-site police presence in schools. In a growing number of local elementary, middle, and high schools police officers are on duty as officers of the law on school property during the school day and at all school sponsored functions. Vacca and Boshier (2003)

As recently reported in [NSBA Legal Clips](#) (December 14, 2006), the Milwaukee, Wisconsin, school board will pilot a program that puts two pairs of police officers in schools; one pair assigned to a specific high school and the other pair to a cluster of schools (high, middle, and elementary schools). The story reports that the new security plan is in response to “a string of major violent episodes in schools this fall.”

The Courts and School Disciplinary Authority

More than a decade ago, Professors Alexander and Alexander reminded us that “[c]ourts have long recognized that if schools are to be properly conducted, teachers and principals must be given authority to maintain an orderly and responsible learning environment.... Disruption of the school social setting will undoubtedly have deleterious effects on the quality of the educational program. Recognizing this, courts have uniformly held that student conduct is under the reasonable control of school officials.” Alexander and Alexander (1995)

It is a fact that over the past three decades, beginning with the United States Supreme Court's landmark Goss v Lopez (1975) decision, a majority of judges (federal and state) have granted considerable discretion to local school boards and administrators to do what is necessary to maintain order and discipline in schools, provided students are granted basic procedural due process.

In subsequent decisions, the United States Supreme Court clearly stated that disciplinary authority of public school administrators and teachers must not be "unduly burdened" by judicial decree. In the high court's view, principals and classroom teachers must be free to take "swift and informal disciplinary measures" to protect students and staff, and to maintain a healthy and non-disrupted school environment in which learning can take place. New Jersey v T.L.O. (1985), Vernonia School District v Acton (1995), and Board of Education v Earls (2002). For example, courts uniformly do not require that student's be given a "Miranda warning" before being questioned by school officials, J.D. v Commonwealth (Va. 2004), and are willing to uphold suspicion-less and random searches on student property. Doe v Little Rock School District (8th Cir. 2004)

Student Behavior: Outside School. Over the past decade, increased flexibility and disciplinary discretion granted to public school officials are especially worthy of note in cases where the behavior of students took place off school property. It must be emphasized, however, that administrator and teacher disciplinary discretion is not without limitations, especially where student off-school grounds behavior is involved. What is or is not reasonable in each situation will be decided on the facts present and the totality of the circumstances in each case. Some examples follow.

In Virginia a state court upheld the expulsion of a student who, while attending a school sponsored field trip, was found in possession of a knife. Wood v Henry County Public Schools (Va. 1998) That same year, in a Minnesota case, a federal court upheld the suspension and expulsion of two high school students who drove a pick-up truck onto school grounds. In the truck was a BB gun. Peterson v I.S.D. 811 (D.Minn. 1998) For a similar case on point, see Butler v Rio Rancho Public School Board (D.N.M. 2002) where a high school student was suspended from school for one-year after two weapons were found in a car that he had driven onto school property. The irony in this case was that the car did not belong to the suspended student; he had borrowed the car from his brother. As in the Wood case the student's *possession (not ownership)* of weapons was the key.

Student use of personal computers has produced disciplinary issues. In a Missouri case a student was disciplined for a Web page that he created at home. The Web page was, among other things, critical of his principal and teachers. The student prevailed in court because there was no causal link between the Web page produced by the student outside of school and interference with school discipline inside school. Beussink v Woodland R-IV School District (E.D.Mo. 1998) A similar result can be found in Emmett v Kent School District No. 415 (W.D. WA. 2000), where a student produced mock obituaries on his own Website. In this situation it could not be established that the student had any violent tendencies and that the mock obituaries presented an actual threat to anyone.

A Louisiana case involved a sketch drawn by a student at home. The sketch depicted, among other things, his high school being soaked with gasoline, an individual with a torch, and some students holding guns. Two years later the student's brother was suspended from school for possessing the sketch. Subsequently the student who drew the sketch was brought to the office where he was questioned and his book bag searched. Claiming both First and Fourth Amendment violations, the students filed suit in a federal district court, where the court held that even though the sketch was produced off-campus it (1) interfered with appropriate discipline in the school, and (2) represented a true threat and intent to harm or cause injury to school property and to other individuals in

the school. Among the items found in the book bag were a fake I.D. and a box cutter blade. Porter v Ascension Parish School Board (M.D. La. 2003)

Student Behavior: Inside School. Courts have been more active in deciding cases with respect to the procedural rights of students who have been disciplined for situations that occur on school property or at a school-sponsored function, and where criminal behavior is suspected. Of all the possible issue producers, student search and seizure is the most active.

With increased frequency, in their efforts to establish safety and security and to protect persons and property from injury, public school administrators (sometimes with the assistance of school security or a school resource officer), and guided by the T.L.O. (1985) two-pronged standard (*reasonable suspicion* and *reasonable scope*), are called upon to search students and their property, principally for harboring or dealing drugs, and/or for possession of weapons. Vacca and Boshier (2003) As Professor Joe Beckham of Florida State University reminds us, while students are protected by the Fourth Amendment and public school employees are bound by the prohibitions of the Fourth Amendment, "...perceptions of epidemic drug use and high profile instances of violence involving weapons in the nation's schools have led judges to grant considerable discretion to school officials in the conduct of searches. If school officials articulate a reasonable suspicion justifying a search and limit the scope of a search to avoid excessive intrusion into personal privacy, judges typically find in favor of the state's interest in maintaining discipline and insuring a safe learning environment." Beckham (2005) Courts consistently have held that the police standard of "probable cause" is not the standard to apply in situations where searches are initiated and performed by school officials. Myers v State (Ind. 2005)

In a recent Florida case, a student enrolled in an alternative school challenged the fact that she was routinely searched when she got off the school bus. In the course of one of the searches a long blade knife was discovered on her person. Subsequently she was charged with possession of a weapon on school grounds. The court decided that the search was within the bounds of reasonableness for the following reasons: (1) all students at the alternative school, not just this one student, were subject to routine searches, (2) students at the alternative school had past histories of criminal activity, and (3) students were enrolled in the alternative school to remediate their past behavior. C.N.H. v State (Fla. 2006)

That same year, in a New Mexico case, a high school student who had been subjected to a "pat down search" (his jacket was also searched) by school security, went into court to challenge the constitutionality of the searches. The student, who had been sent to the office by a teacher to get a late for class pass, was observed in a school hallway by a security aide (present to monitor students as they went to classes) as acting nervous and fidgety. A subsequent search produced a pipe that appeared to have marijuana residue on it, and a lighter. The lighter had the initials "BST" on it. BST was an acronym for a student group called "Bud Smoking Thugs." Relying on the T.L.O. (1985) standard, both a state trial court and appellate court held that the search was unreasonable. No reasonable suspicion existed on which to launch the searches. Moreover, the student was not carrying a weapon or marijuana and no connection existed between violations of law or school policy and the items found as a result of the search. State v Pablo R. (N.M. 2006)

Of all the student searches where extreme caution and common sense are vital it is the "strip search." This past May, the United States Court of Appeals for the Second Circuit decided a case involving the strip search of a female student (Phaneuf). Another student reported to a teacher that Phaneuf said she planned to take marijuana on the class picnic by hiding it in her underwear. Prior to leaving for the class picnic, all students had to have their bags searched for security reasons. A search of Phaneuf's bag produced cigarettes and a lighter, but no drugs. Because school personnel were reluctant to search Phaneuf's underwear her mother was called in to

conduct the search. She did so and no drugs were found. Ruling that the search was not reasonable, The Second Circuit Court gave four reasons. First, school officials had made no effort to investigate and corroborate the student tip prior to conducting the strip search. Second, Phaneuf had no past record of drug-related offenses. Third, her possession of other prohibited items in her bag was minimally probative of her possible use of marijuana. Finally, the heightened level of suspicion needed to justify a highly intrusive search had not been created. In essence the appellate court found the strip search to have failed the first prong of the T.L.O. (1985). Phaneuf v Fraikin (2nd Cir. 2006)

Policy Implications

In 2006-2007, because of recent violent and deadly incidents in public and private schools and an increase in youth gang-related activity in communities, safety and security all students and staff members is a high priority. Experience teaches us that access to quality educational opportunities is not possible in schools where staff and students are fearful for their health and wellbeing. However, the discussion above should not be interpreted as sanctioning a “zero tolerance” philosophy. Rather, the judicial trend demonstrated in this commentary encourages the development and implementation of proactive student disciplinary policies that grant building-level principals and their staff members the authority to act quickly and decisively.

As the case law demonstrates, to successfully discipline students for misbehavior that occurs outside of school and off school property a *nexus* must exist between student off-school property actions and harmful and/or disruptive effects inside school. Proactive efforts to head-off incidents of possible criminal wrongdoing involving students must be based on reasonable suspicion.

In summary, local policies must grant building principals, classroom teachers, and school staff the flexibility to act when confronted with student misbehavior (both criminal and non-criminal) that (1) violates school disciplinary rules, or (2) disrupts the learning environment, or (3) violates the law, or (4) poses danger and threatens safety and security. What follow are suggestions for local school boards to consider when revising existing policies and drafting new policies. School system policies must make it clear that:

- Students are expected to comply with all school system disciplinary policies, rules, and procedures as contained and outlined in the school system’s *Student Code of Conduct*.
- While the Board recognizes and respects the rights of all students enrolled in the school system, no student is immune from school disciplinary action where his or her behavior (whether on school property [including school buses] or off school property) disrupts the learning environment; or threatens the safety and security of other students, administrators, classroom teachers, and staff.
- School principals are granted discretionary authority to immediately act and appropriately discipline any student who is found to be in violation of the *Student Code of Conduct*.
- Students will be provided with appropriate procedural due process protections in all disciplinary situations.
- Criminal conduct will not be tolerated on school property (including school buses) or at school sponsored activities or events; and, where such conduct is discovered, school administrators will immediately discipline the student(s) and report such behavior to and cooperate with law enforcement agencies.
- Students engaged in criminal wrong doing on school property and/or at school-sponsored activities and events will be prosecuted to the extent of the law.
- Parents are expected to cooperate with school administrators, classroom teachers, and staff to keep school buildings, school buses, and school sponsored activities free from disruption, safe and secure.

- Parents will be immediately notified in every disciplinary matter that involves their children

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