

**ISSUES AND ANSWERS FOR
DECISION MAKING**

**Realistic Solutions to
Current Day Problems**

**PA Department of Education
Bureau of Community and Student Services
Division of Student and Safe School Services
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The Courts, Students and Schools

Two questions that are constantly asked by educators are: 1) Why are the courts so involved in schools today?; and 2) Why does everything seem to become a legal issue? The answers are not difficult.

We must realize there are only three major groups of people currently in the United States who may be where they don't want to be:

- 1) Prisoners
- 2) Patients confined to mental health facilities
- 3) School children (students)

Therefore, the courts are determined that they must be an active voice speaking on behalf of these groups, especially for students.

In 1969, the United States Supreme Court (*Tinker vs. Des Moines*) stated "students do not shed their constitutional rights when they go through the school door." This was a major decision that really initiated the rights of students in school. Several years later in 1975, the United States Supreme Court issued another major decision (*Goss vs. Lopez*). This very close decision applied the Fourteenth Amendment to public education. This action called for due process before a suspension of ten days or less. These two cases demonstrate the courts continued intent to speak for students and clarify the mission of school to:

- 1) Educate all students in their school;
- 2) Provide a safe and orderly environment for all students in their school;
and
- 3) Protect the health, safety, and welfare of all students in their school.

These three items are the mission statement of the courts (their intent for **all** students).

The United States Supreme Court appears to spend more and more time dealing with educational issues. From 2001 through the present, the high court dealt with school choice, the Internet, privacy in education, and drug testing just to mention a few education related major cases. Along with the Supreme Court, the federal judicial system includes the eleven federal circuit courts plus the District of Columbia that has its own district and the Circuits Court of Appeals. Pennsylvania is part of the Third Circuit that includes Pennsylvania, New Jersey, Delaware, and the Virgin Islands.

The Third Circuit and the Second Circuit (New York, Vermont, and Connecticut) appear to be the most aggressive courts in defending the rights of students of all the federal circuits. Therefore, it is imperative that the cases coming from Pennsylvania must have all their "I's" dotted and their "T's" crossed or the case may be lost.

Preparation is the key! It is also important to note that the state courts also render many decisions on the same type of topics that differ from state to state. Decisions may also differ from circuit to circuit. To give examples of differences, you only have to look at decisions from the Supreme Court of Pennsylvania. They have ruled that using dogs to search a locker in a school does fall under the Fourth Amendment (unreasonable search and seizure) that is not the rule in most other states. In a more recent case, the Supreme Court of Pennsylvania ruled that school resource officers were required to "mirandize" students before they question them on school property. This relationship to the Fifth Amendment is not supported in other states.

You should be aware of three key amendments to the constitution of the United States:

The First Amendment – Freedom of Speech
The Fourth Amendment – Search and Seizure
The Fourteenth Amendment – Due Process

These three amendments in our Bill of Rights dealing with the freedoms of speech and assembly, protection from unreasonable searches and seizures, and the right to due process really did not relate to schools until major cases like *Tinker v. DesMoines* 1969, *Goss v. Lopez* 1975, and *New Jersey v. TLO* 1985.

The key we must remember is that "Students do not lose their rights when they enter the school house door." This concept is really stressed by the courts. However, they also stress that students may have fewer rights in schools than they do in the public/community arena.

That is why many courts carefully state again that LEAs may use their written, documented responses as evidence that they did not condone offensive conduct or allow an environment to exist in which such conduct was likely to occur. Remember – document, document, document!

Remember the key federal laws, thus the involvement of the federal courts:

No Child Left Behind (NCLB) 2001
Family Educational Rights and Privacy Act (FERPA)
Protection of Pupil Right Amendment (PPRA)
Title IX (equal protection) 20 U.S.C. § 1681
Equal Access Act (20 U.S.C. §§ 4071-74)
Health Information Portability and Accountability Act (HIPAA)
Individuals with Disabilities Education Improvement Act (IDEIA)

Helpful Hints

No individual can be aware of ALL materials connected with student assistance, student and staff safety, and new cases, laws, and regulations pertaining to schools! However, you do not have to live in fear of litigation. If you, as an

individual, follow process and procedures that will be discussed today, you will most likely not (as an individual) be found:

GUILTY
NEGLIGENT
HELD HARMFUL
NON-COMPLIANT

and lose money or position as long as you demonstrate that you followed process and procedure with no intent to harm a student or a staff member.

Remember, the only thing constant today in education is change! It is not just the resolution of a single issue that is your priority; it is understanding the cause and effect of the problem as well as the processes and procedures needed to resolve the issue and similar issues that will arise in the future. Consider what applies to all students, not just your special area by itself.

With poor planning, preparation, and carry-through, an attorney will say to you, "Don't ask me if we will win or lose the case; ask me how much it will cost us!"

This document is filled with examples of best practices. Best practices are very strong suggestions, statements and recommendations that you should follow to resolve important issues. Please understand that "best practices" are not legal opinions, therefore, if you want a legal opinion please consult your solicitor.

THE CONTINUUM OF LEARNING IN THE TWENTY-FIRST CENTURY

The Formula

Positive operational procedures plus positive instructional procedures equals the potential for safe and successful education.

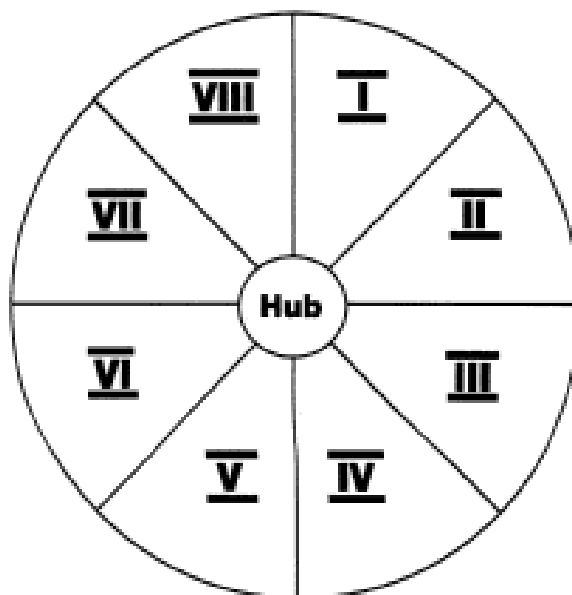
$$\text{P.O.P.} + \text{P.I.P.} = \text{S.S.E}$$

OPERATIONAL PROCEDURES

- A. Student Assistance Programs
- B. Guidance, Psychological and Social Work Services
- C. Health Services
- D. School Police (Resource Officers) and Outside Law Enforcement as needed
- E. Non-Teaching Assistants
- F. Other Support Staff Such as Transportation, Office, Cafeteria, and Custodial
- G. Outside Agencies
- H. Community Groups

ALL OF THE ABOVE ARE DIRECTLY AFFECTED BY THE SCHOOL'S ADMINISTRATION.

Continuum of Learning



- I. The Mission of Schools (What you must do)
 - A. Educate all students.
 - B. Provide a safe and orderly environment for all students.
 - C. Protect the health, safety, and welfare of all students.

- II. The Reverse Mission of Schools (What you must not do)
 - A. Be arbitrary.
 - B. Be capricious (neglecting due process)
 - C. Be deliberately indifferent (deliberate indifference)

- III. The Major Problem Solving Process (Four Steps)
 - A. Are you aware?
 - B. Did you investigate?
 - C. Did you come to a conclusion/reach a decision/make a determination?
 - D. Did you take an appropriate action with no intent to harm a student or staff member?

- IV. The Double Edged Sword
 - A. The Local Educational Agency (LEA) is responsible for the actions of all of their employees. Federal, state and local laws and regulations must be followed.
 - B. Actions taken by the LEA or its employees must be supported by written policies, procedures, guidelines, job descriptions, and contracts – What is your reason and what gives you the authority?

- V. The Seven-Step Support Process
 - A. Is it written?
 - B. Is it specific?
 - C. Is it authorized and by whom?
 - D. Is it published?
 - E. Is it distributed and how?
 - F. Are the staff and students involved in-serviced?
 - G. Is it cross-referenced with other district documents?

VI. Confidentiality Issues

- A. Suspected abuse or actual abuse.
- B. Child at risk (expressed thoughts, threats, or actions) of injuring self.
- C. Child at risk (expressed thoughts, threats, or actions) of injuring others.
- D. Professional certified opinion using additional factors.

VII. Special Need Students and Situations

- A. Is there a written plan?
- B. Is there evidence (demonstrated) that the plan has been adopted?
- C. Is the plan implemented?
- D. Is the plan being followed?
- E. Is the plan assessed and evaluated (record keeping and documentation)?
- F. Is the plan updated as needed (monitor and adjust)?
- G. Is the plan doable, realistic, and attainable?

VIII. Making Parents Allies Not Adversaries

- A. Demonstrate with observable data why you (school staff) are concerned.
- B. What actions/behaviors do you want to see changed (within your area of control)?
- C. Discuss what could occur if your recommended changes do not take place.

Must Know Items

LEA – Local Education Agency or governing body of the school entity (school district, college/university, nonpublic school, private school, charter school, cyber school, intermediate unit, career and technical center). These are LEAs by use, not by law or definition. LEAs pertain legally to public school districts.

The Big Five - policies, procedures, guidelines, job descriptions, and contracts.

The Big Five Supportive People Group – Guidance counselors, psychologists, nurses, social workers, and home and school visitors.

Pennsylvania Supreme Court Case: J.S. vs. Bethlehem SD (July 14, 2000)

Internet Protection Act – Electronic data care, protection, requirements, and use.

U.S. Supreme Court Cases

Name	Topic
Jackson vs. Birmingham Board of Education	Whistleblowing/Title IX (Equal protection)
Tinker vs. Des Moines, Iowa	First Amendment Rights in School/Freedom of Speech
Goss vs. Lopez	Fourteenth Amendment/Due Process
Davis vs. Monroe County, Georgia	Student to Student Sexual Harassment
New Jersey vs. TLO	Fourth and Fourteenth Amendments/Search and Seizure
Hazelwood vs. Kuhlmeier	First Amendment/ Censorship/Student Newspaper
Bethel vs. Fraser	First Amendment/Language that was not appropriate
Vernonia School District vs. Acton	Drug testing for high school athletes
Board of Education Tecumseh, Oklahoma vs. Earls	Drug Testing/Co-Curricular

Legitimate Educational Interest

As an educator, you have a “legitimate educational interest” (a need to know) to review an educational record or to be aware of a situation if needed in order to fulfill your professional responsibilities. Thus, the continued importance of policies, procedures, guidelines, job descriptions, and contracts must always be addressed. If you are a SAP team member, make certain your SAP roles and responsibilities are recognized and placed in writing.

Intent of the Courts and No Child Left Behind (NCLB)

NCLB has a key focus on student's and parent's rights. The courts further add that students are guaranteed equal protection under the Fourteenth Amendment and free speech and association under the First Amendment of the U.S. Constitution. Furthermore, the Equal Access Act of 1984 clearly states the rights of students concerning student clubs. Title IX may also deal with student harassment, bullying, hazing, and whistle blowing.

Suggested Criteria for Critical Issue Staff

The role of the crisis team member, which may be a student assistance team member (core or adjunct), as they work to investigate a crisis situation or individuals involved in a crisis situation is as follows. These members could be an experienced teacher or administrator, a psychologist, a school counselor, or a school police or resource officer.

Qualifications should include*:

1. A questioning, analytical, and skeptical mind-set.
2. An ability to relate well to students, parents, colleagues, and other professionals.
3. Familiarity with childhood and adolescent growth and development, the school environment, and the community.
4. A reputation within the school and community for fairness and trustworthiness.
5. Training in the collection and evaluation of information from multiple sources.
6. Appreciation for the importance of keeping information confidential and of possible harm that may result from inappropriate release of information.

**Source: U.S. Department of Education and U.S. Secret Service*

Tips for Avoiding Poor Decisions (Best Practice)

Make certain that you have "reasonable suspicion" before you take action that you are certain will be questioned or challenged. Note that schools and the administrative/staff work under the umbrella of reasonableness. However, law enforcement agencies and the courts work under the umbrella of probable cause. Is

the individual guilty without a shadow of a doubt? Thus, when schools and their staff members have database or factual observation or information from a source that can be identified and determines that the source is credible, you can proceed with a search without fear of a fourth amendment violation. The fourth amendment protects against unreasonable search and seizure. However, it is important for administrators (narrow band staff members in Pennsylvania) to know their rights as well as their obligations to protect all in order to keep a safe and orderly environment. Don't back off if you're concerned. Learn how to back up your rights to protect.

Never forget due process rights for all students and staff.

- Include due process rights when writing or updating all conduct-related policies, procedures and guidelines.
- Make certain that the accused (the alleged guilty party) has an opportunity to present their side of the occurrence.
- Make certain that the alleged victim is given all rights and opportunities to relate their side of the story.
- All students must be given copies of their school rules and regulations. At the middle and secondary levels, send home the rules and regulations packet. The students and the parents should sign and return the first page that states they have received and read the packet. The remainder of the packet stays at home with the student and parent. It is essential that the school staff make every effort to have the front page returned for every student. Do whatever is necessary to have this signed page returned. It is an extremely important part of the due process procedure. In the event that a parent refuses to return the front page because they disagree with a section or a policy, explain to them that their signature does not mean they agree, it means they are in receipt of the document and they have read the document. If they still refuse to return the front page and you feel your communication efforts are exhausted, then log the date and time of your last call or letter and why the parent had refused. Place this explanation and a blank dated front page in the student's file. This will serve as your record. You should be very comfortable in telling the parent what you will do or have done in this matter. Always remember: document, document, document!
- All students must be given written notice of any actions being considered against them for violation of school rules and regulation.
- All evidence and documentation is available for examination by the accused party.
- Make certain the school considers all evidence.
- Appeal procedures must be included and made clear.

Documentation. Use the saying, "if it isn't documented, it didn't happen." This is the best way to ensure procedurally correct and positive due process. Documentation should be recorded from observable data. When incidents occur that you feel (in your professional certified opinion) are important or may be noteworthy, document them. If you err, err on the side of safety and protection for the student and the district. A very important question to raise is, "how do you make hearsay data into observable data?"

Note the Example: *You are an English teacher and one of your students comes up to you privately after class (11th grade English) and states that her friend, Jill, also a student in your 11th grade English class, drank heavily on the way to the football games the last three Friday evenings. She states that Jill almost got into numerous driving accidents and damaged her car. She tells you how worried she is about her friend.*

What do you do? You record the conversation as follows:

On Tuesday, October 18th at 11:30 a.m. at the conclusion of my 11th grade English class, Tracy Jones, one of my 11th grade students told me in private that her friend Jill Evans, also a student in my 11th grade class, is "drinking heavily like a fish and on the way to the football games the last three Friday evening she almost got into numerous during accidents and damaged her car." She told me how worried she is about her friend.

What have you accomplished? You now have more than a hearsay statement. You now have an observable action statement given to you directly by a person you can identify. Furthermore, you made a judgment (it is your professional certified opinion that the telling student demonstrates no intent to harm her friend - she wants to help). You have now reached the level where you are now aware.

Based on the procedures in your school, this may be dealt with by you, the teacher, a counselor, an administrator or other designated staff, or referred to the Student Assistance Team. When the parent is called, you will certainly identify who you are and why you are calling. Remember, step one in the process of making parents allies not adversaries: Why am I concerned? Most certainly the parents will ask who told you. Your answer (best practice) should be, "Unless this become a court case or a serious discipline matter I am not required to identify my source(s). However, I will tell you that I feel the source(s) wants to help your daughter and showed no **intent** to harm her in any way.

Appropriate student and staff training and awareness. Just handing out an article or a policy, procedure or guideline on harassment is a tiny step in the right direction, but it is not enough. Students and staff need to be reminded and trained of their obligation and must fully understand that the purpose of their receiving a copy is to help minimize problems and to demonstrate preventive maintenance. This can only be accomplished through effective training and awareness.

Documentation:

Documentation is an extremely important part of the student assistance process. In recent court decisions, federal and state courts have gone out of their way to commend districts that have strongly supported their position with excellent documentation.

Examples: J.S. v. Bethlehem Area School District (student expulsion/home website) Pennsylvania Supreme Court, 2002

Board of Education (Tecumseh, Oklahoma v. Earls (Drug Testing) U.S. Supreme Court, 2002

Sypniewski v. Warren Hills Regional Board of Education, New Jersey (t-shirt incident) Third Circuit 2002

Adam J. v. Keller Independent School District (Special Education) Fifth Circuit, 2003

In all of the above cases, even if not resulting in a total victory for the district, the court noted and commended outstanding record-keeping (documentation) by the district or a judgment that did not cost them a loss of revenue.

Redacting: Redacting means to remove restricted information. Educators (best practice) should redact educational records that contain the names of other students prior to the parental review of their child's records. The Family Educational Rights and Privacy Act (FERPA) clearly states that parents may not review records at the expense of other parent's children.

Tips for Student Record-Keeping

1. Policies adopted for records must adhere to FERPA regulations.
2. Accurate (observable) records must be maintained (no hearsay).
3. Corrections redacting or adjustments to records should be dated and initialed by the person responsible with approval of school officials.
4. Do not label students in records.
5. Discipline records must be specific with copies going to students and/or parents.
6. Do not discuss records with third parties or without a need for the party to know.
7. Student records must be kept in a safe and secure place.
8. Student records should not be removed from the school without proper authorization.
9. Non-custodial parent has the right to access records unless prohibited by the court.

10. Narrow your band on sharing information to include only what is requested.
11. Do not release information by telephone or electronic devices unless the requestor's identity is confirmed.
12. If in doubt on student records, after the policy review, contact your school's legal counsel.
13. Make certain you have clear policy on storage of electronic student data.

Distribution of Materials

This is the best practice (from the Third Circuit Court) for the distribution of materials such as fliers

1. Must receive approval by the school administration prior to distribution.
2. Must have a nexus with the students or the school.
3. Must be non-partisan and unrelated to an election or labor negotiations.
4. Does not seek to exploit students for the benefit of a profit-making organization.
5. Does not solicit money.

Best practice would be to have a board-approved policy on the above.

Custody Cases

Custody cases can be a Student Assistance Program nightmare. They are the cases that if not handed properly can cause the school staff and the parents to become long lasting enemies. Therefore, it is essential that the correct processes and procedures be followed. Best tips and practices state:

1. The school must never allow staff to be in the middle of a custody dispute.
2. If any staff member is subpoenaed to court to testify, please make certain their answers to questions are short, to the point, only answering what has been observed by them directly, and is within their area of expertise and control. Do not give opinions such as "I think he would be better off with his mother, not his father" or "If he were placed on medication he would calm down and not worry about the divorce."
3. Before going to court make certain a district official or the solicitor of the district finds out:
 - a. Are you really needed?
 - b. What will you be asked?
 - c. Are records enough or must you be there?

- d. Do you need legal assistance?
 - e. What is needed and are you fully understanding of the items you are bringing?
4. When you testify:
- a. Answer only what is asked in the shortest manner possible. Narrow your information to only what is requested.
 - b. Make certain you give no hearsay in your testimony.
 - c. Make certain you render no opinions on areas outside of your control (only your certified professional opinion in your areas of control).
Example: "Yes, I observed him out of his seat twelve times during our reading period. He disrupted my reading group."
 - d. Speak clearly and not in "educationese."
 - e. You may refer to notes, but realize that court as well as the parties involved have the right to receive and examine your notes.
5. Scope and sequence for the school in custody/separation matter.
- a. The least effective item you can possess in any parental custody dispute is when one parent gives you verbal notice that only they can have authority with the child and not their significant or separated or divorced other.
 - b. The next weak level would be a note.
 - c. Then moving up the chain would be a letter from one parent's attorney.
 - d. Then a joint agreement from both parents and their attorney.
 - e. The best record (of course) is a court order that comes through your county's prothonotary office.

Once there is a court order, do not attempt to change, alter, or adjust any part of that order, no matter how you feel.

For example: If the order states that one party may pick the child up for the weekend at the child's residence at 4 p.m. and the party requests that they pick up the child at school to save time, you must say no! You have no authority to change the court order (regardless of how simple the request seems). Again, all parties must understand that you can never be in the middle.

6. The four types of custody (simple explanations)
- i. Legal Custody -- A court order giving legal authority over a child to an individual.
 - ii. Partial Custody -- This allows a parent the right to take possession of a child away from the custodial parent for a certain amount of time.
Example: Every other weekend from 6 p.m. Friday until 6 p.m. Sunday.
 - iii. Physical Custody -- This is the actual physical possession and control of a child. In most cases, the parent with physical custody generally has the authority to make educational decisions.

- iv. Shared Custody -- Both parents share the child. It presumes that both parents have continuing contact with the child.

Please note that even with shared custody, most states require that the child attend one district. It is important that the primary residence is established by at least one of the parents within your LEA.

When custody and its ramifications are recorded and shared with the school (court order), make certain that the child's teacher(s) knows what he or she can do, share, and proceed with all concerned. If the non-custodial parent demands items or actions that do not fall within the courts order, say no and contact the custodial parents to handle the situation (not the school). The role of the school is to clearly state that if the request is not within the court order the district cannot break the law and do it! The answer must be NO!

Search and Seizure

Why make all these rules and regulations? Is it to see how many students we can catch doing something wrong? The answer is absolutely NO! We make our rules and regulations to see how many students we can protect so that students can learn and teachers can teach in a safe, disciplined, orderly, and drug free environment.

This brings us to the area of search and seizure. Countless publications as well as interpretations have been written on this subject. Therefore, in an attempt to clarify and give you best practices on the issue, we have listed below key findings, terms, and examples:

1. The United States Supreme Court states that "probable cause" is not required for school searches because educators lack the legal and law enforcement training necessary to make probable cause decisions. In addition, the time required to demonstrate probable cause is time that would take away from the major task of educators (to educate students). Moreover, the United States Supreme Court has stated that students in school have a lesser expectation of privacy than the general public. Therefore, you need to know that searches of school students have different standards than those of citizens in the general public. Certainly, school must still demonstrate unmistakable awareness of the need to balance the individual rights (privacy needs) of students against the very real need to maintain a safe, disciplined and drug free educational environment. The court will apply the legal test of "was the search reasonable?" (Highlight from Supreme Court cases and from the Norfolk Virginia School District.)
2. What is a search? A search, says M. Levin, Esq. Pennsylvania School Boards' Association, is "an actual examination of someone's property or body where or when the individual has a reasonable expectation of privacy."
3. In the Commonwealth of Pennsylvania, the following are examples of searches:

- a. Examining the contents of a student's pockets (including pants as well as outer jackets).
- b. Examining the contents of a student's locker. It is very important that, at the start of the school year you establish in writing that the lockers are the property of the school and they are only loaned to the students. Furthermore, state that you (the school officials) may search the lockers with reasonable cause to protect the health, safety, and welfare of the student body and staff at any time, as well as to keep as safe and orderly environment.
- c. Examining the contents of a student's car. You should have the students and parents sign a permission slip authorizing driving to and from school and the adherence to the rules and regulations listed on the form. Parking on school property is a privilege not a right and these rules are permissible. Quite simply, a student who will not sign for permission to park will not be granted the privilege to park on school property. Be certain to give copies of parking rules to the student drivers and their parents.
- d. Examining the contents of a student's pocketbook or wallet.
- e. Examining the contents of a student's book bag.
- f. A pat down or frisk.
- g. Urine and blood tests.
- h. A dog sniffing a locker. (This is not the case in most other states.)
- i. The use of metal detectors on (students) individuals.

4. Remember, the key question with student searches in school is "Is the search reasonable?"

5. Courts, law enforcement, and most agencies use probable cause. Is the individual guilty without a shadow of a doubt?

6. The Fourth Amendment of the United States Constitution provides that individuals have the right to be secure against unreasonable searches. Therefore, make certain your search and seizure is truly reasonable.

7. With school searches and seizures today, courts look for sufficient reason, not absolute certainty (is it reasonable?).

8. Searches, especially at the secondary level, should be conducted by narrow band officials (administrators) rather than by wide band staff (teachers, support staff). Courts feel that the more narrow the category of searchers, the more chance of consistency. In addition, disciplinary actions are usually carried out by the administration (narrow band staff are administrators).

<p>9. Best practice statement to include in the district's search and seizure policy: "An administrator may seize any evidence indicating that a student is violating or has violated the law or a school rule, that the administrator may find as a result of a search of a student's property,</p>
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clothed body or areas designated for a student's use if the search is proper and reasonable."

10. Make certain that the search and seizure policy is placed in student handbooks and discussed at the start of the school year. Other key policies to be discussed are those such as substance abuse, hands on, suicide, weapons, and the discipline code under the discipline policy of the LEA (this is not an all inclusive list).

11. When a staff member (administrator) conducts a search, always have a witness present and, of course, if there is any touching involved, the search needs to be conducted by a person of the same gender as the student.

12. Provide for privacy during searches.

13. Urge students not to share their lockers with others. Try to impress upon them that their locker is really their home away from home with limited privacy. Stress the importance of them controlling what they can control by allowing no other person to use their school assigned locker.

14. Stress again and again that students in the right have nothing to fear.

We have only scratched the surface of school searches and seizure. Common sense should be a key ally for you in this area. Don't ask a student to empty his pockets if you are searching for a missing basketball! Don't demand a student empty his pockets two days after you find ten dollars is missing from a teacher's desk. Of course, don't take action that demonstrates using an elephant gun to shoot a fly by asking the police or the central office to search the desk of a kindergarten child for some missing stickers. That search should be so non-invasive that certainly the teacher as a regular part of her job may do that task. Remember "common sense."

A key additional clause: A student who refuses the request for a search by an administrator that is proper and reasonable may be disciplined under the district's discipline policy. Action may include suspension or referral to the board for an expulsion hearing.

Best Practice for Student Searches:

1. Observing a weapon.
2. Observing the breaking of a law or a school rule.
3. Threats to do bodily harm.
4. Tips provided by others that you judge to be reasonable.
5. Student found in a restricted area known to be a problem area for smoking or drug exchange.
6. Smell of items such as alcohol, tobacco or marijuana on the suspected student.
7. Observation of an item. Example: a jacket just reported to be stolen.
8. Student in your professional certified opinion, appears to be lying.
9. A student runs from you to escape questioning.

10. The student fits the description of a suspect wanted in a recent offense.
Please note that this is not an all-inclusive list.

Confidentiality/Personal Notes

Without question, today's educators find themselves overloaded with information about their students. In many cases, they feel they may be in possession of too much information. At other times, they are frustrated because they are not aware of information that possibly could have prevented negative or destructive actions by their students. Thus, the question becomes, "What do you need to know? What can you share? and, What can't you share or simply state what is confidential?"

1. In the world of education, never promise blanket confidentiality.
2. Students will come to you for assistance based on their trust and confidence of you; not on what you must share with others based on needs. Therefore, it is always important to say (by placing in writing in your operations handbook, office, room, or even in your course syllabus), "I want to help. I welcome our dialogue. I will try my best to keep our conversation confidential. However, if you bring me information that in MY PROFESSIONAL CERTIFIED OPINION indicates abuse, danger to yourself, or danger to others, then there can be no such thing as confidentiality. I am not the decision maker for you. Therefore, because of the seriousness of the matter, I need to contact your parents or a responsible school or agency staff member."

Certainly, in many cases you can assist the student in opening dialogue with their parents, but you must not take the problem totally on your back. A good tip from the Harvard Management School is to try and return problems to the responsible source, if possible.

3. If you err in an issue that may involve confidentiality, ERR ON THE SIDE OF SAFETY.
4. Remember the three big areas for basic EXCEPTIONS to confidentiality:
 - Abuse (reported to child protection services if a family member or to the office of the district attorney if the accused is not a family member
 - The student poses a danger to himself or herself in your professional certified opinion. (The phrase "professional certified opinion" heightens the recognition and experience and the seriousness of the issue in question.)
 - The student poses a danger to others (in your professional certified opinion).
5. Confidentiality has many gray areas, so the consideration of health, safety, and welfare as well as a safe and orderly environment should always be a factor in your decision making process.
6. Rules and regulations may differ from circuit to circuit and even from state to state. Levels of confidentiality are usually much higher and more

expansive for school counselors, psychologist, social workers, home and school visitors, and nurses than they are for teachers and even to a degree for administrators. Thus, knowing if you do make a mistake, do so on the side of safety. You must do everything in your power to keep your school a safe, disciplined and drug free facility while at the same time protecting the individual rights of your students whenever possible. Without question, this is quite a job!

7. It appears in the review of numerous cases that staff members are more likely to get into legal difficulty (showing deliberate indifference or negligence) when a casual relationship can be proven between the staff member's conduct (or omission) and the student.

- Causal relationship - being a cause
- Omission - something left out or neglected.

8. An interesting development that touches and skirts the issue of confidentiality at the same time is the publication of the Georgia Management Agency on "How to Identify Destructive Behavior in Students." The publication discusses indicators that need to be reported such as:

- Articulation of a plan to commit a violent act
- Use of terms such as "get even" or "retaliate"
- Description of an act of violence towards animals
- Articulation of feelings of persecution
- Shows severe rage for seemingly minor reasons

9. When pushed to a corner on the issue of confidentiality, you want to do the right thing by not demonstrating intent to harm a child but by getting assistance for that child as you protect them and others to keep that safe, orderly and drug free environment and protect the health, welfare, and safety of all concerned from abuse, harm to themselves, and harm to others

10. Remember, there is a great amount of student information that you may "have the need to know" especially if you are formally helping the student through your Student Assistance Program or as a counselor or administrator. Make certain that the information you may have the "right to know" is not shared or overheard or exposed to others who are not involved and who do not have the "right to know!" Therefore, avoid confidential discussions on students in the staff lounge where staff members who are not involved could overhear your conversation. Avoid sharing written reports with staff members who do not have any "need to know."

11. Remember that confidential material can be subpoenaed. Make certain your reports contain factual, observable information with no hearsay. Make certain that you understand there is a big difference between a personal note and a confidential note.

A personal note is a short memory aid, seen only by the writer and destroyed immediately after the performed task is completed. Example: The nurse writes a short note to herself that says "When Jim Smith returns to school tomorrow check him

for head lice." After the nurse checks the child she destroys the note. That note is usually not one that can be subpoenaed. However, if the note written by the nurse is shared with a teacher, it loses its status as personal note and becomes a confidential note and can be subpoenaed

Foreseeability

Noting our responsibility for working to maintain a safe and orderly environment, we should be aware of an area called "foreseeability." Simply stated, parents, advocates, lawyers, and the courts will ask, "Was this harmful incident foreseeable by the individual or the district?" We also find the courts saying you are responsible but you are not the guarantor of safety. Therefore, let us examine a few sample cases.

Example: Two students, Miss Hatfield and Miss McCoy have a history of fighting and harassing each other in school. There have been seven recorded incidents where disciplinary action was taken involving the two of them in the last two years. There is a junior class bus trip leaving your school today. You are the assistant principal and as you check the buses before they leave your school for the trip, you see the two of them sitting next to each other.

Question: Are there any foreseeability factors or actions that you see that should take place or do you assume good behavior will be demonstrated by all?

Answer: Foreseeability factors say SEPARATE THE TWO STUDENTS and alert the staff member in charge of that bus that they are to stay separated.

Example: Two students sitting next to each other in class have had no difficulties with each other from the start of school in September until March 1. On March 2, during a two second argument over a pencil's ownership, one of the students pokes the other student in the eye and injures him. The injured child's parents sue for lack of supervision (even though the teacher was in the room) and because the teacher should have stopped the injury from happening. The case is decided in favor of the teacher and the district. The teacher had no reason to foresee what happened. There was no foreseeability on the part of the teacher or the school in this case.

Example: Over twenty students get food poisoning after eating lunch in the school cafeteria. Several parents sue and the judge rules in favor of the district. There had not been a problem prior to the incident. However, several weeks later, over fifty students get sick (again food poisoning) after eating lunch in the cafeteria. Again, a group of parents take the issue to court and this time the results are different. The court rules the district must demonstrate foreseeability.

Question: After the first incident, did they (the district):

- Make certain that employees washed their hands carefully

after using the restroom (signs posted, etc.)?

- Ensure the cooks and servers were wearing gloves when coming in contact with the food served to students (also hairnets)?
- Ensure the ovens and refrigerators and food freezers were set at the proper temperatures?
- Ensure the vegetables were washed before use (especially government surplus items supplied from out of the country)?

Again, we emphasize the point that although you cannot guarantee safety, you must work to provide a safe and orderly environment working to protect the health, welfare, and safety of all students.

The New York Supreme Court reversed a lower court's decision and determined that an assault on a student, after the school instructional day, in school by a trespassing individual (a former student), was not foreseeable by the district. Though the student who was attacked brought evidence that trespassers had previously been in school after the school day, there were no acts of violence. Thus, the student could not demonstrate negligence nor deliberate indifference that the district failed to respond to a dangerous condition that resulted in injuries to the students. The aspect of foreseeability was not proved.

Shocking The Conscience

The courts are also carefully reviewing the area of "shocking the conscience." Do humans make mistakes? Is it true even educators make mistake? Of course, the answer is yes, everyone makes mistakes. However, in too many cases, educators fearing trouble, job actions against them, or the threat of litigation, pull back and are afraid of doing something that is not viewed as totally safe, standard, or totally acceptable.

Studies from the National Elementary and Secondary Principals' Association state that fear of litigation makes a big difference in actions taken (or not taken) by administrators. Please note that we are not endorsing that concept that educators need to make mistakes, but are stressing that doing nothing is also a mistake. Your intent to resolve issues on behalf of students is a key to success to efforts that do not "shock the conscience." The courts will work to determine if the actions created a constitutional violation (was the action used to cause harm or serious injury, was excessive physical force used, does the action have an unclear objective?). Recent Pennsylvania cases demonstrate both sides of the issue.

Case One: An administrator in Pennsylvania pushed a student into a doorknob. Federal court ruled this act wasn't to the level that violated her constitutional rights or caused a constitutional violation. (The district did discipline the administrator.) The action taken by the court in no way supported the action of the administrator. The judges stated that there was no clear reason for the administrator to push the student and they were not happy with the action, but the action did not rise to the level of "shocking the conscience."

Case Two: A teacher in Pennsylvania yelled at a student in his math class. This resulted in a verbal confrontation. The Third Circuit three-judge panel ruled that even though the teacher had a history of intimidating and berating his students, he did not physically abuse the student and his actions. Although totally rejected by the court, this case did not rise to the legal level of “shocking the conscience.”

Case Three: In a Pennsylvania case where a student died as a result of strangulation on a school bus from an improper harness restraint, the court noted the conduct and procedure in this case were deliberately indifferent and certainly “shocked the conscience.”

The At Risk Generation

Society screams out for student assistance programs! Careful examination of major reports from the American Medical Association, the American Bar Association, the Carnegie Report, the National Institute of Health, and the U.S. Department of Education highlight the fact that there are too many young people living unhealthy lifestyles and facing devastating futures. Too often we hear the phrase that they are “at risk.” There are five major reasons why this is true:

Media Influence: The influence of media, movies, television, the printed word in magazines, as well as newspapers, MTV, and the Internet, create a world of tremendous learning opportunities as well as a world of risks, false images, dangers, non-factual reporting and numerous mixed and confused messages. Too often, today’s news articles lose their objectivity by containing not only hard news, but also editorial comment and commercialism all in the same article.

Lack of Parent Modeling: With the economy of today, many parents are not able to spend the time needed to do all they would like to do with their children. We find that they often “talk the talk, but they do not walk the walk.” They often confuse quantity of time with quality of time. Their responsibility for their children does not end when the child is attending school. We know that parents are the decision makers! Therefore, schools and agencies must work together with parents to lower the barriers of learning affecting students so that students can achieve maximum learning and teachers can achieve maximum teaching!

Instant Gratification: We have entered and enhanced the “I want it and I want it now” generation. I want to be an Olympic Champion (but without the practice); I want to go to an Ivy League school (but without the study); I want to be the best (but without the commitment!)

A violence, drug, and sex immune society: Unfortunately, too many of our youth today believe that drugs, risky sexual behavior, and violence are

acceptable ways of life as well as viable alternatives to problems solving, growth, and development. These factors are a serious concern.

Moral Decline: Our society as viewed in survey after survey, calls our poor values, our tolerance of bad behavior, pornography, and the reduced influence of religion as major players in the casual factors of decline. Therefore, it is no surprise that the above "big five" are synonymous with our "at risk generation."

Our schools must work to provide comprehensive instructional and support programs designed to meet the educational and social development of students. There must be effective programs that strive to prevent destructive behavior including: substance abuse including alcohol and other drugs, violence, suicide, dropping out, risky sexual activity, bullying, harassment, hazing, and discrimination.

The programs must promote positive and responsible attitudes and behaviors through classroom instruction, alternative schools, school and community activities, as well as collaborative planning and decision making with students, parents, teachers, administrators, police, agency, and community leaders.

Zero Tolerance

This publication attempts to clearly explain not only the laws, but give the best and most realistic practices that support "assisting students" so they can maximize learning and teachers can maximize their teaching. The staff must work to reduce the barriers to learning at the same time students work to learn in a safe, disciplined, orderly, and drug free environment. It is also extremely important to make parents an important part of the educational process.

In May 2003, an honor student, two weeks before graduation, went camping over the weekend with friends. He drove the family pick-up (an open bed truck) to the camping site and after returning home on Sunday, he drove to school on Monday morning. He parked in his regularly assigned spot and proceeded to class. As the parking lot security person made his rounds, he noticed something shiny reflecting in the back of the student's pick-up truck. After a closer look, he picked up two sharp objects between the ridges in the floor of the bed of the truck. One was a kitchen knife and the other was a barbeque fork. He turned these "weapons" into the office (the weapons policy was put into effect after the events of Columbine and September 11, 2002). The student was suspended and then expelled, not only losing the right to graduate with his class, but also now losing a competitive four-year scholarship to a college he had competed for and won. The uproar from his parents as well as the community was strong, but the zero tolerance policy held. To sum up the case: weapons possession on school property during the school day meant expulsion according to school policy. Could this be legal? It could be. Should it be legal? It could be. Are there other alternatives to his problem? There certainly are other directions that can be followed. One strong example is to include the following type of clause in your policies that deals with weapons, substance abuse or other risk issues.

SAMPLE ZERO TOLERANCE EXCEPTION CLAUSE

The Chief School Officer (or his or her designee), on an individualized case basis, may appeal to the board in writing, requesting that the action called for in the LEA's policy may be changed or adjusted based on extenuating and mitigating factors of the individual case directly related to the policy.

In the above case, as you focus on the expulsion of the student, please carefully note a very realistic alternative to using the zero tolerance exception as in the sample listed above.

Place yourself in the position of principal of that high school. Your parking lot security officer brings you the barbeque fork and kitchen knife. He has already looked up the license plate of the truck and has the name of the student driver in writing. He describes the discovery to you as well as bringing you the actual items. You are now aware of the situation. Of course, your policy does not permit weapons in school and certainly a knife may be a weapon. (Note that the FBI definition of a weapon is any object used with the **intent** of doing harm.)

However, before we move toward expulsion, let us investigate further. The principal investigates by questioning the student (this following a due process to get his side of the story). The principal questions other students identified as being part of the weekend trip as well as the student who drove to school with the accused. In addition, the principal examines the record of the accused. Putting all this together, the principal now concludes his investigation.

Next, the principal studies all aspects of the case and reaches a decision (makes a determination/comes to a conclusion). His conclusion is that the accused student, though in possession, demonstrated NO INTENT to use the object in a harmful manner as a weapon.

The next step is determining what is an appropriate action. In the previously noted case, after presenting written facts of the occurrence to the board of school directors, the principal states that the facts of the case do not warrant expulsion. He suggests another action and requests that the student be permitted to graduate with no weapons violation charge on his record. Legally, the final decision rests with the board of school directors. Please note that in the above actual case (Georgia) the board did agree to follow the recommendation of the principal.

The Role of the School Board (Governing Body)

In every state in the nation, making and setting policy is the function of the board of school directors. Without question, policy setting is crucial in the daily life of a board member. In the Commonwealth of Pennsylvania, school boards have four major functions:

1. Appointing a superintendent;
2. Approving the total budget including all staffing, job descriptions, and contracts;
3. Approving the total curriculum; and
4. Setting policy for the district.

The policies set by the board have a tremendous influence on the functioning of the school district. The manner in which they address zero tolerance issues is key to the success of the district, their students, staff and community.

The Four-Step Problem Solving Process

Educators know that it makes sense to use preventive maintenance techniques and attempt to solve problems before they reach the crisis level. Never has this concept been more a reality in the world of educators than it is today. The following four-part process appears to be the best formula for success.

1. Are you aware?
2. Did you investigate?
3. Did you come to a decision (make a determination, come to a conclusion)?
4. Did you take an appropriate action (with no intent to harm a student or a staff member)?

Lets further examine the process step by step:

Step 1: Are you aware?

When a phone call gives you information about drugs being stored in student Jones' locker in hallway #3, you are now aware. Thus, you are now officially involved or you certainly should be involved in the problem solving process. A good rule of thumb to follow is "even the slightest suspicion of misconduct needs to be taken seriously and warrants investigation." The days of being aware and disregarding the situation must end if you have any hope of being perceived as a successful educator. This is especially true in the administrative arena. Remember to ask yourself, are your actions interruptable and observable?

Step 2: Did You Investigate?

This is the second part of the problem solving process. Make certain you **never**:

1. Refuse to investigate when you are aware!
2. Make statements like, "I know Sam and he would never do anything like that!" or, "She comes from such a good family, so she would never lie!"
3. Make certain you always get written statements from all parties.
4. Make certain that all statements reflect observable data.
5. Make certain you look at all information and data not just those items that support what you would like to see.
6. Be thorough and comprehensive but don't add words for the purpose of making a larger report.
7. Leave all hearsay information out of your investigation.
8. Include nothing in your investigative report that you do not expect to be read by others.
9. If asked, you will try to keep names of information providers as confidential as possible; but they must realize if a case reaches the level of an expulsion hearing or a court case confidentiality is not possible.
10. Do not give out information, especially to the media, while you are investigating.

Many situations warrant saying nothing, especially to the press during an investigation. Therefore, state the following:

- a) We are certainly aware of the situation.
- b) We are investigating and when we complete our investigation, we will make a determination and will take appropriate action.

Best practice tips for dealing with the press, especially during an investigation: Find other time to speak with the media other than at crisis or contract time. Do not say foolish words like: "The shooting did not occur on our school property so our students are safe." Remember, difficult situations can happen anywhere. Be prepared. Always have a safety plan.

Step 3: Did you reach a conclusion?

This is the third part of the problem solving process asking "did you reach a conclusion; did you make a decision; did you make a determination?" This is the part of the process where you put together all of the assembled information with **no planned intent to harm the child**. Make certain that your data is observable and not hearsay. Make certain you include all information that is available so that your decision is all-inclusive. Never make your report on what you feel others would like or what is popular. Make the decision on what is

right! Make certain your decision gives full due process to both the victim and the accused.

Step 4: Did you take an appropriate action?

This is the step that demonstrates the integrity and credibility of the decision maker. This is the step that is seen and observed by your many publics and the step that can cause you conflict, confrontation, or litigation. One only has to read the newspaper or watch the daily television reports to see what occurs when people are aware of situations and are perceived as not taking or don't take appropriate actions.

It is extremely important to realize that even if you follow the process 100% of the time, as human beings, we can still make a mistake. However, the strength of this process that has been and continues to be demonstrated in case after case is that if you follow the process and demonstrate no intent to harm the student or staff member (and are truthful in each aspect of the process), you most likely will not be found guilty, held harmful, negligent, or liable in the case in question.

Student Rights and Responsibilities

We must always be aware of the thin line separating individual rights and protection for all, but if there is any question or reasonable doubt we should err on the side of safety. We must work hard to achieve appropriate and timely reactions to any abnormal situation. We must also work hard to involve our students in decisions that affect them. They should not only understand, but they should be part of the process and, if possible, part of the solution. Never be afraid to speak up to protect the rights of your students, staff, your LEA, or yourself.

A student rights and responsibility policy should be developed with input from students, staff, and community, and of course, approved by the board of school directors. The policy should list the rights of students and also the responsibilities of students.

Examples of partial content:

- A student will not make another student or staff in the school feels unsafe.
- A student will not call any other student or staff member a name that will hurt them.
- A student who participates in any destructive act in school will be disciplined accordingly under the rules of the school's discipline code. In addition, any student who is involved in the planning of the act or is aware of an act of destruction that has or may take place without contacting the administration immediately will be disciplined accordingly, under the rules of the school's discipline code.

The above statements demonstrate responsibility. It is extremely important that we stress to our students that they are not being tattletales if they report to a responsible school staff member any action that may interfere with the health, safety and welfare of themselves or others. They need to fully understand a reasonable guarantee should be a safe, disciplined, and drug free learning environment for all.

Tips for Avoiding Poor Decisions (Best Practice)

1. Make certain that you have “reasonable suspicion” before you take action that you are certain will be questioned or challenged. Note that schools and the administrative/staff work under the umbrella of reasonableness. However, law enforcement agencies and the courts work under the umbrella of probable cause. Is the individual guilty without a shadow of a doubt? Thus, when schools and their staff members have database or factual observation or information from a source that can be identified and determines that the source is credible, you can proceed with a search without fear of a fourth amendment violation. The fourth amendment protects against unreasonable search and seizure. However, it is important for administrators (narrow band staff members in Pennsylvania) to know their rights as well as their obligations to protect all in order to keep a safe and orderly environment. Don’t back off if you’re concerned. Learn how to back up your rights to protect.
2. Never forget due process rights for all students and staff.
 - Include due process rights when writing or updating all conduct-related policies, procedures and guidelines.
 - Make certain that the accused (the alleged guilty party) has an opportunity to present their side of the occurrence.
 - Make certain that the alleged victim is given all rights and opportunities to relate their side of the story.
 - All students must be given copies of their school rules and regulations. At the middle and secondary levels, send home the rules and regulations packet. The students and the parents should sign and return the first page that states they have received and read the packet. The remainder of the packet stays at home with the student and parent. It is essential that the school staff make every effort to have the front page returned for every student. Do whatever is necessary to have this signed page returned. It is an extremely important part of the due process procedure. In the event that a parent refuses to return the front page because they disagree with a section or a policy, explain to them that their signature does not mean they agree, it means they are in receipt of the document and they have read the document. If they still refuse to return the front page and you feel your communication efforts are exhausted, then log the date and time of your last call or letter and why the parent had refused. Place this explanation and a blank dated front page in the student’s file. This will serve as your record. You should be very

comfortable in telling the parent what you will do or have done in this matter. Always remember: document, document, document!

- All students must be given written notice of any actions being considered against them for violation of school rules and regulation.
- All evidence and documentation is available for examination by the accused party.
- Make certain the school considers all evidence.
- Appeal procedures must be included and made clear.

3. Documentation: Use the saying, "if it isn't documented, it didn't happen." This is the best way to ensure procedurally correct and positive due process. Documentation should be recorded from observable data. When incidents occur that you feel (in your professional certified opinion) are important or may be noteworthy, document them. If you err, err on the side of safety and protection for the student and the district. A very important question to raise is, "how do you make hearsay data into observable data?"

Note the Example: *You are an English teacher and one of your students comes up to you privately after class (11th grade English) and states that her friend, Jill, also a student in your 11th grade English class, drank heavily on the way to the football games the last three Friday evenings. She states that Jill almost got into numerous driving accidents and damaged her car. She tells you how worried she is about her friend.*

What do you do? You record the conversation as follows:

On Tuesday, October 18th at 11:30 a.m. at the conclusion of my 11th grade English class, Tracy Jones, one of my 11th grade students told me in private that her friend Jill Evans, also a student in my 11th grade class, is "drinking heavily like a fish and on the way to the football games the last three Friday evening she almost got into numerous during accidents and damaged her car." She told me how worried she is about her friend.

What have you accomplished? You now have more than a hearsay statement. You now have an observable action statement given to you directly by a person you can identify. Furthermore, you made a judgment (it is your professional certified opinion that the telling student demonstrates no intent to harm her friend - she wants to help). You have now reached the level where you are now aware.

Based on the procedures in your school, this may be dealt with by you, the teacher, a counselor, an administrator or other designated staff, or referred to the Student Assistance Team. When the parent is called, you will certainly identify who you are and why you are calling. Remember, step one in the process of making parents allies not adversaries: Why am I concerned? Most certainly the parents will ask who told you. Your answer (best practice) should be, "Unless this become a court case or a serious discipline matter I am not required to identify my source(s). However, I will

tell you that I feel the source(s) wants to help your daughter and showed no **intent** to harm her in any way.

4. Appropriate student and staff training and awareness. Just handing out an article or a policy, procedure or guideline on harassment is a tiny step in the right direction, but it is not enough. Students and staff need to be reminded and trained of their obligation and must fully understand that the purpose of their receiving a copy is to help minimize problems and to demonstrate preventive maintenance. This can only be accomplished through effective training and awareness.

Documentation:

Documentation is an extremely important part of the student assistance process. In recent court decisions, federal and state courts have gone out of their way to commend districts that have strongly supported their position with excellent documentation.

Examples: J.S. v. Bethlehem Area School District (student expulsion/home website) Pennsylvania Supreme Court, 2002

Board of Education (Tecumseh, Oklahoma v. Earls (Drug Testing) U.S. Supreme Court, 2002

Sypniewski v. Warren Hills Regional Board of Education, New Jersey (t-shirt incident) Third Circuit 2002

Adam J. v. Keller Independent School District (Special Education) Fifth Circuit, 2003

In all of the above cases, even if not resulting in a total victory for the district, the court noted and commended outstanding record-keeping (documentation) by the district or a judgment that did not cost them a loss of revenue.

Journal Writing, Backpacks, and Cell Phones

The debate on what can and cannot be shared and what can result in litigation can be resolved as follows (best practice). Place this statement in your course outline, in the student handbook, in a student handout, or permanently posted in the classroom.

Sample statement for journal/diary writing from the teacher:

Journal writing is a good language arts technique. I may not read your journal on a regular basis or even randomly. However, if I do read your journal and find it to contain anything that may deal with abuse, harm to yourself or harm to others, there will be no such thing as confidentiality. Your parents and/or responsible school officials will be contacted immediately.

Off Campus Actions

As we continue to explore when the school is responsible for the actions of students, careful process and procedural steps must be followed to avoid challenge as well as litigation.

A simple example: A high school junior cuts second period class and leaves school for the rest of the day. He robs a neighborhood convenience store during the time of third period. What does the district charge the student?

Answer: cutting class, truancy from school, but not robbery or theft. Remember, control what you can control, but what you don't control, don't assume to be in a position of charge. Certainly, if you are a staff member in a non-public school, this may not be the case depending on your written, signed parent, student, school agreement or contract.

A second simple example: A defiant student sees you outside the building as he leaves the school building. You are supervising dismissal proceedings. The student walks across the street off of school property and lights up a cigarette and smokes it within your view. Can you discipline? Yes; even though he may be off school property, he is in plain view, under your observation, directly off of school property, and still under your supervision.

Key points in disciplining off-campus:

- a. Have you clearly establishing a connection between the off-campus event and the health, safety, and welfare of the student body or staff?
- b. Have you clearly established that students or staff member were involved in doing the actions or having the actions done to them or their property, but connected directly with school?
- c. Is the event or occurrences known in the community? Is it public knowledge?
- d. Have you clearly established or can you prove that a disruption will occur or has occurred (in school)?
- e. Can you show that the action or the problem began on the school site or is about to continue at school?
- f. Can you demonstrate that if the student or students involved stay at school there will be a clear and present danger to other students or staff members?
- g. Have you given due process to the accused and to the victim?
- h. Can you demonstrate that if the problem is an off campus speech, or an Internet or website message, that the speech or message materially and substantially is a control factor and interferes with the operation of the school or students and staff in a safe and orderly manner?
- i. Have you established a nexus (a connection between the event and the school)?

Examples

1. An assistant principal disciplines two students for continual negative behaviors in school that clearly violated the discipline code of the LEA. For three nights in a row near Halloween, the assistant principal's house is spray-painted and has eggs thrown all over his windows. The two students are caught by the police and identified as students by the assistant principal. The students live less than $\frac{1}{4}$ of a mile from the assistant principal's home and passed by his home every day when one of the students delivered the local newspaper to the administrator's home (connection and knowledge of whose home it was had been clearly established). The students are disciplined in school as well as being charged by the police.
2. Two students beat and rob an individual near a market at 8:00 p.m. The victim is a school board member and the school as well as the police charge and discipline the students. After being challenged, the school's case was dismissed. The district could not prove that the students had any knowledge that the individual they beat and robbed was a board member, and they violated district policy concerning attacks on students, staff or board members.
3. Caution and the ability to think things through are essential in all cases, but especially with off campus cases resulting in the LEA proposing discipline. In one case, the Connecticut Supreme Court overturned a school district's expulsion of a student for a drug offense. The student was driving his car and was stopped by a state trooper for not wearing his seat belt. The trooper saw a marijuana cigarette in the ashtray. He then searched the trunk and found additional marijuana. State law said the police had to notify the district. The board voted to expel the student, the reason being that the student violated school policy and seriously disrupted the educational process. The reason the case was overturned, was that the district could not demonstrate serious disruption of the educational process.

A key note to remember: many courts will permit school districts to discipline students for off campus actions if the district can clearly show the off campus action has an immediate and direct effect on the health safety and welfare of the students and staff of the school.

An opposite view of the Connecticut case was taken in a Delaware case where a student was expelled after he was caught selling drugs to an undercover police agent after school hours and off of school property. Here the court ruled that because of today's societal issues, this was strongly supported by district policy.

Again, control what you can control but if you don't control it, stay away or be extremely legalistic in your approach and handling of the case. Great care must be taken with off campus discipline matters noting Section 1317 of the Pa. School Code (intent as follows):

“Every teacher, vice principal and principal in the public schools shall have the *right to exercise* the same authority as to conduct and behavior over the pupils attending his school. During the time they are in attendance, *including the time required in going to and from their homes*, as the parents, guardians, or persons in parental relation to such pupils may exercise over them.”

Legally, this is a very challenged section. Words like “shall have the right to exercise the same authority,” and “time required” are viewed from vague to very clear. Therefore, you must know your LEA’s policy.

Fights

As we discuss control related to discipline issues, we must address staff responsibility as well as liabilities when responding to a student fight. What should you do? What must you do? What shouldn’t you do?

Tip and Directions (Best Practice)

1. Staff members are not required to put themselves in harm’s way and physically intervene in a fight. The exception would be where you as a staff member had intervention in a fight as part of your job description and you first received training in restraint techniques. Each employee should also carefully read your LEA’s “hands on” policy to examine when you may place “hands on” a student above and beyond the usual friendly greeting.

Examples of a “hands on” statement in a policy (best practice):

You may place hands on a child with **no intent to harm** in the following situations:

- To separate students who are fighting or in your judgment about to fight.
- To defend yourself (notice the key word is to “defend”) – defensive not offensive.
- To come to the aid of a student. Example: student trips, falls, and becomes dizzy. You certainly can help them to their feet and steady them with your hand on their arm as you walk them to the nurse’s office.
- You give a direct order to a student and the student refuses to follow through. Repeat the order and if the student still refuses, you may place your hand between their shoulder and elbow and escort them to the office. *Note: if the student resists or breaks away do not grab them.*

However, it is important to know that what you must do, do so in a way that in no manner can you be called deliberately indifferent to the health, safety, and welfare of the student.

Thus, seeing a fight, do the following:

- a. Yell, shout, order, yell, or blow a whistle to have the students who are fighting stop. In the simplest language possible, order the student to stop fighting immediately (identify yourself first).
- b. If possible, send someone to the office for help. Call for assistance in some way (cell phone, two way radio, etc.).
- c. Work to get the crowd to disperse if one begins to assemble or is already there when you arrive. Crowds seem to have the effect of increasing the "fight" mentality since now each side feels they can't back down or else they will lose respect.
- d. If you feel that you want to try to break up the fight by using physical intervention, think quickly and carefully before you act!
 - Are you doing this to prevent injury?
 - Are you in a position to intervene without certain injury to yourself (example: you are 5' 6", 160 pounds and both fighters are at least 6' 2" and over 240 pounds)?
 - Be careful you don't approach them from the rear as they could turn on you as a first reaction.
 - Continue to order them to stop even if you are going to intervene physically.
 - Even with the stress and anxiety of the moment keep your actions defensive (to assist) not offensive (to hurt or injury)
 - Note: your intent is always to project the health, welfare, and safety of students and staff and you always demonstrate the concept of no intent to harm the child.

Best Practice: The discipline policy (code) should make a very strong statement concerning fighting.

Example: Fighting using physical means to settle a disagreement is not acceptable. Any physical confrontation that may result in disciplinary action by the administration may result in the involvement of local law enforcement as well as a severe fine involving the magistrate or juvenile court system.

One must realize that when the parent of a child who has been charged by the police complains about you (the school) involving the police, your response should be: "Our job is to teach, not to be law enforcement officers. Fighting has no place in our school and will be dealt with in a quick, fair, and stern manner. It is our responsibility to keep a safe and orderly environment and to protect the health, safety, and welfare of all of our students and staff."

Also remember (best practice) that doing nothing and stating you may do nothing in writing may be a real sounding alarm to bring on a "deliberate indifference" charge as complete non-action can cause a problem affecting the health, safety, and welfare of the students. You may also damage the concept of a safe and orderly environment.

Field Trips

More LEAs are developing policies for field trips. Here is where the expression “foreseeability is the key to preventing liability” comes into the picture. The board and school staff must work together to make certain that trips do not become a liability nightmare or due to the anticipated difficulties with trips, boards cancel all field trips. The key is to say what you need to say in your policy and make certain that both students and parents understand the contents of the policy, their responsibilities, and the responsibilities of the school.

Example of an overnight trip policy: A student who breaks the law or violates a school rule may be sent home at the expense of the parent after a due process hearing is held by the administrator in charge (as stated in the board policy). Therefore, this could mean that a student caught shoplifting in Disneyland on a band trip could be sent home at the expense of the parents. The incident occurred on the second day of the five-day trip and parents were informed immediately. The hearing was held on site and the child was taken to the airport and flew home to Pennsylvania from California at the expense of the parents. (They had received a copy of the policy and the trip agreement packet and signed the agreement, as did the student before the band left for the trip.) Without the agreement placed in writing, along with the shared communications, the actions of the district would most likely not be upheld.

Best Practice:

- Make certain that your trips have educational value.
- Make certain there is adequate school supervision.
- Cover medicine and medical needs before you leave school. Who administers the needed medicine?
- All school rules expectations must be covered (copied in writing).
- All consent forms must be signed.
- Make certain that all personnel, including volunteers, have been screened appropriately (Act 34 and Act 151.) Plus any additional screening requirements (FBI Check).

These are only a few of the items that must be addressed. Proper policy, plus proper pre-planning, can make trips a special event that a student remembers forever in a very positive way.

Example (Choir Field Trip)

1. Trip notice is distributed to students in choir practice.
2. Trip permission meeting notice is mailed to the parents of each concert choir member. Only one of six meetings is required for both the parent and their student to attend. Three are held before school and three are held in the evening.

3. At these meetings, the trip packet is distributed. It lays out the trip agenda as well as listing the rules and regulations for the trip. The packet states the staff member who will be in charge and what information is needed from the parents.
4. Parents and students must sign the front page and return it to a designated staff member (reverse distribution). The parent and student keeps the rest of the packet.
5. Non-returned forms are followed up by stating that failure to sign and return will make the student forfeit their right to participate.
6. Final list of who may go on the trip is distributed to students, staff, and parents.

This distribution process saves a great deal of unnecessary worry and lack of information from reaching all concerned.

Best Practice

Add to your handbook when the school is responsible for students.

1. During the instructional hours of the school day in school.
2. During the instructional hours of the school day on school district property.
3. On school district vehicles (owned, rented, leased or contracted).
Bus stop activity will depend on the situation.
4. At school district events held before, during, or after school that are directly observed and supervised by school district staff.

The above is a best practice protective statement.

The Internet: Websites and Worries

Recently a student in Costa Mesa, CA was suspended from school for making threats against other students as well as making hateful ethnic statements. Another student in Jefferson, CO was arrested after showing himself on his MySpace.com page holding handguns. When police officers went to his home they found the guns and he was charged for being a juvenile in possession of handguns. Numerous college athletes have been kicked off their teams for criticizing their coaches on student Facebook.com pages. These are not just scattered, once a year incidents. These are everyday occurrences that are affecting the lives of students and educators. The numbers are staggering and growing every day.

Cases are now in court, including a Pennsylvania case where a student used school pictures without authorization when he posted a negative parody of his principal on MySpace.com. It is to be noted that this was done after school and on a relative's computer. The big question: What is the connection (nexus) between the MySpace.com page statements and the school?

Consider how many students sign a code of conduct and then post photos of themselves relating to alcohol, other drugs, sexual activities, verbal threats and attacks on others. When confronted by school authorities, the students' hard copied pages become no laughing matter. In many cases the students claim it was just a joke or "I did it to be cool."

Numerous schools K-16 are now placing warnings in their student and parent handbooks concerning the use and ramifications of online photos and statements. Schools would be well advised to address these issues just as they do alcohol and other drugs and risky sexual behaviors.

When discussing "online" with students, most students do not seem to understand that they are presenting a permanent, life-long hard copy picture of themselves and their actions. In many cases the viewer does not really know if what they see is truth or fiction.

There are several key points to note:

1. Though the youth of today are very competent in computer and Internet skills, they are naïve about their own privacy and Constitutional rights.
2. Students (especially minors) have fewer privacy rights that are school guaranteed (via First Amendment). Students have more rights at the mall than they have in school since schools do have some "in loco parentis" functions.
3. In general students who attend non-public schools or private higher education schools do not have as many First Amendment free speech rights as their counterparts who attend public schools. At non-public schools students are really agreeing to abide by the rules and regulations published in their handbook.
4. Students involved in co-curricular activities can have restrictions placed on them that cannot be placed on those students who do not participate in these activities. Can this have Internet impact? It depends.
5. Only a fool (and the young) does not realize that sexual predators closely monitor these websites. In many cases, arrests take place after the damage has been done.
6. Today's youth does have the skills and the scope of authority to use the Internet. Therefore, training to think things through in order to protect them must be stressed by parents - and yes, this is another job for schools.
7. Tips educators can give to parents:
 - a. Talk with your children about the positives and negatives related to websites and the Internet. A hard copy printed off of the Internet may be a document that can be viewed forever!

- b. Learn the skills so that, as adults, you can monitor your children as needed.
 - c. If possible, move the computer out of the child's room to the family room.
 - d. You would not let your child watch TV alone for five hours unmonitored, so put similar conditions and cautions on their Internet use.
 - e. Don't forget your child's rights; but never forget your rights as adults and especially as a parent.
 - f. Don't hesitate to check sites on the Internet for the health, safety and welfare of your child.
8. School entities **MUST** develop policies and procedures concerning use and involvement with computers and any electronic data.

The number of U.S. visitors to social networking sites has skyrocketed in the past year. Among the top sites (in millions)*:

- MySpace.com - 37.35
- Facebook.com - 10.51
- Xanga.com - 7.25
- Hi5.com - 2.35
- Friendster.com - 10.4

*Source: comScore. Media Metrix

CONTROL, IN THEORY, RESTS WITH USERS

MySpace and Facebook give users control over who can see their pages — but it's up to the users to take that control.

"People are learning how to use the site and what's OK to share," says Facebook founder Mark Zuckerberg. "As time goes on, people will learn what's appropriate, what's safe for them — and learn to share accordingly."

Here's how the sites work:

Facebook was created two years ago when Zuckerberg, now 21, wanted to help his fellow Harvard students network and socialize with one another. The site must add a school's Web address before students can join.

More than 6.1 million college students from more than 2,100 schools have profiles — 65% of undergrads at four-year colleges and universities, the company says. Faculty and staff, as well as many alumni who have school e-mail addresses, also have access. In September, Facebook opened its doors to high-schoolers; 900,000 have signed up so far.

Members can view all profiles of students from their own school; they can search for others by name but can see only a student's name, school and photo. To access someone's full profile, they must ask to be added to his or her list of "friends."

Members also can customize profiles to be even more private, allowing access only to other undergrads, for example.

MySpace, with about 61 million registered users, is open to anyone; while it appeals largely to teens, 78% of members are over 18, the company says.

MySpace says users must be at least 14; users can customize the privacy of their sites, blocking anyone but friends, for example. "We're very concerned about the safety of our users," says My Space CEO Chris DeWolfe. "But at the end of the day, the Internet is a microcosm of real life, and MySpace is part of the Internet."

—Janet Kornblum *USA TODAY* (March 9, 2006)

Deliberate Indifference/Deliberately Indifferent

As courts become more and more involved in school affairs that may reach the level of litigation, the term "Deliberate Indifference" comes to the forefront. Though the term is very serious, you need not worry if you use common sense.

Former Supreme Court Justice Sandra Day O'Connor wrote the majority opinion for the United States Supreme Court in the Davis/Monroe County, Georgia case. The case dealt with over a five-month "barrage of sexual harassment and abuse" that a fifth grade female endured from a male student in their school. The court ruled that in this case, damages could be collected. However, damages may not be recovered in other cases unless a school official who has the authority to do something about the situation has actual notice (are you aware?) and has done nothing or takes a totally inappropriate action.

Stated clearly -- You can be a deliberately indifferent person if you:

A. Are aware of a situation and you do nothing about it.

Example: An administrator sees a student on a playground place a gun in his backpack on the way into school and says or does nothing about the sighting and later the student pulls out the gun in class to frighten the teacher.

B. Are aware of a situation and you take a totally inappropriate action.

Example: After viewing the gun, you decide that your schedule is so busy you will wait until tomorrow to deal with the situation.

Please note that the term "deliberate indifference" is frequently used for all school entities. However, the strict reference states, "Schools from elementary to college (K-16) that accept federal funds can be forced to pay victims if found to be deliberately indifferent."

Remember, common sense should make you fully tuned into two key terms:

1. Notice (are you aware?)
2. Action/Nonaction (did you take an appropriate action with no intent to harm?)

In case after case where the courts cited deliberate indifference, the rulings took into account the failure to investigate when staff was aware, or inaction to remedy the situation. Therefore, always use the four-step solution as a guide:

1. Are you aware?
2. Did you investigate?
3. Did you come to a conclusion/reach a decision/make a determination?
4. Did you take an appropriate action with no intent to harm a student or staff member?

Using proper process and procedure can put you into the position where if litigation is threatened, your school district attorneys will not say, "Don't ask me if we will win or lose the case, ask me how much it will cost us!" The smallest suspicion of wrongdoing warrants investigation. Deliberate indifference is preventable.

Redefining Education

It is extremely important that educators and agency staff members realize that the term "in loco parentis" is not nearly as wide ranging and powerful in schools as it was before the famous Tinker vs. DesMoines case in 1969 and the Goss vs. Lopez case in 1975. These case decisions clearly stated that students do not lose their rights when they enter the schoolhouse door and due process is not just for cases outside of school. Since both schools and agencies want to make parents allies not adversaries, the real definition of education must be clearly understood and remain in the forefront of our dealings with students, parents and staff.

Today's Definition of Education: Parents are the decision makers. At best, schools and agencies on a collaborative basis work to reduce the barriers to learning so that students can learn at the maximum and teachers can teach at the maximum while educating all students in a safe and orderly environment and continue working to protect their health, safety and welfare. This definition is especially important in the legalistic society of today.

Bullying Information

- Boys who were frequent bullies in middle school are three times as likely as their non-bullying peers to have a criminal conviction by age 24.
- One in fifteen students said they avoided certain places at school because they feared being attacked. (Harvard School of Public Health)
- Only 25% of students report that teachers intervene in bullying situations, while 71% of teachers believe they always intervene.
- Up to 7% of 8th graders stay home at least once a month because of bullies
- Incidents of bullying according to a US Justice Department Summary:
 - Both males and females were more likely to be bullied in 2001 than in 1999
 - In 2001, males were more likely than females to be bullied (9 and 7 percent, respectively)
 - In 1999 no such difference could be detected (5 percent each)
 - In 2001, there were few differences detected among racial/ethnic groups or location in the percentage of students who reported being bullied
- Best estimates are that approximately 15% of students either bully or are bullied regularly. Direct physical bullying is reported as decreasing with age (peaking in the middle school). Verbal abuse seems not to abate. While more boys than girls are bullies, the problem is far from limited to males. Girls tend to use less direct strategies (e.g., spreading malicious rumors and shunning).
- Bullying is the assertion of power through aggression. Its forms change with age: school playground bullying, sexual harassment, gang attacks, date violence, assault, marital violence, child abuse, workplace harassment and elder abuse. (Pepler and Craig, 1997)
- Children in lower grades are more likely to be victims of same-age bullies. Younger students experience more direct bullying, whereas older students experience more indirect bullying. (Olweus, 1993)
- Both boys and girls who are victimized report symptoms of depression such as sadness and loss of interest in activities. (Slee, 1995) (Craig, 1997)
- Bullying is reduced in a school if the principal is committed to reducing bullying. (Charach et al., 1995)
- Forty percent of those identified as bullies had three or more arrests by age thirty.
- Bullies are at even greater risk of suicide than their targets.

Compiled by: Russell Alves
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Division of Student and Safe School Services

Bullying*

A student is being bullied or victimized when he or she is exposed, repeatedly and over time, to negative actions on the part of one or more other students (Olweus 1986 and 1991). It is a negative action when someone intentionally inflicts injury or discomfort upon another.

Direct bullying - A negative action when somebody hits, pushes, kicks, pinches, or restrains another by physical contact. Direct bullying can also be carried out by words (verbally), by threatening, taunting, teasing, and calling names.

Indirect bullying - Making faces or dirty gestures, intentionally excluding someone from a group, spreading rumors, or refusing to comply with another person's wishes.

Relational aggression - Describes behavior which can undermine or destroy relationships and is often used when identifying "female" bullying.

However, it should be noted that both genders can engage in direct or indirect bullying, and it can be either physical and/or psychological in nature.

Bullying can be carried out by a single individual or by a group. The target/victim of bullying can be a single individual or a group of students.

The behavior can be either overt or covert in nature utilizing various methods of communication. For example, the term cyber bullying is being used to describe bullying behavior that occurs on the Internet.

The term "bullying" should not be used when there is a mutual confrontation between two students or groups of students.

Behavior is clearly bullying when:

- (1) **There is intent to harm** – the perpetrator appears to find pleasure in taunting and continues even when the target's distress is obvious. Mutual "teasing" should not be confused with bullying behavior.
- (2) **There is intensity and duration** – the taunting continues over a period of time and is not welcomed by the target.

***From the 2005-2006 Pennsylvania Annual Safe Schools Report, Definitions Section**

The Courts, the Constitution and the Law

It is important that we realize the two major factors considered by the courts today.

Factor One: What does the law say?

Factor Two: What is the impact of the United States Constitution?

Note: There are three amendments to the Constitution often cited in education cases:

Amendments to the Constitution

Article I (Freedom of Speech)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article IV (Search and Seizure)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath of affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article XIV (Due Process)

Sect. I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Key Relationship Between Courts and the Schools

<u>Courts</u>		<u>Schools</u>
Laws/Constitution	Equals =	Policies, Procedures, Guidelines, Job Descriptions and Contracts

REFERENCES (Partial Listing)

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SAMPLE INVESTIGATION PROCESS CHART

Names of Students Involved	Incident Reports	Student Interviews by Adm. & Date	Victim (V) Perpetrator (P)	Charges	Current Status (Discipline Report)	Action Recommended	Reason Conclusion
Sally Bennett	Statement from Lunch Aide School Police Videotape 3 Witnesses	Yes 5/1/04	P	Cutting Class Forged Pass Fighting Destroying School Property (table)	5 past suspensions 1 arrest for fighting 6 cutting incidents from class	10 days suspension and expulsion hearing	Fighting Forged Pass Cont. cutting of class Destroying school property Past discipline record
Sarah Cast	Statement from Lunch Aide School Police Videotape 2 Witnesses	Yes 5/1/04	V & P	Offensive language	1 suspension class cutting	2 days suspension	Offensive language Continued verbal Encouraged fight
Susan Doe	Statement from Lunch Aide School Police Videotape 3 Witnesses	Yes 5/2/04	V	None	1 Detention for lateness	None	No Action
Sybil Eaton	Statement from Lunch Aide School Police Videotape 2 Witnesses	Yes 5/2/04	P	Pushed into Susan Doe & knocked her down Cutting Forged pass	1 suspension for class cutting 1 suspension food fight	3 days	Class cutting Forged hall pass Past discipline record

SITUATION/PROBLEM/RESOLUTION CHART

Situation/Problem	Date of Awareness	Proposed Solution	Status	Resolution and Date Completed
Example #1: The SAP team does not have adequate and secure records storage space.	9/3/05	Purchase a new file cabinet or transfer empty cabinets from other schools.	Submitted request to buildings and Grounds on September 3. Contacted Business Office regarding the purchase of new cabinets if used ones not available.	Empty cabinets transferred from another school 9/10/05.
Example #2: Student sent to nurse by teacher because of alcohol on breath, staggering, and falling asleep in class.	10/5/05	Follow district process and refer student to SAP.	Parent agreed to continue with the SAP process. Team met with student and parent.	Ongoing

Rights v/s Privileges

Educators must be very careful not to confuse rights of students with privileges that students may earn, enjoy, or be given.

Example:

1. A tenth grade student has the right to take English 10. It is not a right but a privilege for that student to apply for acceptance into the debating team's school program.
2. Graduation (if you have met all the requirements is a right, but the graduation ceremony is a privilege.
3. A free and appropriate education is a right while attendance at the senior prom or playing on the baseball team is a privilege.
4. It is extremely important that when one of your students is enrolled in an alternative placement you fully understand what obligations you must adhere to regarding the student's participation in social and co-curricular activities back at the home school. (Rights v/s Privileges)

Alternative Placement

Certainly, alternative placement availability is a very important factor for some conduct disorders and/or substance-involved students. The purpose succeed in his or her home school, if possible.

Best practice tips for alternative school placements to be successful as well as avoiding litigation and conflict include:

1. A signed parent agreement
2. A signed student agreement
3. Transportation to and from the alternative school site
4. Certified staff
5. A planned curriculum directly tied to the home district
6. A school calendar tied to the home district
7. A school day tied to the home district school day and hours per day
8. A program with an intent to return component built into the program
9. G.E.D. availability (if warranted)
10. Liaison staff member assigned to the student from the home school
11. The staff at the home school takes a positive attitude when students return from alternative school placements (a clean start discipline record or behavior contract agreement)
12. Agreement reached on how participation in athletic, other curricular activities and social events will be handled before a situation arrives. For example: the student from the alternative school is not told until the day of the prom that he may not attend.
13. Evaluation of the student.
14. A transition (in and out plan).
15. Rules and Regulations (Do the rules of the alternative school match the home school?)
16. Staff agreement concerns

Remember the sixteen steps listed above do not guarantee success but they are essential for success. It is also important to note that with most every list they are not all inclusive.

Student Teachers

One of the most important functions of the sending institution and the receiving school is the care and training of student teachers. These future staff members hold a major part of the key in the continued need to improve the learning process of students. Student teachers hopefully eager and bright arrive not only to complete a portion of their education, not only to try to access if teaching is the right profession for them but also to receive that experience and “on the job training” that will be essential to their future success. Therefore, it is a priority issue for schools to examine the key factors that calls special attention to student teachers.

Examples:

1. The shortage of substitutes in many districts. Thus, the “push” to have the student teachers act as the substitute. Their key question then become “is the student teacher ready?”
2. Though the student teachers are well prepared academically, there are questions as to their preparation to deal with the troubled student without continued awareness training, help and support on the many problem-solving processes.

Action steps that should be taken:

1. Time needed to study and get to know and understand district policies, procedures, job descriptions, and guidelines that affect students and staff (best practices)
2. Establish clear processes and procedures for student teachers to be able to teach alone (without a certified teacher in the room for up to a day if no sub is available).
 - a. Student teachers feel they are ready
 - b. Cooperative teacher agrees in writing
 - c. Principal is alerted and observes the student teacher (agree in writing)
 - d. Supervisor of the student teacher (college or university) agreed to in writing.
 - e. LEA checks for contractual policy and liability issues clearance to permit the student teacher to teach as a substitute.
3. Clear rules and regulations on student contact (dating, fraternization with students as well as with all district staff) in and out of school.

4. College and university training in (SAP) student assistance seminars and/or courses.
5. Seminars given to district staff on expectations and goals of the arriving student teachers. In addition an on-site meeting given by district administrators to the arriving student teachers is very important so they get an understanding on how the district works.
6. Remember the key function of a student teacher is not to relieve the responsibilities of the classroom teacher.

More, Must Know Terms (continued from page 7)

1. "It Depends" - Before you make your decision do your best to think things through by using the problem solving process. You know that every student is unique/different as is most every situation. Thus, what is the answer? "It Depends".
2. Why do we do what we do? – In many situations staff members hesitate to question. They may even be viewed as a negative force for asking questions. Thus, understand you do things for three common sense reasons.
 - a. To protect students and staff
 - b. To protect yourself
 - c. To protect your school entity whatever it may be.
3. Scope of Authority – Be extremely careful not to make decisions, give suggestions, or take actions that are beyond your "scope of authority". Example:
 - a. Conversation with a parent by the educator who says, "Mrs. Hoffman, your child really needs to be on ritalin; his behavior is so bad." The parent has every right to say to the educator;
 - i. Where did you get your medical degree?
 - ii. If medication is needed, will the school pay since you suggested medication?
 - b. An educator states with anger after an incident with a student. "The student will never set foot in his classroom again". When the student returns to the classroom after ten days the educator is embarrassed and loses face with the rest of the class. The decision to return the student to the classroom was not within the scope of authority of the educator (the teacher).
4. Wide band/Narrow band – Wide band employees are all employees of a school entity except for certified school administrators currently working in a recognized school administrative position. Example:
 - a. An administrator who is certified as a principal working as a principal (narrow band)
 - b. A school employee with an administrative degree working as a guidance counselor is a wide band employee, not a narrow band employee.
 - c. Narrow band (accepted) functions (adjudicate)
 - i. The ability to suspend
 - ii. The ability to recommend an expulsion hearing to the governing body.

- iii. The ability to recommend promotion or retention including graduation.
 - iv. The responsibility to formally observe and evaluate other wide band staff members.
 - d. Wide band (accepted functions)
 - i. The ability to issue grades for courses they teach.
 - ii. Teachers are wide band employees and they do not have the same scope of authority as do administrators who are narrow band employees.
 - iii. Key support staff (guidance counselors, psychologists, social workers, home and school visitors and nurses) are wide band employees.
5. Requisite Intent – Courts today stress intent in every case, especially requisite (specifically related to the incident being considered) intent. This is why due process procedures are so important as you work through the problem solving process. Often actions by schools are overturned as it is too easy to forget to consider intent especially in the heat of the moment. For example:
- a. Two students are sitting at a lunchroom table finishing their lunch. They are near a trash can as well as a door to the lunchroom. Rather than getting up to throw their trash away in the trash can, one of the students wraps up his apple core in aluminum foil and talks about banking the “trash ball” off the wall into the basket, two points! However, his throw is way off the target and just as the assistant principal opens the door to the lunchroom, he is struck in the face by the “trash ball” and his nose is fractured.

Question – Is this an assault? We must be careful not to act before investigation.

Follow the four-step process:

1. **Are we aware?** Yes, we know it certainly happened and we have the thrower.
2. **Did we investigate?** Yes, the students had no idea the administrator was coming in the door. The students had never been disciplined prior to this incident.
3. **Did we come to a conclusion?** Yes, there was no requisite intent. In fact, there was no intent at all to assault or even touch the staff member. Our conclusion is also that this is not the definition of an assault. Our conclusion is that there will be disciplinary action taken

against the student for breaking school rules (posted) for throwing trash and creating a disturbance.

4. **Did we take appropriate action?** Yes, the student who threw the trash had to help clean the lunchroom for three days after he finished his lunch as well as receiving an after school detention for two days.

The above is a very simple case. However, in many more difficult cases involving knives or other items that could be dangerous, courts have overturned expulsions by LEAs where intent was not proven.

On the other hand, where a student stated again and again that he intended to insult a sports team that his class was visiting because he didn't like them, the student was not permitted to go on the trips. His parents took the case to court saying he was deprived of an educational trip his classmates took during the school day and he was also a special needs child.

The court ruled on the side of the district. They stated the district showed clear intent by the student to do harm even after several warnings from his teachers. The district also showed that the student's intended action was not a part of his disability.

Please realize intent must be utilized carefully. It is not an easy justification for something that took place; it is an important finding that has been very carefully investigated.

6. **At Risk** – Defined as any situation or behavior that impinges on the learning process of students.
7. **Safety Alert** – Schools should not provide contact information about students, staff or parents to outside vendors. This issue has resulted in product solicitation and in some cases calls about students to parents that are misleading and cause great concern.
8. **Student Assistance Records** – Please remember that student assistance records are educational records and must be treated with all the safeguards of educational records under the law. (State and Federal)
9. **Obstruction of Justice** – Make certain that you do not hinder law enforcement efforts to be aware of or hinder investigations that may indicate that a law has been broken or a crime may have been committed. Control what you can control within your scope of authority. If it is not within your scope of authority, do

not pretend that you are in total control of the incident.
Example:

From the USA Today

Columbia, South Carolina (AP) – A high school principal was charged Monday with hindering the police investigation of the cheerleading coach, who had been accused of providing student with beer, authorities said.

Jane Blackwell tried to thwart the investigation of Ware Shoals High School cheerleading coach Jill Moore, who was arrested last week and resigned soon after, Chief Deputy Mike Frederick said.

After investigators told Blackwell and others they planned to talk to each cheerleader, the principal called a squad meeting and told them not to discuss the case with anyone, Frederick said.

“it became quite clear to investigators who was attempting to keep this thing quiet,” he said.

Blackwell asked investigators if they knew whether any calls were made from the school to the media and disciplined at least one student who mentioned the Moore case at school, according to a sworn statement filed with an arrest warrant.

Blackwell, 59, was arrested Monday and charged with obstruction of justice. She was released from jail Monday evening on her own recognizance, Frederick said.

Deputies believe Blackwell knew the coach was giving alcohol to students but did not report the information to authorities, Frederick said.

10. **Preponderance of Evidence** – Circumstantial evidence can be sufficient to establish by a preponderance of the evidence that a student violated a school policy and that a (written and approved) disciplinary action was proper.
11. **Whistle Blowing** – (Definition and Example) An employee of a school entity reports a misdeed or an improper action. It may be very embarrassing to the school entity but employers or line staff above the reporting individual are not permitted to

discipline or retaliate against the employee if they are truthful in their reporting. If unfair negative action, such as dismissal is taken against the reporting (truthful) individual and the individual files a law suit it would be under the realm of whistle blowing.

Key Statements and Rulings from the Judicial Area

1. The lack of common sense often initiatives the creation of rules, regulations, and laws that in many cases narrow the parameters of meaningful individual decision-making.
2. In many cases, the court's ruling underscored its concern about the appropriateness of its action stating that courts are getting tired of litigation that seeks "to wrest the the day to day control of our public schools from school administrators and hand it over to judges and jurors who lack both knowledge of and responsibility for the operation of our public schools." (From the Seventh Circuit Court of Appeals.)
3. Courts carefully state that LEAs may use their written, documented responses as evidence that they did not condone offensive conduct or allow an environment to exist in which such conduct was likely to occur. Remember – document, document, document!
4. Courts are increasingly demanding that reason for and authority to do are clear and present in every case.
 - a. Example: In a major case decision (Morse v/s Frederick) June 2007, "Bong Hits 4 Jesus", the Supreme Court of the United States ruled in favor of the school principal (Morse) over the student (Frederick)

The following are articles from the "USA Today"

Case: Morse v. Frederick

Decision: Voting 5-4, the high court tightened limits on students' speech rights by ruling against an Alaska student who had unfurled a 14-foot-long banner that read, "Bong Hits 4 Jesus" at a school event.

The case involved Joseph Frederick, then a high school senior, who was suspended after he unfurled a homemade sign in 2002 as the Olympic torch passed through Juneau, en route to the Winter Olympics in Salt Lake City. Frederick, now 23 said the banner was a non-sensical message he had seen on a snowboard. He has said he merely was trying to get on TV, and he intended for the banner to proclaim his right to say anything at all. The court sided with school officials who said they were within their rights to tear down the banner as a violation of school anti-drug policies. The ruling is the court's first pronouncement on students' speech rights in almost two

decades. It creates a new exception to a 1969 Supreme Court decision that said school administrators generally can't restrict students from speaking out as long as the students aren't being disruptive.

In this case, the student unfurled a banner reading "BONG HiTS 4 JESUS" on a sidewalk as the Olympic torch passed by his Alaska school in 2002. The student said he used a nonsense phrase and meant only to attract national TV cameras. The principal angrily pulled the banner down and suspended the student.

In Monday's ruling, all nine justices clearly sympathized with the harried principal. They agreed she could take the banner down. But on the core question of whether she violated the students' free speech rights by suspending him, the court split 5-4. The majority held that he merited no First Amendment protection because the banner was an obvious invitation to illegal drug use, which school rules banned. Six justices voted to overturn a federal appeals court's ruling that left the principal, Deborah Morse, liable for damages for violating Mr. Frederick's First Amendment rights.

Chief Justice John G. Roberts, Jr. spoke, at least nominally, for five of the six. He said for the court that Ms. Morse's reaction to the banner, which was displayed off school property but at a school-sponsored event, was a reasonable one that did not violate the Constitution.

While the banner might have been nothing but "gibberish," the chief justice said, it was reasonable for the principal, who "had to decide to act-or not act- on the spot", to decide both that it promoted illegal drug use and that "failing to act would send a powerful message to the students in her charge, including Frederick, about how serious the school was about the dangers of illegal drug use."

He added, "The First Amendment does not require schools to tolerate at school events student expression that contributes to those dangers."

However, you must look at each case on a individual basis. The United States Supreme Court in 2007 ruled that a school did not have the right to censor a student who came to school wearing a T-Shirt that

called the President a lying drunken driver who abused cocaine and marijuana, and the "chicken-hawk-in-chief" engaged in a "World domination tour." An appeals court said the school had no right to censor the shirt, and the Supreme Court upheld that the ruling, saying schools cannot censor political speech.

Thus, please note that "it depends".

**Bullying, Discrimination, Harassment, Hazing and Intimidation
(plus Whistle Blowing) (additional information can be found on
pages 40 and 41)**

Protecting the health, safety, and welfare as well as maintaining a safe, disciplined, and orderly school environment DEMANDS policies from each and every school entity that clearly and realistically address discrimination, harassment hazing, bullying, and intimidation.

Sample Policy Statement:

"It is the policy of the Board of School Directors to fully support the regulations and laws prohibiting discrimination, harassment, hazing, bullying, and intimidation because of race, religion, sex, sexual orientation, color, national origin ancestry, martial status, familial status, disability, medical condition, age, as well as sexual harassment, and to maintain a learning environment which is free of any area listed in this purpose statement."

What do you include in this Policy?

- A. Examples of impermissible actions
- B. Reporting procedures
- C. Investigation procedures
- D. Disciplinary actions
- E. Reporting act of retaliation
- F. District commitment (including in-service commitment)
- G. Notice of Policy (communications)
- H. Research (Where did you get the information for this policy and what process or program are you using?)

Best Practice Tip: Be certain that your intervention into any observed, suspected or reported incidents in the above areas is immediate. If aware, start the investigation at once. This is not only key in protecting your students, it also sets the tone for your school in demonstrating to all that actions making students fearful or uncomfortable are completely unacceptable.

Assisting Students

As you continue your efforts to come to the assistance of students whose observable behavior indicates the need for help, carefully note what is meant by "observable indicators for the need for student assistance."

Examples:

- A. Academic decline
- B. Continual disciplinary problems
- C. Frequent visits to the nurse
- D. Frequent requests for visits to the guidance office
- E. Decreased attention span
- F. Frequent expressions of anger or sadness
- G. Continual disrespect to students and/or staff members
- H. Inappropriate actions in class such as uncontrolled laughter or talking
- I. Smell of alcohol or marijuana on a student or their belongings
- J. Observing a significant weight loss or gain
- K. Observing frequent trip to the restroom
- L. Observing drug, cult, satanic-related language or drawings

Please note this list is not all inclusive.

Decision Making for Life (A best practice educational tool)

There are many times when a student will say to a teacher, counselor, or administrator that he or she had no choice in the matter. They just had to do it. This of course does not make a “bad” child; it is often a child who simply makes a “bad” decision. How can you change this attitude of “No choice” as part of the student assistance process? The following is an exercise called “Decisions for Life”.

The exercise is broken up into five parts:

- A. The Scenario
- B. The Options
- C. The Ramification’s (consequences)
- D. The Individual’s Choice
- E. Dealing with the Choice

The Scenario – To start the process, the educator, mentor, or the team member presents the scenario (the situation). At a later time, the student or a group of students can create their own scenarios (either real life or created situations)

This is the scenario: On Saturday at the playground, the usual group is playing basketball. Someone out of the group (your friend) offers you a marijuana joint during a break in play.

The Options – Remember, let the student or students list all the options they can think of during a reasonable amount of time. As with a brainstorming process, record all options but do not comment on their being good or bad, right or wrong!

Options (our example):

- A. You take the joint and smoke it
- B. You take it and you say you’ll use it later
- C. You say no
- D. You say you don’t use drugs
- E. You take a puff or two and throw it away
- F. You say no and try to dissuade your friend from using since drugs are harmful

The Ramifications (Consequences)

To option A → My friend thinks I’m cool, since cool guys smoke pot.

To option B → My friend will think I'm still cool, but I'm not sure if I'll use it.

To option C → My friend may think I'm a nerd, definitely not cool. I could lose my friend.

To option D → My friend might accept that and drop the issue or he could possibly make fun of me.

To option E → My friend may be faked out for the moment but what happens the next time and I really did take a puff.

To option F → My friend could get angry, he could also realize I just wont take drugs, he could feel I'm a nerd, he could stop being my friend, I could stop being his friend.

The Individual's Choice

In this case (actually used in a group situation, 7th graders listed all response that were given above), the individual said NO!

Dealing with the Choice

In this case the individual not only said NO, but also added that smoking anything really bothered him and made him feel sick. He also added that he didn't want to use anything that would "cut his wind!"

Certainly this is only one sample of a decision-making scenario. Its key purpose is to open a young person's mind to better realize and understand that there are CHOICES. If we can assist students in the decision making process so they can take the steps to "think things through" and make decisions that help to protect their health, safety, and welfare, we have achieved a level of success.

Students and Student Services

22 PA Code, Chapter 12

The new Chapter 12 consolidates Chapter 7 (pupil services) and Chapter 12 (student rights and responsibilities)

It directs schools (best practice) to:

- Evaluate the different student support services provided and strategically connect with community resources to fill in gaps in services, particularly at the Coordination/Consultation services tier where students with chronic services are served.
- Develop a comprehensive, integrated, systemic view of student services that transcends beyond the specialized interventions of counselors, nurses, psychologists and social workers.
- Integrate non-academic supports in school improvement planning.
- Strategically integrate student services and supports with effective practices toward successful student achievement.
- Prepare a Students Record Plan consistent with applicable state and federal laws, regulations and directives.
- Prepare a written Student Service Plan consistent with Strategic Plan requirements outlined in Chapter 4 and include developmental, diagnostic and consultative services.
- Prohibit the use of corporal punishment as a form of student discipline.
- Set timelines for disciplinary hearings.
- Clarify students' rights and free expression
- Plan and provide Student Assistance Programs for all school entities.

It is imperative that you fully read and understand this chapter.

A Civility Policy

In the confrontational world of today, there is more and more of a need for a Civility Policy. This policy should ensure that the general public treats the governing body with respect at meetings and the governing body in return continues to treat the public with the same respect.

The policy must also address civility involving all staff members as well as students and the general public. It should cover parent conferences, student meetings and any verbal or written exchanges between individuals to keep actions civil. The policy should include everything from purpose to procedure to ramifications. Hopefully, this policy will make certain that educators do not have to tolerate verbal abuse without recourse.

The Educators' Study Skills

The successful educator of today must (best practice) become a specialist in three areas. He/She must become:

- I. A "word-smith" – Have the ability to speak in clear, concise terms relating specifically what you want to say.
- II. A "writing-smith" – Have the ability to write in clear, concise terms what you want to communicate through the written word.
- III. A "reading-smith" – Have the ability to read and clearly understand policies, procedures, guidelines, job descriptions and contracts, as well as decisions handed down from the courts on educational matters.

Remember – "Is it observable?" is the key.

The Three S's

Remember along with the three R's – Reading, Writing and Arithmetic – taken figuratively, there are now the three S's that must be understood (best practices). Though there are great differences between public, private, parochial, intermediate, county, colleges, universities and other school entities, you must fully understand that there are no differences among schools when it comes to the area of:

Safety,
Security and
Supervision.

It is always important to remind yourself that you are not the guarantor of safety but you must (best practice) have written plans demonstrating your efforts for the Safety, Security and Supervision of your students, staff, facilities, and vehicles.

Planning and Follow Through

1. When you plan your objective, make certain your goal is REALISTIC. DOABLE and ATTAINABLE! Do not think you can accomplish everything at the same time. Plan your approach and the steps needed to complete the tasks.
2. There is no more direct way to say the following as you handle everyday happenings – “Consistency is King”!
Policies, guidelines and procedures for cell phones and backpacks must be carried out with consistency. Don't make rules you cannot or don't intend to keep. Inconsistency will cause you many problems including legal losses.

Reason For/Authority For

Since the United States Supreme Court's ruling in the matter of "Bong Hits for Jesus" (Please also refer to pages 54 and 55 for more information) there has been a tremendous increase in the need to substantiate the two key questions you must be able to answer (best practice).

1. What was the reason for doing what you did?
Answer - To Educate all students. Provide a safe and orderly environment for all students. Protect the health, safety of all students.
2. Where did you get the authority to do what you did?
Answer – From the "big five" – Written Policies, Procedures, Guidelines, Job Descriptions and Contracts.

Key Sayings to Remember

1. We don't have crisis or emergency situations anymore. We just have non-normal every day happenings.
2. Be prepared for the unusual. Pearl Harbor didn't happen on a Tuesday with a full staff on duty. Pearl Harbor happened on a Sunday when most staff was off duty.
3. Keep current on key issues. They often change from year to year especially when the court system becomes involved.
 - Keep Current
 - Keep Communicating
 - Keep Involved

- Changes in the child abuse law are a key example. There are now increased penalties and additional reporting practices.
4. The slightest suspicion of wrongdoing warrants investigation.
5. As educators, work as hard as you can to convince students that sharing important information that could affect the health, safety and welfare of yourself and others is NOT being a tattletale.

What People Say

1. Information for students:
Law enforcement representatives state that four out of five school shooters tell other students about their plans before they act. Whatever you do, if you become aware, tell a trusted adult. Don't assume it's a joke and don't try to handle the situation by yourself.

2. Information for staff:
When you discuss problems or concerns with students, key questions to ask as raised by the Search Institute are:
 - a. Is this a risky situation?
 - b. Am I being pressured?
 - c. How would my parents feel about this?
 - d. Is this consistent with my values?
 - e. What effect will this have on my future?
 - f. What other choice do I have?

Please refer to pages 58 and 59 on the topics of decision-making and choices.

Safety Issues

The safety committee members or the person responsible for safety and handling crisis in your school entity (best practice) should develop and maintain a management handbook containing documents such as:

1. Emergency and Crisis Procedures
2. Memorandums of Understanding, not only with law enforcement, but also with mental health and other contracted agencies.

This person or committee needs to develop a "RUMOR CONTROL" procedure, not only receiving the rumor but also investigating the rumor and sending out the proper response.

Reasonable vs. Probable Cause

More and more the terms of reasonable and probable cause are confused. When the term probable cause is used it rises to a much higher level than reasonable cause. Probable cause really applies to courts, law enforcement and agencies. They must be at the level of "without question" to achieve the level of probable cause.

Schools use the term of reasonableness. They must establish reason to do what they do and it does not rise to the level of probable cause. In case after case today, educators are asked, what was your reason to do what you did? Did your action rise to the level of reasonableness?

Searching a locker because you have a feeling that there are drugs inside does not rise to the level of reasonableness. Searching a locker after two students and a teacher saw a student place packets of brown powder in his locker is reasonable. (Remember, the search should be done by an administrator or under the direction of an administrator.)

Important Documents

Every educator has important documents they constantly use. Your handbook and your emergency/health card are extremely important documents. They can clearly represent your school as to what you need to know as well as what parents and students need to know. A strong comprehensive handbook should state educational philosophy and goals as well as provide information that enhances a safe and orderly environment. The content should also list information to protect the health, safety and welfare of all students and staff. A cover page is needed for these documents that states the parent or guardian and the student has received, read and understood the document. The signed cover page should then be returned. If they have questions, they should sign and return the cover page and request an appointment to get their question or questions answered. Their signature does not mean that they agree with everything in the handbook.

An emergency/health card must be returned for every child. If there is additional information that the parent feels the school needs to know, it should be placed in a confidential sealed envelope attached to the card.

**From this point forward all
additions represent
copyrighted material for the
2009-2010 school year**

Continuation of Key Statements and Rulings from the Judicial area including Policy Development and Regulating Expression

Also see pages 54-55.

It is important to realize that the year of 2009 continued to be an extremely defining year for the courts as their decisions affected schools all across the country.

Speaking at a judicial conference in late June 2009, Chief Justice John G. Roberts of the United States Supreme Court set the goals and direction of our highest court. He stated, "Don't look to the Supreme Court to set school rules only to clarify them when officials have abdicated that responsibility".

The following article was published in the "Washington Post" on June 28, 2009 written by Sue Lindsey of the Associated Press. In part the article stated:

At a judicial conference, Roberts was asked how school administrators should interpret seemingly conflicting messages from the court in two recent decisions. On Thursday, the justices ruled that Arizona officials conducted an unconstitutional strip search of a teenage girl. In 2007, the justices sided with an Alaska high school principal, ruling that administrators could restrict student speech if it appears to advocate illegal drug use.

Roberts told the audience there is no conflict in the court's rulings, just clarity intended to deal with narrow issues that surface from government actions.

"You can't expect to get a whole list of regulations from the Supreme Court. That would be bad", Roberts said. "We wouldn't do a good job at it."

Roberts said administrators should take comfort in the Arizona case's 8 to 1 ruling, which also found that officials could not be held financially liable when carrying out school policy.

"We recognized that they didn't have very clear guidance," Roberts said. "We laid down a rule about what they can and can't do, but we said they don't have to fork over damages from their own personal funds if they guess wrong."

Policies:

Rather than saying the proof is in the pudding (an old saying), we need to say the proof is in the POLICY.

Practical considerations in policy development

The National School Boards Association in a report titled *Violence in the Schools*, recommends that the following questions should be considered as school districts develop violence prevention policies:

- Is the content of the policy within the scope of the board's authority?
- Is it consistent with local, state and federal laws?
- Have legal references been included?
- Does it reflect good educational practice?
- Is it reasonable?
- Does it adequately cover the issue?
- Is it limited to one policy topic?
- Is it cross-referenced to other relevant policy topics?
- Is it consistent with the board's existing policies?
- Can it be administered?
- Is it practical in terms of administrative enforcement and budget?

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Considering the above questions can certainly save educators and their governing body a great deal of future difficulty.

Key Cases:

Redding v. Safford Unified School District. A decision was made by the Supreme Court of the United States on Thursday, June 26, 2009, affirming in part the decision of the 9th Circuit that the search of this case was excessive in scope. However, it found..

That the three school employees involved, including the assistant principal who ordered the search, were entitled to qualified immunity. It remanded the case to the 9th Circuit to establish whether the district could be held liable for the unconstitutional search.

The Redding v. Safford case is further explained in an article published, June 26, 2009 in the USA Today

WASHINGTON – The Supreme Court’s decision Thursday striking down the strip search of an eighth-grade girl for prescription-strength ibuprofen requires schools nationwide to weigh more carefully how intrusively they search for drugs.

By an 8-1 vote, the justices ruled that school officials in a rural Arizona district violated the Fourth Amendment rights of Savana Redding when they forced her to take off her clothes after an unverified tip that she had the pain relief pills. The court emphasized the difference between a routine search of a backpack and a search that exposes a student’s private parts.

Justice Clarence Thomas dissented. The decision, which differs from signals the justices sent during oral arguments in April, also departs from a recent trend giving administrators wide latitude to search for drugs in schools.

Writing for the court, Justice David Souter said an official must have a “reasonable suspicion of danger” regarding the drugs sought and a belief they could be hidden in a student’s underwear before making “the quantum leap from outer clothes and backpacks to exposure of intimate parts.”

Matthew Wright, lawyer for the Safford school district, predicted the decision would have a “chilling effect” on administrators responding to threats of drugs. Francisco Negron, lawyer for the

National School Boards Association, said the decision could be confusing for school officials, who typically lack formal training in drugs yet would have to consider whether the contraband they seek is dangerous enough to do a strip search.

Redding, who was 13 at the time of the search and is now 19, said “I’m so glad that they recognized that my rights were violated. I don’t want this to happen to anyone else.” Her lawyer, Adam Wolf, a lawyer with the American Civil Liberties Union who argued the case, added, “Today’s ruling affirms that schools are not constitutional dead zones.”

In October 2003, after Assistant Principal Kerry Wilson heard from a student that Redding might have ibuprofen, he asked a school nurse and administration assistant, both women, to search Savana in the nurse’s office. They asked her to take off her shirt and pants, then to pull out her bra and underpants to see whether she was hiding any pills. No pills were found.

Savana’s mother April Redding, sued, claiming school officials breached Savana’s rights under the Fourth Amendment protection from unreasonable searches. A lower U.S. appeals court ruled for the Reddings and said Safford officials were financially responsible for harm to Savana.

In affirming that her rights were violated, Souter said a strip search requires officials

to have an “indication of danger (and) reason to suppose that Savana was carrying pills in her underwear.”

Souter was joined by Chief Justice John Roberts and justices John Paul Stevens, Antonin Scalia, Anthony Kennedy, Ruth Bader Ginsburg and Stephen Breyer and Samuel Alito. In his dissent, Thomas said the decision allows judges “to second-guess” officials trying to ensure student safety.

By a separate vote of 7-2, the court said that because rulings in this area of the law have not been clear, Safford officials are shielded from financial responsibility for their actions. Stevens and Ginsburg dissented from that part of the ruling in Safford Unified School District no. 1 v. Redding.

During oral arguments April 21, many justices voiced more sympathy for school administrators than for Redding. Several, including Souter and Roberts, appeared open to arguments that administrators need considerable leeway to look for drug abuse. Ginsburg was most forceful on the other side. In a concurring opinion Thursday, Ginsburg was most forceful on the other side. In a concurring opinion Thursday, Ginsburg emphasized the humiliation Savana endured, including being forced to sit on a chair outside Wilson’s office even after the search found no pills.

Key conclusions from this case:

1. There must be reasonable suspicion of danger
2. There must be a clear statement of your scope of authority
3. There needs to be credible sources of information
4. There must be a clear, workable policy.
5. The staff must understand and be trained to legally carry out the policy.
6. There must be great care taken by governing bodies if they consider using "zero tolerance policies" especially if they lump minor and major cases under the same microscope.
7. Always use the problem solving process (page 5, Section 3) before you even consider doing a strip search.
8. Searches that expose intimate parts of a student's body must rise to a much higher level of justification than less intrusive searches.
9. In the Redding v. Safford case the high court stated that school officials violated the Fourth Amendment of the United States Constitution by conducting a search that was unreasonable after all the facts of the case were considered.
10. Please refer to pages 14-16 for more tips on proper search and seizure.

Additional Case References

The United States Supreme Court in a 1985 decision "New Jersey v/s TLO", stated that searching a student's purse by school officials needs only reasonable suspicion, not probable cause. However, they did warn against searches that were "excessively intrusive".

Regulating Student Expression

1. Students don't lose their rights under the First Amendment of the United States Constitution as stated in the "Tinker v Des Moines School District" in 1969. This Supreme Court ruling, however, does not give students the right for substantial disruption of the school's program. This may include speech, writings and threats of violence as well as other acts of interfering with the school's educational program.

Case Examples

In the U.S. District Court (Southern District of Texas) (Madrid v. Anthony – 2008) the court ruled that the principal did not violate the rights of students under the first amendment by prohibiting groups to wear t-shirts that had strong conflicting statements on them. These conflicting statements dealt with opposing views on immigration. The court concluded that the principal made the proper decision to ban the t-shirts in order to protect the health, safety and welfare of opposing student groups, not to harm them by precluding their free speech under the First Amendment. School Officials may restrict student expression if they have reason to believe that the student speech will substantially interfere with the school program or interfere with the rights of other students.

Case 2. Regulating Student Expression, Corder v. Lewis Palmer SD No. 38/No. 08-1293 (10th Circuit 5/29/09) (Colorado)

The 10th U.S. Circuit Court of Appeals rejected a high school valedictorian's claim that restrictions placed on her speech violated her First Amendment rights. The court ruled that there was no violation of the student's "school sponsored" speech for valid educational reasons. Thus educators can control a speech to ensure that the student's views are taken as the view of the school. In this case the principal approved the speech but at the graduation ceremony the student changed the speech without getting approval from the principal. After the speech the principal would not award the student her diploma until she publicly stated her added comments represented her personal view and not the view of the school. The student sued the district, lost the case at the District Court level, appealed and then lost at the 10th U.S. Circuit Court of Appeals. Thus the school district was justified in its action with this "school sponsored" speech.

Case 3. Regulating Student Expression

Riehm v. Engelking, et al., 538 F.3d 952 (8th Cir. 2008) The 8th Circuit Court of Appeals affirmed that school districts may regulate student speech that constitutes a "true threat".

Through a written school assignment the student wrote a "true threat" to his teacher. The court stated that the student's speech occurred in

the school environment where schools may regulate some speech even though the government could not censor similar speech outside the school.

Case 4. Regulating Student Expression

Ponce v. Socorro Independent School Dist.,
No. 06-50709 WL 4245778 (5th Cir.
11/20/07)

A written speech advocating harm against the student body is not protected under the constitution. These threats must be taken seriously by the school administration.

Case 5. Regarding Sexual Harassment (and deliberate indifference)

Fitzgerald v. Barnstable School Committee
(07-1125)

Argued 12/2/2008 decided 1/21/2009 by the United States Supreme Court. (unanimous agreement) They reversed a lower court decision and remanded the case to the lower court.

The case involved a third grade boy who repeatedly bullied their (Fitzgerald's) five year old daughter on the school bus making her pull up her skirt, pull down her underpants and spread her legs. After investigating the district offered to transfer the girl to another bus or to leave empty seats between the child (a kindergarten student) and other students. The parents claimed the district's solution punished their child (the victim) and not the child who was the alleged perpetrator. The parents requested that the boy should be moved to another bus or a monitor should be placed on their daughter's bus. They claimed this was "deliberate indifference" (See Page 38-39) and asked for protections provided under the 14th Amendment's equal protection clause. The lower court ruled against the Fitzgerald's saying Title IX could not be used. They would not allow Section 1983 to be used. The Supreme overturned the decision stating the parents could sue and remanded the case back to the lower court. During the Supreme Court hearing, though the Justices did not charge since they remanded the case back to the lower court their discussions often centered around the area of "Deliberate Indifference".



Supreme Court collection

DAVIS V. MONROE COUNTY BD. OF ED. (97-843) 526 U.S. 629 (1999)
120 F.3d 1390, reversed and remanded.

Syllabus	Opinion [O'Connor]	Dissent [Kennedy]
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Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 97–843

AURELIA DAVIS, as next friend of LaSHONDA D.,
PETITIONER v. MONROE COUNTY BOARD
OF EDUCATION et al.
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

[May 24, 1999]

Justice O'Connor delivered the opinion of the Court.

Petitioner brought suit against the Monroe County Board of Education and other defendants, alleging that her fifth-grade daughter had been the victim of sexual harassment by another student in her class. Among petitioner's claims was a claim for monetary and injunctive relief under Title IX of the Education Amendments of 1972 (Title IX), 86 Stat. 373, as amended, [20 U.S.C. § 1681](#) *et seq.* The District Court dismissed petitioner's Title IX claim on the ground that "student-on-student," or peer, harassment provides no ground for a private cause of action under the statute. The Court of Appeals for the Eleventh Circuit, sitting en banc, affirmed. We consider here whether a private damages action may lie against the school board in cases of student-on-student harassment. We conclude that it may, but only where the funding recipient acts with deliberate indifference to known acts of harassment in its programs or activities. Moreover, we conclude that such an action will lie only for harassment that is so severe,

pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit.

I

Petitioner's Title IX claim was dismissed under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief could be granted. Accordingly, in reviewing the legal sufficiency of petitioner's cause of action, "we must assume the truth of the material facts as alleged in the complaint." *Summit Health, Ltd. v. Pinhas*, 500 U.S. 322, 325 (1991).

CASE: FOREST GROVE S.D/W/T.A. (U.S. 2009) JUNE 22 ND.

Subject: Supreme Court Affirms Reimbursement Rights for Special Education - The New York Times

In a 6-to-3 vote on June 2009, the Supreme Court ruled: "*We conclude that IDEA authorizes reimbursement for the cost of private special education services when a school district fails to provide a FAPE and the private school placement is appropriate, regardless of whether the child previously received special education or related services through the public school.*" Justice John Paul Stevens, U.S Supreme Court.

In his dissent, Justice David H. Souter, joined by Justices Antonin Scalia and Clarence Thomas, said that the disabilities law was designed to promote cooperation between school districts and families in developing an individualized education plan for each disabled student. The dissent also discussed the high costs of private-school placements. "*Given the burden of private school placement, it makes good sense to require parents to try to devise a satisfactory alternative within the public schools.*" Justice David H. Souter, U.S Supreme Court.

ARTICLE

Court Affirms Reimbursement for Special Education

By TAMAR LEWIN, June 23, 2009

In a decision that could help disabled students obtain needed services and cost school districts millions of dollars, the Supreme Court ruled on Monday that parents of special-education students may seek government reimbursement for private school tuition, even if they have never received special-education services in public school.

The case before the court involved a struggling Oregon high school student, identified in court documents only as T. A., whose parents removed him from public school in the Forest Grove district in his junior year and enrolled him in a \$5,200-a-month residential school.

Although Forest Grove officials had noticed T. A.'s difficulties and evaluated him for learning disabilities, he was found ineligible for special-education services. Only after he enrolled in the private school did doctors say T. A. had attention deficit hyperactivity disorder and other disabilities.

While most of the nation's six million special-education students attend public school, as T. A. did for many years, thousands of families with disabled children, convinced that the public schools lack appropriate placements, avoid the public schools altogether. Instead, they enroll their children in expensive private schools for students with emotional or learning disabilities, and then seek reimbursement.

Nationally, about 90,000 special-education students are in private schools, most of them referred by their public schools.

In 2007-8, the New York City schools, which filed a friend-of-court brief supporting Forest Grove, paid \$89 million in private-school tuition for disabled students whose parents had placed them there, up from \$53 million two years earlier. In 2007-8, the city received 4,368 requests for reimbursement from parents who enrolled their children in private school; of those, more than half had not received services in public school.

The issue in the Forest Grove case was whether a 1997 amendment to the Individuals with Disabilities Education Act (or IDEA) prohibited private-school tuition reimbursement for students who never received special-education services in public school.

The amendment says tuition may be available for students with disabilities "who previously received special-education" services in public school, if the school did not make a free and appropriate public education (or FAPE) available in a timely manner.

Forest Grove, backed by school-boards associations across the country, argued that the amendment precluded reimbursement for those, like T. A., who never received special-education services in public school.

But the high court, in a 6-to-3 ruling, rejected that argument.

"We conclude that IDEA authorizes reimbursement for the cost of private special education services when a school district fails to provide a FAPE and the private school placement is appropriate, regardless of whether the child previously received special education or related services through the public school," Justice John Paul Stevens wrote in the majority opinion.

Justice Stevens said the school district's interpretation would produce a result "bordering on the irrational."

"It would be strange for the act to provide a remedy, as all agree it does, where a school district offers a child inadequate special-education services but to leave parents without relief in the more egregious situation in which the school district unreasonably denies a child access to such services altogether," he wrote.

He was joined by Chief Justice John G. Roberts Jr. and Justices Anthony M. Kennedy, Ruth Bader Ginsburg, Stephen G. Breyer and Samuel A. Alito Jr.

In his dissent, Justice David H. Souter, joined by Justices Antonin Scalia and Clarence Thomas, said that the disabilities law was designed to promote cooperation between school districts and families in developing an individualized education plan for each disabled student. The dissent also discussed the high costs of private-school placements.

↑ NOTE ROLES OF THE JUSTICES

Technology, Schools and the Law

Sexting as described in a "USA Today" editorial as a combination of technology, hormones, and stupidity has spread all across this country like an unwanted epidemic. It seems that "Sexting" is and has become the teenage name for the act of sending, receiving or forwarding to others naked, semi naked or sexual activities via cell phones.

Survey: 1 in 5 teens 'sext' despite risks

6/24

Racy messages open doors for 'cyberbullies' and other predators

By Donna Leinwand
USA TODAY

WASHINGTON — A new survey on kids in cyberspace finds that one in five teens have "sexted" — sent or received sexually suggestive, nude or nearly nude photos through cellphone text messages or e-mail.

Most teens who sexted sent the photos to girlfriends or boyfriends, but 11% sent them to strangers, according to the study made public today by the National Center for Missing & Exploited Children and Cox Communications. Of

teens who sext, 80% are under 18, the survey found.

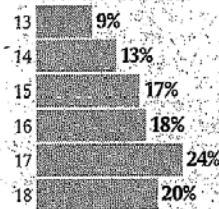
Harris Interactive interviewed 655 teens ages 13 to 18 in April about their use of computers and cellphones. One in five told Harris they have been "cyberbullied" — harassed or threatened online or by text message.

Most teens are online: 91% have an e-mail address, and 60% have an instant-message screen name. Nearly three-quarters have a cellphone, and 72% have profiles on social networking sites.

Although teens say they recognize the dangers of

Teen 'sexters'

Ages of teens who say they have received or sent a sexually suggestive nude or nearly nude photo by e-mail or phone text:



Source: Teen online and cellphone behavior survey, Harris Interactive

By Julie Snyder, USA TODAY

sharing personal information online, they do it anyway.

Three in five say they know

having personal information or photos on a public site is unsafe. Yet most teens using social networking sites told the survey they post photos of themselves and friends.

One in four teens say they know someone who had a bad experience because of information posted on the Internet. Bad experience can range from having a sext forwarded around school to being sexually victimized. This month, FBI agents in Los Angeles arrested a 34-year-old man who allegedly posed as a 22-year-old and began a sexual relationship with a 15-year-old girl he met online.

Teenagers underestimate the risks they take online, says David Walsh of the Na-

tional Institute on Media and the Family. "The part of their brain that puts the brakes on things is under major construction," he says.

Many teens say their parents are clueless: 40% tell their parents very little or nothing about what they do online.

Parents can teach their kids the consequences of putting information online, says John Walsh (no relation to David Walsh), TV host of *America's Most Wanted* and a founder of the National Center for Missing & Exploited Children.

"Parents need to sit down and tell their kids, 'I taught you how to cross the street. I'm going to teach you how to be safe online,'" Walsh says.

In May of 2009 this USA Today article summarized what is going on today in even greater numbers:

More teens caught up in 'sexting'

Many don't realize porn charges can be attached

By Wendy Koch
USA Today

A growing number of teens are ending up in serious trouble for sending racy photos with their cellphones.

Police have investigated more than two dozen teens in at least six states this year for sending nude images of themselves in cellphone text messages, which can bring a charge of distributing child pornography. Authorities typically are notified by parents or schools about so-called "sexting."

This week in Spotsylvania, Va., two boys, ages 15 and 18, were charged with solicitation and possession of child porn with intent to distribute after an investigation found they sought nude pictures from three juveniles — one in elementary school.

"It's absolutely becoming a bigger problem," says Michelle Collins of the National Center for Missing & Exploited Children.

Of the 2,100 children the center has identified as victims of online porn, she says, one-fourth initially sent the images themselves.

She says some did it for fun and others were tricked into it by adults they met online.

"They may not realize the danger they are exposing themselves to," says William Shaw, district attorney for Clearfield County, Pa. "When

they put it online, they lose control."

Last month, Shaw filed a juvenile petition against a 15-year-old girl for sending nude photos of herself over the Internet. He says his objective isn't to jail her but to get her counseling or other help. The 27-year-old man who enticed her to do it has been sentenced to 10 years for having sex with her.

Lawmakers are debating penalties. On Wednesday, the Utah Legislature passed lighter penalties, from a felony to a misdemeanor, for sexting.

In Cuyahoga County, Ohio, Juvenile Court Judge Thomas O'Malley struggled to figure out what to do with eight teens, 14 to 17, caught trading nude cellphone pictures of themselves. He says the father of one of the girls found the images.

If the 17-year-old who sent the nude photos to an ex-boyfriend were convicted of a child-porn charge, he says, she would be a registered sex offender for 20 years.

"These kids have no record, not even a parking ticket," says O'Malley, a father of four teens.

He required each to do community service and to ask peers if they knew sexting was a crime. They told O'Malley they surveyed 225 teens; 31 knew.

Best Practices Concerning “Sexting”

1. Make certain your school entity has a clear, legal, enforceable cell phone policy in place.
2. Make certain that staff fully understands the policy and that all staff members know who to call (administrator in the school entity) if there is a problem or a question.
3. Make certain students and parents understand the policy and can see a copy of the policy in your handbook.
4. Administration should review the policy with local or state law enforcement for clarity support and specific action to be taken or not to be taken. (Example → Do I open the cell phone or not?)
5. Remember each situation maybe different. That is why the four step process is appropriate
 - a. Aware
 - b. Investigate
 - c. Conclusion
 - d. Appropriate action

Please refer to Page #5

In many cases it may be overkill to regard teen sexting as child pornography or punishment for the teen to register as a sex offender. Although sexting is crude, disgusting and often deplorable it should be up to adults, through written policy, to ensure that the adjudication fits the violation.

Law enforcement agencies in numerous states are also trying to sort out disciplinary actions on individual investigation of cases, thus staying away from zero tolerance actions.

It is important to understand that in the area of “sexting”, parents hold the key to the actions of their sons and daughters. The schools cannot fix the problem by themselves, nor can law enforcement or the courts.

Internet/Student Web Sites

More and more situations occur everyday involving students and their web sites in relation to First Amendment protection. (additional information is found on pages 30-31) Certainly, a major factor with any internet situation is “Have you established a NEXUS” (a connection between the event and the school?) Though there seems to be no 100% guarantee on disciplining or not disciplining students under the law or school policies, there are some common sense guidelines you need to follow:

1. Areas that may be disciplined
 - a. Criminal activity
 - b. Threats and/or terroristic threats
 - c. Items that start or are created off campus that disrupts the school.
 - d. Expression that suggests or encourages violence.
 - e. Review of court rulings that explain unprotected speech or expression. Example: (statements encouraging violence toward a teacher.)
2. Areas where you should not seek disciplinary action:
 - a. Actions, speeches or messages that do not disrupt the educational program in the school.
 - b. Actions that do not affect the rights of others in the school environment.
 - c. Opinions or complaints about school rules or school assignments.
 - d. Student opinions (example → complaints about the food served at lunch)

Please note that the above two lists are not all inclusive.

Hands on Students/Corporal Punishment

In the Commonwealth of Pennsylvania, pertaining to the PA Department of Education (22 Pa Code, Chapter 12) the following is a Regulatory Requirement:

Corporal Punishment as a form of student discipline is not permitted. It is prohibited.

Regulatory Requirement: (a) Corporal punishment is defined as physically punishing a student for an infraction of the discipline policy. Use of corporal punishment is prohibited; (b) Teachers and school authorities may use reasonable force under the following circumstances:

- (1) To quell a disturbance.*
- (2) To obtain possession of weapons or other dangerous objects.*
- (3) For the purpose of self-defense.*
- (4) For the protection of persons or property.*

Department Expectations: LEA must comply with regulatory language prohibiting the use of corporal punishment including exceptions that teachers and school authorities may use reasonable force under the following circumstances:

- (1) To quell a disturbance.*
- (2) To obtain possession of weapons or other dangerous objects.*
- (3) For the purpose of self-defense*
- (4) For the protection of persons or property.*

Revised, 9/7/2007

Please refer to Pages 32-33 (Hands on) and Page 60 (Chapter 12) for additional information.

Drug Testing

It is extremely important for a school entity to establish clear reason for and authority for a legal comprehensive and enforceable "drug testing" policy. In 2002, the United States Supreme Court published their decision on drug testing in the following case that was heard, approved, and reversed at lower levels.

SUPREME COURT OF THE UNITED STATES

**BOARD OF EDUCATION OF INDEPENDENT SCHOOL DISTRICT NO. 92 OF
POTTAWATOMIE
COUNTY et al. EARLS et al.**

**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH
CIRCUIT**

No. 01-332. Argued March 19, 2002 – Decided June 27, 2002

The Supreme Court voted 5 to 4 to support the actions of the School District.

DRUG TESTING

“[W]e find that testing students who participate in extracurricular activities is a reasonably effective means of addressing the School District’s legitimate concerns in Preventing, deterring, and detecting drug use.”

Justice Clarence Thomas
U.S. Supreme Court
June 27, 2002

Board of Education of Independent School District v. Earls, U.S. Supreme Court (2002). The U.S. Supreme Court approved a school district policy requiring urinalysis drug testing of students involved in extracurricular activities on the grounds that such testing furthered the school district’s significant interest in preventing and deterring drug use.

DRUG TESTING

The following are the three most important cases in the Drug Testing area.

The Court	The Case	The Result
U.S. Supreme Court	Veronia Sch. Dist 47J v. Action, 515U.S.646(U.S. 1995)	Student-athletes. Policy upheld requiring all students participating in interscholastic athletics to consent to random drug testing.
U.S. Supreme Court	Board of Educ. Of Indep. Sch. Dist. No 92 of Pottawatomie County, et al. v. Earls, No. 01-332 (U.S. 06/27/02)	Nonathletic extracurricular participants. Approved policy that required extracurricular activity participants to consent to initial and random drug tests.
New Jersey Supreme Court	Joye, et al. v. Hunterdon Cent. Regional High Sch. Bd of Educ. Et al., No. A-27SeptemberTerm2002(N.J. 07/09/03)	Students with parking permits. Policy passed state constitutional muster based on students' diminished privacy expectations, minimally intrusive testing procedures, and substantial governmental interest.

DRUG TESTING

Key questions that must be answered and for best practice need to be included in your governing body's policy.

1. Which students can be tested for drug use?
2. What is the process for selecting students for testing?
3. Who will conduct the test?
4. What are the consequences of a positive drug test?
5. Are steps clearly articulated for helping students who test positive for drugs?
6. Will a second confirming test be done?
7. Who pays for the test?
8. Will subsequent positive tests result in suspension or expulsion from extracurricular activities?
9. Are test results cumulative throughout a student's tenure at the school, or is the slate wiped clean each year?
10. What happens if a student refuses to take the test? Will refusal be construed as a drug-positive test?
11. Who will see the test results, and how will confidentiality be maintained?
12. How will parents be informed about positive test results?
13. How does a student contest the results of a positive test result? And what mechanism is in place for students whose prescription medication triggers a positive reading?

This list is not all inclusive. This list is from the Office of National Drug Control Policy, Washington DC 2002-2003.