

A Board Member's Guide: Students' Rights and Discipline



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Policy Writing

- S.C. Code Ann. § 59-19-90. General Powers and Duties of School Trustees
 - (3) Promulgate Rules and Regulations. Promulgate rules prescribing...standards of conduct and behavior that must be met by all pupils ... such rules may result in the ineligibility of pupils who fail to observe the required standards and require the suspension or permanent dismissal of such pupils.

Code of Conduct Pitfalls

- ❑ Vague Language
- ❑ Overly Broad Wording
- ❑ Outdated
- ❑ Subject to Arbitrary Application

Discipline Policy Checklist

- ❑ Is the Code of Conduct current?
- ❑ Does the Code of Conduct put parents and students on notice of what conduct is prohibited?
- ❑ Does the Code of Conduct clearly state the sanctions that could be imposed for misconduct?
- ❑ Does the Code of Conduct define critical terms and phrases?
(*examples: drugs, sexual offenses, bullying, weapons, firearms, etc.*)
- ❑ Are the provisions in the Code of Conduct supported by state/federal laws and regulations?
- ❑ Are the rules reasonably related to the school's purpose?
- ❑ Do the policies address off-campus conduct, cyberbullying, sexting, synthetic drug use, and other new disruptions facing schools?

Hot Topics: Students' Misuse of Technology

- ❑ Cyberbullying
- ❑ Sexting
- ❑ Cell Phones



Addressing Off-Campus Conduct

- ❑ Does the student's misconduct have a direct and immediate effect on school discipline or the safety and welfare of students and staff, causing a material or substantial disruption to the operations of the school?
- ❑ The policy must inform students that they are subject to discipline for action even though it occurs away from school grounds.
- ❑ The discipline imposed should relate to school purposes.

Types of Discipline: Are These Sanctions Permissible?

- ❑ Grade Reduction?
- ❑ Withholding Diploma?
- ❑ Placing Limitations on Graduation Ceremony Participation?
- ❑ Extracurricular Activities/Student Activities?
- ❑ Suspensions?
- ❑ Expulsions?
- ❑ Alternative Education Placements/Transfers?
- ❑ Corporal Punishment?

Grounds For Expelling, Suspending, or Transferring Students

(S.C. Code Ann. § 59-63-210)

- Any district board of trustees may authorize or order the expulsion, suspension, or transfer of any pupil for the commission of any crime, gross immorality, gross misbehavior, persistent disobedience, or for violation of written rules and promulgated regulations established by the district board...or where the presence of the pupil is detrimental to the best interest of the school.

Due Process

- ❑ Procedural Due Process – The procedures that the government (school district) must follow before it deprives a person (student) of life, liberty, or property.
- ❑ Substantive Due Process – This asks whether the government (school district) abused its powers by arbitrarily depriving a person (student) of a protected interest, or by basing the decision on an improper motive.

Due Process

- ❑ *Goss v. Lopez* (U.S. Supreme Court 1975) – minimum due process rights for students
- ❑ *Byrd v. Irmo High School* (South Carolina Supreme Court 1996)— suspensions not appealable to South Carolina circuit courts, but due process requirements must be met
- ❑ *Floyd v. Horry County School District* (South Carolina Supreme Court 2002) --clarified the Byrd ruling, stating that it provided for limited judicial review of short term suspensions. A student may appeal a temporary school suspension to the circuit court, but only for the sole purpose of determining whether the minimal due process requirements of *Goss* were met.
- ❑ *Davis v. School District of Greenville County* (South Carolina Supreme Court 2007) - transfer of a student for disciplinary sanction is not appealable to circuit court

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- ❑ Each expelled pupil has the right to petition for readmission for the succeeding school year.

Suspensions

(S.C. Code Ann. §§ 59-63-220 and 59-63-230)

- ❑ Not in excess of ten (10) days for any one offense and not for more than thirty (30) days in one school year
- ❑ Conduct conference with student to notify him/her of charges and provide student with an opportunity to explain.
- ❑ Send written notice to parent/guardian
- ❑ Must hold conference within three (3) days of the date of the suspension
- ❑ State law provides that an appeal of the suspension may be made to the board of trustees or to its authorized agent
- ❑ Many districts limit suspension appeals to the District's hearing officer, the superintendent, or the superintendent's designee

Expulsions

(S.C. Code Ann. § 59-63-240)

- ❑ The Board may expel a student for the remainder of a school year for reasons identified in applicable state law.
- ❑ Parents or legal guardians of a student should be notified in writing. Notice must include the date, time, place of the hearing, and the reason for the expulsion recommendation. The notice should also inform parents/guardians of their rights at the time of the hearing.
- ❑ At the hearing, the parent or legal guardian shall have the right to legal counsel and to all other regular legal rights including the right to question all witnesses.

Expulsions

(S.C. Code Ann. § 59-63-240)

(continued)

- ❑ **If the hearing is held by any authority other than the board of trustees, the right to appeal the decision to the board is reserved to either party.**
- ❑ The hearing shall take place within fifteen (15) days of the written notification at a time and place designated by the board and a decision shall be rendered within ten (10) days of the hearing.
- ❑ The student may be suspended from school and all school activities during the time of the expulsion procedures.
- ❑ The action of the board may be appealed to the proper court.

Expulsion of Student Determined to Have Brought Firearms to School

(S.C. Code Ann. § 59-63-235)

- ❑ The district board must expel for no less than one year, a student who is determined to have brought a firearm to a school or any setting under the jurisdiction of a local board of trustees...The one year expulsion is subject to modification by the district superintendent of education on a case-by-case basis.
- ❑ Students expelled pursuant to this section are not precluded from receiving educational services in an alternative setting.
- ❑ Each local board of trustees is to establish a policy which requires a student to be referred to the local county office of the Department of Juvenile Justice or its representative.

Transfer of Pupils

(S.C. Code Ann. § 59-63-250)

- The board or a designated administrator may transfer a pupil to another school in lieu of suspension or expulsion, but only after a conference or hearing with the parents or legal guardian.
- **The parents or legal guardians may appeal a transfer made by an administrator to the board.**

Discipline Hearings

- ❑ Adequate Warning
- ❑ Cross-Examination of Witnesses
- ❑ Rules of Evidence
- ❑ Self-Incrimination
- ❑ Scope of Hearing
- ❑ Right to Counsel
- ❑ Right to Review

Appeals

- What disciplinary actions are appealable to the board?
- What disciplinary actions are appealable to the courts?

Reviewing Discipline Appeals

- ❑ The standard of review for which the courts determine whether a decision by a local board of trustees may be reversed or modified is whether “substantial evidence” exists to support the board’s decision.
- ❑ Substantial evidence is not a mere scintilla of evidence nor the evidence viewed primarily from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.

Reviewing Appeals: Pitfalls

- Courts typically do not substitute the judgment of the board but will reverse or modify the decision if the substantial rights of the student have been prejudiced because the board's findings, inferences, conclusions, or decisions are:
 - In violation of constitutional or statutory provisions
 - In excess of the statutory authority of the school board
 - Made upon unlawful procedures
 - Affected by other errors of law
 - Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record
 - Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion

Reviewing Appeals

- ❑ Examine whether due process has been given
- ❑ Stick to the evidence in the record below
- ❑ Understand the evidentiary standard and determine whether there is substantial evidence to support your decision
- ❑ Recuse yourself if necessary
- ❑ Consider mitigating circumstances, where applicable
- ❑ Consistently enforce policies

Dealing with Calls from Parents

- ❑ You receive a call from a parent the week before your next Board meeting. The parent tells you that his daughter was recommended for expulsion after getting into a fight in the school cafeteria. What do you do?
 - A. Tell the parent you are watching the final episode of “The Voice”, offer to pray for the child, and hang up.
 - B. Ask the parent to tell you everything about the situation and ensure the parent that his child will not receive any punishment...after all, the other child probably had it coming.
 - C. Warn the principal that if the disciplinary proceedings are not stopped, he/she will need to look for a new job.
 - D. None of the above.

Dealing with Calls from Parents

- You receive a call from a parent whose son was expelled after committing a “sexual offense” with his girlfriend on school grounds. The parent wants to know what, if any, discipline was imposed against the female student involved in the incident. What do you do?
 - A. Tell the parent to mind his own business
 - B. Tell the parent that the Board did not think the young lady was responsible for what happened and decided not to impose any discipline against her
 - C. Inform the parent that the female student involved in the incident had a track record of this kind of behavior and the Board thought it was time for her to go.
 - D. None of the above.

Dealing with Calls from Parents

(Continued)

- ❑ Impartiality is key
- ❑ Direct parents to refer the matter to the appropriate teacher or administrator
- ❑ Ask the parent not to provide you with any details concerning the matter as it may end up before you on appeal
- ❑ Consider FERPA compliance

Common Legal Challenges To Student Discipline

- ❑ First Amendment Violations
- ❑ Due Process Violations
- ❑ Search & Seizure Violations
- ❑ Lack of Substantial Evidence
- ❑ Discrimination Claims
- ❑ Bullying Lawsuits

Balancing the Safe Operation of Schools vs. Student Constitutional Rights

- You have been hearing about cyberbullying on the internet and you decide to browse Facebook. You happen to see a student's Facebook page that has very disparaging comments about you and other board members. What do you do?
 - A. Notify the superintendent and tell her that the student needs to be recommended for expulsion immediately.
 - B. At your next Board meeting, move to pass a resolution to prohibit all students from being on Facebook.
 - C. An eye for an eye.....start your own webpage to share your thoughts about this student.
 - D. None of the above.

Tinker v. Des Moines Ind. Comm. Sch. Dist.,
393 U.S. 503 (1969)

- ❑ Invalidating disciplinary action against students for wearing black armbands to protest Vietnam War
- ❑ Under Tinker, a school may regulate student expression that either:
 - A. Causes, or is reasonably expected to cause, material and substantial disruption to school operation; or
 - B. Infringes upon the rights of others

Bethel Sch. Dist. No. 403 v. Fraser
478 U.S. 675 (1986)

- ❑ Upholding disciplinary actions against students for delivering assembly speech with sexual innuendo
- ❑ Under Fraser, a school may regulate plainly offensive student expression as inconsistent with the school's basic educational mission.

Morris v. Fredrick, 551 U.S. 398

(June 25, 2007)

- ❑ At a school sanctioned/school sponsored event, the high school principal saw some of her students hold up a large banner conveying a message “Bong Hits 4 Jesus.” This was regarded as promoting illegal drug use.
- ❑ Consistent with established school policy prohibiting such messages at school events, the principal directed the students to take down the banner. When one of the students refused to do so, the principal confiscated the banner and suspended the student.
- ❑ The U.S. Supreme Court held that schools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use. The Supreme Court concluded that the school officials did not violate the First Amendment by confiscating the pro-drug use banner and suspending the student responsible for it.

Keep In Mind...

- The courts' rulings in student discipline and student rights cases are extremely fact specific and made on a case-by-case basis.

Questions?
