



Update on Student Discipline Developments

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Topics

- Anti-Bullying Legislation
- OCR Position on Bullying
- Ban on Paddling
- Off-Campus Student Conduct
- Student Drug-Testing
- Drug Sniffing Dogs



Anti-Bullying Legislation

NM Senate Bill 78

- 2011 Legislature – Signed by Gov. Martinez
- Introduced by
 - Sen. Jane M. Garcia / Rep. Rick Miera
- Requires:
 - PED – establish guidelines for bullying prevention policies
 - Local Boards – Bullying Prevention Policy by August 2011
 - Every Public School – Bullying Prevention Program by August 2012
 - [Copy of bill on CD]

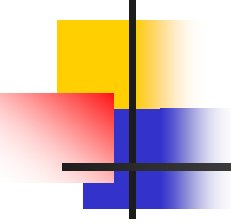
Office of Civil Rights

Re: Bullying

- “Dear Colleague” Letter to all Superintendents
- Tougher stand than required by case law
- Important that school respond promptly and take action to stop bullying, especially bullying/harassment based on protected categories

OCR DCL

Liability	OCR Enforcement
actual knowledge	knew or reasonably should have known
severe, pervasive, AND objectively offensive	severe, pervasive, OR persistent
effectively bars participation	interferes or limits participation
deliberate indifference	eliminate harassment



Bullying --→ Harassment

- Harassment
 - Student recipient of threatening, disturbing or unwelcome behaviors because of a particular characteristic
- Unlawful Harassment
 - Verbal or physical conduct based on a student's race, color, national origin, gender, religion, disability, sexual identity



Bullying -→ Sexual Harassment

- Sexual Harassment
 - Unwelcome conduct of a sexual nature between students
 - Verbal or physical sexual advances
 - Sexually-oriented touching, pinching, patting, staring, pulling at clothing
 - **MAKE SURE YOU HAVE A SEPARATE SEXUAL HARASSMENT POLICY !!!**



Legal Consequences of Bullying

- Lawsuits against school districts that have failed to adopt, implement and enforce anti-bullying policies
 - Lawsuit against NM School District because student committed suicide
 - Lawsuit against NM School Districts because student was physically injured
 - Threats of lawsuit because of discrimination on the basis of race, religion and because of criminal sexual contact/penetration

Why Address Bullying?

- Avoid or Help in Defense of Lawsuits
- Improve the Learning Climate
- It's the Right Thing to Do!





Two-Prong Approach

- Adopt, Implement & Enforce Policies that Prohibit Bullying, Hazing & Harassment
- Implement Proactive Instructional/Preventive Programs on Anti-Bullying - to teach students alternative behaviors, to reconnect with your school mission & unite school officials, parents, students and your community to create a safe school



Ban on Corporal Punishment

- 2011 NM Legislature Amended Section 22-5-4.3(B) NMSA 1978
- Removed “corporal punishment” as one of the possible disciplinary sanctions for student discipline
- Prohibits the use of corporal punishment/paddling students
- Board must change policies to comply with new law
- [Copy of bill on CD]



Corporal Punishment Policy

- Prohibit corporal punishment and any form of physical mistreatment of students
- Prohibit directing or suggesting physical mistreatment of a student by another student



Corporal Punishment - Defined

- Spanking, paddling, striking, squeezing, or pinching any part of the body or forcefully grabbing the body or clothing of a student, or pushing a student
- Requiring a student to assume uncomfortable positions (*e.g.* hands held over head, holding books, etc.)



Corporal Punishment – Definition Continued

- Restraining or restricting physical movement through binding or tying;
- Enclosing a student in a confined space such as a closet, locker, or similar cubical;
- Using exercise as punishment (*e.g.* pushups, laps); exception for PE and Athletics where activity is appropriate to the physical and emotional condition of each student.



Corporal Punishment - Exceptions

- Reasonably restrain a student whose conduct is violent or physically disruptive *if* :
 - Conduct directed toward any person (employee, other student(s), third person) on school premises, or student him/herself
 - Conduct directed toward school property or the property of another on school premises



Corporal Punishment – Exceptions (cont.)

- Not a violation of the policy to exercise **reasonable** grasp upon, or restraint of, the student for purpose of moving or removing the student, or for the purpose of preventing the student from entering the premises **AFTER** student has **REFUSED** valid directives.



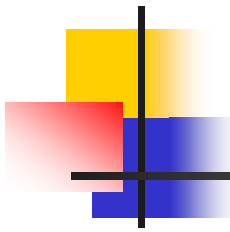
Corporal Punishment – Penalty for Violations

- Employee found in violation of the policy shall be subject to discipline, which may include suspensions, termination or discharge.
- Instances of physical mistreatment will be referred to law enforcement or child protective agencies as required by law.



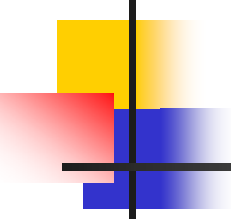
Off-Campus Misconduct

- School Sponsored
 - All School Rules Apply
- Examples Non-School Sponsored:
 - Drug / Alcohol Use away from school during non-school time
 - Criminal Arrest for Serious Crime away from school during non-school time
 - Use of Home Computer for Cyber Bullying



Off-Campus Student Misconduct

- When Does School Have Jurisdiction?
- “Nexus of Responsibility” – Student misconduct creates a foreseeable risk of substantial disruption within the school
- PED Reg. 6.11.2.9(9) – Students may be disciplined for out-of-school conduct that has a “direct and immediate effect” on school discipline or general school safety



Off-Campus Student Misconduct

– 1st Amend. Issues

- *Tinker v. Des Moines*, 393 US 503 (1969) – Set standard that schools may punish speech that “materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school.”



Mixed Court Decisions

- *Evans v. Bayer*, 684 F.Supp.2nd 1365 (S.D.Fla. 2010)
- found that student's Facebook group creation entitled "Ms. Sara Phelps is the worst teacher I've ever met," with the stated purpose of encouraging students to voice their dislike for the teacher, was protected speech by 1st Amendment. Suspension was violation of the student's Constitutional rights.



Court Decisions Mixed

- *J.S. v. Blue Mt. Sch. Dist.*, 539 F3d 286 (3rd Cir. 2010)
- Found that student website with photo of principal and “profanity-laced statements insinuating he was a sex addict and pedophile” reasonably threatens to cause a substantial disruption of a material interference with a school--need not satisfy any geographical technicality.
- Upheld 10-day suspension.



Court Decisions Mixed

- *Laycock v. Hermitage Sch. Dist.*, 593 F.3d 249 (3rd Cir. 2010)
- Found that a 10 day student suspension for a website which included photo of principal with references to use of drugs, steroids, theft, and drinking was violation of student 1st Amendment rights.
- School could not establish a sufficient nexus between Laycock's speech and a substantial disruption of the school environment.



Student Drug Test = Search

- Drug testing is considered a “search” of a person.
- Thus, law on student search and seizure applies.



Student Search & Seizure

- Fourth Amendment of US Constitution
 - Prohibits unreasonable searches and seizures
 - “The right of 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 . . .”
 - Gov. may not conduct a search without a warrant issued by an independent magistrate based on probable cause.



Student Search & Seizure

- ***New Jersey v. T.L.O.***, 469 U.S. 325 (1985)
 - *Adopted the “Reasonable Suspicion” standard*
 - *Must be:*
 - *Justified at inception – Reasonable grounds for suspecting search will reveal evidence of violation of law or school rules*
 - *Not excessively intrusive in light of age and sex of the student and the nature of the infraction*
 - *A mere “hunch” is not a proper basis for a search*



Student Drug Testing – “Reasonable Suspicion”

- Same standards of search & seizure apply to drug testing
- Thus, student may be drug tested or alcohol tested when there is “reasonable suspicion” that the student is under the influence of drugs/alcohol
- Testing may not be needed when symptoms of use are obvious



Random Student Drug Tests

- Student Drug Tests
 - Gen. population: Courts have found drug/alcohol testing for all students infringed upon the student's legitimate expectations of privacy. Must have reasonable suspicion.
 - *Doe v. Little Rock Sch. Dist.*, 380 F.3d 349 (8th Cir. 2004) – random, suspicionless searches of students and belongings violated the 4th Amendment.



Drug Testing All Students - Prohibited

- *Tannahill v. Lockney Ind. Sch. Dist.*, 133 F.Supp. 2d 919 (N.D. Tex. 2001)
- Struck down both mandatory and random drug test policy for all students in grades 6 through 12.
- Expectation to privacy higher than for just athletes



Random Student Drug Test Exceptions by U.S. Supreme Ct.

Athletics:

Vernonia v. Acton, 515 U.S. 646 (1995)

For students who voluntarily choose to participate in non-mandatory school activities.

Activities: *Bd. of Ed. of Pottawattomie County v. Earls*, 536 U.S. 822 (2002)

For student who voluntarily participate in competitive extra curricular activities.



Factors in *Vernonia v. Acton*

- Permits drug testing athletes because:
 - Documented problem of student drug use
 - Student athletes have lower expectation of privacy (dressed/undressed in front of others)
 - Health and safety risk
 - District secured student privacy rights regarding other health conditions
 - Program was narrowly focused on drug use



Drug Sniffing Dogs

- *U.S. v. Place*, 462 U.S. 696 (1983)
- U.S. Supreme Court held use of sniffer dogs with respect to unattended luggage was not a search.
- Dog alert creates the “reasonable suspicion” needed to conduct a search



Drug Sniffing Dogs

- *U.S. v. Morales-Zamora*, 914 F.2d 200 (10th Cir. 1990)
- “society does not recognize a reasonable privacy interest in the public airspace containing the incriminating odor” when that air space is sniffed around a vehicle.



Circuit Cases Re: Sniffer Dogs in Public Schools

- *Dow v. Renfrow*, 631 F.2d 91 (7th Cir. 1980)
 - Canine sniff did not constitute search
- *Horton v. Goose Creek Ind. Sch. Dist.*, 690 F.2d 470 (5th Cir. 1982)
 - Sniff was a search – dog placed nose on student
- *B.C. v. Plumas Unif'd Sch. Dist.*, 192 F.2d 1260 (9th Cir. 1999)
 - Sniff of student belongings in classroom (after students removed) was a 4th Amend. search



Some Drug Dog Sniffs Riskier after *B.C. v. Plumas*

- Student to student searches are very risky because of *Horton* and *Plumas*
- Sniffing of student belongings, such as backpacks, is risky because of *Plumas*
- ACLU waiting for right case in NM or 10th Circuit for clarity on drug dog sniffs



Drug Dogs Sniffs - Defensible

- Student Lockers – Property owned by the school (*Zamora v. Pomeroy*)
Roswell High School case
- Student Vehicles in School Parking Lot (*Morales-Zamora*) Police roadblock in Socorro



To Withstand a 4th Amendment Challenge

- Have a Drug Sniffing Dogs and Search Policy
- Give adequate notice to Students/Parents that desks, lockers, cars and other areas are subject to search
- Lockers and student cars – OK
- No student to student sniffs
- No sniff of student belongings
- Contract with qualified/certified dog handlers
- Do Not use Law Enforcement Dogs



Drug-sniffing Dog Use

- Careful and Limited use of drug-sniffing dogs in NM Schools can withstand a 4th Amendment challenge
- Lack of “clearly established law”
- Must have current policies, guidelines and procedures
- Trained Administrators



Q & A

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