2015

Global Interest in Student Behavior: An Examination of International Best Practices

Charles J. Russo
University of Dayton, crusso1@udayton.edu

Izak Oosthuizen
North West University

Charl C. Wolhuter
North West University

Chapter Five

Disciplining Students in the United States

An Ongoing Challenge

Charles J. Russo

As reflected by the legal issues reviewed in the chapters in this volume, a continuing concern in the United States[1] and nations around the world is how to maintain safe and orderly learning environments for children and other members of educational communities while safeguarding the legal rights of students who are accused of violating disciplinary rules. Considering the explosion of litigation in the area of student rights over the better part of the last half century in the United States,[2] this chapter takes a focused approach to discipline in American public schools.[3]

In examining the status of student discipline in American public schools, an ongoing challenge for educators to be sure, this chapter is divided into four primary sections. The first part of the chapter provides an overview of the American legal system as the context in which disputes are resolved. Insofar as there is so much litigation on point, the second section of the chapter begins by focusing on student discipline generally before reviewing out of school conduct, zero tolerance policies, punishments (including corporal punishment as well as suspensions and expulsions), and due process hearings. The third part of the chapter briefly reviews the expansive and complicated topics of disciplining children with disabilities.[4]

Since they are overly expansive topics, this chapter does not deal with the voluminous litigation involving searches and seizures[5] or sexual harassment[6] even in recognizing that these issues typically involve student discipline and due process concerns; neither does this chapter deal with the free speech

rights of students.[7] The fourth part of the chapter briefly addresses emerging issues in student discipline. The chapter ends with a brief conclusion.

THE AMERICAN LEGAL SYSTEM

The U.S. Constitution is the law of the land. In other words, the Constitution provides the framework within which the entire American legal system operates. Accordingly, actions of federal, state, and local governments including state constitutions, statutes, regulations, and common law, all of which impact the law of education as it pertains to disciplining students, are subject to the Constitution as interpreted by the Supreme Court and lower courts.

As important as education is, it is not mentioned in the U.S. Constitution. Under the Tenth Amendment, according to which "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," then, education is primarily the concern of individual states.

Federal courts can intervene in educational disputes if a federal right is at issue such as in *Brown v. Board of Education* (*Brown*).[8] In *Brown*, the Supreme Court struck down state-sanctioned racial segregation in public schools on the basis that officials violated students' rights to equal protection under the Fourteenth Amendment rather than on the right to education per se.

Along with identifying the rights of Americans, the Constitution establishes three coequal branches of government, all of which are involved in safeguarding the rights of students. The legislative, executive, and judicial branches of government give rise to the three other sources of law. The legislative branch "makes the law." Once bills complete the legislative process, they are signed into law by a chief executive such as a president or governor who has the power to enforce them through regulations written by personnel at administrative agencies.

The fourth and final source of law is judge-made or common law. Common law requires judges to "interpret the law,"[9] examining issues that may have been overlooked in the legislative or regulatory process or that may not have been anticipated when statutes were enacted. Common law involves the concept of precedent, the notion that a majority ruling of the highest court in a given jurisdiction is binding on lower courts within its jurisdiction. A ruling of the U.S. Supreme Court is thus binding throughout the nation, while decisions of state supreme court are binding only in given jurisdictions.

The federal judiciary and most state court systems consist of three levels: trial courts, intermediate appellate courts, and courts of last resort. In the federal system, trial courts are known as federal district courts; state trial courts use a variety of names. Each state has at least one federal district court

while densely populated states, such as California and New York, have as many as four.

Trial courts typically involve a judge and a jury. The role of the judge, as trier of law, is to apply the law by deciding, for instance, whether evidence is admissible while providing direction for juries on how to apply the law to the facts of the specific cases that they are examining. There are thirteen federal intermediate appellate courts known as Circuit Courts of Appeal; state intermediate appellate courts employ a variety of names. The highest court in the United States is the Supreme Court; although most states refer to their high courts as supreme courts, a variety of titles are in use.

DISCIPLINE GENERALLY

Recognizing the increasingly difficult challenge facing educational officials, courts grant them "wide discretion in school discipline matters"[10] to ensure safe and orderly learning environments by adopting reasonable policies and procedures regulating student conduct. Of course, whether rules are enforceable depends on fact-specific analysis of disputes during litigation.

Whether all rules are written is often inconsequential where offenses such as not turning in homework assignments, cheating, and talking either during class or out of turn are punishable under general expectations in schools. Insofar as courts concede that educators cannot develop written rules for all possible student rule violations, they typically defer to the authority of educators as long as they impose discipline that meets the requirements of due process.

When students know,[11] or reasonably ought to know, school rules and the punishments applied by educators are appropriate to their offenses,[12] such as getting a zero for cheating on an examination, regardless of whether misbehavior occurs in schools or away from schools, courts are unlikely to interfere as long as officials treat similarly situated individuals similarly by providing them with the required level of due process.[13] While students certainly have a right to know what conduct is prohibited, school rules need not meet the same standard that courts apply in criminal cases which calls for a higher burden of proof in establishing guilt or innocence.[14]

Out-of-School Conduct

The authority of school officials to discipline students for their off-campus misconduct has led to a large amount of litigation with most courts deferring to educators as long as rules satisfy due process. Clearly, educators can regulate student conduct that violates school rules even if it occurs at extracurricular activities such as football games.[15] It is, though, more difficult to enforce conduct rules outside of school due to potential conflicts with the

rights of parents and attenuated connections between student behavior and the educational process. As discussed briefly below as an emerging topic, courts reach mixed results in this emerging area of student use of the internet outside of schools such as in their own homes.

Putting aside cases involving search and seizure under the Fourth Amendment to the U.S. Constitution and similar provisions in state constitutions, a topic beyond the scope of this chapter, courts typically refuse to intervene in disputes where rules prevent drug use and/or alcohol consumption. Courts tend to not get involved in these disputes regardless of whether infractions occur on campus, especially by student-athletes, but not exclusively limited to them, for two reasons.

First, insofar it is well-settled that participating in extracurricular activities, whether such organizations as the National Honor Society[16] or sports,[17] is a privilege rather than a right, educators can impose higher disciplinary standards on students who participate in these activities. Second, officials can base rules on health and safety concerns. In either circumstance, educators can suspend or dismiss students who violate team or activity rules regardless of whether parents approve of the behavior of their children.

At the same time, rules cannot be too broad such as where one forbade student-athletes from being in cars where beer was being transported.[18] Yet, presence at events where alcohol is being consumed can provide the justification for rendering student-athletes ineligible[19] as can drinking alcohol at school-sponsored events.[20] Moreover, rules must be applied equally to males and females[21] when officials dismiss players from teams.

As to punishments, a federal trial court in Wisconsin reiterated the legal principle that educational officials must rely on sufficient evidence and fair processes when disciplining students.[22] Courts agree that students can be punished for off-campus activities that threaten the health or safety of those in school such as off-campus misbehaviors as drug sales,[23] possession of tobacco[24] or drugs,[25] and committing aggravated assaults[26] on school sponsored trips.

Zero-Tolerance Policies

As a subset of issues surrounding misbehavior typically associated with student substance abuse and violence, whether in or around schools, many boards adopted zero-tolerance policies in attempts to remedy, if not eliminate problems with regard to drugs, alcohol, tobacco, and weapons. Insofar as such policies tend to deny educators discretion in making decisions, courts have reached mixed results when they are challenged. When reviewing zero-tolerance policies, usually courts look to ensure that school officials acted with discretion in disciplining students.

When applying zero-tolerance policies, courts reached mixed results as to students who possessed knives in schools. For example, when school officials in Tennessee discovered a hunting knife in the glove compartment of a student's car, but it did not belong to him, the Sixth Circuit ruled that his proposed expulsion for possession of a weapon, pursuant to a zero-tolerance policy under which students could have been disciplined for not knowingly possessing weapons, was invalid because it was not rationally related to a legitimate state interest.[27]

Conversely, the Fourth Circuit affirmed that educators could suspend a student who had a knife in his locker even though he took it from a suicidal schoolmate.[28] The court was satisfied that officials provided the student with due process before he was suspended.

In Florida, an appellate court refused to intervene on behalf of a student who was suspended for bringing a gun to school under a zero-tolerance policy.[29] The court dismissed the claim insofar as it lacked jurisdiction under state law. Earlier, the federal trial court in South Dakota upheld a student's being disciplined for violating her school's zero-tolerance policy by using profanity.[30]

PUNISHMENTS

Generally

As discussed earlier, courts realize that educators need to use their discretion when disciplining students who break school rules.[31] If disciplinary rules and procedures satisfy due process as fundamentally fair, courts usually uphold the actions of educators as long as they are not arbitrary, capricious, or unreasonable.

Many of the cases discussed in this chapter demonstrate that courts have long taken the sex, age, and size as well as the mental, emotional, and physical conditions of students and the nature of their offenses into consideration when reviewing penalties.[32] For instance, when a student received a ten-day suspension for using inappropriate and disrespectful language to educators, a federal trial court in Michigan rejected his claim that they violated his rights to due process because he missed his graduation ceremony and other senior events.[33] The court reasoned that insofar as the student received all of the process he was due and the punishment was rationally related to his offense, his claim was without merit.

As noted, courts ordinarily do not review student conduct rules with the same scrutiny as they use in criminal cases. In *Wood v. Strickland*, involving the attempted expulsion of students in Arkansas for consuming alcoholic beverages at school or school-sponsored activities, the Supreme Court acknowledged as much. The court pointed out that the federal judiciary is not

supposed to "supplant the interpretation of [a] regulation of those officers who adopted it and are entrusted with its enforcement."[34]

Among the many cases dealing with punishments, courts refused to overturn such penalties as receiving a grade of zero for the first offense of plagiarism on an assignment;[35] being expelled for bringing a weapon to school;[36] being named a ward of the court for bringing a knife to school;[37] being dismissed from a marching band for missing a performance;[38] being seated at an isolated desk due to disruptive behavior;[39] and being suspended for turning in an assignment which expressed the desire to blow up the school.[40] Moreover, courts have upheld adjudications of juvenile delinquency against students for making obscene remarks to a teacher;[41] threatening a teacher;[42] being disruptive at school;[43] bringing a plastic toy gun to school;[44] making a false fire alarm report at school;[45] violating a law against the possession of a weapon at school by bringing a paintball gun and markers to school;[46] and threatening to blow a counselor's brains out with a shotgun.[47]

Other courts invalidated a variety of sanctions as too harsh. Courts overturned such penalties as a conviction for disorderly conduct where a student threatened to shoot up a school since no one took him seriously and there were no weapons in his home;[48] assault for throwing a partially eaten apple at a teacher;[49] adjudication as a juvenile delinquent for having a butter knife in a locker since it was incapable of being used as a deadly weapon;[50] and repeatedly using insulting and vulgar language to address a teacher.[51]

Corporal Punishment

According to the common law, teachers have the right to administer reasonable corporal punishment. In fact, absent growing statutory prohibitions against corporal punishment[52] rendering it illegal in more than half of the states, educators may employ the practice even against parental wishes[53] as long as local board policies authorize its use.[54]

Unless they are contrary to state law, local board policies with regard to the imposition of corporal punishment are generally controlling.[55] The use of unreasonable corporal punishment, a determination that is ultimately a question of fact for a jury to resolve, or behavior violating board policy or state law has served as the cause for dismissing teachers.[56]

In its only case on the merits of the practice, *Ingraham v. Wright*,[57] the Supreme Court refused to treat corporal punishment as unconstitutional in all circumstances. It ruled that the Eighth Amendment's prohibition against cruel and unusual punishments was designed to protect those guilty of crimes and was inapplicable to paddling students in order to preserve discipline, not protect children. Noting that most jurisdictions at that time permitted its use, and that professional and public opinion was divided on the practice, the court refused to strike down corporal punishment as unconstitutional.

Turning to fact-specific cases, the Fourth,[58] Tenth,[59] and Eleventh[60] Circuits, as well as federal trial courts,[61] agreed that students can proceed with substantive due process claims where punishments are "so brutal, demeaning, and harmful as literally to shock the conscience of a court."[62] In such a case, the Fourth Circuit affirmed the denial of a wrestling coach's claim for qualified immunity where a student sued him and other school officials after the coach encouraged members of his team to beat the plaintiff repeatedly.[63]

In two other cases, though, the Fifth Circuit disagreed, explaining that state statutory and common law provisions offered better redress as to damages and possible criminal liability rather than vitiate the use of corporal punishment.[64] Most litigation involving corporal punishment has been resolved in favor of teachers based on the presumption of correctness which complaining students and parents were unable to overcome.[65]

Suspension and Expulsion

Suspension and expulsion are the most serious penalties that school officials can impose on students. Suspensions generally refer to temporary exclusions for set periods or until students satisfy specific conditions while expulsions are permanent removals from school. On a related point, whether students are entitled to educational services during expulsions varies from one jurisdiction to the next. The elements of due process depend to a significant extent on the length of the exclusions under consideration.

Due Process and Punishments

Courts generally defer to educators who use reasonable forms of discipline and can justify their actions.[66] Cases often hinge on whether officials provided students with adequate procedural due process. While due process does not require educators to afford students all of the safeguards present in criminal,[67] or, for that matter, civil,[68] proceedings, essential elements depend on the circumstances and seriousness of potential punishments. At the very least, students who are subject to significant disciplinary penalties are entitled to notice and opportunities to respond in the presence of fair and impartial third-party decision makers.[69]

The Fifth Circuit provided the earliest guidelines, admittedly from a dispute in higher education, as to required notice and hearings prior to long-term exclusions where a student faced expulsion from a public college for nonacademic reasons.[70] The court reasoned that notice should contain a statement of the specific charges and grounds which, if proven, would justify an expulsion. The court also decided that insofar as assessing misconduct depends on gathering facts that can be easily colored by witnesses, a fair and

impartial third-party decision maker must hear both sides in considerable detail.

Expressly rejecting the requirement of "a full-dress judicial hearing, with the right to cross-examine witnesses,"[71] the Fifth Circuit observed that "the rudiments of an adversary proceeding . . . [require that] . . . student[s] should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies. [They] should also be given the opportunity to present . . . [their] own defense against the charges and to produce either oral testimony or written affidavits of witnesses in [their] behalf."[72]

In *Goss v. Lopez* (*Goss*),[73] arguably the high water mark of student rights, the Supreme Court set out the minimum constitutional requirements when dealing with suspensions of ten days or less. In a dispute from Ohio, students who did not receive a hearing challenged their suspensions for allegedly disruptive conduct.

Ruling in favor of the students, the *Goss* Supreme Court mandated that due process requires that they be given "oral or written notice of the charges against [them] and, if [they] den[y] them, an explanation of the evidence the authorities have and an opportunity to present [their] side of the story."[74] The court held that there is no need for a delay between when officials give students notice and the time of their hearings, conceding that in most cases disciplinarians may well have informally discussed alleged acts of misconduct with them shortly after they occurred.[75]

The *Goss* court pointed out that if the presence of students constitutes threats of disruption, they may be removed immediately with the due process requirements to be fulfilled as soon as practicable. The court expressly rejected the notion that students should be represented by counsel, be able to present witnesses, and be able to confront and cross-examine witnesses when facing short-term exclusions.[76]

In its analysis, the Supreme Court added that "[l]onger suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures . . . [and that] in unusual situations, although involving only a short suspension, something more than the rudimentary procedures will be required."[77] States have followed the court's suggestion by developing statutory guidelines when students are subject to long-term suspensions or expulsions.

Following *Goss*, federal trial courts began to apply its procedural requirements to student disciplinary transfers[78] and three-day suspensions.[79] The courts agreed that where the property interests of students were involved, they were of sufficient magnitude to qualify for the minimal constitutional due process protections. A federal trial court in Texas reached the same result where a student received a three-day suspension for taking allegedly compromising photographs of the principal's car while it was parked in front of a

female teacher's house.[80] The Fifth Circuit later upheld a student's suspension for less than ten days, agreeing that officials did not violate his rights to due process in light of his role in an attack on his school's computer network.[81]

In cases involving criminal misconduct, the Fifth[82] and Eleventh[83] Circuits was satisfied that insofar as students who were transferred to alternative schools within their districts did not suffer the losses of property interests, they lacked rights to hearings. On the other hand, the Sixth Circuit remanded a dispute where a student was transferred due to criminal misbehavior for consideration of whether the failure of officials to afford him a hearing violated his rights to due process.[84]

The argument that more extensive processes are necessary if disciplinary penalties indirectly lead to academic sanctions has led to mixed judicial results. The Seventh Circuit refused to intervene where a student's three-day suspension for drinking alcohol in violation of school rules delayed his graduation.[85]

Courts disagree as to the precise requirements of procedural due process in connection with penalties that are more severe than the ten-day suspension involved in *Goss*. The bottom line is that educators must act with fairness. As such, most jurisdictions rely on the Supreme Court's perspective as set forth in *Mathews v. Eldridge*, that "[d]ue process is flexible and calls for such procedural protections as the particular situation demands."[86]

In such a case, where a student in Georgia was suspended for nine days for fighting, screaming obscenities, and refusing to cooperate with and assaulting faculty members in connection with her possession of look-alike drugs at school, the Eleventh Circuit affirmed that educators met the requirements of due process when her mother participated in a telephone call with them on the day that the incident occurred.[87]

Due Process Hearings

Courts do not expect students who are accused of school disciplinary infractions to receive full judicial proceedings.[88] Even so, courts agree that students facing expulsions are entitled to notice informing them of the time and place of some form of hearings.[89] At the same time, school officials should inform students of the charges and the nature of the evidence that they face[90] but not necessarily to prehearing notice of particular infractions.

In representative litigation, courts upheld expulsions where one student and his parents received repeated warnings that he faced expulsion for possession of marijuana[91] and another was arrested and charged with two counts of illegal sales of controlled substances.[92] Both courts agreed that the students were expelled after hearings that were presided over by fair and impar-

tial third-party decision makers who based their actions on the contents of the records.[93]

Other courts decided that students are not entitled to have their own attorneys present as trial counsel[94] or at public expense if they can obtain pro bono lawyers,[95] or to know the identity of[96] and/or to confront witnesses,[97] especially if there may be clear and serious danger to student witnesses.[98]

A dispute arose where a state statute afforded students and their parents due process rights including notice, an opportunity to respond, the right to be represented by counsel, as well as to present evidence and question witnesses during their expulsion proceedings. When the student and his parents chose neither to have an attorney present during his initial hearing nor to exercise his statutory right to present evidence or question witnesses, the Supreme Court of South Carolina rejected their claim that officials violated his rights to procedural due process.[99]

As reflected by a case from the Sixth Circuit, there is a balance between the rights of students who are accused of wrongdoing to confront witnesses and the danger to accusers. The court conceded that the necessity of protecting student witnesses from reprisal and ostracism generally outweighs the value to the truth-seeking process of allowing them to cross-examine their accusers.[100] In addition, hearsay evidence used in hearings has withstood judicial scrutiny when allowing police or school officials to testify instead of protected student witnesses.[101]

Other courts agreed that students lack rights to hearing officers who are not school employees[102] or, as noted, to *Miranda* warnings when questioned by educational officials. Conversely, "although '[a]s a general matter, there is no hard and fast federal Constitutional right to call or cross-examine witnesses in a school disciplinary setting,'"[103] some courts granted students the right to cross-examine witnesses;[104] to have an attorney present;[105] to the presence of an impartial, non-school, third-party decision maker;[106] and to obtain a redacted copy of disciplinary records.[107]

In a case addressing aspects of due process, the Eighth Circuit affirmed that a middle school student in Arkansas failed to prove that educators violated his procedural due process rights when he was expelled as a result of an altercation with a teacher and principal. The court found that officials did not violate the student's rights because they fully informed his mother of the grounds for his expulsion and he received a hearing at which he was represented by counsel who had a full opportunity to examine and cross-examine witnesses.[108] The court pointed out that even though educators violated board rules by not supplying the student's attorney with the remarks of two witnesses in advance of the hearing, this was not a constitutional violation.[109]

According to an older federal case from Illinois, students facing long-term suspensions or expulsions did not have a right to stenographic or mechanical recordings of proceedings.[110] Almost thirty years later, another ap-

pellate court in Illinois denied a student's request for a verbatim transcript of his expulsion hearing.[111]

Similarly, the federal trial court in Massachusetts agreed that a student who was excluded from school for disruptive behavior was not entitled to a stenographic or mechanical recording of his expulsion hearing.[112] However, almost twenty years later, the Supreme Judicial Court of Massachusetts affirmed that when students ask that testimony given at closed hearings be recorded electronically, it must be honored.[113]

Challenges to disciplinary actions often involve disputes over whether school officials fully complied with statutory provisions or board policies. If infractions are minor and officials have not violated student rights, courts tend not to overturn the punishments. For instance, where a student did not receive the necessary written notice, but knew of the rules and charges, the Supreme Court of Vermont refused to invalidate his expulsion.[114]

Earlier, where a student in Mississippi admitted that he brought a switchblade to school in violation of board policy, the Fifth Circuit affirmed that it was unnecessary for all witnesses and their testimony to have been identified before the hearing.[115] Additionally, although officials in Minnesota may not have provided a precise rationale for a contemplated three-day suspension of students who distributed an unofficial newspaper in school containing vulgarity, but the evidence against them was so overwhelming that a second hearing would not have altered the outcome, the Eighth Circuit acknowledged that officials did not violate their rights to due process.[116]

DISCIPLINING STUDENTS WITH DISABILITIES

Following multiple earlier cases in a variety of jurisdictions, *Honig v. Doe* (*Honig*)[117] remains the Supreme Court's only case involving disciplining students with disabilities. In a dispute over whether educators in California could exclude two students with disabilities from school, the Justices affirmed that the stay-put provision in the Individuals with Disabilities Education Act[118] prohibits educators from unilaterally excluding students with disabilities from school for dangerous or disruptive actions that are manifestations of their disabilities during the pendency of review proceedings.

In Honig, the Supreme Court added that officials could impose normal, non-placement-changing procedures such as, "the use of study carrels, timeouts, detention, or the restriction of privileges,"[119] including temporary suspensions for up to ten school days, for students who posed immediate threats to school safety.

Unfortunately, *Honig* failed to resolve all of the legal issues surrounding how educators can discipline students with disabilities. Consequently, Congress sought to clarify the rights of students with disabilities as part of the

IDEA's 1997 Amendments.[120] These changes granted educators the authority to suspend special education students for not more than ten school days as long as the same kinds of sanctions apply to children who are not disabled.[121]

According to the IDEA's regulations, a series of removals resulting in a pattern of exclusions cumulatively having children with disabilities out of school for more than ten school days may be considered changes in placements.[122] The regulations make it clear that if students are suspended for misbehavior substantially similar to past actions that have been identified as manifestations of their disabilities, then this constitutes changes in placements.[123] In making such judgments, the regulations direct educators to consider the length of each removal, the total amount of time that children have been out of school, and the proximity of the removals to one another in evaluating whether changes in placements occurred.[124]

School officials can remove students with disabilities from school for separate, but dissimilar, acts of misconduct for more than ten cumulative days in school years.[125] After students with disabilities are removed from school for ten days in the same school year, during any later removals, educators must provide them with educational services.[126]

Under the 2004 amendments to the IDEA, educators have increased authority when dealing with students with disabilities who possess weapons or drugs at school.[127] Pursuant to an expanded definition of a dangerous weapon, the IDEA incorporates language from another federal statute such that it now includes instruments, devices, materials, and substances capable of inflicting harm in addition to firearms, but does not include small pocket knives.[128]

The IDEA defines illegal drugs as controlled substances but excludes those that may be legally prescribed by physicians.[129] Educators may thus transfer students with disabilities unilaterally to interim alternative placements for up to forty-five school days for carrying or possessing weapons[130] or for knowing possession, use, sale, or solicitation of drugs[131] on school property or at school functions as long as this sanction applies under like circumstances for peers who are not disabled.[132]

Another change in the 2004 version of the IDEA permits educators to place students who inflicted serious bodily injury on others at school, on school premises, or at school functions in alternative educational settings.[133] In explicating "serious bodily injury," the IDEA relies on another federal statute which defines the term as involving a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.[134]

Under the IDEA's interim alternative placement provisions, educators must allow students to continue to progress in general curricula where they still receive necessary services outlined in their IEPs.[135] Further, school offi-

cials must provide students with services and modifications designed to prevent the misbehaviors from recurring.[136]

When students are moved to alternative placements for more than ten school days,[137] educators must conduct functional behavioral assessments (FBAs) and implement behavioral intervention plans (BIPs) if they are not already in place.[138] If plans were in place when children misbehaved, IEP teams must review them and their implementation in order to make any necessary modifications.[139] If parents disagree with alternative placements and request hearings, consistent with the IDEA's stay-put provision, children must remain in their alternative settings.[140] On the expiration of the forty-five day periods, educators must return students to their former settings even if hearings on school board proposals to change their placements are pending unless parents and educators agree otherwise.[141]

Educators must complete FBAs and BIPs if they view disciplinary infractions as manifestations of students' disabilities.[142] As important as FBAs and BIPs can be, though, and as directive as the IDEA and its regulations are, neither addresses their content or form. Moreover, there is little case law addressing this issue.[143]

The IDEA includes definitions and procedures to evaluate whether, on "case-by-case determinations,"[144] misconduct is related to students' disabilities.[145] The IDEA defines a manifestation as conduct caused by or having a direct and substantial relationship to students' disabilities or as the direct result of the failure of school officials to implement IEPs properly. In reviewing whether placements are inappropriate, key members of IEP teams should gather and use the same standards they worked with in prospectively evaluating whether proposed placements were appropriate.[146]

If teams interpret misconduct as either manifestations of students' disabilities or as results of improperly implemented IEPs, children may not be expelled or suspended for more than ten days and school officials must reconsider their current placements.[147] In rendering manifestation determinations, teams must consider all relevant information, including evaluations and diagnostic results as well as student observations.[148]

As with other aspects related to special education, manifestation determinations are subject to the IDEA's administrative appeals process. The IDEA now directs school officials to expedite hearings incident to manifestation determinations. Hearings must occur within twenty school days of the dates on which they were requested and hearing officers must render decisions within ten days of hearings.[149]

If parents contest the outcomes of manifestation determinations, educators must delay long-term suspensions or expulsions until hearings are completed while students may remain in interim alternative educational settings.[150] Along with retaining students in their then current, or pendent, placements, hearing officers may issue change in placement orders.[151]

Language in the revised IDEA addresses whether school officials can discontinue services for children who are properly expelled for misconduct that is not related to their disabilities. In codifying a federal policy directing officials to provide services for a student who was excluded for misbehavior unrelated to his disability, the IDEA essentially repudiated earlier litigation which rejected the position that such a requirement existed.[152]

The IDEA requires boards to provide appropriate educational placements for all students with disabilities including those who have been expelled from school.[153] As a result, even if students are expelled for disciplinary infractions unrelated to their disabilities, they must be provided with services allowing them to progress toward achieving their IEP goals.[154]

In resolving disputes over the status of students who were not yet assessed for special education but claimed to have been covered by the IDEA officials must now provide the law's protections to individuals if they knew that children were disabled before they misbehaved.[155] Educators may be considered to be on notice in light of students' prior behavioral and academic performances and the concerns of teachers about their performances.[156] An exception exists if educators already conducted evaluations and concluded that students were not disabled or if parents refused to grant their permission for evaluations or declined offered special education services.[157]

If parents request evaluations when students are subject to disciplinary sanctions, they must be conducted in an expedited manner.[158] Consistent with the IDEA's stay-put provision, until expedited evaluations are completed, students must remain in the placements deemed appropriate by educators.[159] If evaluation teams have reason to believe that children are disabled, they must provide students with special education services.[160]

The IDEA's discipline provisions allow school officials to report crimes committed by students to the proper authorities or impeding law enforcement and judicial authorities from carrying out their duties.[161] If officials report crimes, they must make copies of students' special education and disciplinary records available to appropriate authorities.[162]

EMERGING ISSUES

As in other parts of the world, courts and educational leaders have difficulty keeping pace with technological advancements particularly as they impact student expressive activities in and around schools. This interplay between student rights to free speech and the ability of educators to ensure safe and orderly learning environments, presents perhaps the greatest challenge for school officials in the United States as they who seek to look after the well-being of all of the students in their care.[163]

Coupled with the fact that many of the cases involving cyber-bullying, whether of peers[164] or teachers,[165] and that inappropriate websites were often created in private homes rather than schools raises novel questions about the authority of educators to intervene. These cases have led to seemingly paradoxical outcomes as students[166] have prevailed in some litigation while school officials[167] have triumphed in other cases. It should be interesting to observe how this issue plays itself out in coming years.

CONCLUSION

Clearly, one of the greatest challenges facing educational leaders and teachers is devising school rules that help to create safe and orderly learning environments. By reviewing the litigation and issues described in this chapter, hopefully educators can devise systems of discipline that respect the rights of all members of school communities.

KEY POINTS

1. Students have varying rights to due process when subjected to discipline in American public schools.
2. For minor infractions where students knew, or should have known the law, school officials can act unilaterally as long as punishments are appropriate to the offenses.
3. Students are entitled to due process hearings when they will be out of school for ten days or longer.
4. Disciplining students with disabilities is a complex process. If the misbehavior is related to students' disabilities, educational officials must provide significant procedural due process if they are to be removed from their current placements for ten days or more.

NOTES

1. This chapter relies in part on material covered in chapter 13, on student rights, in Charles J. Russo, *Reutter's The Law of Public Education*, 8th ed. (New York, NY: Foundation Press, 2012).

2. Recognizing that multiple suits can be used for most of the issues discussed in this chapter, the footnotes cite to leading representative disputes rather than provide exhaustive lists of cases.

3. Insofar as student behaviors are largely matters of contract based on the fact that their parents paid to have them attend non-public schools, disputes from these schools are beyond the scope of this chapter.

4. For more detail on this topic, see Allan G. Osborn and Charles J. Russo, *Procedural Requirements for Disciplining Students with Disabilities* (Cleveland, OH: Education Law Association, 2014).

5. For a comprehensive review of Fourth Amendment issues, see Charles J. and Ralph D. Mawdsley, *Searches, Seizures and Drug Testing Procedures: Balancing Rights and School Safety*, 2nd ed. (Sarasota, FL: LRP Publications, 2012); (3rd ed. currently in preparation).

6. See Charles J. Russo, "A Legal Primer on Sexual Harassment: Lessons for Practice from the United States." *Australia and New Zealand Journal of Law and Education* 13(1) (2008): 21–48.

7. See Allan G. Osborne and Charles J. Russo, "Can Students Be Disciplined for Off-campus Cyberspeech: The Reach of the First Amendment in the Age of Technology." *Brigham Young University Education and Law Journal* 2012 (2012): 331–67.

8. 347 U.S. 483 (1954).

9. For an article on the judicial process, see Charles J. Russo, "Judges as Umpires or Rule Makers? The Role of the Judiciary in Educational Decision Making in the United States." *Education Law Journal* 10(1) (2009): 33–47.

10. *DMP v. Fay Sch. ex rel. Bd. of Trustees*, 933 F. Supp.2d 214, 222 (D. Mass. 2013) (internal citations omitted).

11. *Martinez v. School Dist. No. 60*, 852 P.2d 1275 (Colo. Ct. App. 1992).

12. *Kolesnick By and Through Shaw v. Omaha Pub. Sch. Dist.*, 558 N.W.2d 807 (Neb. 1997).

13. *Goss v. Lopez*, 419 U.S. 565 (1975).

14. *Wiemerslage Through Wiemerslage v. Maine Twp. High Sch. Dist. 207*, 29 F.3d 1149 (7th Cir. 1994).

15. *Fuller ex rel. Fuller v. Decatur Pub. Sch. Bd. of Educ. School Dist. 61*, 251 F.3d 662 (7th Cir. 2001).

16. *Piekosz-Murphy v. Board of Educ. of Cmty. High Sch. Dist. No. 230*, 858 F. Supp.2d 952 (N.D. Ill. 2012).

17. *Lowery v. Euverard*, 497 F.3d 584 (6th Cir. 2007), *cert. denied*, 555 U.S. 825, (2008); *Palmer v. Merluzzi*, 868 F.2d 90 (3d Cir. 1989); *Braesch v. DePasquale*, 265 N.W.2d 842 (Neb. 1978), *cert. denied*, 439 U.S. 1068 (1979).

18. *Bunger v. Iowa High Sch. Athletic Ass'n*, 197 N.W.2d 555 (Iowa 1972).

19. *Bush v. Dassel–Cokato Bd. of Educ.*, 745 F. Supp. 562 (D. Minn. 1990).

20. *Katchak v. Glasgow Indep. Sch. Sys.*, 690 F. Supp. 580 (W.D. Ky. 1988).

21. *Schultzen v. Woodbury Cent. Cmty. Sch. Dist.*, 187 F. Supp.2d 1099 (N.D. Iowa 2002) (holding that a female student-athlete could not be punished more harshly than males for the same offense of smoking in violation of athletic training rules).

22. *Butler v. Oak Creek–Franklin Sch. Dist.*, 172 F. Supp.2d 1102 (E.D. Wis. 2001).

23. *Howard v. Colonial Sch. Dist.*, 621 A.2d 362 (Del. Super. Ct. 1992), *aff'd without published opinion*, 615 A.2d 531 (Del. 1992).

24. *Ette ex rel. Ette v. Linn–Mar Cmty. Sch. Dist.*, 656 N.W.2d 62 (Iowa 2002) (sending an eighth grader home from a band trip for possessing cigarettes).

25. *Rhodes v. Guarricino*, 54 F. Supp.2d 186 (S.D.N.Y. 1999).

26. *Pollnow v. Glennon*, 757 F.2d 496 (2d Cir. 1985).

27. *Seal v. Morgan*, 229 F.3d 567 (6th Cir. 2000).

28. *Ratner v. Loudoun Cnty. Pub. Schs.*, 16 Fed.Appx. 140 (4th Cir. 2001), *cert. denied*, 534 U.S. 1114 (2002).

29. *D.K. ex rel. Kennedy v. District Sch. Bd. Indian River Cnty.*, 981 So. 2d 667 (Fla. Dist. Ct. App. 2008).

30. *Anderson v. Milbank Sch. Dist. 25–4*, 197 F.R.D. 682 (D.S.D. 2000).

31. *Spacek v. Charles*, 928 S.W.2d 88 (Tex. Ct. App. 1996).

32. See, for example, *Berry v. Arnold Sch. Dist.*, 137 S.W.2d 256 (Ark. 1940).

33. *Posthumus v. Board of Educ. of Mona Shores Pub. Schs.*, 380 F. Supp.2d 891 (W.D. Mich. 2005).

34. 420 U.S. 308 (1975), *reh'g denied*, 421 U.S. 921 (1975), *on remand sub nom. Strickland v. Inlow*, 519 F.2d 744 (8th Cir. 1975).

35. *Zellman ex rel. M.Z. v. Independent Sch. Dist. No. 2758*, 594 N.W.2d 216 (Minn. Ct. App. 1999).

36. *J.M. v. Webster Cnty. Bd. of Educ.*, 534 S.E.2d 50 (W. Va. 2000).

37. *In re Randy G.*, 110 Cal.Rptr.2d 516 (Cal. 2001).
38. *Mazevski v. Horseheads Cent. Sch. Dist.*, 950 F. Supp.69 (W.D.N.Y. 1997).
39. *Cole by Cole v. Greenfield–Cent. Cmty. Schs.*, 657 F. Supp. 56 (S.D. Ind. 1986).
40. *Cuff ex rel. B.C. v. Valley Cent. Sch. Dist.*, 714 F. Supp2d 462 (S.D.N.Y. 2010).
41. *In Interest of D.A.D.*, 481 S.E.2d 262 (Ga. Ct. App. 1997).
42. *In re J.H.*, 797 A.2d 260 (Pa. Super. Ct. 2002).
43. *In re D.H.* 663 S.E.2d 139 (Ga. 2008); *M.C. v. State*, 695 So. 2d 477 (Fla. Dist. Ct. App.1997), *review denied*, 700 So. 2d 686 (Fla. 1997).
44. *In re B.N.S.*, 641 S.E.2d 411 (N.C. Ct. App. 2007).
45. *In re C.R.K.*, 56 S.W.3d 288 (Tex. Ct. App. 2001).
46. *In re M.H.M.*, 864 A.2d 1251 (Pa. Super. Ct. 2004), *appeal denied*, 880 A.2d 1239 (Pa. 2005).
47. *Andrews v. State*, 930 A.2d 846 (Del. 2007).
48. *State v. McCooey*, 802 A.2d 1216 (N.H. 2002).
49. *In re Gavin T.*, 77 Cal.Rptr.2d 701 (Cal. Ct. App. 1998).
50. *In re Melanie H.*, 706 A.2d 621 (Md. Ct. App. 1998).
51. *In re Nickolas S.*, 245 P.3d 446 (Ariz. 2011).
52. See, for example, Cal. Educ. Code § 49000; Iowa Code Ann. § 280.21; Mich. Comp. Laws Ann. § 380.1312; Neb. Rev. Stat. Ann. § 79–295, N.D. Cent. Code 15.1–19–02 Utah Code Ann. § 53A–11–802; Va. Code Ann. § 22.1–279.1; Wash. Rev. Code Ann. § 28A.150.300; W. Va. Code Ann. § 18A–5–1; Wis. Stat. Ann. § 118.31
53. *Baker v. Owen*, 395 F. Supp. 294 (M.D.N.C. 1975), *aff'd*, 423 U.S. 907 (1975) (agreeing that parental disapproval of corporal punishment did not preclude its use on a child).
54. *Ware v. Estes*, 328 F. Supp. 657 (N.D. Tex. 1971), *aff'd*, 458 F.2d 1360 (5th Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).
55. *McKinney v. Greene*, 379 So. 2d 69 (La. Ct. App. 1979), *writ denied*, 379 So. 2d 69 (La. Ct. App. 1979).
56. See, for example, *McPherson v. New York City Dep't of Educ.*, 457 F.3d 211 (2d Cir. 2006); *Bott v. Board of Educ., Deposit Cent. Sch. Dist.*, 392 N.Y.S.2d 274 (N.Y. 1977).
57. 430 U.S. 651 (1977).
58. *Hall v. Tawney*, 621 F.2d 607 (4th Cir. 1980).
59. *Garcia v. Miera*, 817 F.2d 650 (10th Cir. 1987), *cert. denied*, 485 U.S. 959 (1988).
60. *Neal v. Fulton Cnty. Bd. of Educ.*, 229 F.3d 1069 (11th Cir. 2000), *reh'g en banc denied*, 244 F.3d 143 (11th Cir. 2000).
61. See, for example, *Nicol v. Auburn–Washburn USD 437*, 231 F. Supp.2d 1107 (D. Kan. 2002).
62. *Hall v. Tawney*, 621 F.2d 607, 613 (4th Cir. 1980).
63. *Meeker v. Edmundson*, 415 F.3d 317 (4th Cir. 2005).
64. *Cunningham v. Beavers*, 858 F.2d 269 (5th Cir. 1988), *cert. denied*, 489 U.S. 1067 (1989); *Moore v. Willis Indep. Sch. Dist.*, 233 F.3d 871 (5th Cir. 2000), *reh'g en banc denied*, 248 F.3d 1145 (5th Cir. 2001).
65. See also *Fox v. Cleveland*, 169 F. Supp.2d 977 (W.D. Ark. 2001); *Campbell v. Gahanna–Jefferson Bd. of Educ.*, 717 N.E.2d 347 (Ohio Ct. App. 1998); *Burnham v. Stevens*, 734 So. 2d 256 (Miss. Ct. App. 1999).
66. See *In re Expulsion of N.Y.B.*, 750 N.W.2d 318 (Minn. Ct. App. 2008) (remanding a board's expulsion of a student for a calendar year for further consideration where it was unclear whether officials provided sufficient detail justifying their action).
67. See, for example, *Brewer by Dreyfus v. Austin Indep. Sch. Dist.*, 779 F.2d 260 (5th Cir. 1985).
68. *Colquitt v. Rich Twp. High Sch. Dist. No. 227*, 699 N.E.2d 1109 (Ill. App. Ct. 1998).
69. See, for example, *G.C. v. Owensboro Pub. Schs.*, 711 F.3d 623 (6th Cir. 2013); *Wynar v. Douglas Cnty. Sch. Dist.*, 728 F.3d 1062 (9th Cir. 2013).
70. *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150 (5th Cir. 1961), *cert. denied*, 368 U.S. 930 (1961).
71. *Id.* at 159.
72. *Id.*

73. 419 U.S. 565 (1975).
74. *Id.* at 581.
75. See, for example, *G.C. v. Owensboro Pub. Schs.*, 711 F.3d 623 (6th Cir. 2013).
76. See *In re Gault*, 387 U.S. 1 (1967) (stating that a fifteen-year-old who was committed to a facility for juvenile delinquents had the right to notice of charges, to counsel, to confront and cross-examine witnesses, and to the privilege against self-incrimination).
77. *Goss v. Lopez*, 419 U.S. 565 (1975).
78. *Everett v. Marcase*, 426 F. Supp. 397 (E.D. Pa. 1977).
79. *Hillman v. Elliott*, 436 F. Supp. 812 (W.D. Va. 1977).
80. *Riggan v. Midland Indep. Sch. Dist.*, 86 F. Supp.2d 647 (W.D. Tex. 2000).
81. *Harris ex rel. Harris v. Pontotoc Cnty. Sch. Dist.*, 635 F.3d 685 (5th Cir. 2011)
82. *Nevares v. San Marcos Consol. Indep. Sch. Dist.*, 111 F.3d 25 (5th Cir. 1997).
83. *C.B. By and Through Breeding v. Driscoll*, 82 F.3d 383 (11th Cir. 1996), *reh'g and suggestion for reh'g en banc denied*, 99 F.3d 1157 (11th Cir. 1996).
84. *Buchanan v. City of Bolivar, Tenn.*, 99 F.3d 1352 (6th Cir. 1996).
85. *Lamb v. Panhandle Cmty. Unit Sch. Dist. No. 2*, 826 F.2d 526 (7th Cir. 1987).
86. 424 U.S. 319 (1976).
87. *C.B. By and Through Breeding v. Driscoll*, 82 F.3d 383 (11th Cir. 1996), *reh'g and suggestion for reh'g en banc denied,* 99 F.3d 1157 (11th Cir. 1996).
88. See, for example, *Boykins v. Fairfield Bd. of Educ.*, 492 F.2d 697 (5th Cir. 1974), *cert. denied*, 420 U.S. 962 (1975); *Newsome v. Batavia Local Sch. Dist.*, 842 F.2d 920 (6th Cir. 1988).
89. *Donovan v. Ritchie*, 68 F.3d 14 (1st Cir. 1995).
90. *C.B. By and Through Breeding v. Driscoll*, 82 F.3d 383 (11th Cir. 1996).
91. *L.Q.A. By and Through Arrington v. Eberhart*, 920 F. Supp.1208 (M.D. Ala. 1996), *aff'd without reported opinion*, 111 F.3d 897 (11th Cir. 1997).
92. *Rossi v. West Haven Bd. of Educ.*, 359 F. Supp.2d 178 (D. Conn. 2005).
93. *Newsome v. Batavia Local Sch. Dist.*, 842 F.2d 920 (6th Cir. 1988); *Ruef v. Jordan*, 605 N.Y.S.2d 530 (N.Y. App. Div. 1993).
94. See, for example, *Osteen v. Henley*, 13 F.3d 221 (7th Cir. 1993); *Newsome v. Batavia Local School Dist.*, 842 F.2d 920 (6th Cir. 1988).
95. *In re Expulsion of N.Y.B.*, 750 N.W.2d 318 (Minn. Ct. App. 2008).
96. *Coplin v. Conejo Valley Unified Sch. Dist.*, 903 F. Supp. 1377 (C.D. Cal. 1995), *aff'd in an unpublished opinion*, 116 F.3d 483 (9th Cir. 1997); *Paredes by Koppenhoefer v. Curtis*, 864 F.2d 426 (6th Cir. 1988).
97. *Scanlon v. Las Cruces Pub. Schs.*, 172 P.3d 185 (N.M. Ct. App. 2007); *Newsome v. Batavia Local Sch. Dist.*, 842 F.2d 920 (6th Cir. 1988).
98. *Dillon v. Pulaski Cnty. Special Sch. Dist.*, 468 F. Supp. 54 (E.D. Ark. 1978), *aff'd*, 594 F.2d 699 (8th Cir. 1979); *John A. v. San Bernardino City Unified School Dist.*, 187 Cal.Rptr. 472 (Cal. 1982).
99. *Stinney v. Sumter Sch. Dist. 17*, 707 S.E.2d 397 (S.C. 2011).
100. *Newsome v. Batavia Local Sch. Dist.*, 842 F.2d 920 (6th Cir. 1988).
101. *E.K. v. Stamford Bd. of Educ.*, 557 F. Supp.2d 272 (D. Conn. 2008).
102. *John A. v. San Bernardino City Unified Sch. Dist.*, 187 Cal.Rptr. 472 (Cal. 1982).
103. *J.E. ex rel. Edwards v. Center Moriches Union Free Sch. Dist.*, 898 F. Supp.2d 516, 544 (E.D.N.Y. 2012) (internal citations omitted).
104. See, for example, *Wynar v. Douglas Cnty. Sch. Dist.*, 728 F.3d 1062 (9th Cir. 2013).
105. *Id.* See also *Givens v. Poe*, 346 F. Supp. 202 (W.D.N.C.1972).
106. *Gonzales v. McEuen*, 435 F. Supp. 460 (C.D. Cal. 1977).
107. *Graham v. West Babylon Union Free Sch. Dist.*, 692 N.Y.S.2d 460 (N.Y. App. Div. 1999).
108. *London v. Directors of DeWitt Pub. Schs.*, 194 F.3d 873 (8th Cir. 1999).
109. See also *West v. Derby Unified Sch. Dist. No. 260*, 206 F.3d 1358 (10th Cir. 2000), *cert. denied*, 531 U.S. 825 (2000) (involving a three-day suspension for drawing a Confederate Flag).
110. *Whitfield v. Simpson*, 312 F. Supp. 889 (E.D. Ill. 1970).

111. *Colquitt v. Rich Twp. High Sch. Dist. No. 227*, 699 N.E.2d 1109 (Ill. App. Ct. 1998).
112. *Pierce v. School Comm. of New Bedford*, 322 F. Supp. 957 (D. Mass. 1971).
113. *Nicholas B. v. School Comm. of Worcester*, 587 N.E.2d 211 (Mass. 1992).
114. *Rutz v. Essex Junction Prudential Comm.*, 457 A.2d 1368 (Vt. 1983).
115. *McClain v. Lafayette Cnty. Bd. of Educ.*, 673 F.2d 106 (5th Cir. 1982), *reh'g denied*, 687 F.2d 121 (5th Cir. 1982).
116. *Bystrom By and Through Bystrom v. Fridley High Sch.*, 686 F. Supp. 1387 (D. Minn. 1987), *aff'd without reported opinion*, 855 F.2d 855 (8th Cir. 1988).
117. 484 U.S. 305 (1988).
118. 20 U.S.C.A. §§ 1400 *et seq.*
119. *Honig* at 325.
120. 20 U.S.C.A. §§ 1415(i), (j), (k), (l).
121. 20 U.S.C.A. § 1415(k)(1)(B).
122. 34 C.F.R. § 300.536(a)(1).
123. 34 C.F.R. § 300.536(a)(2).
124. 34 C.F.R. § 300.536(a)(2)(iii).
125. 34 C.F.R. § 300.530(b)(1).
126. 34 C.F.R. § 300.536(b)(2).
127. 20 U.S.C.A. §§ 1415(k)(7)(A), (B).
128. 18 U.S.C.A. § 930(g)(2).
129. 20 U.S.C.A. § 1415(k)(7)(B). For the list of controlled substances, see 21 U.S.C.A. § 812(c).
130. 20 U.S.C.A. § 1415(k)(1)(G)(i).
131. 20 U.S.C.A. § 1415(k)(1)(G)(ii).
132. 20 U.S.C.A. § 1415(k)(1)(C).
133. 20 U.S.C.A. § 1415(k)(1)(G)(iii).
134. 18 U.S.C.A. § 1365(h)(3).
135. 20 U.S.C.A. § 1415(k)(1)(D)(i).
136. 20 U.S.C.A. § 1415(k)(1)(D)(ii).
137. 20 U.S.C.A. § 1415(k)(1)(D)(ii).
138. 20 U.S.C.A. § 1415(k)(1)(D)(ii); 34 C.F.R. § 300.530(d)(ii).
139. 34 C.F.R. § 300.530(f)(1)(ii).
140. 20 U.S.C.A. § 1415(k)(4)(A).
141. 20 U.S.C.A. § 1415(k)(4)(A).
142. 20 U.S.C.A. § 1415(k)(1)(F)(I).
143. See, for example, *School Bd. of Indep. School Dist. No. 11 v. Renollett*, 440 F.3d 1007 (8th Cir. 2006) (explaining that a BIP need not be in writing).
144. 20 U.S.C.A. § 1415(k)(1)(A).
145. 20 U.S.C.A. § 1415(k).
146. 20 U.S.C.A. § 1415(k)(1)(E)(I).
147. 20 U.S.C.A. § 1415(k)(1)(C).
148. 20 U.S.C.A. § 1415(k)(1)(E)(i).
149. 20 U.S.C.A. § 1415(k)(4)(B).
150. 20 U.S.C.A. § 1415(k)(4)(A).
151. 20 U.S.C.A. § 1415(k)(3)(B).
152. *Commonwealth of Va., Dep't of Educ. v. Riley*, 106 F.3d 559 (4th Cir. 1997); *Doe v. Board of Educ. of Oak Park and River Forest High School Dist. 200*,115 F.3d 1273 (7th Cir. 1997), *cert. denied*, 522 U.S. 998 (1997).
153. 20 U.S.C.A. §§ 1412(a)(1)(A), 1415(k)(1)(D)(i).
154. 34 C.F.R. § 300.530(d)(i).
155. 20 U.S.C.A. § 1415(k)(8).
156. 20 U.S.C.A. § 1415(k)(5)(B).
157. 20 U.S.C.A. § 1415(k)(5)(C).
158. 20 U.S.C.A. § 1415(k)(5)(D)(ii).
159. 20 U.S.C.A. § 1415(k)(5)(D)(ii).
160. *Id.*

161. 20 U.S.C.A. § 1415(k)(6)(A).

162. 20 U.S.C.A. § 1415(k)(6)(B).

163. For a comprehensive review of issues dealing with technology in schools, see Osborne and Russo, "Can Students Be Disciplined for Off-campus Cyberspeech."

164. *Lindsey v. Matayoshi*, 950 F. Supp.2d 1159 (D. Hawaii 2013) (upholding a student's expulsion for fighting with a peer and posting comments about it and her opponent on social media).

165. *J.S. v. Bethlehem Area Sch. Dist.*, 807 A.2d 847 (Pa. 2002) (upholding the expulsion of a student who created a Web site, on his own computer while at home containing derogatory remarks about his algebra teacher and asking for collections to pay a hit man to kill the woman).

166. *Layshock ex rel. Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205 (3d Cir. 2011), *cert. denied*, ___ U.S. ___, 132 S. Ct. 1097 (2012) (affirming that educators violated the First Amendment rights of a student who was suspended after using his grandmother's home computer to create a fake internet profile of his principal)

167. *Kowalski v. Berkeley Cnty. Schs.*, 652 F.3d 565 (4th Cir. 2011), *cert. denied*, ___ U.S. ___, 132 S. Ct. 1095 (2012) (upholding a student's suspension for creating and posting to a webpage ridiculing a classmate).