

**GUIDELINES FOR THE DEVELOPMENT OF DISTRICT
POLCIES ON STUDENT RIGHTS AND RESPONSIBILITIES**

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GUIDELINES FOR THE DEVELOPMENT OF DISTRICT POLICIES
ON STUDENT RIGHTS AND RESPONSIBILITIES

INTRODUCTION

The goals of education are best served where there is a safe and pleasant environment, which permits staff and students to concentrate on teaching and learning. Such an atmosphere can only be maintained through the cooperative efforts of all those involved in the education community—especially educators, students and parents. Educators have the responsibility to inform students of their rights and responsibilities. Students have the responsibility to know and abide by school rules and regulations. Parents should also familiarize themselves with school rules to avoid misunderstanding and to join the school community's efforts to maintain a climate of respect, consideration and good citizenship.

Schools are recognized as having the general authority to maintain order and discipline and to control student conduct, however schools must operate within established guidelines and constitutional limits. Under our constitutional system, state governments are empowered with the legal responsibility for establishing and maintaining a system of public education. Although the power of states over education is considerable, state legislatures do not actually operate schools; rather, they provide for the operation of schools. In Delaware, the authority for this operation is delegated to the State Board of Education and local boards of education. Such authority is outlined in Title 14 of the Delaware Code. It is the purpose of these guidelines to provide assistance to Delaware's local boards of education of developing policies for schools, which will inform students of their rights and responsibilities.

I. FUNDAMENTAL AND DEVELOPMENT RIGHTS

Schools provide direct instruction and opportunities for students to develop their intellectual abilities through inquiry, discovery, exposition and the interchange of ideas. Public education should also contribute toward the continual development of self-discipline through learning activities and opportunities for students to participate as citizens in the schools. Essential concerns at all school levels are the maintenance and encouragement of responsible behavior, student leadership and respect for due process and fundamental freedoms.

A. Freedom of Expression and Communication

The rights and responsibilities of students regarding freedom of speech, press, and action should be in conformity with the safeguards established in the First Admendment to the United States Constitution and as interpreted and applied through decisions of the various courts. Tinker v. DesMoines Independent School District, 393 U.S. 503 (1969). The U.S. Supreme Court, in applying this principle to the high school, noted: "In order for the state in the person of school officials to justify prohibition of a particular expression of opinion it must be able to show that its action was caused by

something more than a mere desire to avoid the discomfort and unpleasantness which always accompany an unpopular viewpoint.....” Id. at 511.

The following principles should serve as guidelines on student freedom of expression:

1. Students should be free to express their views and opinions provided that they do not seek to coerce others to follow their mode of expressions or interfere with the free expression rights of others.
2. Students should be permitted to discuss and express all views relevant to the subject matter in the classroom, limited only by the responsibility of the teacher to maintain order, to assure meaningful participation and to respect the contributions of all students:
 - a. Students are responsible for learning the content of their courses.
 - b. Students are responsible for meeting they performance standards of the subjects as established by the teachers and school officials. Requirements of class attendance, participation and the submission of written assignments are important aspects of student responsibilities.
 - c. Students should also be provided the opportunity to participate in discussions and offer recommendations to improve the curriculum through duly elected or appointed representatives.
 - d. Evaluation of student performance should be related to the achievement of the subject matter content, the understanding of processes, and the development and application of learning skills. Penalties involving student achievement should not be imposed as a result of student behavior outside of the subject matter study.
3. Student should have the right to express themselves through direct and symbolic means as long as such expression:
 - a. does not mock, demean, or ridicule other persons or groups, See: Nitzberg v. Parks, 525 F. 2d 378 (4th Cir. 1975);
 - b. does not interfere with the scheduled activities or disrupt the educational process within the school, Tinker v. DesMoines Independent School District, Id.; See also: Lipp v. Morris, 579 F. 2d 834 (3d Cir. 1978);

- c. does not reflect obscenity, vulgarity, and/or inflammatory statements; See: Bethel School District v. Fraser 478 U.S. ____, 92 L.Ed. 2d 549, 106 S.Ct. 3159 (1986);
 - d. does not conflict with the prohibitions relating to the separation of Church and State; See: Bender v. Williamsport, 475 U.S. 534 (1986).
4. Student should have the right to publish and distribute materials as long as such action or material:
- a. does not endanger the health or safety of students or others; William v. Spencer, 622 F.2d 1200 (4th Cir. 1980);
 - b. does not threaten to disrupt the educational process; Frasca v. Andrews 463 F. Supp. 1043 (E.D. N.Y. 1979);
 - c. does not reflect a libelous nature; See: Nitzberg v. Parks, Id. ; Frasca v. Andrews, Id.;
 - d. does not indicate a commercial purpose;
 - e. does not contain obscene and inflammatory statements; See: Bethel School District v. Fraser, Id.; (1988) Hazelwood School District v. Kuhlmeier, 484 U.S. ____, 98 L.Ed. 592.
 - f. does not conflict with the prohibitions relating to the separation of Church and State; See: Hernandez v. Hanson, 430 F. Supp. 1154 (D Neb. 1977); Goodwin v. Board of Education, 394 F. Supp. 417 (E.D. Ark. 1973).
5. The right to publish and distribute materials should be accompanied by the following responsible actions:
- a. designation of the persons or persons who wrote and published the materials;
 - b. adherence to acceptable standards of journalism, which emphasize literary value, newsworthiness, and propriety;
 - c. adherence to school policies on the time, place and manner of the distribution of such materials; See: Shanley v. Northeast Independent School District, 462 F. 2d 960, (5th Cir. 1972);
 - e. acceptance of the legal consequences for student expressions and publications.

6. Each school should establish a committee composed of students, teachers, administrators, and lay representatives to develop standards and guidelines as to acceptable journalism and the definition of such abstract terms as obscenity, vulgarity, inflammatory, libelous and literary value. Such guidelines should be made known to all members of the school community. The development of standards and guidelines should preclude the necessity of prior censorship of publications. See: Baughman v. Freienmuth, 478 F. 2d 1345 (4th Cir. 1973).
7. Notwithstanding the above school administrators have the right to control the content of all school-sponsored publications, theatrical productions or other vehicles of student expression. Hazlewood School District v. Kuhlmeier, Id.
8. Students should have the right of peaceful assembly involving free discussion, Passing of resolutions, and exercising lawful action pertaining to matters, which directly concern their educational progress.

The school administration may require that meetings or assemblages be held at times which will not disrupt classes or other scheduled school activities; will not present hazards to persons or property; and will avoid conflicts through advance notice of intent to hold meetings.

9. Students should have the right to petition school officials regarding activities directly related to the conduct and improvement of the educational process and services. Such proposals should contain recommendations for constructive and responsible improvement and action, and should be given full consideration by school officials.

The school administration should require that signatures on petitions be so collected as not to create a distraction or to foster a disruptive influence.

10. The concept of freedom of expression emphasizes the aspect of self-expression regarding personal appearance and dress. Students shall have the right to choose their own dress, so long as their apparel does not jeopardize the health and safety of themselves or others, and does not interfere with the teaching-learning process.

Students should be required to follow dress standards to prevent hazards or dangers in areas such as shop, laboratory, and physical education classes as defined by a student-faculty committee.

Students may be required to modify their dress standards when such dress creates a disruptive influence.

B. Freedom of Association

The rights appropriate to students regarding freedom of expression imply further consideration of the right to associate for the fulfillment of common purposes, the interchange of ideas, and the improvement of human relations and intercultural understanding.

1. Students should have the right to participate in curriculum-based clubs and associations in accordance with the following guidelines:
 - a. Group membership shall not be denied to any student because of race, sex, religion or nationality;
 - b. Clubs or associations may require special qualifications for membership if such qualifications relate directly to the purposes of the group;
 - c. Groups with a constitution and by-laws should submit such documents along with a listing of officers to the school administration and student council. Amendments to the constitution and changes in the by-laws should also be submitted.
2. Students should have the right to participate in decisions about the Nature, organization, and procedures for their clubs and associations as long as such decisions do not threaten the health and safety of students or disrupt the educational process of the school

Clubs and associations should be organized within the guidelines and policies established through an effective Student Council or Student Government Organization.

3. Participation in student clubs and associations shall be in accordance with State Board of Education and district policies on participation in extra-curricular activities.
4. Schools should comply with federal statutes and case law regarding equal access. See: 20 U.S.C. §4071, et seq.

C. Student Government

It is important in the maintenance and improvement of democratic institutions that students have the opportunity to participate effectively in the decision-making processes necessary for developing responsible and productive citizens.

1. Students should have the right to organize and conduct student council or government association activities, which contribute toward the understanding and functioning of the objectives of the school system and assure an important role in the decision-making affecting their educational betterment.

This right should be emphasized within the guidelines and practices recommended by the national and State Associations, and within the rules and regulations established by the respective school districts; however, the following factors should be considered:

- a. The organization, operation, and scope of the student government should be defined in a written constitution developed through effective student participation and approved at least once every three years by majority of the students;
 - b. Student government should function with respect to its constitutional and by-law provisions.
 - c. The school administration should assure that all students have the right to vote and to hold office as provided in Paragraph 2 which follows;
 - d. The decisions of the student government association should not be influenced by the faculty and should not be arbitrarily vetoed by the administration. Appeal of a decision by students or staff should be reviewed by a committee composed of administrative, faculty, and student representatives to assure compliance with the purpose of the student organization.
 - e. The student government organization should be responsible to the needs and interest of all students and shall conduct open meetings to assure maximum involvement of students.
2. Students should have the right to select officers and representatives from among the student body in accordance with the provisions established in the constitution or the by-laws of the student government association.

Provisions as to the qualifications of candidates should be as broad as possible to assure the greatest participation and representation of all students. However, such provisions should reflect district and State Board policies on participation in extra-curricular activities.
 3. Students should have the right to recommend to the administration the name of a faculty advisor or sponsor selected by members of the student government organization.

The faculty advisors should advocate that the purposes of the constitution be fulfilled and that the members develop rules and regulations within the framework of the school's philosophy.

4. Students should have the right to organize and conduct clubs and associations under the guidelines and recommendations established through the Student Government Organization or Student Council.
5. Participation in student government shall be in accordance with State Board of Education and district policies on participation in extra-curricular activities.

D. Student Grievance and Complain Procedures

It is desirable for school officials to provide a means for the expression and resolution of student grievances and complaints. Students should be encouraged to discuss their grievance or complaint informally with the person involved. However, functional orderly procedures should be established in every district through which consideration of student problems and concerns can be discussed and resolved quickly and equitably.

1. Students should have the right to participate in recommending procedures through which discussion of student problems and concerns can be handled.
 - a. The procedures should be developed through a committee composed of an equal number of students and faculty members. Representatives from the school administration and from the community should also be a part of this action-oriented committee.
 - b. Students should have the right to discuss with faculty members matters of both educational and personal concern as they relate to the educational process. This informal and private process should be followed in order to resolve differences and problems in a positive and cooperative manner.
 - c. Students should have the right to appeal, in writing, matters of educational concern to the school principal, should discuss with the staff members not resolve the issue.
 - d. The right of appeal regarding educational problems should extend to the school superintendent and, if a satisfactory resolution does not result, then to the local board of education.

2. It is the purpose of discussion and appeal procedures to provide access to Appropriate school officials within a reasonable time. It is not the purpose to provide a forum through which trivialities. Irresponsible actions, and non-related school issues are conveyed. In this context it is recommended:
 - a. That an many student problems and concerns as possible be handled through committees established by the Student Council or Government organization or through direct communication with staff members;
 - b. That only issues of utmost concern be brought before a Student-Faculty Committee for review and disposition.
 - c. That only unresolved issues of major importance be appealed to the school administrator for consideration and action.

E. Student Conduct

The schools exist as educational and social institutions concerned with providing learning opportunities which lead to the development of responsible and intelligent citizens. School officials are, therefore, granted the authority to maintain an orderly and safe educational environment which considers student conduct and behavior as essential to the development aspect of the learning process.

1. Students should have the right to participate in the development, implementation and modification of rules and regulations establishing appropriate student conduct and behavior.
 - a. Such rules and regulations should be developed through a representative committee composed of administrators, teachers, and students. The committee may be expanded to include parents and lay citizens.
 - b. Such rules and regulations should emphasize the constitutional rights of students and respect for the school and school officials.
 - c. Such rules and regulations should be written in clear and precise language.
 - d. Such rules and regulations should not penalize the student for behavior not directly related to the educational responsibilities and functions of the school.

2. Students should have the right to be informed about violations of rules and regulations and to be granted a hearing regarding serious offenses.
 - a. Each student and/or his or her parent(s) or guardian(s) should receive a copy of the school's disciplinary code at the beginning of each school year or upon entry or re-entry to school.
 - b. Minor infractions and misconduct may be handled through conferences with teachers and administrators.
 - c. Procedures for handling infractions may vary in formality in accordance with the seriousness of the action.
 - d. Procedures for disciplinary action shall be conducted in accordance with the judicial concept of innocent until proven guilty.
3. Students have the right to be treated fairly and equitably and to be granted due process before any disciplinary action, which deprives them of education. Any such action which hampers their access to education should be reasonable and within the limits of the Constitution, the laws of the State and the regulations of the State Board of Education.
 - a. Disciplinary action shall be fair, firm, consistent, and appropriate to infraction or offense.
 - b. Codes of conduct should be meaningful and applied without preference to any group or individuals.
4. Students should have the right to seek informal review or appeal or disciplinary decisions. Any disciplinary decision for which the sanction imposed is suspension for more than 10 days or expulsion, or which results in the right of appeal to the State Board of Education, requires formal due process procedures. Codes of conduct should clearly set out whether sanctions result in informal review or appeal. The appeals procedure should be in writing and be made well-known to the entire school community each-year.
5. If a student is handicapped within meaning of P.L. 94-142 (See Administrative Manual: Programs for Exceptional Students, A. I. 1.), a determination must be made prior to any disciplinary action of whether the misconduct prompting the disciplinary action was the result of the student's handicapping condition. If the misconduct is a manifestation of the student's handicap, any consequences should be through the IEP process, not through student disciplinary procedures.

F. Suspension and Expulsion

It is fundamental to the progress of a democratic nation that youth be provided with educational opportunities which address their interests and are addressed to their abilities. Equality of educational opportunity is both a right and a privilege, established within the framework of a compulsory attendance law, which requires that students between the ages of 5 to 16 – with certain exceptions – be in school and be further permitted to continue in school if necessary until the age of 21.

Any administrative or disciplinary action, which tends to restrict the above requirements should be conducted in accordance with acceptable standards of due process and should reflect, as broadly as possible, a learning experience which contributes toward the further educational development, responsibility, and maturity of the individual students, and corrects the situation producing the unacceptable behavior.

1. The use of suspension and/or expulsion as a consequence for misconduct should be limited to activities associated with the school.
2. Short-term suspensions for 10 days or less require that a student be afforded rudimentary due process. Goss v. Lopez, 419 U.S. 565 (1975). There are certain basic requirements, which exist when rudimentary due process is extended. They are:
 - a. Conducting an individualized preliminary investigation to determine the facts associated with the infraction. Id.
 - b. Informing the student of the charges against him or her and permitting the student to discuss the matter. Id.
 - c. If the student denies the charges, giving him or her an explanation of the school's evidence and an opportunity to present his or her version of the facts. Id.
 - d. Notifying the student and his or her parent(s) or guardian(s) of the infraction and the proposed disciplinary action. French v. Cornwall, 276 N.W. 2d 216 (1979).
 - e. Conducting a conference with the student and his or her parent(s) or guardian(s) and informing them of the impending action, and permitting question of the complaint. Goss v. Lopez; Id.

- f. Giving the student a written decision which clearly states:
 - i. The charges and the evidence;
 - ii. The sanction imposed
 - iii. The rights or informal review or of appeal, including review by or appeal to the district superintendent, followed by the local board of education, or a panel composed of an equal number of faculty, student and lay representatives.
 - g. Providing the condition under which the suspension will be terminated and recommending constructive means for improvement.
3. If the right or appeal granted by the district implicates review by the State Board of Education, the procedures for long-term suspension (more than 10 days) or expulsion should be followed. 14 Del. C., § 1058; Regulations for the conduct of Hearings Before the State Board of Education Pursuant to 14 Del. C. § 1058, January 20, 1972.
 4. Where suspension is not immediate, denial of appropriate educational opportunities during the period prior to the determination that suspension is warranted presupposes “guilt before conviction.”
 5. If the student’s presence constitutes a clear and present danger to persons or property in the school, or an on-going threat of disruption of the academic process, the student may be suspended without rudimentary due process, but notice and an informal hearing, as detailed in paragraph 2 above, should be provided as soon as practicable. Goss v. Lopes, Id.
 6. Multiple short-term suspensions should not be used to circumvent the due process requirements of long-term suspensions or expulsion.
 7. Suspensions for more than 10 days or expulsions require more formal procedures. Such procedures should include the following:
 - a. All those procedures accorded students for short-term suspensions (paragraph 2 above);
 - b. Written notice to the student and his/her parent(s) of:

- i. The specific misconduct of which the student is accused, the factual basis of the charges, and the specific provisions of the student code allegedly violated; Dixon v. Alabama State Board of Education, 294 F. 2d 150 (5th Cir.), cert. den. 368 U.S. 930 (1961); Strickland v. Inlow, 519 F. 2d 744 (8th Cir. 1975).
 - ii. The right to have a formal hearing and the procedures to be followed; Gross; Dixon.
 - iii. The date, time and place of the hearing, given so that the student has sufficient time to prepare a defense; Dixon; Smith v. Miller, 514 P. 2d 377 (Kan. 1973).
 - iv. The right to be represented by legal counsel or an adult advisor; Black Coalition v. Portland School District No. 1, 484 F. 2d 1040 (9th Cir. 1973).
 - v. The right to testify and present evidence. Goss v. Lopez, Id.
 - vi. The right to have witnesses and to cross-examine opposing witnesses. Id.; DeJesus v. Penberthy, 344 F. Supp. 70 (D. Conn. 1972).
 - vii. The right to either a public or a private hearing. 29 Del. C. §10004 (b) (7).
- c. The district and the local board should ensure:
- i. That the student receives a fair and unbiased hearing which follows both substantive and the procedural due process requirements regarding student suspension and expulsion, Goss v. Lopez, Id.
 - ii. That the hearing is held by and the matter is decided by impartial decision-makers who have not participated in bringing or investigating the charges, Gonzalez v. McEuen, 435 F. Supp. 460 (D.C. Cal. 1977);
 - iii. That a verbatim record is made of the hearing, Regulations for Deciding Controversies Before Local Boards of Education, January 20, 1977, I (d) II (a);
 - iv. That the decision reached is supported by “substantial evidence.” Regulations for the Conduct of Hearings Before the State Board of Education Pursuant to 14 Del. C. § 1058, January 20, 1977, III a.

- d. The local board should render a written decision setting forth:
 - i. The findings of fact;
 - ii. The basis of the decision in law or the district student disciplinary code, and;
 - ii. The disciplinary action to be imposed, if any. Regulations for Deciding Controversies Before Local Boards of Education, January 20, 1977, I (c).
- e. The written decision should be entered in full in the local board's minutes; Id. at II (b)
- f. A copy of the written decision should be sent to the student and his or her parent(s) or guardian(s), and should include or be accompanied by:
 - i. A notice of the student's rights of administrative or judicial review (e.g. by the State Board of Education), See: Dixon v. Alabama, Id.
 - ii. A statement of the conditions for readmission to school after the term of expulsion, with sufficient particularity to be able to determine whether the re-admittance of the student would either constitute a problem or disrupt the educational process.

G. Role of Police Authorities

While the education system is primarily responsible for the development of intellect and character and the police are responsible for welfare and safety, the two are interdependent. The successful functioning of law enforcement officials in the schools is dependent upon effective communication and cooperation between the two agencies. With this in mind, police, school and the various other agencies involved with the education, safety and welfare of Delaware's youth have been consulted, and a document entitled School/Police Relations Guidelines for School Administrators, dated October 20, 1988, was adopted by the State Board of Education.

These Guidelines address police/school relations in the following instances:

- a. Arrests on school premises;
- b. Questioning or interrogation by police on school premises;

- c. Search and seizure in connection with the police;
- d. Reporting crimes to the police;
- e. School disturbances requiring police assistance; and
- f. Police contact with “truants” out of school.

Although one of the primary aims of law enforcement officials is the prevention of and intervention in conduct and activity prescribed by law, the presence of such officials in the schools should not be limited to crisis situations. School officials should invite the police as guest speakers and visitors through which effective cooperative relationships can be established before a crisis occurs.

H. Student Records

1. Parents of student, and students who are 18 years old or over or who are attending an institution of post-secondary education, have the right of access to student education records. Such access to and the disclosure of student information shall be pursuant to the Procedures for the Collection, Maintenance and Disclosure of Student Data, Handbook for Secondary Schools, at Appendix A, or Handbook for K-8, at Appendix B.
2. Parents or eligible students have the right to request that records they believe to be inaccurate be amended. Schools shall establish procedures to permit access and to provide an opportunity to request amendment of the records, and a hearing thereon if requested. Schools shall give parents of students in attendance annual notification of their rights under the Procedures.
3. Schools may presume that either parent of a student has the authority to inspect, review and receive copies of the student’s education records unless the school has been provided with evidence that there is a legally binding instrument or court order governing such matters as separation, divorce or custody, which specifically denies such access.

II. Guidelines as to Student Responsibilities

The various rights of students set forth in the preceding sections reflect those guaranteed to all citizens in accord with the Constitution of the United States, federal laws, laws of the State of Delaware, and the rules and regulations of the State Board of Education.

Our nation acquires its strength through citizen involvement. The educational process in the schools must become the vehicle by which the meaningful principles of democracy are both taught and practiced. To this end, school officials must assure that advice, counsel, and Supervision are provided students.

The rights assumed by students must be accompanied by corresponding responsibilities as they exercise their rights. They must further accept the consequences of their actions, recognize the limits of their freedoms, and show concern and consideration for the rights of others.

Student rights thus involve equivalent responsibilities. Students thus have the following responsibilities:

1. To accept every person as an individual human being and to promote intercultural and group relations and understanding.
2. To apply their abilities and interests to the improvement of their knowledge and to the development and application of learning skills.
3. To recognize and function within the policies established by the school boards and school officials.
4. To attend school regularly for the purpose of obtaining a quality and meaningful education.
5. To abide by rules and regulations necessary for the orderly conduct of school activities by the administration and faculty.
6. To implement and abide by rules and regulations developed through the cooperation of student-faculty committees.
7. To contribute cooperatively toward the improvement of the teaching-learning situation and to strive for the overall betterment of the total school environment.
8. To maintain respect for school officials and students and to exhibit conduct Reflecting self-control, self-regulation, and self-discipline.
9. To plan, organize and participate in school activities – such as assemblies and clubs – which provide constructive learning opportunities and contribute toward the educational progress of all students.
10. To assure all students have a voice in the student government through their duly selected representatives and to cooperate with the student officers in the development and implementation of student related policies.

11. To contribute toward the overall improvement of the school curriculum through active involvement in both classroom and extra-curriculum activities.
12. To develop a sense of pride and respect for the school and the ideas for which it stands.
13. To provide support for the members of the athletic teams and other student groups representing the school as part of the esprit de corps necessary for group success.
14. To realize that all right are relative to the rights of others and must be protected with the same degree of respect with which they are accepted.

APPENDIX A

RESOURCE CHECKLIST FOR DUE PROCESS PROCEDURES IN SUSPENSION AN EXPULSION

A. PRELIMINARY QUESTIONS:

- _____ 1. Is the student to be disciplined a handicapped student under P.L. 94-142? (See Administrative Manual: Programs for Exceptional Children, A.I.1.)
- A. _____ If so, has there been a determination made and documented prior to any disciplinary action of whether this misconduct prompting the disciplinary action was the result of the student's handicapping condition?
- B. _____ If the student's misconduct is the result of his or her handicapping condition, any consequences should be through the IEP process, not disciplinary procedures.
- _____ 2. Is the proposed disciplinary measure related to activities associated with the school? A student should not be disciplines (e.g. suspended or expelled) solely because charges are pending or a conviction has been obtained against him or her in court. See Leonard v. School Comm., 212 N.E. 2d 468 (Mass. 1965); Smith v. Little Rock School District, 582 F. Supp. 159 (E.D. Ark. 1984).
- _____ 3. Has the student received some kind of advance notice of prohibited behavior and of consequent disciplinary action (e.g. a published student code which has been reviewed by the school at the beginning of the year and/or which has been sent to the student's parents)? Ingraham v. Wright, 498 F. 2d. 909 (5th Cir. 1976); Smith v. Little Rock School District, 582 F. Supp. 159 (E.D. Ark. 1984).
- _____ 4. Is this an emergency situation where a student may be suspended from school without a hearing because his or her continued presence in school would be clear and present danger to persons or property in school or an on-going threat of disruption of the academic process? See Goss v. Lopez, 419 U.S. 565 (1975).
- a. _____ If so, an informal hearing should be afforded the student as student as soon as practicable following the suspension. If a formal hearing is indicated from student's misbehavior, that hearing should be held as soon as possible. Jenkins v. Louisiana State Bd. Of Educ., 506 F.2d 992 (5th Cir. 1975); See Stricklin v. Regents of Univ. of Wisconsin, 297 F.2d 416 (W.D. Wis. 1969).

- b. _____ If not, the student should be afforded an informal hearing promptly following the misconduct or the discovery thereof.

SHORT-TERM SUSPENSIONS (10 DAYS OR LESS)

- _____ 5. Has the student received an “individualized” investigation of his or her case by a school administrator? Goss
- _____ 6. Has the student received oral or written notice of the specific misconduct of which he or she is accused and the proposed disciplinary measure? Goss
- _____ 7. If the student denies the charges, has he or she been given an explanation of the evidence the school authorities have and an opportunity to present his or her version of the facts? Goss
- _____ 8. Where the suspension is not immediate, has the student been afforded appropriate educational opportunities during the period prior to the determination that suspension is warranted? See No. 31
- _____ 9. Has there been an objective finding of the student’s misconduct by an impartial decision maker? See Sullivan v. Houston Indep. School Dist., 475 F. 2d 1071 (5th Cir. 1973), cert den. 414 U.S. 1032 (1974).
- _____ 10. Has the student’s parent(s) or guardian(s) been notified of the above? French v. Cornwall, 276 N.W. 2d 216 (1979).
- _____ 11. Has a written decision been rendered in the student’s case?
- a. _____ Does it document all of the above steps?
- b. _____ Does it clearly state the sanction imposed?
- _____ 12. Has the student been informed of the right to informal review or to appeal the suspension? See No. 16b
- a. _____ Does the school disciplinary notice sent the student clearly set out the form the appeal is to take? If the right is only to informal review without any further right of appeal to the State Board of Education, that limitation should be set out. If the right of appeal implicates review by the State Board of Education, the guidelines for long-term suspensions or expulsions should be followed. 14 Del. C. sec. 1058; Regulations for the Conduct of Hearings Before the State Board of Education Pursuant to 14 Del. C. sec. 1058, January 20, 1977.

- b. _____ Does the notice clearly set out the student's rights on appeal?
See No. 16, below.
 - c. _____ Does the notice inform the student of whether the hearing must be requested (and the time period within which such a request must be made) or whether it will be scheduled automatically?
- _____ 13. If short-term suspension is merely a prelude to a suspension of more than 10 days or expulsion, has the student been given notice of his right to a formal hearing (appeal)? See No. 16, below.
- a. _____ Do the school disciplinary rules and the notice sent the student clearly set out the procedures to be followed for a formal hearing (appeal)?
 - b. _____ Does the notice clearly set out the student's rights on appeal (formal hearing)?

LONG-TERM SUSPENSION (MORE THAN 10 DAYS) OR EXPULSION:

- _____ 14. Have all of the procedural steps set out above been followed? (If the steps taken above implicate review by the State Board of Education, the subsequent guidelines should be followed.)
- _____ 15. Does the student wish to relinquish, abandon or waive his right to a formal hearing? Sullivan v. Houston Indep. School Dist., 475 F.2d 1071 (5th Cir.), cert. denied, 414 U.S. 1032 (1973).
- a. _____ If so, is it adequately documented that the student clearly understood his or her right to the hearing and that his or her actions constituted a relinquishment, abandonment or waiver? Lopez v. Williams, 372 F.Supp. 1279 (D.C. Ohio), aff'd subnom. Goss v. Lopez, 419 U.S. 565 (1975).
 - b. _____ If the student refused to or failed to participate in the hearing, have the school's efforts to inform the student of his or her rights and to seek the student's participation in the hearing been documented clearly? Scott v. Alabama State Bd. of Educ., 300 F.Supp. 163 (D.C. Ala. 1969). See Wright v. Southern Texas University, 277 F.Supp. 110 (S.D. Tex. 1967), aff'd, 392 F.2d 728 (5th Cir. 1968).

- _____ 16. Has the student received the following:
- a. _____ Written notice of the specific misconduct of which the student is accused, the factual basis of which charges and the specific provisions of the student disciplinary code allegedly violated? Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th cir.), cert. den., 368 U.S. 930 (1961); Strickland v. Inlow, 519 F.2d 744 (8th Cir. 1975).
 - b. _____ Written notice of the right to a hearing, the student's rights on appeal or at the hearing and the procedures to be followed? Goss; Dixon; Graham v. Knutzen, 351 F.Supp. 881 (D.Neb. (1973)).
 - c. _____ Written notice of the date, time and place of the hearing, given so that the student has sufficient time to enable him or her to prepare a defense? Dixon; Texarkana Indep. School Dist. v. Lewis, 470 S.W.2d 727 (Tex.Civ.App. 1971); Smith v. Miller, 514 P.2d 377 (Kan. 1973).
 - d. _____ Written notice of the student' right to be represented by legal counsel or an adult advisor? Black Coalition v. Portland School District No. 1, 484 F.2d 1040 (9TH Cir. 1973); Diggles v. Corsicana Indep. Sch. Dist., 529 F.Supp. 169 (N.D.Tex. 1981); but see Linwood v. Bd. of Educ., 463 F.2d 763 (7th Cir.), cert. den. 409 U.S. 1027 (1972).
 - e. _____ A copy of the student disciplinary code and applicable procedures? See DeJesus v. Penberthy, 344 F. Supp. 70, 77 (D. Conn. 1972).
- _____ 17. Has the student been given the right to an open or closed hearing? 29 Del. C. sec 10004 (b) (7).
- _____ 18. Has the student had access to the evidence before the hearing, including, where requested, a summary of the proposed testimony, where requested, a summary of the proposed testimony of witnesses? Dixon; Graham; Smith v. Miller, but see Linwood v. Board of Educ., 463 F.2d 763 (7th Cir. 1972).
- a. _____ If disclosure of requested evidence is prohibited by the Family Educational Rights and Privacy Act, or State law or State Board rule and regulation, has this been documented clearly and notice given the student? See Family Educational Rights and Privacy Act, 20 U.S.C. sec. 1232 g; See also Brown v. Knowlton, 370 F.Supp. 1119 (S.D.N.Y.), aff'd 505 F.2d 727 (2d Cir. 1974).

- b. _____ If disclosure of requested evidence would result in reprisals against witnesses, has this anticipated result been documented clearly and notice been given the accused student? Graham v. Knutzen, Id.
- _____ 19. Has the student been afforded the right to present witnesses and to confront and cross-examine opposing witnesses? See No. 23k, below. Where the school can require attendance by a requested witness, have those witnesses been asked to attend the hearing? See Abbott, Due Process and Secondary School Dismissals, 20 Case W. Res. 378 395 (1969); Rapp, 2 Education Penberthy, Id. but see Greene v. Moore, 373 F.Supp. 1194 (N.D. Tex. 1974).
- _____ 20. Has a verbatim record been made of the hearing? Regulations for Deciding Controversies Before Local Boards of Education, January 20, 1970 I(d), II(a).
- _____ 21. Has the hearing been held by an impartial decision-maker (tribunal)? See Gonzalez v. McEuen, 435 F. Supp. 460 (D.C. Cal 1977).
- a. _____ Has the decision-maker testified in the hearing: See Warren v. National Ass'n of Secondary School Principals, 375 F.Supp. 1043, (N.D. Tex. 1974).
- b. _____ Has the decision-maker participated in bringing or in investigated the charges? Gonzalez; Sullivan v. Houston Indep. Sch. Dist., 475 F.2d 1071 (5th Cir.), cert. denied 414 U.S. 1032 (1973); but see Winnick v. Manning, 460 F.2d 545 (2d Cir. 1972).
- c. _____ Has the decision-maker other, outside, specific knowledge of the evidence so as to have impugned his fairness? Gonzalez.
- d. _____ Is the decision-maker otherwise impartial? Gonzalez.
- _____ 22. If the attorney for the school serves as both attorney for the decision-maker (tribunal) and prosecutor, can it be shown that the attorney performed both roles without prejudice or bias? (The better view is that the attorney should not serve in both roles. The administration should present the case or an additional attorney should fill one of the roles.) See Gonzalez; Appeal of Feldman, 346 A.2d 895, 896 (Pa.Comm.Pl. 1975); but see Alex v. Allen, 409 F.Supp 379, 378 (W.D. Pa. 1976).

- _____ 23. When the hearing was conducted was the subsequent format followed?
- a. _____ The presiding officer should declare the hearing convened, and state the date, time and matter to be considered.
 - b. _____ If a board is hearing the matter, the presence of its member (by name) should be established and the existence of a quorum confirmed.
 - c. _____ All other persons participating in the hearing should be identified by name and their interest in the matter.
 - d. _____ It should be stated whether the student wishes the matter to be heard in open or closed session. 29 Del.C. sec. 10004(b) (7). If closed, all persons without proper interest in the matter should be excluded. Linwood. Witnesses may be excluded on request.
 - e. _____ The presiding officer should state the procedures to be followed in the hearing, and the parties should be allowed to make any objections to the time, date, place, or procedures of the hearing or the impartiality of any member of the tribunal or the decision-maker. See Board of Trustees v. Speigel, 549 P.2d 1161 (Wyo. 1976).
 - f. _____ The charges against the student should be read, and the student should be requested to confirm that he has received a copy of them. See No. 16
 - g. _____ If any matters have been stipulated to or agreed upon, the parties should be requested to present them.
 - h. _____ Each party should be afforded a specific amount of time in which to make an opening statement.
 - i. _____ The district should then proceed to present its evidence, and thereafter the student should present his or her evidence. Each party should be allowed to present rebuttal, and if needed surrebuttal evidence.
 - j. _____ Although strict evidentiary rules need not be followed, the parties should be given the opportunity relevant, material and

reliable evidence, to make objections for the record and to have clear ruling made on those objections. See Boykins v. Bd. of Education, 492 F.2d 697 (5th Cir.1974); Morale v. Grigel, 422 F.Supp. 988 (D.N.H. 1976); DeJesus v. Penberthy, 344 F.Supp. 70 (D.Conn. 1972).

- k. _____ Each party should be given the opportunity to cross-examine the opposing witnesses. Black Coalition; DeJesus; Givens v. Poe, 349 F.Supp. 202, 209 (W.D.N.C. 1972), but see Dixon; Boykins.
 - l. _____ Where criminal penalties attach, the student may be given the right to remain silent. Caldwell v. Canady, 340 F. Supp. 835, 841 (N.D.Tex. 1972); but see Madera v. Board of Educ., 386 F.2d 788, 780 (2d Cir. 1967), cert. denied 390 U.S. 1028 (1968); Garrity v. New York, 385 U.S. 493 (1967).
 - m. _____ At the close of the evidence, each party should be afforded time to make a closing statement.
 - n. _____ The decision-maker (tribunal members) may be given the opportunity to ask questions at the close of the presentation. See State v. Milwaukee Bd. of School Directors, 111 N.W.2d 198 (1961).
 - o. _____ The hearing should be closed by the presiding officer with an explanation of when and how a decision will be rendered in the matter, and the decision-maker (tribunal) may go into closed session to consider the evidence.
- _____ 24. Have only the members of the tribunal, or hearing officer, and their attorney(s) or advisor(s) attended the deliberations or participated in the decision? Gonzalez v. McEuen, Id.
- a. _____ Should any of these participants been barred from the deliberations because of lack of impartiality? (See Nos. 21, 22, above).
- _____ 25. If a board subject to the Freedom of Information Act is hearing the matter, has the board come back into open session to vote on its decision? 29 Del.C. sec. 1000(c).
- _____ 26. Has the decision reached been supported by "substantial evidence"? Regulations for the Conduct of Hearings Before the State Board of Education Pursuant to 14 Del.C. sec. 1058, January 20, 1977, IIIa.

- _____ 27. Has the decision-maker rendered a written decision, setting forth findings of fact, the basis of the decision in law or the student disciplinary code, and the disciplinary action to be imposed, if any?
- a. _____ Has the full decision been entered in the local board's minutes. Regulations for Deciding Controversies Before Local Boards of Education (January 20, 1977), IIb.
- _____ 28. Has a copy of the written decision been sent to the student? See Dixon.
- _____ 29. Has the student been advised in writing of his rights of administrative and/or judicial review of the decision, if any?
- _____ 30. If the student has admitted misconduct but still maintains the penalty should not be imposed, has he or she been afforded the opportunity to have the above detailed hearing on the penalty? See Betts v. Board of Educ. 466 F.2d 629 (7th Cir. 1972).
- _____ 31. Has the student been afforded appropriate educational opportunities during the period prior to the formal hearing? Failure to provide educational alternatives presupposes "guilt before conviction."

GENERAL CONSIDERATIONS:

- _____ 32. If the student is handicapped, and a determination has been made that his or her misconduct was not the result of his or handicapping condition, is the student's exclusion from school in accordance with federal and State law and rules and regulations? See Administrative Manual: Programs for Exceptional children, A.I.1.
- _____ 33. If the student is a minor (under 18), has his or her parent(s) or guardian(s) been given the right to act on his or her behalf? If a student is handicapped, P.L. 94-142 give parent(s) or guardian(s) the right to act o that student's Behalf to age 21, with respect to rights guaranteed under the Act. 1 Del.C. Sec. 701; 13 Del.C. sec. 701, et seq.; Administrative Manual: Programs for Exceptional Children.

Appendix B

STATEWIDE GUIDELINES FOR DRAFTING DISTRICT DRUG AND ALCOHOL POLICIES

PREAMBLE

A school policy should clearly establish that use, and/or possession, and/or sale of alcohol, and/or illicit drugs will not be tolerated in the school environment. Prevention, intervention, treatment, and disciplinary measures are elements of a total drug program. A comprehensive alcohol and drug prevention program is necessary for all students to help young people value and maintain good personal health, resist pressures to use chemical substances, and to promote activities that offer healthy avenues for student energies and interests. Self-referral by a student who was an alcohol and/or drug problem should be encouraged and they should be given help rather than treated punitively. A school policy needs to be enforced fairly and consistently and made available to parents, teachers, and students.

The State Board believes that a student disciplinary code which contains a successful drug policy will contain the following elements:

1. The first section of any policy prohibiting the use of alcohol and drugs in the schools should contain definitions so as to make clear the exact terms, which the policy uses. The following definitions are recommended:
 - a. "Alcohol" shall mean alcohol or any alcoholic liquor, capable of being consumed by a human being, as defined in Section 101 of Title 4 of the Delaware Code, including alcohol, spirits, wine and beer.
 - b. "Drug" shall mean any controlled substance or counterfeit substance as defined in Chapter 47 of Title 16 of the Delaware Code, including, for example, narcotic drugs such as heroin or cocaine, amphetamines, and marijuana, and shall include any prescription substance, which has been given to or prescribed for a person other than the student in whose possession it is found.
 - c. "Drug paraphernalia" shall mean all equipment, products and materials as defined Section 4701 of Title 16 of the Delaware Code, for example, roach clips, miniature cocaine spoons and containers for packaging drugs.

- d. "Prescription drug" shall mean any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 Del.C. sec. 4701 (24), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose possession it is found.
- e. "Drug-like substance" shall mean any noncontrolled and/or non-prescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over-the-counter cough medicines, certain types of glue, and caffeine pills.
- f. "Non-prescription medication" shall mean any over-the-counter medication; some of these medications may be a drug-like substance."
- g. "Look-alike substance" shall mean any noncontrolled substance, which is, packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling. See 16 Del .C. sec. 4752A.
- h. "Possession" shall mean that a student has on the student's person, in the student's belongings, or under the student's reasonable control by placement of and knowledge of the whereabouts of, alcohol, a drug, a look-alike substance, a drug-like substance or drug paraphernalia.
- i. "Use" shall mean that a student is reasonably known to have ingested, smoked or otherwise assimilated alcohol, a drug or a drug-like substance, or is reasonably found to be under the influence of such a substance.
- j. "Distribute" shall mean the transfer or attempted transfer of alcohol, a drug, a look-alike substance, a drug-like substance, or drug paraphernalia, to any other person with or without the exchange of money or other valuable consideration. The receiving party shall be considered "in possession."
- k. "School environment" shall mean within or on school property, and/or at school sanctioned or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at extra curricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

2. The next section of the policy should contain a clear statement or statements of the policy of the district. Examples of such statements are:
 - a. The possession, use of distribution of alcohol, a drug, a drug-like substance, a look-alike substance or drug paraphernalia is prohibited within the school environment.
 - b. All students should take prescription drugs or non-prescription medications brought into the school environment to the school nurse. Failure to do so may result in a student being treated as if he or she were in possession of a drug or drug-like substance.
3. The next section should contain a clear statement of infractions and penalties. It is recommended that distribution be treated more severely than possession or use, that there be some hierarchy between first and subsequent offenses, and that required actions be distinguished from optional actions under the policy.

It is also recommended that possession of a drug-like substance where the student intends that the substance be used like a drug or be treated like a look-alike substance be distinguished from where the student intends that the substance be used as the product it actually is (e.g., non-prescription medication or model airplane glue).
4. The next section should contain information on how the policy should be administered, setting out procedures for reporting incidents, circumstances which require reporting, how authorities and/or parents are to be contacted, and procedures which are associated with confidentiality, due process, seizure and the like, if such information is not elsewhere provided in the student disciplinary code.
5. The last section should set out what resources are available to the student and his or her parents in the school and the community for counseling or drug and alcohol treatment.

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