DOCUMENT RESUME

ED 123 709 EA 008 257

AUTHOR Nolte, M. Chester
TITLE Methods of Discipline: What Is Allowed? A Legal Memorandum.
INSTITUTION National Association of Secondary School Principals, Reston, Va.
PUB DATE May 76
NOTE 7p.
AVAILABLE FROM National Association of Secondary School Principals, 1904 Association Drive, Reston Virginia 22091 ($0.50, quantity discounts; payment must accompany orders of $10.00 or less)

EDRS PRICE MF-$0.83 Plus Postage. HC Not Available from EDRS.
DESCRIPTORS Administrator Responsibility; *Civil Liberties; *Court Cases; *Discipline; Discipline Policy; Elementary Secondary Education; Legal Responsibility; *School Law; *Student Rights; Student School Relationship; Supreme Court Litigation

ABSTRACT

This publication briefly discusses the legal status of various methods of school discipline and related efforts to control the behavior of elementary and secondary school students. Specific topics examined include corporal punishment, suspension, expulsion, exclusion from extracurricular activities, detention, truancy, verbal correction, a variety of less common disciplinary measures, and the relationship of school discipline and the responsibility of school officials to civil justice. Usually the discussion of these topics consists mainly of brief quotations taken directly from court opinions in relevant cases. (Author/JG)

A Legal Memorandum

NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS
1904 Association Drive Reston, Va 22091

May 1976

METHODS OF DISCIPLINE: WHAT IS ALLOWED?

Sharp disagreement exists among educators and the general public on the appropriate means of achieving pupil discipline. Generally speaking, both sides agree that the best methods are those which produce an environment conducive to learning with the least coercion or regulation necessary. But beyond that general objective, the two sides split sharply, one generally concluding that more negative restraints are necessary, the other claiming that they are not.

The general public has often gone further, arguing that negative or coercive methods of discipline are not only undesirable from the educational viewpoint, but are also legally impermissible. Accordingly, recent years have witnessed almost every disciplinary method used in schools being challenged in court.

Federal cases have emphasized the importance of carrying out the U.S. Supreme Court's decision in *Tinker v. Des Moines School Board*, 1969, declaring that children are "persons" under the Constitution and do not shed their constitutional rights at the schoolhouse gate. By means of selective incorporation, the Court seeks two simultaneous objectives: the attainment of justice and the containment of power. In layman's language, the "selective" part of the doctrine means that the Court picks and chooses which cases it will review. Reading the First and Fourteenth Amendments together amounts to an incorporation of the substantive rights of the individual with the procedural safeguards of equal protection and due process of law. The resulting doctrine, to which Justice Hugo Black devoted a lifetime on the bench, is an expression of the belief that the individual must at all times be protected against the tendency of the state to become too powerful. Justice Felix Frankfurter was not indulging in overstatement when he said, "The history of liberty has largely been the history of the observation of procedural safeguards."

Attempts to apply these safeguards to the disciplinary techniques most commonly used in public schools (namely expulsion, suspension, and corporal punishment) have been a key element in many legal challenges to school authority. Primary elements of due process are: (1) notice--both of the general nature of a punishable offense, and of any specific violation; (2) an opportunity for some kind of a hearing prior to punishment; (3) some kind of an appeal.

Another source of law now applies to school discipline: The Civil Rights Act of 1871 (42 U.S.C. Sec. 1983). Under it a majority of the Supreme Court held in February 1975 that school officials may be held personally liable if they knew, or reasonably should have known, that what they were doing to students would result in a deprivation of a civil right constitutionally guaranteed. (*Wood v. Strickland*, 95 S.Ct. 992.) It seems reasonable to expect that the term "school officials" may apply to principals

This Legal Memorandum presents brief discussions of the legal status of various methods of school discipline in common use today. In many cases, brief quotations have been taken directly from court opinions to suggest current judicial attitudes. Readers should remember, however, that every court opinion relates only to the specific circumstances of the case being decided; general comments of the court, as opposed to its actual decision on the issue before it, are not legally binding therefore upon cases which occur later.

Corporal Punishment

Corporal punishment was held not be to inherently in violation of the Eighth Amendment to the U. S. Constitution as a cruel and unusual punishment, but if the punishment is unreasonable and excessive, it is no longer lawful and the perpetrator of it may be criminally and civilly liable. The law and policy do not sanction child abuse. [*Ware v. Estes*, 328 F. Supp. 657; Aff'd, 458 F. 2d 1360 (TX 1971). The Supreme Court declined to review the case, 409 U.S. 1027 (1973).]

The year after the *Ware* case was decided, however, a federal district court in Pennsylvania said:

> A parent may veto corporal punishment for his own child, but he must be prepared to discipline his errant child himself. The parent must actively, promptly and effectively assert his authority so that the other children will not be hampered in their educational pursuits and school activities will not be disorganized. [*Glaser v. Marietta*, 351 F. Supp. 555 W.D. Pa. (1972).]

Many schools followed the *Glaser* approach forbidding the use of corporal punishment if there was express parental objection. Then, last year, a federal district court in Florida said:

> So long as the force used is reasonable--and that is all the statute here allows--school officials are free to employ corporal punishment for disciplinary purposes until in the exercise of their own professional judgment, or in response to concerted pressure from opposing parents, they decide that its harm outweighs its utility. [*Baker v. Owen*, 395 F. Supp. 294 (1975).]

The decision went on to say that the child has a liberty interest protected under the Fourteenth Amendment and therefore is entitled to certain basic elements of due process: (1) notice should be given that specific instances of misbehavior may result in corporal punishment; (2) it should never be employed as a first line of punishment; (3) it should be carried out in the presence of another official; (4) the administering official must provide the parent, upon request, a written explanation of the reasons for punishment.

Baker was affirmed by the Supreme Court, without opinion, on October 20, 1975. But a subsequent decision of the Fifth Circuit Court of Appeals said that the Supreme Court only affirmed the lower court's holding that the use of corporal punishment could not be barred by parental objection, and that it did not reach its ruling on procedural due process.

The Fifth Circuit then went on to disagree with the *Baker* court, holding that procedural safeguards are not required in the use of corporal punishment when specifically permitted by state law. Said the Court:

While a recorded suspension can indeed have a permanent adverse impact on a person's reputation and could conceivably harm that person's chance to obtain employment or higher education, we find it difficult to contend that a paddling, a commonplace and trivial event in the lives of most children, involves any such damage to reputation.

It seems to us that the value of corporal punishment would be severely diluted by elaborate procedural process imposed by this court . . . a hearing procedure could effectively undermine the utility of corporal punishment for the administrator who probably has little time under present procedures to handle all the disciplinary problems which beset him or her. [*Ingraham v. Wright*, U.S. Court of Appeals, 5th Circuit, 525 F.2d 909 (1976).]

Suspension

The schools need to set up a definite set of standards and regulations so that all people involved in the administration of the problem children may know precisely what is expected and when they are to act, all as explained and ordered herein. [*Graham v. Knutsen*, 351 F. Supp. 642 (Neb. 1972).]

A summary suspension for 10 days is not illegal, but an additional 30-day suspension by the superintendent of schools is excessive. [*Williams v. Dade County School Board*, 441 F 2d 299 (Fla. 1971).]

Guilt or innocence is not relevant: students have a constitutional right to a hearing before being suspended for any considerable length of time. [*Black Students ex rel. Shoemaker v. Williams*, 317 F. Supp. 1211 (Fla. 1970).]

The total exclusion from the educational process for more than a trivial period, and certainly if the suspension is for 10 days, is a serious event in the life of the suspended child. Neither the property interest in educational benefits temporarily denied nor the liberty interest in reputation, which is also implicated, is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary. [*Goss v. Lopez*, 95 S. Ct. 729, (Ohio 1975).]

Expulsion

The Fourteenth Amendment, as now applied to the States protects the citizen against the State itself and all of its creatures, boards of education not excepted. That they are educating the young for citizenship is reason for scrupulous protection of constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes. [*W. Va. State Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943).]

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the State has undertaken to provide it, is a right which must be made available to all on equal terms. [*Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483 (Kan. 1954).]

A school board member is not immune from liability under Sec. 1983 if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected. [*Wood v. Strickland*, 95 S. Ct. 992 (1975).]

The U.S. Supreme Court has never attempted to set forth the minimal due process requirements pertaining to expulsion or long-term suspension at the secondary school level, but from a number of lower federal and state court cases, they can be assumed to include, in addition to those required for a short suspension: written notice of the offense, a more formal hearing, representation by counsel, and some form of written record of the decision.

Exclusion from Extracurricular Activities

It is an established legal principle that the state has the authority, either by specific statutory provisions or by delegating powers to school boards, to govern the extracurricular program of the public schools by the passage of rules and regulations that are needed to achieve the purposes and objectives of the schools, so long as such rules and regulations are not arbitrary, unreasonable, and discriminatory. Therefore, the majority of the cases dealing with rules and regulations pertaining to extracurricular activities, are brought before the courts on the grounds that the school board exceeded its constitutional limits for the government of the schools or passed resolutions which were arbitrary, unreasonable, or discriminatory. In this area of litigation most of the cases heard by the courts deal with the authority of school boards to prohibit secret society members and married pupils from participating in extracurricular activities. [Law of Extracurricular Activities in Secondary Schools, Mohler and Bolmeier, W. H. Anderson Co.; 1968].

What greater invasion of marital privacy can there be than one which could totally destroy the marriage itself? (Overturning a board rule barring a boy who was married from playing baseball.) [*Davis v. Meek*, 344 F. Supp. 298 (Ohio 1972).]

The board has not shown any danger to petitioner's (an unwed pregnant girl) physical or mental health, no likelihood that her presence will cause any disruption, or any valid educational or other reason to justify her segregation and to require her to receive a type of educational treatment which is not the equal of that given to others. [*Brown v. Hargraves*, 323 F. Supp. (Mass. 1971).]

Plaintiff (girl student) has proved she can compete with boys, and in the absence of a similar competitive program in her school, denying her the right to compete for no valid reason, a benefit available to others, is unconstitutional. [*Colgin v. Kansas H.S. Activities Assn.*, 377 F. Supp. 1233 (Kan. 1974).]

Detention

School rules specifying periods of detention after school for unexcused absenteeism and tardiness and for skipping school . . . are not unconstitutionally vague. [*Fielder v. Bd. of Ed.*, 346 F. Supp. 722 (Neb. 1972).]

Verbal Correction

No cause of action derives from the teacher's verbal chastisement in the absence of proof of malice or wantonness. [*Wexell v. Schott*, 276 N.E.2d 735 (Ill. 1971).]

Truancy

A student's claim contesting the Illinois truancy law as being unconstitutionally vague and overbroad was held to fail to allege the basis for equitable relief. The court could not interfere with school authorities exercising reasonable judgment in defining the "habitually truant" student. [*Sheehan v. Scott*, 520 F.2d 825 (Ill. 1975).]

Other Punishments and Efforts at Control

Knocking down grades: "The use of grades as a means of punishment is improper. Hence, a student's rights are prejudiced where he is given a zero for truancy and then given a make-up test; but the zero is weighed against the result." [*Minories v. Bd. of Ed.* N.J. Comm. Decision, 1972.]

Revoking student's letter: "Due process was lacking in the board's determination that a high school student's letter should be revoked, where, outside the season, and after he had won the letter, his letter was revoked for beer drinking." [*O'Connor v. Bd. of Ed.*, 316 N.Y.S. 2d 799 (1970).]

Guilt by association: Iowa High School Athletic Association rule making ineligible any player who knowingly rides in a car where beer is being consumed, while school is not in session, denies due process of law and is guilt by association. [*Bunger v. Iowa High School Athletic Association*, 197 N.W. 2d 555 (1972).]

Barring student from graduation: Student had completed her studies and was eligible to receive her diploma. No evidence of a threat to orderliness was present, and no disruption in fact occurred. Without due process, such a means of punishment may not be an appropriate regulatory act by the board of education. [*Dodson v. Bd. of Ed.*, 323 N.Y.S. 2d 545 (1971).]

Search and seizure: "Given the responsibility of school teachers in the control of the school precincts and grave threat, even lethal threat, of drug abuse among school children, the basis for finding sufficient cause for a school search will be less than required outside the school." [*People v. J.*, 358 N.Y.S. 2d 325, 403 (1974).] But see also, *Bellis v. Knight*, 357 F. Supp. 215 (Pa. 1973), where the court held that administrators, here the principal and assistant principal, who called the police when a ring was missing, and who stood by when a policewoman required the girls to strip down to their panties and bras, could be held personally liable for an illegal "strip search" if they were found at trial to have had a conspiratorial relationship with the policy.

Alternative instruction: Under a statute covering suspensions of students for periods not to exceed five days, it was held that alternative instruction was not required. [*Turner v. Kendall*, 364 N.Y.S. 2d 91 (1975).]

Charging fees for supervision: Boards have no right to charge a 25¢ per day fee against pupils for supervision of children who bring their own lunches to eat in school. [*Buchanan et al. v. Bd. of Ed.*, N.J. Comm. (Dec. 1975.)]

Acts of the parent: Suspension from school where the student's mother struck the assistant principal was declared an infringement of the student's constitutional rights. [*St. Ann v. Palisi*, 495 F. 2d 423 (La. 1974).]

Principal's affirmation: A school board policy of merely affirming a decision of the principal in student expulsion hearings was held insufficient to satisfy due process requirements. [*Dixon v. Baton Rouge Bd. of Ed.*, 490 F. 2d 458 (5th Circ. 1974).]

Relation of School Discipline to Civil Justice

It is not "double jeopardy" for a student to be punished for an act which is in violation of school disciplinary rules, whether he may be tried, or has already been tried and convicted in a civil court for violation of law by that same act. [*Center for Participant Education v. Marshall*, 337 F. Supp. 126, (N.D. Fla. 1972).]

CONCLUSIONS

It can be argued with good reason that the authority of the principal and, indeed, the school board itself, has been curtailed by the courts in the last decade. Some would go farther and say that the maintenance of discipline in secondary schools has been seriously damaged by the growing concern for the substantive and procedural rights of students as citizens. Others, agreeing with the court's concern, would urge that greater effort must be made to find ways to motivate young people in positive ways to follow the rules of conduct necessary to provide an atmosphere in which learning can take place.

In any event, it seems clear that the Supreme Court itself has no intention or desire of removing from school administrators the authority they need to maintain an orderly educational environment. Even while extending First Amendment rights to students in the *Tinker* case, the Court said:

> The Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools."

One year earlier, in 1968, the Court stated:

> By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values. [*Epperson v. Arkansas*, 89 S. Ct. 266].

Finally, in *Wood v. Strickland*, decided last year, Justice Byron White, even while ruling in part for the expelled students wrote:

> It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion. Public high school students do have substantive and procedural rights while at school. But Sec. 1983, (Civil Rights Act of 1871) does not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings or the proper construction of school regulations. The system of public education that has evolved in this Nation relies necessarily upon the discretion and judgment of school administrators and school board members, and Sec. 1983 was not intended to be a vehicle for federal court correction of errors in the exercise of that discretion which do not rise to the level of violations of specific constitutional guarantees. (Citations omitted.).

Contributing editor of this Legal Memorandum is M. Chester Nolte, Chairman, Educational Administration, University of Denver; and Past President of the National Organization for Legal Problems in Education (NOLPE).

A Legal Memorandum is published periodically by the National Association of Secondary School Principals, 1904 Association Drive, Reston, Va 22091 Annual subscription is included in NASSP dues Single copy price 50 cents, five or more copies, 30 cents each Payment must accompany orders of $10 or less

NASSP President, Charles M Fallstrom Executive Secretary Owen B Kiernan Editorial Director: Thomas F Koerner Legal Counsel & Memorandum Writer Ivan Gluckman Assistant Editor, Carol Bruce