

S T U D E N T S '



# Rights Handbook

Second Edition

Created and Written by the American Civil Liberties Union of New Jersey  
Sponsored by the New Jersey State Bar Foundation



This publication was prepared by the staff and volunteers of the American Civil Liberties Union of New Jersey (ACLU-NJ). The American Civil Liberties Union is a non-profit, non-partisan membership organization founded in 1920 to maintain the rights of free speech, due process, equal protection and liberties guaranteed by the U.S. Constitution. Through litigation, legislative advocacy and public education, the ACLU works to maintain liberty and justice for all Americans. The ACLU-NJ is the state affiliate of the ACLU. The ACLU has prepared publications on a broad range of issues. In addition, a wealth of information may be found on our website at [www.aclu-nj.org](http://www.aclu-nj.org).

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This publication is provided as a public education service to help explain laws in New Jersey. It does not constitute legal advice, which can only be given by an attorney.

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To obtain free copies, you may write to the New Jersey State Bar Foundation, One Constitution Square, New Brunswick, NJ 08901-1520, call 1-800 FREE LAW or visit our website at [www.njsbf.org](http://www.njsbf.org). You may also contact the ACLU-NJ at P.O. Box 32159, Newark, NJ 07102, 973-642-2084, [info@aclu-nj.org](mailto:info@aclu-nj.org), [www.aclu-nj.org](http://www.aclu-nj.org).

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## Introduction

Most Americans between the ages of six and 18 spend nearly half their waking hours in or around school. It is therefore essential that they learn about both their rights and responsibilities in that environment. Equally important, the adults who deal with these students should know the extent of their control over this group of young people. While it is true that students do not check their rights at the schoolhouse gate, it is also true that, because of their young age and because of the educational function of schools, the rights of students are more limited than the rights of adults in the outside world.

In this booklet, we have addressed a variety of rights and responsibilities affecting students in school, including those regarding discrimination, speech and expression, religion, search and seizure, school records and disciplinary procedures. This information is current as of October 2003. It is important to note that this booklet is being produced as a public education service to help explain the laws in New Jersey. It does not constitute legal advice, which can only be given by an attorney. If you are having a problem related to one of the issues discussed here, you may want to consult a counselor or teacher. You may also want to consult an attorney who regularly handles school cases. Finally, you may wish to contact one of the organizations listed in the Appendix-Referral Guide of this handbook.

In short, we hope this booklet will serve as a guide to students, parents and school personnel who wish to protect their own rights and to respect the rights of others within the school community.

# I. Right to a Free Public Education & Responsibility to Attend

The New Jersey Constitution requires the state to provide “a thorough and efficient system of free public schools for the instruction of all the children in the state between the ages of five and eighteen years.”<sup>1</sup> The New Jersey Supreme Court has held that the right to a “thorough and efficient” education means that the state must ensure that poorer urban school districts’ educational expenditures per pupil are substantially equivalent to those of the more affluent suburban districts and must address the urban districts’ special disadvantages.<sup>2</sup>

State law requires regular attendance at a public school or an equivalent program of instruction, either in a private school or outside of school, for all children between the ages of six and 16.<sup>3</sup> In New Jersey, parents have a right to educate their children at home as long as they provide “equivalent instruction” to that provided in the public schools.<sup>4</sup> Parents are required to provide only academic equivalency; they are not required to provide equivalent social development derived from group education.<sup>5</sup> Parents or guardians who fail to ensure that their children regularly attend school or who do not provide equivalent education at home may be charged with a disorderly persons offense and are subject to a fine of up to \$25 for the first offense and up to \$100 for each subsequent offense in the discretion of the court.<sup>6</sup>

Students have a right to attend school in the district in which they live.<sup>7</sup> The law presumes that a child lives with his or her parents. Foster parents are treated the same as natural parents for this purpose.<sup>8</sup> If, however, a child lives with someone who is not a parent or foster parent, but who provides support and caretaking, without being paid to do so, the child may attend school in the district where the guardian lives. To do so, the parents and guardian must show that the student is not residing with the guardian solely for the purpose of receiving a free public education within the district, and that the parents are unable to care for the child due to family or economic hardship.<sup>9</sup> If the board determines that the claims are not supported by sufficient evidence, it may deny admission to the child. This decision may be appealed within 21 days to the commissioner of the Department of Education. During this 21-day period, and during the pendency of any appeal proceedings before the commissioner, the child is entitled to attend the district of claimed residency.<sup>10</sup> If the appeal is unsuccessful, the district will assess tuition for the period of time during which the student was improperly enrolled, including the time that the case was pending on appeal to the commissioner.<sup>11</sup>

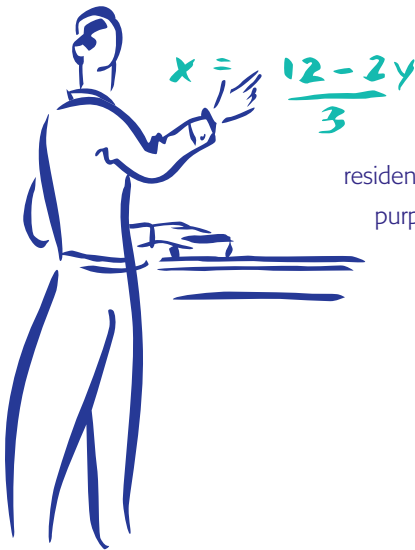
Although students generally attend school in the district where their parents or guardians reside, New Jersey law recognizes that homeless families may be forced to move quite often. If such students had to switch schools each time their family moved, their education would be severely disrupted. So, state law makes special provisions for the children of homeless parents.

Homelessness is defined as “temporarily lack[ing] a fixed, regular and adequate residence.”<sup>12</sup> The “district of residence” for children whose parent or guardian temporarily moves from one school district to another as a result of being homeless is the school district in which the parent or guardian last lived prior to becoming homeless.<sup>13</sup> After such a move, the child may continue to attend public school wherever he or she attended before moving; may enroll in the “district of residence,” determined as stated above; or may enroll in the district where the child is temporarily living.<sup>14</sup> The decision about where to attend school is to be made by school officials from the “district of residence,” in consultation with the child’s parents, and is to be based on the child’s best interests.<sup>15</sup> Wherever the child goes to school, any necessary tuition or transportation costs must be paid by the “district of residence.”

If the parent or guardian objects to the school officials’ decision about where a homeless child is to attend school, he or she may object to the county superintendent of schools. The county superintendent must then determine the appropriate placement within 48 hours.<sup>16</sup> A parent or guardian who objects to the county superintendent’s decision, may request mediation through the Department of Education’s Office of Education for Homeless Children. If the mediation is unsuccessful, that office must assist the parent or guardian with filing an appeal to the Commissioner of Education.<sup>17</sup>

Disputes over whether a family actually lives within a particular district often arise. Where a family lives can be established through a variety of documents, such as household bills, car registrations and leases.<sup>18</sup> A school district should not be able to insist on one particular type of document to determine residency. For example, the ACLU-NJ was successful in prohibiting a school board from denying enrollment to students whose parents could

not produce a Certificate of Continuing Occupancy for their apartment. Such a certificate may not be available where a family is living in substandard housing. Whether a family’s occupancy of a particular residence is legal is irrelevant to the determination of residency for purposes of entitlement to a free public education.<sup>19</sup>





## II. Freedom From Discrimination

Discrimination has many faces and can be subtle yet harmful. Each board of education must adopt courses of study, instructional material and programs that are designed to eliminate discrimination and promote understanding among children of different races, colors, creeds, religions, sexes, ancestries, national origins, and social and economic status.

If a student feels he or she is being treated differently from other students because of his or her race, sex, religion, national origin, social or economic status, pregnancy, family or marital status, physical, mental, or sensory handicap or affectional or sexual orientation, the student should immediately bring the matter to the attention of his or her teacher, counselor, principal or other school official. The following sections set forth some of the forms of discrimination that have occurred in school settings.

### **Racial Discrimination**

Intentional racial segregation in schools was first declared illegal by the U.S. Supreme Court in the 1954 case of *Brown v. Board of Education*.<sup>20</sup> Ten years later Congress passed Title VI of the Civil Rights Act of 1966, which prohibits discrimination and segregation based on race or national origin.<sup>21</sup> In New Jersey, school officials are not only forbidden to segregate, they are also required to make every effort to assure racial balance. Each board of education is required to assure that each school and each class within the school reflects the racial composition of the school district as closely as possible.<sup>22</sup>

New Jersey, like many states, has wrestled for years with the problem of racial segregation resulting from segregated housing patterns. This is a topic so enormous that it is beyond the scope of this booklet. If a student has a complaint or needs information regarding discrimination, he or she may contact his or her local school district's affirmative action officer.

### **Gender Discrimination**

Like other forms of discrimination, discrimination based on gender is illegal under both federal and state law.<sup>23</sup> Title IX of the Educational Amendments of 1972 provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."<sup>24</sup> Specific regulations issued under Title IX make it illegal to discriminate against girls/women in the areas of curriculum, extracurricular activities, student aid, student services, counseling and guidance, and financial aid.<sup>25</sup>

School athletic programs have traditionally been a source of alleged discrimination against women. Although Title IX specifically includes a section prohibiting discrimination in athletics, it also contains two major exceptions to the prohibition: (1) single-sex teams are permitted in the case of contact sports (e.g., boxing, wrestling, rugby, football, basketball and ice hockey);

and (2) single-sex teams are also permitted in non-contact sports if parallel male and female teams are established. For example, a separate men's softball team is permitted if a women's softball team exists.<sup>26</sup>

There are other avenues to pursue, however, if a female student wants to try out for a male team. Challenges have been brought under federal and state constitutions and state anti-discrimination laws. For example, a New Jersey girl successfully challenged a local school board's prohibition on girls playing on the boys' football team by arguing that her exclusion violated the anti-discrimination provisions contained in the New Jersey education law and the more general Law Against Discrimination.<sup>27</sup> Where separate male and female teams exist, however, girls have not been so successful in gaining a spot on the boys' team. Even where a particular girl possesses the requisite skill to play on the boys' team, the courts have justified the maintenance of two separate teams under the guise of maximizing participation of both sexes in interscholastic sports.<sup>28</sup>

Boys who want to try out for girls' teams will probably not be permitted to do so in New Jersey, even where the girls' team is the only team. A New Jersey boy who wanted to play on his high school's girls' field hockey team was unsuccessful in his court challenge. In upholding the New Jersey Interscholastic Athletic Association's policy prohibiting boys from playing on girls' teams, the court held that the policy did not amount to discrimination because the purpose was to promote equal athletic opportunity for females and to redress the effects of past discrimination.<sup>29</sup> The court reasoned that allowing boys to gain spots on girls' teams would allow males to dominate the sport and would displace the females to such a substantial extent that the athletic opportunities for girls would be diminished.

In addition to providing equal access to teams, New Jersey law provides that where separate male and female teams are permitted, the teams must receive relatively equal treatment. This means that program expenses like staff salaries, the purchase and maintenance of equipment, as well as the quality and availability of facilities, the scheduling of practice and game times and the length of the season must be equitable.<sup>30</sup>

Sexual harassment is another form of discrimination that is covered by Title IX and state anti-discrimination laws.<sup>31</sup> There are two types of sexual harassment. In the first type, unwelcome sexual advances, requests for sexual favors and other verbal or physical acts of a sexual nature are made a condition of an individual's school performance. This is called *quid pro quo* harassment. The most obvious example is where a teacher requests sexual favors from a student in return for a good grade. The other more prevalent type of harassment is called hostile environment harassment. This occurs when the unwelcome sexual advances, requests for sexual favors



and other verbal or physical sexual acts have the purpose or effect of creating an intimidating, hostile or offensive school environment. Unwelcome sexual behavior by teachers or fellow students should be reported immediately to a counselor, principal or other school official.

### **Married, Pregnant and Parenting Students**

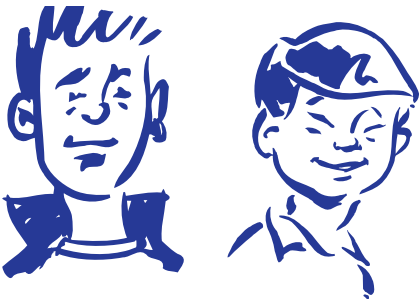
Married students, pregnant students and students who are parents have the same right to a free education as all other students, including the right to participate fully in all activities offered by the school. State regulations specifically prohibit schools from excluding a pregnant student from any educational program or activity unless she so requests or a physician certifies that such exclusion is necessary for her physical, mental or emotional well-being. If such a student is excluded for these reasons, the school must provide her with an adequate and timely opportunity for instruction in order to continue or make up her schoolwork without penalty or prejudice.<sup>32</sup>

### **Discrimination Based on Citizenship**

The U.S. Supreme Court has ruled that excluding the children of undocumented or “illegal” immigrants from public schools violates the children’s right to equal protection of the laws and is therefore unconstitutional.<sup>33</sup> Because immigration status is not relevant to the determination of whether students may attend school, directly or indirectly questioning students or their parents regarding their citizenship is suspect and violates their right to equal protection unless undertaken for some other lawful purpose.

### **Non-English Speaking Students**

The failure of a school district to provide remedial English language instruction to non-English speaking students, or other adequate instruction in their own language, “make[s] a mockery of public education,” and constitutes unlawful discrimination.<sup>34</sup> Federal law specifically requires that all school districts receiving federal funding provide classes for non-English speaking students to learn English.<sup>35</sup> Further, New Jersey law guarantees a bilingual program in each school district in which at least 20 students of limited English-speaking ability speak the same native language.<sup>36</sup> Even in districts where there are not 20 such students, school boards must establish an English as a Second Language (ESL) Program if there are at least 10 students of limited English-speaking ability in their district.<sup>37</sup> Moreover, even if there are fewer than 10 such students, a school board must provide English language services to improve the proficiency of any student with limited English-speaking ability.<sup>38</sup>



Recently, an important change was made to the New Jersey law regarding the right to decline these services. Regardless of whether a student has been classified as non-English speaking, parents retain the right to refuse any or all of the bilingual program or English language services for their child.<sup>39</sup> Once a child has been enrolled in a bilingual program, however, a parent must appeal the decision in order to remove the child.<sup>40</sup>

### **Students With Educational Disabilities**

The federal Individuals With Disabilities Education Act (IDEA)<sup>41</sup> and the New Jersey Beadleston Act<sup>42</sup> protect students with educational disabilities who may be denied their right to a free and appropriate education. Pursuant to these statutes, the New Jersey Department of Education has adopted the following classifications of educational disabilities:<sup>43</sup>

1. auditorily handicapped
2. autistic
3. other health impaired
4. communication impaired
5. emotionally disturbed
6. cognitively impaired
7. multidisabled
8. traumatic brain injury
9. specific learning disability
10. preschool disabled
11. orthopedically disabled
12. social maladjustment
13. visually impaired

It is the responsibility of each local school district to adopt and implement procedures for the identification and referral of students with potential educational disabilities.<sup>44</sup> If a student is referred to the child study team by school personnel, the child study team *must* obtain consent from the parent prior to undertaking any initial evaluation.<sup>45</sup> If the parent withholds consent for the initial evaluation, the school district may not proceed without obtaining a due process hearing decision.<sup>46</sup> On the other hand, if a parent identifies his or her child as potentially educationally disabled, the parent may request an evaluation in writing. Once the child is referred for the initial evaluation, a meeting of the child study team, the parent and the regular teacher must occur within 20 calendar days of the request for evaluation. The parent must then be notified in writing of the determinations made at this meeting, including whether the child will be evaluated.<sup>47</sup> If the child study team determines that an evaluation is appropriate, evaluations must then be completed within 90 calendar days.<sup>48</sup>

If the child is determined to have an educational disability, the parent and the child study team, as well as the student's teacher(s), must meet within 30 days of the determination to develop a plan for the child's education called an Individualized Education Program (IEP).<sup>49</sup> The IEP is a written plan that sets forth goals and measurable objectives for the student and defines the setting in which the student will be taught.<sup>50</sup> For example, a student with a severe disability may need to be in a special program or school in order to receive an appropriate education. The IEP also describes the related services necessary for the student to

benefit from an education.<sup>51</sup> Common types of related services are speech, physical therapy and occupational therapy.

Parental consent is required to implement the first IEP developed after initial classification.<sup>52</sup> As with the initial evaluation, if the parent does not consent to the initial IEP, the school district must obtain a due process hearing decision before initial implementation of the IEP.<sup>53</sup> The school district must obtain parental consent before re-evaluating a student. Parental consent is not required, however, where the district can show that it diligently attempted to obtain consent but the parent or adult student did not respond.<sup>54</sup>

If parents disagree with an evaluation made by the child study team or other professional hired by the school district, they have the right to request an independent evaluation of their child's needs at the cost of the school district.<sup>55</sup> In addition, parents may request either mediation through the New Jersey Department of Education or an impartial due process hearing before an administrative law judge.<sup>56</sup>

Both state and federal laws include so-called "stay put provisions, whereby pending the outcome of mediation or a due process hearing, no change in classification, program or placement may be made unless the school board and parents agree otherwise or emergency relief is granted by an administrative law judge. If the child is applying for initial admission to a public school, with the consent of the parents, he or she shall be placed in the public school program until all proceedings have been completed.<sup>57</sup>

Congress recently enacted important exceptions to the "stay put" rule involving the disciplining of students with disabilities. They allow school personnel to suspend a child with a disability or refer him or her to alternative placement for a maximum of 10 consecutive school days, to the extent such alternatives would be applied to children without disabilities. However, if the removal is less than 10 consecutive days, but constitutes a pattern of removal it will constitute a change of placement. Section VII of this booklet contains general information regarding the disciplining of students with disabilities. For further information parents may consult *Fairness in School Discipline: The Rights of Students in New Jersey*, a publication of the Education Law Center whose address and phone number are listed in the referral guide at the end of this handbook. In addition, in the case of a dangerous weapon or drugs, school personnel can place the child in an interim alternative educational setting for the same amount of time that the child without a disability would be subject to discipline, but no more than 45 days.<sup>58</sup>

The IEP team determines what is an appropriate alternative educational setting. The IEP team also must determine whether the child's behavior is a manifestation of the child's disability. If it is not, the child can be disciplined in the same way as a student without disabilities. If the behavior is a manifestation of the disability, the child's placement cannot be changed, except by the IEP team process as described above.

## Discrimination Based on Sexual Orientation

Discrimination on the basis of sexual orientation is prohibited by state law in New Jersey.<sup>59</sup> In addition, because the Constitution guarantees people the freedom to associate with whomever they choose, discrimination against gay and lesbian students also violates the First Amendment to the U.S. Constitution.

Court cases have arisen involving recognition of gay and lesbian student groups, harassment against gay students and prohibitions on same-sex couples attending the senior prom. In each of these cases, the courts held that the gay and lesbian students had been unlawfully discriminated against. As a result, gay and lesbian student groups must be recognized and allowed to hold social functions in the same way as other student groups.<sup>60</sup> In addition, same-sex couples may not be prohibited from attending the prom.<sup>61</sup> And recently, a federal court held that school officials could be held responsible for not punishing the classmates of a student who was repeatedly harassed and physically harmed because he was gay.<sup>62</sup>

## Bullying

The Director of the New Jersey Division on Civil Rights has held that, based on the New Jersey Law Against Discrimination, schools are liable for failing to protect students from harassment by classmates when that harassment is based on protected characteristics such as race, religion, gender, ethnicity, sexual orientation or disability.<sup>63</sup> The U.S. Court of Appeals has also held that a school which could not protect a student from severe harassment by classmates thereby violated the student's right to a free and appropriate public education.<sup>64</sup> However, in *Doe v. Bellefonte Area School District*, the U.S. Court of Appeals for the Third Circuit found that a school district was not liable for the harassment of a student when the school district reasonably responded to each action of harassment.<sup>65</sup>

## Immunizations

Students may be prohibited from attending school if they have not been immunized against certain vaccine-preventable diseases. Exceptions can be made, however, if a doctor signs a statement saying the immunization would be harmful to the student or if a parent or guardian signs a statement explaining how immunization goes against the religious beliefs of the parent or guardian.<sup>66</sup> Nevertheless, anyone, even students with medical or religious exemptions, may be excluded from a school or child care facility to control outbreaks of vaccine-preventable or other contagious diseases.<sup>67</sup>

## AIDS

A person with HIV infection or Acquired Immune Deficiency Syndrome (AIDS), whether a student or a teacher, may not be barred from public schools or otherwise be discriminated against by a public school or school district. Such discrimination is prohibited by a number of state and



federal laws, including the Americans With Disabilities Act, the Federal Rehabilitation Act, the New Jersey Law Against Discrimination, and the New Jersey Administrative Code.<sup>68</sup> These laws all reflect numerous medical “studies that indicate there is no apparent risk of HIV infection through close, non-sexual contact with AIDS patients.”<sup>69</sup>

### III. Freedom of Speech & Expression

#### **Speech and Political Expression**

Freedom from governmental interference with speech is guaranteed to everyone in New Jersey by the First Amendment to the U.S. Constitution and by Article 1, paragraphs 4, 6 and 18 of the New Jersey Constitution. Public school teachers and administrators are all considered governmental actors, which means that students have free speech rights at public schools. It also means that school officials must provide students wide latitude in the expression of their ideas and opinions.<sup>70</sup>

These rights, however, do have limitations. Students may not encourage others to commit acts of violence.<sup>71</sup> Students who make false personal attacks may be disciplined or sued for slander or libel. In addition, if their speech is obscene, students may be punished by both school and government authorities. Moreover, the U.S. Supreme Court has held that a school district may discipline a student for using sexual innuendo in a speech, even though the speech would not have been punishable if given outside of school.<sup>72</sup> Similarly, in an earlier New Jersey decision, the court found that students who screamed lewd and obscene chants at a basketball game were so “loud, offensive, disruptive, and disturbing to neighboring spectators” that the students forfeited their First Amendment rights.<sup>73</sup> Additionally, a federal district court held that a school did not violate a kindergartner’s first amendment rights by suspending the student for saying, “I’m going to shoot you” because a balance must be struck between the student’s rights and the school’s role in fostering “socially appropriate behavior.”<sup>74</sup>

In addition, school officials can impose reasonable restrictions on when, where and how speech activities can take place in order to prevent disruption of educational activities. For example, a school can limit passing out flyers in hallways to times before and after school and during lunch in order to protect students and maintain a proper educational environment.<sup>75</sup> A school could not, however, maintain a blanket rule against handing out literature anywhere or at any time during school.<sup>76</sup>

Students cannot be disciplined for merely expressing an idea, as long as that expression does not disrupt educational activity or interfere with the rights of others.<sup>77</sup> This rule applies whether students are communicating an idea or political viewpoint as part of a class discussion or protesting a government or school policy outside class. No peaceful expression,

no matter how unpopular or controversial, may be censored.

Students may express their views not only verbally, but also through symbolic speech, such as wearing armbands or political buttons. In the case of *Tinker v. Des Moines Independent Community School District*,<sup>78</sup> three public school students had been suspended from school for wearing black armbands to protest the Vietnam War. The U.S. Supreme Court held that the students' peaceful protest was protected by the Free Speech Clause of the First Amendment. This protection extends to the use of buttons, flags, decals and other badges of symbolic expression, as long as they are not "obscene" and do not directly provoke a "material and substantial" interference with classroom activities or the rights of others. Students' rights to express their views cannot be abridged simply because the views are unpopular with school officials or other students, or because administrators fear students reacting to a symbol will cause a disruption.<sup>79</sup>

## Demonstrations

Picketing, marching and other forms of peaceful demonstration are forms of symbolic expression and, as a result, are constitutionally protected.<sup>80</sup> As long as school activities are not disrupted or obstructed, demonstrations should not be prohibited, and participants should not be subject to discipline. Most courts, however, have restricted student demonstrations on school property, particularly if the demonstration is to occur during school hours or within a school building. These courts appear to have reasoned that based on the *Tinker* case, discussed above, it is likely that such demonstrations will be found to "materially and substantially disrupt" school activities.

A federal court, for example, upheld the suspension of a group of black students who walked out of a school pep rally when the song "Dixie" was played.<sup>81</sup> School officials had found the walkout disruptive. In another case, a federal court held that students could be

suspended for staying out of school and conducting a rally to protest school policies they claimed were racially discriminatory.<sup>82</sup> Still another court permitted a school to prohibit all demonstrations inside any school building.<sup>83</sup> This last decision seems clearly wrong under *Tinker*, because the court made no distinction between demonstrations that disrupt school activities and those that do not.

A Pennsylvania state court similarly upheld suspensions for an in-school sit-in, but more thoroughly applied the analysis in *Tinker*. The court stated that a sit-in was not illegal merely because it was indoors; nor because other students gathered in the hall to watch; nor because school administrators,





who had chosen to keep watch on the demonstration, could not attend to their duties. The court said that in deciding under the

*Tinker* test when a demonstration “materially” interferes with school activities, “the courts can only consider the conduct of the demonstrators and not the reaction of the audience.”<sup>84</sup> The Pennsylvania court found, however, that this particular demonstration did materially interfere with school activities, both because the student demonstrators missed scheduled classes, and because noise from the demonstration required some classes to be moved to different locations and disturbed others.

A demonstration outside a school building, such as a rally or picketing, is more likely to be found legal than one inside the building. Moreover, although school authorities are responsible for disorderly conduct by students on the way to or from school, they have no right to restrict students’ participation in demonstrations held off campus and after school hours.

### **Hair and Dress Codes**

Hair and dress are as much a form of expression for students as speech and demonstration. Therefore, schools that adopt unreasonable regulations in this area may be interfering with students’ constitutional rights.

The wearing of a particular type or style of clothing usually is not seen as expressive conduct, protected by the First Amendment guarantee of free speech.<sup>85</sup> However, if the type of clothing conveys a particularized message which has a great likelihood to be understood by those who see the clothing, then the clothing would constitute protected speech.<sup>86</sup> A recent federal court held that wearing saggy pants does not constitute protected speech, despite the fact that the student wearing the pants intended to convey to others his identity with his black culture. The court rejected this argument because the student failed to establish that this message would be objectively understood.<sup>87</sup> Similarly, a federal court in Illinois upheld the authority of a high school to forbid male students from wearing earrings as part of a broader ban on gang symbols, jewelry and insignia.<sup>88</sup> The court determined that earrings did not convey a particular message.

Mandatory uniform requirements, unlike most dress codes, tell students what they must wear rather than what they cannot wear, and as a result are more likely to infringe on students’ rights. Recently the New Jersey Legislature passed a law endorsing, but not mandating dress codes, including uniforms.<sup>89</sup> Schools that implement uniform policies, however, must provide assistance for economically disadvantaged students. Furthermore, the policy is partially voluntary in that parents may choose not to comply with it.<sup>90</sup>

A student’s right to wear his or her hair any length and style, has been consistently upheld by New Jersey courts. Many of these cases were decided during the 1960s and ‘70s, when long hair, beards, mustaches and sideburns were considered controversial. In protecting the rights of students, the courts held that hairstyles and sideburns are not proper subjects for school regulation.<sup>91</sup> In addition, students cannot be barred from participating in school

activities, like band or athletics, because of their hairstyle or because they have mustaches and beards.<sup>92</sup> School officials may, however, require students to alter hairstyles if they interfere with work, create a disruption in the classroom or elsewhere in the school, or present a clear and present danger to health or safety.<sup>93</sup> The burden is on the school to show that the problem actually occurred and could not be controlled any other way.

## **Student Newspapers and Publications**

In *Hazelwood School District v. Kuhlmeier*, the U.S. Supreme Court made it clear that under the U.S. Constitution, school officials may exercise editorial control over both the style and the content of school-sponsored newspapers and other publications, so long as the restrictions they impose are reasonably related to a valid educational policy.<sup>94</sup> The decision in *Hazelwood* overturned many lower federal court decisions permitting students to make their own judgments about the content of school newspapers unless materials threatened to severely disrupt the educational process. According to the Court in *Hazelwood*, the school is the “publisher” of a school newspaper, which is printed under school supervision and at school expense, even though the writers are students. As “publisher,” the school can determine what can be published.

While the *Hazelwood* decision currently controls limits on students’ federal First Amendment rights, it does not affect any additional rights the New Jersey Constitution may guarantee to student editors and writers. State constitutions can provide greater protection than the U.S. Constitution. Therefore, it is up to the state’s courts, legislature and interested legal organizations to define the limits of these state constitutional rights.

In one New Jersey case, *Desilets v. Clearwater Regional Board of Education*,<sup>95</sup> the ACLU of New Jersey claimed that both the U.S. and state constitutions were violated by a school’s censorship of material that was to appear in the school newspaper. In *Desilets*, a junior high school principal refused to publish a seventh grader’s movie reviews of two R-rated films. The New Jersey Supreme Court decided that the school authorities failed to establish any legitimate educational policy that would apply to the challenged material. Therefore, even under *Hazelwood*, the censorship violated the student’s First Amendment expressional rights. The case was decided solely under the U.S. Constitution. Therefore, it remains an open question whether student writers and editors might in some cases be protected from censorship under the state constitution, even though the U.S. Constitution would permit the censorship.

In the case of non-school-sponsored (“underground”) publications, the school has much less control. Material in such publications can be censored only if it meets a clearly stated definition of libel or obscenity, or if it will cause a substantial disruption. Students may distribute underground newspapers on school grounds before and after school and between classes, as long as the distribution is reasonable in terms of time, place and manner of distribution.<sup>96</sup> Moreover, school authorities do not have the right to review the contents

of underground publications before distribution.<sup>97</sup> In addition, school policies on what may be prohibited in underground papers cannot be vague or overbroad. For example, a school policy forbidding distribution of material that “encourages actions which endanger the health and safety of students” was found to be too vague.<sup>98</sup> Students also have the right to appeal a censorship decision within set time limits.<sup>99</sup> A school cannot regulate off-campus distribution of underground student newspapers, even if distribution appears calculated to cause the newspaper to arrive on school premises.

### **Censorship of Information**

Censorship of books and instructional materials by school authorities has become a troublesome issue around the country. The Supreme Court has held that high school students have a constitutional right not only to speech but also to the receipt of ideas, because the ability to receive ideas is necessary to the meaningful exercise of freedom of speech. Therefore, the Court held that a school board may not remove books from school libraries based solely upon the board’s view of what should be acceptable religion, politics or other matters of opinion.<sup>100</sup> However, the Court would allow schools to remove books that are “pervasively vulgar” or not “educationally suitable.”

As to classroom texts, the school’s authority is much broader because of the school’s duty to teach “community values” in the classroom. Accordingly, schools may select books that are consistent with those values. However, New Jersey law prohibits discriminatory classroom or school practices, such as stereotyping in textbooks or other course material.<sup>101</sup>

The escalating number of computers used by students and schools, and the popularity of the Internet, have added yet another dimension to the censorship issue. Although no court has decided the issue of whether a school can censor web pages on the Internet, the U.S. Supreme Court recently held that the Internet is the most participatory form of mass speech yet developed and is entitled to the highest protection from governmental intrusion.<sup>102</sup> Although this decision was not framed in the context of schools, it strongly indicates that the Internet deserves at least as much protection from censorship as a school library.

### **Flag Salute and Pledge of Allegiance**

Students have the right to refuse to salute the flag or to recite the “Pledge of Allegiance” if they have any conscientious objections to either of these acts.<sup>103</sup> School authorities may not judge whether such objections are sincere or reasonable; the First Amendment protects the expression of such beliefs, even if they are unfounded.

In 1978, a federal court struck down a section of the New Jersey statutes that required students who objected to the flag salute to stand during its recitation.<sup>104</sup> Thus, students may sit quietly during the flag salute. In addition, students who do not wish to participate may not be required to leave the room during the flag salute.<sup>105</sup>

# IV. Religion in Schools

The founders of our nation felt strongly that individuals should be granted the right to practice their religious beliefs or non-beliefs and that they should be free from religious persecution. The framers of the U.S. Constitution believed that the best way to ensure religious freedom and diversity was to keep the government out of religious matters. Therefore, the Establishment Clause of the First Amendment sets forth the principle of separation of church and state in that “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...” In public schools, this means that students are free to believe what they wish and that school officials may not endorse, promote, fund or otherwise impose religious beliefs in any way.<sup>106</sup>

## School Prayer

School-sponsored prayer in public school is forbidden. The Supreme Court has recognized that “prayer exercises in public schools carry a particular risk of indirect coercion.”<sup>107</sup> Thus, public schools may not conduct prayer or Bible reading sessions, even if students who do not want to participate are permitted to remain silent or leave the classroom.<sup>108</sup> Nor may teachers announce that a period of prayer may be offered by a student volunteer.<sup>109</sup> Even so-called “non-denominational” prayers are banned.<sup>110</sup> It is important to remember that the Establishment Clause prohibits both the endorsement of one religion over another, as well as the endorsement of religion over non-religion.<sup>111</sup>

This prohibition against prayer in public schools was reaffirmed by the United States Supreme Court in its 1992 decision in *Lee v. Weisman*.<sup>112</sup> There, the Court ruled that invocation and benediction prayers were not permissible at public school graduation, even though the prayers lasted less than a minute, were nonsectarian and were subject to restrictions that they be composed with inclusiveness and sensitivity to all faiths.

Similarly, school districts in New Jersey cannot avoid the prohibition of prayer at graduation by allowing students to vote on whether a student-led prayer should be delivered at their graduation ceremony. Recently, the ACLU of New Jersey was successful in representing a student who did not want a public prayer as part of his graduation ceremony.<sup>113</sup> His school tried to argue that, because a majority of students had voted to include prayer at graduation, it was constitutionally permissible. The federal court hearing the case did not agree. It held that the right to be free from state-sponsored religion is, like all rights contained in the Bill of Rights, an individual right, that cannot be taken away by majority vote.

Of course, private, individual prayer is always permissible and protected by the Constitution. In addition, the Bible and other religious works may be read or studied as works of literature, and the study of all religions for an academic purpose is proper.

## Moment of Silence

In New Jersey, legislators tried to circumvent the prohibition on prayer in schools by passing legislation that required a moment of silence at the beginning of every school day in all public schools in the state. The U.S. Supreme Court, however, upheld a federal appeals court ruling that New Jersey's moment of silence law violated the First Amendment's separation of church and state, and thus the practice is prohibited.<sup>114</sup>

## Released Time Programs

It is also unconstitutional for a school to have a "released time" program in which regular public school classes end an hour early one day a week so that religious instruction, by teachers employed by private religious groups, can be given in public school classrooms.<sup>115</sup> On the other hand, the Supreme Court has held that it is constitutional for a school to have "released time" to allow students to leave public school to receive religious instruction elsewhere, provided that the public school is in no way used for religious purposes.<sup>116</sup> In addition, a student may be absent, with parental permission, for religious holidays, with the absence not counting against the student's attendance or academic record.<sup>117</sup>

## Religious Clubs

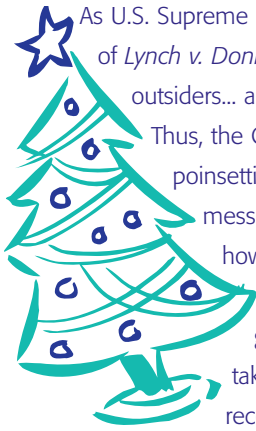
Student groups, including religious clubs, at public secondary schools have a right to use classrooms, auditoriums or other school facilities during non-instructional time if other "non-curriculum-related" groups have the right to use the facilities.<sup>118</sup> A student group is non-curriculum-related if the subject matter of the group is not taught in a regularly offered course, the subject does not concern the body of courses as a whole, and participation is not required for a course and does not result in course credit.<sup>119</sup> Therefore, a chess club, scuba diving club or community service club would be non-curriculum-related, but a French club at a school that offers French would be considered curriculum-related.

In providing equal access to all student groups, the school must ensure that the group's meetings are voluntary and student-initiated; there is no sponsorship of the meetings by the school or government; school or government personnel are present at religious meetings only in a nonparticipatory capacity; the meetings do not interfere with educational activities; and non-school persons may not direct, conduct, control or regularly attend activities of student groups.<sup>120</sup>



## Holiday Displays

The holiday season presents special problems in public schools. Schools throughout the state conduct Christmas programs and display Christmas trees, menorahs and other religious symbols, even though such displays appear to violate the constitutional principle of neutrality.



As U.S. Supreme Court Justice Sandra Day O'Connor stated in the case of *Lynch v. Donnelly*, such displays "send a message to non-adherents that they are outsiders... and an accompanying message to adherents that they are insiders."<sup>121</sup>

Thus, the Court held that a municipality's display of a creche surrounded by poinsettias and two decorated evergreen trees sent a "patently Christian message" and was, therefore, unconstitutional.<sup>122</sup> In the same case, however, the Court upheld another municipal display of a Christmas tree, menorah and sign saluting liberty and conveying general holiday greetings. The Court's decision was based on its determination that, taken as a whole, the scene created a secular theme, although it recognized that the menorah was a religious symbol.

The Court did specifically suggest in the case of *Allegheny County v. Pittsburgh American Civil Liberties Union* that "when located in a public school, such a display [of a tree and a menorah] might raise additional constitutional considerations."<sup>123</sup> Therefore, even with respect to the holiday season, the guiding principle remains that government must maintain a course of neutrality between religions as well as between religion and non-religion. Accordingly, schools should keep in mind that an attempt to include all religions in such celebrations is not adequate since many students either do not have any religious beliefs, or follow faiths (such as Islam) that do not have any holidays around Christmas.

## Vouchers

As part of the guarantee that church and state be separated, the Constitution prohibits government funding of religious schools.<sup>124</sup> Many states, however, have enacted voucher systems whereby, as an alternative to attending their local public school, students can receive cash allowances to be used at any other school, including religious schools. Thus far, almost every court that has examined a voucher plan has determined that the use of government-funded vouchers at religious schools is unconstitutional.<sup>125</sup>

The ACLU-NJ filed a petition with the New Jersey Commissioner of Education challenging a voucher plan adopted by the Lincoln Park School Board.<sup>126</sup> Before the case was heard, however, the school board voted to rescind the voucher program.

equal access

# v. Search & Seizure

The Fourth Amendment to the U.S. Constitution guarantees citizens freedom from unreasonable governmental searches. Ordinarily law enforcement officials cannot search a person or a person's possessions unless they have probable cause to believe that the person has committed or is committing a crime. Moreover, the official usually must obtain a search warrant before conducting the search.

## Individual Searches

The rules regarding searches are very different for students. One of the major U.S. Supreme Court decisions concerning student searches is *New Jersey v. T.L.O.*<sup>127</sup> In *T.L.O.*, the Court determined that students are protected under the Fourth Amendment from unreasonable searches and seizures by public school officials (who are viewed as governmental agents). Nevertheless, the Court found that within the school setting, where school personnel must maintain discipline so that learning can take place, the definition of what is "reasonable" is much broader than outside this setting. Accordingly, school officials need not obtain search warrants; nor do they need to have probable cause to believe a student is violating the law prior to conducting a search. School searches of students are lawful if they are reasonable under the circumstances. The search will generally be found to be reasonable if two conditions exist: (1) there are reasonable grounds for suspecting the search will turn up evidence that the student is violating the law or school rules; and (2) the search is no more intrusive than necessary to turn up this particular evidence. The age and sex of the student and the seriousness of the offense are also considered in deciding reasonableness.<sup>128</sup>

In a more recent New Jersey case, *State v. Moore*,<sup>129</sup> the appellate court applied the reasoning of the *T.L.O.* decision and determined that the search of a student's bookbag by an assistant principal was reasonable because another student had reported to a guidance counselor that the defendant possessed marijuana. Also, the assistant principal knew that the defendant had previously been disciplined for possessing a small amount of marijuana. In addition, the assistant principal did not conduct the search until after he asked the defendant if the bookbag was his, and he denied ownership. The court in *Moore*, quoting the decision in *T.L.O.*, emphasized that school officials need only exercise reason and common sense.

The decisions in *T.L.O.* and *Moore* do appear to protect students from blanket searches without individualized suspicion of wrongdoing. In *T.L.O.*, the Court rejected the argument that

school officials, as “substitute parents,” can search any student at any time. Nevertheless, once these officials reasonably suspect a student of violating the law, they have broad authority to search, among other places, the student’s locker, pockets and purse, and they can turn over what they find to the police.<sup>130</sup>

It is important to remember, however, that the Supreme Court in *T.L.O.* prohibited searches that are overly intrusive. This standard applies to searches of persons as well as property, like a backpack. The search itself must be reasonably related to the objectives of the search and must not be excessively intrusive in light of the student’s age and sex, and the nature of the alleged offense. Therefore, strip searches are generally regarded as so intrusive that they cannot be legally justified.<sup>131</sup> A number of courts have ruled that the more intrusive the search, the higher the degree of suspicion required. A federal court in New York, for instance, found that a teacher had reasonable suspicion to search a student’s handbag for stolen money but should not have strip-searched the student without full probable cause.<sup>132</sup> Because strip searches are so intrusive, New Jersey law permits them only under the following limited circumstances: (1) the search is authorized by a warrant or consent; (2) it is based on probable cause that a weapon, controlled or dangerous substance, or evidence of a crime will be found; and (3) the person is lawfully confined in a detention facility.<sup>133</sup>

In short, if a teacher were looking for a gun or large knife, a pat-down would be enough to determine whether the student had the weapon. A search for a small bag of candy might require a more intrusive search, but one that could not be justified in light of the relative unimportance of the infraction.

### **Mass Searches – Metal Detectors and Dogs**

Making all students walk through a metal detector before entering school is becoming more widespread. Although in other contexts individual suspicion is required before a student may be searched, the courts have upheld the use of metal detectors at school entrances on the grounds that they are relatively unintrusive methods of inspection and that the objectives of the search – keeping weapons out of school – are necessary to protect and maintain a proper educational environment.<sup>134</sup>

Similarly, courts have upheld schools’ use of drug-sniffing dogs to search all school lockers.<sup>135</sup> Again, they have upheld these searches on the grounds that the search is relatively unobtrusive and the need to keep drugs out of school is very important. However, many courts have distinguished between the use of dogs to sniff lockers and the use of dogs to sniff the individual.<sup>136</sup> While the former has generally been allowed, the latter has not.

### **Searches of Desks and Lockers**

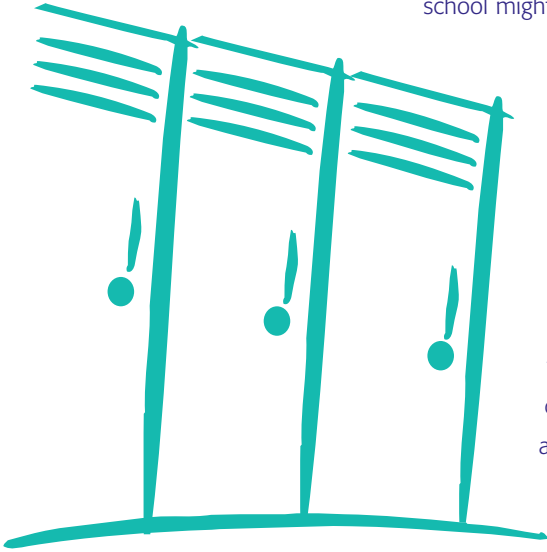
Students should consider any desk or locker, or any other place provided by the school



for their belongings, to be searchable without a warrant. They should not put anything in these places that they would not want anyone to find or see. In *In re Engerud*,<sup>137</sup> the New Jersey Supreme Court ruled that it was unlawful to search a locker in a case where the police had received an anonymous call naming the student as a drug dealer. The court's ruling, however, was based on the fact that the student was justified in believing that the master key to the

locker would be employed only at his request or convenience. A school might be able to conduct locker or desk

inspections without a warrant, consent by the students or even any particular suspicion, so long as there is a written policy allowing such searches, and students are informed in writing at the beginning of the year that an inspection may occur.<sup>138</sup> New Jersey law specifically grants school boards the power to enact such policies.<sup>139</sup> Of course, if a school has no such policy, a search without a warrant or a student's consent must be shown to be based on reasonable suspicion.<sup>140</sup>



## **Random Drug Testing of Students in Extracurricular Activities**

Testing a person for the presence of drugs has been held to be a type of search and therefore subject to the constraints of the Fourth Amendment.<sup>141</sup> The U.S. Supreme Court ruled for the first time on a random school drug-testing program in *Vernonia School District v. Acton*,<sup>142</sup> a 1995 decision where the Court held that the school district could require students to consent to random drug testing before they would be allowed to play interscholastic sports. Such a program, the Court held, did not involve an unreasonable search or seizure. The Court found that student athletes have even less expectation of privacy than other students. In addition, the testing involved in the case was done confidentially and in relative privacy. Finally, the Court determined that the program seemed an effective way to serve the school district's interest in fighting drug abuse.

The Court's 2002 decision in *Board of Education of Independent School District No. 92 of Pottawatomie v. Earls*<sup>143</sup> extended the decision in *Vernonia*. The Court in *Earls* upheld a drug testing policy covering all students who participated in any competitive extracurricular activities (as opposed to only students on athletic teams).

The Court in *Earls* reiterated the holding in *Vernonia* that because schools have been charged with the responsibility of maintaining the discipline, health and safety of the students left in their care, a “special need” exists, warranting a less restrictive standard of review for government searches.

Notwithstanding these federal decisions, in August 2000 the ACLU-NJ filed a lawsuit, *Joye v. Hunterdon Central Regional High School Board of Education*,<sup>144</sup> under the New Jersey Constitution, which is often interpreted more broadly than the U.S. Constitution, challenging Hunterdon Central Regional High School’s policy of conducting random drug testing of all students who participated in extracurricular activities or who sought parking privileges. In July 2003, the Supreme Court of New Jersey upheld the policy. Like the U.S. Supreme Court, the New Jersey Supreme Court found students generally have a diminished expectation of privacy based on the government’s duty to maintain safety, order and discipline in the schools. The New Jersey Supreme Court noted, however, that participation in extracurricular activities is optional and that students can avoid random drug testing by not participating in such activities. Because of the court’s reliance on the “voluntary” nature of extracurricular activity, it is unlikely that random drug testing policies for *all* students who attend school would be permitted under the New Jersey Constitution. Further, the court stated that each drug and alcohol testing program will be analyzed separately, and each school will have to “base their intended programs on a meticulously established record.”

### **Drug Testing Based on Reasonable Suspicion**

In 1990, New Jersey enacted specific procedures for drug testing students based on reasonable suspicion.<sup>145</sup> If the school has reasonable suspicion to believe that a student is acting under the influence of drugs or alcohol, which warrants a drug test, the principal shall immediately notify the parent or guardian and the superintendent of schools to arrange for an immediate examination by a doctor selected by the parent or guardian. If there is no one available, then the student must be brought to the emergency room of the nearest hospital to be examined as soon as possible for the purpose of diagnosing whether the student is under the influence. A written report of the examination shall be furnished within 24 hours to the parent or guardian. If found to be under the influence, the student shall not resume attendance until he or she submits a written statement prepared by the physician to the principal, detailing the student’s ability to return. In addition, the student must be interviewed by a substance awareness coordinator to determine the extent of the student’s involvement with the illegal substance(s).

## VI. School Records

The Buckley Amendment, a 1976 federal act, specifies a parent's and student's right to see school records. A student's parents and students 18 years of age or older (or 16 and graduating or leaving school) can inspect and review official school records and files directly related to the student. The school must provide the records within a reasonable period of time, but never more than 45 days after the request.<sup>146</sup> In addition, New Jersey regulations provide that a record can be withheld only if school officials obtain a court order.<sup>147</sup>

Information in the record that is inaccurate, misleading or otherwise in violation of privacy or other rights can be challenged in two ways. A parent or adult student may: (1) require that an explanation or additional data be inserted into the records to correct any false impression; or (2) may seek the expungement or correction of misinformation. Any reference to disciplinary action that later proves to have been wrongfully imposed must be expunged from the student's record.<sup>148</sup> No hearing is necessary for inserting material into records. If the matter is not satisfactorily resolved, a parent or adult student may appeal the decision to the local board of education or to the commissioner of education within 10 days.<sup>149</sup>

Generally, a school may not release records to third parties without the written consent of the parents or the adult student. There are four, third-party exceptions to this rule: (1) local school officials who have a legitimate educational interest; (2) officials from other schools in which the student plans to enroll; (3) representatives of the Comptroller General of the United States and the Secretary and Director of the National Institute of Education; and (4) state educational authorities. Any request for the records must be made in writing and a copy must be kept in the file. Parents or adult students must also be notified in advance every time the records are turned over to a court.<sup>150</sup>

In *Owasso Independent School District v. Falvo*,<sup>151</sup> the Court was asked to consider whether peer grading—when a student scores another student's test or assignment as the teacher reads out the correct answers—violated confidentiality related to education records. The Court found that peer grading did not violate those requirements because an assignment graded by a peer is not an educational record as it is not yet recorded in the teacher's grade book.

Since a student's records may someday be seen by local school officials, such as those on a disciplinary panel, or by a future employer, probation officer, welfare worker or school admissions director, it is advisable that the student or a parent check the student's records periodically and correct any inaccurate, misleading or inappropriate information.

The No Child Left Behind Act,<sup>152</sup> which was signed into law on January 8, 2002 by President George Bush, includes a provision which requires school districts receiving certain federal funding to share students' names, addresses and telephone numbers with military recruiters to the same extent it shares the information with institutions of higher learning. However, schools must advise

parents and students of their right to refuse distribution of this material to the military. Many groups have objected to this provision, citing concerns about the privacy of students.

## VII. Discipline: Suspension, Expulsion & Other Punishments

All schools have rules of conduct for students to follow. These rules should be given to all students in writing. If a student does not receive a copy, he or she should ask the school for one. The following section answers questions about the two most important forms of discipline that schools use — suspension and expulsion.

Students have a constitutional right to an education and therefore may be suspended or expelled only for specified reasons and only in a manner that satisfies certain procedural requirements to determine if the student is guilty.<sup>153</sup> (Detentions or other minor punishments may be given without a hearing or other requirements.) These requirements are called “due process rights” because they derive from the U.S. Constitution’s due process clause in the Fourteenth Amendment. The Constitution applies to government employees and therefore governs the actions of public school officials, because they are employees of the government. The following sections describe the protection students have and the ground rules the school must follow in imposing these punishments.

### **Students With Educational Disabilities**

If school staff believe that a student’s misbehavior results from a disability they should make a referral for a child study team evaluation.<sup>154</sup> Under New Jersey and federal law, a student with educational disabilities is entitled to certain procedural protections before he or she can be suspended or expelled.<sup>155</sup> These protections, which include a “stay put” provision (see page 11) that students remain in current placements pending any review proceedings, are detailed in the federal Individuals with Disabilities Act and in the New Jersey Administrative Code.<sup>156</sup> For additional information parents can refer to *Fairness in School Discipline: The Rights of Students in New Jersey*, a publication of the Education Law Center whose address and phone are listed in the referral guide at the end of this handbook. Parents can also consult an advocate who is familiar with these protections if confronted with a disciplinary action.

## **Duty to Prevent Suspension or Expulsion**

A school district should only remove a student after it has made every reasonable effort to address a behavior problem. Cause of misbehavior may include an undetected disability, unchallenging classwork or a stressful home environment. Before suspending or expelling a student, school authorities should first attempt other corrective steps, such as counseling, parent conferences, a behavior modification plan or temporary placement in a “time-out” room. School districts are required to have programs in place for students who are “at risk” of being removed from school because of earlier disruptive behavior or drug abuse.<sup>157</sup>

## **The Difference Between Suspension and Expulsion**

Suspension is when a student is temporarily prohibited from attending school. Any time a student is sent home from school, he or she has been suspended, regardless of what term school officials use. Expulsion is when a student is permanently barred from school. Students facing either suspension or expulsion are entitled to some protections. The dividing line for the degree of protection is 10 days. A student facing suspension for 10 days or fewer is entitled to know the charges and have an informal hearing. If the time period is for more than 10 days, it is considered to be an expulsion and there are more extensive protections for the student.

## **Valid Reasons for Suspension or Expulsion**

Under New Jersey law, students can be suspended or expelled for any of the following forms of conduct:

- continued and willful disobedience;
- open defiance of a teacher or another person with authority over the student;
- posing a danger to the physical well-being of other pupils or self;
- trying to injure or injuring another student, teacher or school employee;
- trying to steal or stealing another student’s property;
- damaging school property;
- occupying or causing others to occupy a school without permission, and refusing to leave when told to do so by the person in charge;
- causing other students to be truant;
- possessing or consuming alcohol or drugs on school premises;
- possessing a gun while on school property, a school bus or at a school-sponsored event;
- having been convicted of, or adjudicated delinquent for, possession of a gun, or a crime while armed with a gun, either on or off school property.<sup>158</sup>

The first two grounds for discipline are very general. School authorities may use them to

justify expulsion or suspension for specific behavior beyond that described in the remaining grounds. For example, a court upheld a three-day suspension of a student for using profanity to a music teacher.<sup>159</sup> However, courts have ruled that suspension or expulsion is only justified if a student's behavior "materially and substantially" interferes with the operation of the school.<sup>160</sup> Courts in New Jersey have also ruled that students may be disciplined for behavior that occurs away from school grounds, but only if it jeopardizes the safety or well-being of other students, teachers or school property.<sup>161</sup>

Although the grounds for suspension and expulsion are broad, they do have limits. A court in New Jersey ruled that a suspension on the basis of an arrest alone was illegal.<sup>162</sup> In another case, the court determined that a student's conduct of inappropriate touching and making vulgar comments to seven girls warranted suspension with homebound instruction, not expulsion.<sup>163</sup>

### **Suspensions of 10 Days or Fewer**

If a suspension is for 10 days or fewer, the procedural protections are less extensive than for expulsion, but there are still certain requirements that school authorities must follow.<sup>164</sup>

A student facing suspension must receive:

- oral or written notice of the charges and of the evidence the authorities have;
- an informal hearing.<sup>165</sup>

An informal hearing can be held by having the principal discuss the alleged misconduct with the student immediately after it has occurred.<sup>166</sup> This give-and-take session should take place before the suspension. If the student denies the charges, he or she should be given an explanation of all the evidence upon which the charges are based. The student must also be given an opportunity to present his or her side of the story. A student facing a suspension of 10 days or fewer does not have the right to counsel, to call his or her own witnesses or to cross-examine witnesses.

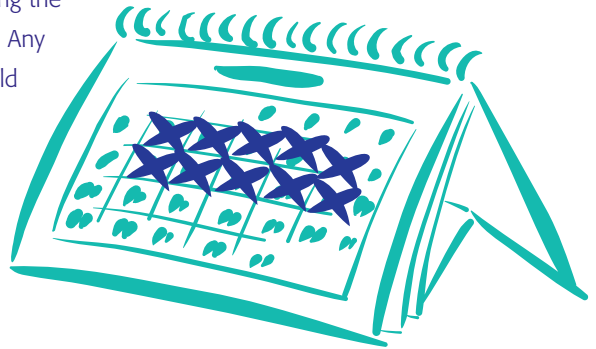
A student may be immediately removed from school without this informal hearing only if the student's presence poses a continuing danger to persons or property or threatens to disrupt the academic process. Immediate removal is justified only for certain serious offenses, such as assault with a weapon,<sup>167</sup> or when the school can demonstrate that it was impossible or unreasonably difficult to provide a hearing before suspension.<sup>168</sup> When a student is immediately moved from school, he or she must receive notice and a hearing as soon as possible, probably no later than the next day.

### **Long-Term Suspensions or Expulsion**

If a student is suspended for more than 10 days, or expelled, school officials must provide a more formalized hearing, because the student is being deprived of an education.<sup>169</sup> Although principals can impose suspensions of fewer than 10 days,<sup>170</sup> long-term suspensions

and expulsions can only be ordered by a school district's board of education. A student facing long-term suspension or expulsion must receive:

- **Written notice of the charges.** Prior to the hearing, the student must be given a written statement of the charges and the evidence upon which they are based. The reasons must be clear and precise and not merely state that the student was “disruptive” or “interfered with classroom activities.” A copy of this notice should be sent to the student’s parents.
- **Formal hearing.** A hearing must be held by the time of the second regular meeting of the board of education after the suspension occurs.<sup>171</sup> School officials should advise the student of the exact procedures to be followed in the hearing within a reasonable time before the hearing. If the proposed procedures do not conform to those set forth here, the student may choose to seek legal advice before the hearing.
- **Representation by an attorney.** The student has the option of being represented at the hearing by an attorney or any other person the student feels can adequately protect his or her interests. However, the school authorities do not have to pay for the student’s attorney. Parents may also attend the hearing.
- **Impartial officials.** The school board or committee of the board that is hearing the case must not be biased in any way. Any person involved in the incident should not be a member of the panel or board hearing the case. Finally, no member of the hearing board should take a side until after all the evidence is presented.



• **Translator.** A translator should be provided if needed.

- **List of witnesses and student defense.** Before the hearing, school officials should give the student a reasonable time to prepare a defense and, if necessary, the opportunity to inspect his or her school records. School officials are also required to give the student the names of the witnesses they plan to call and approximately what each will say so the student can prepare for the hearing.<sup>172</sup> At the hearing, the student must be given the opportunity to:

- explain his or her side of the story;
- bring witnesses to testify;
- present signed statements by witnesses;
- face and cross-examine the witnesses for the school;
- remain silent without being disciplined for it.

The board's discipline hearing must be held at a session closed to the public to protect the privacy of the student and his or her family. However, the board must take its final vote on the discipline in public.<sup>173</sup>

- **Fair decision.** The board or committee must hand down a written decision within a reasonable time. If a committee of the board held the hearing, the school board as a whole must receive and consider a detailed written report of the hearing before taking any final action against the student.<sup>174</sup> A complete transcript or tape of the hearing should be made available to the student. The conclusion of the board must be in writing and a copy must be given to the student.
- **Appeals.** The student has the right to appeal. An appeal must be made first to the commissioner of education and then to the State Board of Education. New Jersey laws set forth the exact procedure for appealing a suspension or expulsion. In most cases, a lawyer should be consulted if an appeal is planned.
- **Clearing records.** If a student is found not guilty at a hearing, or if a suspension is later determined to have been invalid, any reference to the hearing or suspension must be removed from the student's school records.<sup>175</sup>

### **Special Discipline Rules for Serious Offenses**

Under New Jersey and federal law,<sup>176</sup> additional procedures and rules apply to the most serious discipline cases involving:

- assault against school personnel;
- assault against school personnel or another student with a weapon on school property or at a school function;
- gun possession on school property, on a school bus or at a school function;
- conviction or possession of a gun or a crime involving a gun off school property.

A student accused of one of the above four offenses is entitled to the same procedural protections listed above for any student facing long-term suspension or expulsion. In addition, such a student is subject to the following rules.

**Immediate suspension.** For all four serious offenses, the principal<sup>177</sup> must immediately suspend the student from school until the school board holds a formal hearing. For assaults without a weapon (the first category), the student is entitled to an informal hearing at this stage.

**Board hearing and decision.** The school board must hold a hearing within 30 days following the day the student is removed. The school board's decision on the imposition of discipline must be made within five days of the close of the hearing.<sup>178</sup> If the board finds that the student has not committed the offense, the student must be returned immediately to the regular education program.<sup>179</sup>

**One-year removal for gun offense.** If the school board finds that a student is guilty of possessing a gun at school, or has been convicted of a gun offense off school property,



the board must order the student's removal from the regular education program for at least one year. However, the school district's superintendent has the discretion to shorten this time period, depending upon the facts of the case.<sup>180</sup>

**Return to regular education program for students.** As in most suspension cases, the school board determines the length of suspension for a student found guilty of assaulting school personnel without a weapon. A different procedure applies to those students suspended or removed from regular education for the three weapon offenses. For these students, the school district's superintendent, not the school board, is responsible for determining whether and when a student is ready to return to the regular education program.<sup>181</sup>

### **Alternative Education and Home Instruction During Long-Term Suspension and Expulsion**

Expelled students have the right to an alternative education under the state constitution until the student's 19th birthday or graduation, and under state statute until the student's 20th birthday or graduation.<sup>182</sup> This is so even in cases involving removal from school for assault with a weapon against another student or school staff, possession of a gun on school grounds, and conviction of a gun offense. For these three weapons offenses, the 1995 "Zero Tolerance for Guns" law requires placement in an alternative education program, home instruction or another suitable program.<sup>183</sup>

For other offenses, some school boards provide home instruction, and some provide placement in an alternative school. However, the vast majority provide no educational alternatives for students removed from school. This may present a problem when the three serious offenses listed above result in required alternative instruction. The New Jersey Constitution guarantees a thorough and efficient education for all students.<sup>184</sup> In one case, the New Jersey commissioner of education ruled that a suspended student must have the opportunity to make up the work missed.<sup>185</sup>

### **Other Punishments**

**Monetary damages.** In addition to suspension and expulsion, the parents or guardians of any minor (even if he or she does not attend the school) who damages or vandalizes public or non-public school property are liable to the board of education for money damages.<sup>186</sup>

**Corporal punishment.** New Jersey law prohibits the use of physical force (such as hitting the hands of a student with a ruler)<sup>187</sup> to discipline a student unless it is reasonable and necessary to prevent physical injury to others, to obtain possession of weapons or other dangerous objects, in self-defense or for the protection of persons or property.<sup>188</sup>

# Conclusion

Schools are places for growing, inquiring minds. School authorities must accordingly allow students to question or reject established values, even at the expense of their own comfort. On the other hand, the educational environment requires that students observe a certain degree of discipline and order. In many respects, this same tension between an individual's right to expression and society's interest in order is present in American society as a whole. Our U.S. and state constitutions require that these competing interests be met in a manner that protects individual rights. Individual rights are the foundation for the growth and stability of our democratic institutions. It is the responsibility of students to be vigilant so that when civil liberties issues arise in school, they will be resolved in a way that respects constitutional principles.

# Appendix

## Referral Guide

American Civil Liberties Union of New Jersey  
P.O. Box 750, Newark, NJ 07101  
(973) 642-2084

Association for Children of New Jersey  
35 Halsey Street, Newark, NJ 07102  
(973) 643-3876

Education Law Center  
60 Park Place, Suite 300, Newark, NJ 07102  
(973) 624-1815

Unschoolers Network  
2 Smith Street  
Farmingdale, NJ 07727  
(732) 938-2473  
Email: UnNet@aol.com

Legal Services of New Jersey  
100 Metroplex Drive at Plainfield Avenue, Suite 402,  
P.O. Box 1357, Edison, NJ 08818-1357  
(732) 572-9100

Rutgers Law School – Newark  
Constitutional Litigation Clinic  
123 Washington Street, Newark, NJ 07102  
(973) 353-5687

Rutgers Law School – Newark  
Special Education Clinic  
123 Washington Street, Newark, NJ 07102  
(973) 353-5576

# Endnotes

1. N.J. Const. art. VIII, § 4, ¶ 1. The guarantee extends to age 20, if the student is still in high school at that time. N.J. Stat. Ann. § 18A:1-1 (West 1989).
2. *Abbott v. Burke*, 149 N.J. 145 (1997).
3. N.J. Stat. Ann. § 18A:38-25 (West 1989).
4. *State v. Massa*, 95 N.J. Super. 382 (Cty. Ct. 1967); see also *Pierre v. Society of Sisters*, 268 U.S. 510 (1925).
5. *Id.*
6. N.J. Stat. Ann. § 18A:38-31.
7. N.J. Stat. Ann. §§ 18A:38-1(a), (d).
8. *Id.* §§ 18A:7B-12(a), 18A:38-2.
9. *Id.* § 18A:38-1(b)(1).
10. *Id.*
11. *Id.* §§ 18A:38-1(b)(1)-(b)(2).
12. *Id.* § 18A:7B-12 (c).
13. *Id.*
14. *Id.* § 18A:7B-12.1.
15. *Id.*
16. *Id.*
17. N.J. Admin. Code tit. 6, § 3-8.7(b).
18. *R.A. v. Board of Education of Ewing Township*, 95 N.J.A.R. 2d (EDU) 49 (1994).
19. *Board of Education of Township of Middle v. K.K.*, 93 N.J.A.R. 2d (EDU) 461 (1992).
20. *Brown v. Board of Education*, 347 U.S. 483 (1954).
21. Title VI, Civil Rights Act of 1964, 42 U.S.C.A. § 2000a *et seq.* (West 1994).
22. *In the Matter of the Racial Imbalance Plan of Roselle Board of Education*, 1976 S.L.D. 187; N.J. Admin. Code tit. 6, § 4-1.1 *et seq.* [Equality in Educational Programs] (Supp. 2-18-97).
23. U.S. Const. amend. XIV; N.J. Const. art. I, para. 4; 20 U.S.C.A. § 1681 *et seq.* (West 1990); N.J. Stat. Ann. § 10:5-1 *et seq.* (West 1993).
24. 20 U.S.C.A. § 1681 (West 1990).
25. 45 C.F.R. § 86.31 *et seq.* (1996).
26. *Id.* § 86.41.
27. *E.B. v. North Hunterdon Regional School District Board of Education*, 12 N.J. Admin. 232 (1986).
28. *O'Connor v. Board of Education of School District 23*, 545 F. Supp. 376 (N.D. Ill. 1982).
29. *B.C. v. Cumberland Regional School District*, 220 N.J. Super. 214 (App. Div. 1987).

30. N.J. Admin. Code tit. 6, § 4-1.5(f) (Supp. 2-18-97).
31. 20 U.S.C.A. § 1681 *et seq.* (West 1990); N.J. Stat. Ann. § 10:5-1 *et seq.* (West 1993); N.J. Stat. Ann. § 18A:36-20 (West 1989).
32. N.J. Admin. Code tit. 6, § 4-1.5 (c).
33. *Plyler v. Doe*, 457 U.S. 202 (1982).
34. *Lau v. Nichols*, 414 U.S. 563 (1974).
35. 20 U.S.C.A. § 1703 *et seq.*
36. N.J. Stat. Ann. § 18A:35-15 *et seq.* (West 1989).
37. N.J. Admin. Code tit. 6, § 15-1.4 (Supp. 7-6-98).
38. *Id.*
39. N.J. Stat. Ann. § 18A:35-22 (West Supp. 1997).
40. N.J. Stat. Ann. 18A:35-19.2.
41. 20 U.S.C.A. § 1415 *et seq.* (West Supp. 1997).
42. N.J. Stat. Ann. § 18A:46-2 *et seq.* (West 1989).
43. N.J. Admin. Code tit. 6A:14-3.5 (Supp. 9-16-96).
44. *Id.* 6A:14-3.3.
45. *Id.* 6A:14-3.3(e).
46. *Id.* 6A:14-2.3(b).
47. *Id.* 6A:14-3.3(e).
48. *Id.* 6A:14-3.4(c).
49. *Id.* 6A:14-3.7(a).
50. *Id.* 6A:14-1.3.
51. *Id.* 6A:14-1.3.
52. *Id.* 6A:14-2.3(a)(2); 6A:14-3.7(k)
53. *Id.* 6A:14-2.7(b).
54. *Id.* 6A:14-2.3(a)(3).
55. *Id.* 6A:14-2.5(c).
56. *Id.* 6A:14-2.6; 6A:14-2.7.
57. *Id.* 6A:14-2.1(c).
58. 20 U.S.C.A. § 1415(l)(A)(iii) (West Supp. 1997).
59. N.J. Stat. Ann. § 10:5-1 (West 1993).
60. *Gay Student Serv. v. Texas A & M Univ.*, 737 F.2d 1317 (5th Cir. 1984);  
*Gay Students Org. v. Bonner*; 509 F.2d 652 (1st Cir. 1974).
61. *Fricke v. Lynch*, 491 F. Supp. 381 (D.R.I. 1980).
62. *Nabozny v. Podlesney*, 92 F.3d 446 (7th Cir. 1996).
63. *L.W. v. Toms River Regional Schools Board of Education*, *see*  
<http://www.state.nj.us/lps/dcr/orders04.html>
64. *Shore Regional High School Board of Education v. P.S.*, 381 F.3d 194, 195 (2004).

65. *Doe v. Bellefonte Area School District*, 106 Fed Appx. 798, 800 (2004).
66. N.J. Admin. Code tit. 8, § 57-4.4 (Supp. 3-18-96).
67. *Id.*
68. N.J. Stat. Ann. § 10:5-1 (West 1993); N.J. Admin. Code tit. 8, § 57-61.1(b) (Supp. 12-16-96).
69. *Chalk v. United States Dist. Ct. Cent. Dist. of Cal.*, 840 F.2d 701 (9th Cir. 1988).
70. In *Dwyer v. Oceanport School District*, Case No. 03-6005 (D.N.J. files Dec. 18, 2003), a court held that a student cannot be held responsible for the speech of others even if he or she created a forum for other students to express their views.
71. *Brandenburg v. Ohio*, 395 U.S. 444 (1969).
72. *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986).
73. *State v. Morgulis*, 110 N.J. Super. 454 (App. Div. 1970).
74. *S.G. v. Sayreville Board of Education*, 333 F.3d 417, 422 (2003).
75. *Nelson v. Moline Sch. Dist.* 40, 725 F. Supp. 965 (C.D. Ill. 1989).
76. *Riseman v. School Comm. of Quincy*, 439 F.2d 148 (1st Cir. 1971).
77. *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503 (1969).
78. *Id.*
79. *Id.*; *Bethel School District v. Fraser*, 478 U.S. 675 (1986). In *Syniewski v. Warren Hills Regional Board of Education*, 397 F.3d 243 (2002), the United States Court of Appeals held that a school did not show prior disruptive use of the word "redneck," thus could not ban a student from wearing a T-shirt containing the word "redneck."
80. *Edwards v. South Carolina*, 372 U.S. 229 (1963).
81. *Tate v. Board of Education of the Jonesboro Special School District*, 453 F.2d 975 (8th Cir. 1972).
82. *Dunn v. Tyler Independent School District*, 460 F.2d 137 (5th Cir. 1972).
83. *Sword v. Fox*, 446 F.2d 1091 (4th Cir. 1971).
84. *Gerbet v. Hoffman*, 336 F. Supp. 694 (E.D. Pa. 1972); *Jenkins v. Louisiana State Board of Education*, 506 F.2d 992 (5th Cir. 1975).
85. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).
86. *Texas v. Johnson*, 491 U.S. 397 (1989).
87. *Bivens v. Albuquerque Public School*, 899 F. Supp. 556 (D.N.M. 1995).
88. *Olesen v. Board of Education of School District No. 228*, 676 F. Supp. 820 (N.D. Ill. 1987).
89. N.J. Stat. Ann. § 18A:11-7 (West Supp. 1997).
90. *Id.* § 18A:11-8.
91. *Pelletreau v. Board of Education of New Milford, (NJ)* 1967 S.L.D. 35.
92. *Bramwell v. Franklin Township Board of Education, (NJ)* 1970 S.L.D. 331 and *Harris v. Teaneck Board of Education, (NJ)* 1970 S.L.D. 311.

93. *Wallace v. Ford*, 346 F. Supp. 1567 (E.D. Ark. 1972); *Pelletreau v. Board of Education of New Milford, (NJ)* 1967 S.L.D. 35.
94. *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).
95. 137 N.J. 585 (1994).
96. *Hedges v. Wauconda Community Unit School District No. 118*, 9 F.3d 1295 (7th Cir. 1993).
97. *Burch v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Board of Education*, 460 F.2d 1355 (7th Cir. 1972).
98. *Burch v. Barker*, 861 F.2d 1149 (9th Cir. 1988).
99. *Id.*
100. *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982).
101. N.J. Admin. Code tit. 6, § 4-1.3 (Supp. 2-18-97).
102. *Reno v. American Civil Liberties Union*, 117 S. Ct. 2329 (1997).
103. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).
104. *Lipp v. Morris*, 579 F.2d 834 (3rd Cir. 1978).
105. *Frain v. Baron*, 307 F. Supp. 27 (E.D.N.Y. 1969).
106. *School District of Albington Township v. Schempp*, 374 U.S. 203 (1963).
107. *Lee v. Weisman*, 505 U.S. 577, 592 (1992).
108. *School District of Albington Township v. Schempp*, 374 U.S. 203 (1963).
109. *American Civil Liberties Union of New Jersey v. Blackhorse Pike Regional Board of Education*, 84 F.3d 1471 (3rd Cir. 1996).
110. *Lee v. Weisman*, 505 U.S. 577 (1992).
111. *Wallace v. Jaffree*, 472 U.S. 38 (1985) (O'Connor, J., concurring).
112. 505 U.S. 577 (1992).
113. *American Civil Liberties Union of New Jersey v. Blackhorse Pike Regional Board of Education*, 84 F.3d 1471 (3rd Cir. 1996).
114. *May v. Cooperman*, 780 F.2d 240 (3rd Cir. 1985), *appeal dismissed sub nom. Karcher v. May*, 484 U.S. 72 (1987).
115. *McCollum v. Board of Education*, 333 U.S. 203 (1948).
116. *Zorach v. Clauson*, 343 U.S. 306 (1952).
117. N.J. Stat. Ann. §§ 18A:36-14, -15 (West 1989).
118. 20 U.S.C.A. § 4071 *et seq.* (West 1990); *Board of Education of Westside Community School v. Mergens*, 496 U.S. 226 (1990).
119. *Board of Education of Westside Community School v. Mergens*, 496 U.S. 226 (1990).
120. 20 U.S.C.A. § 4071(c) (West 1990).
121. *Lynch v. Donnelly*, 465 U.S. 668 (1984).
122. *Allegheny County v. Pittsburgh American Civil Liberties Union*, 492 U.S. 573 (1989).

123. *Id.* 620 n. 69.
124. *School District of Grand Rapids v. Ball*, 473 U.S. 373 (1985).
125. *The Vermont Supreme Court, in Brigham v. Vermont*, 166 Vt. 246, (1997), and the Ohio Court of Appeal, in *Simmons-Harris v. Goff*, Nos. 96APE08-982, 96APE08-991, 1997 WL 217583 (Ohio Ct. App. May 1, 1997), struck down voucher plans; the Wisconsin Supreme Court, however, in *Jackson v. Benson*, 218 Wis. 2d 835 (1998), upheld a voucher plan and the U.S. Supreme Court denied further review.
126. *Barbara Manley and Board of Education of Town of Boonton v. Board of Education of Borough of Lincoln Park*, Docket No. 120-4/97 (Dept. of Educ.) (filed April 7, 1997).
127. 469 U.S. 325 (1985).
128. *New Jersey v. Moore*, 254 N.J. Super. 295 (App. Div. 1992); *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).
129. 254 N.J. Super. 295 (App. Div. 1992).
130. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985); *In re State in the Interest of G.C.*, 121 N.J. Super. 108 (Juvenile & Domestic Relations Court, Union County 1972).
131. *Doe v. Renfrow*, 631 F.2d 91 (7th Cir. 1980).
132. *M.M. v. Anker*, 477 F. Supp. 837 (E.D.N.Y. 1979).
133. N.J. Stat. Ann. § 2A:161A-1 (West Supp. 1997).
134. *Thompson v. Cathage School District*, 87 F.3d 979 (8th Cir. 1996); *People v. Dukes*, 580 N.Y.S.2d 850 (Crim. Ct. 1992); *In the Interest of F.B.*, 658 A.2d 1378 (Pa. Super. Ct. 1995); *People v. Pruitt*, 662 N.E.2d 540 (Ill. App. Ct. 1996).
135. *Horton v. Goose Creek Independent School District*, 690 F.2d 470 (5th Cir. 1982); *Zamora v. Pomeroy*, 639 F.2d 662 (10th Cir. 1981).
136. *Horton v. Goose Creek Independent School District*, 690 F.2d 470 (5th Cir. 1982); *Jones v. Latexo Independent School District*, 499 F. Supp. 223 (E.D. Tex. 1980); but see *Doe v. Renfrow*, 631 F.2d 91 (7th Cir. 1980) (holding that dog sniffs of school children are not searches subject to the Fourth Amendment).
137. *State in the Interest of T.L.O. v. Engerud*, 94 N.J. 331 (1983).
138. N.J. Stat. Ann. § 18A:36-19.2 (West 1989); *Singleton v. Board of Education USD 500*, 894 F. Supp. 386 (D. Kan. 1995).
139. *Id.*
140. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).
141. *Vernonia School District v. Acton*, 515 U.S. 646 (1995).
142. 515 U.S. 646 (1995).
143. 536 U.S. 822 (June 27, 2002).
144. 826 A.2d 624 (N.J. 2003).
145. N.J. Stat. Ann. § 18A:40A-9 *et seq.* (West Supp. 1997).
146. Family Educational Rights and Privacy Act of 1974, Buckley Amendment, 20 U.S.C.



§ 1232g.

147. N.J. Admin. Code tit. 6, § 3-6.6.
148. *Robbins v. Burlington Board of Education*, (NJ) 1971 S.L.D. 18.
149. N.J. Admin. Code tit. 6, § 3-6.7.
150. 20 U.S.C. § 1232g; N.J. Admin. Code tit. 6, § 3-6.6
151. 534 U.S. 426, 122 S.Ct. 934 (2002).
152. 20 U.S.C. § 301 (2001).
153. See *Goss v. Lopez*, 419 U.S. 565 (1975).
154. N.J. Admin. Code tit. 6A:14-3.3.
155. *Id.* 6A:14-2.8.
156. 20 U.S.C. §§ 1415; N.J. Admin. Code tit. 6A:14 App. 7 (A).
157. N.J.A.C. 6:8-2.1; 6:8-6.1, 6.2.
158. N.J.S.A. 18A:37-2, 2.1 and N.J.S.A. 18A:37-8.
159. *J.G. o/bo/o S.G. v. Lakewood Board of Education*, 98 N.J.A.R. 2d (EDU) 433 (1992).
160. *R.R. v. Board of Education of Shore Regional School District*, 109 N.J. Super. 237, 343; 263 A.2d 180, 184 (Ch. Div. 1970).
161. *R.R. v. Board of Education of Shore Regional School District*, 109 N.J. Super. at 344; 263 A.2d at 184.
162. *Diggs v. Board of Education of Camden*, 1970 S.L.D. 225.
163. *R.L., on Behalf of B.L. v. Board of Education of Kingsway Regional High School District*, 95 N.J.A.R. 2d (EDU) 296 (1995).
164. *Goss v. Lopez*, 419 U.S. 565 (1975).
165. *Id.*
166. *Id.*
167. N.J. Stat. Ann. § 18A:37-2.2.
168. *R.R. v. Board of Education of Shore Regional School District*, 109 N.J. Super. at 347; 263 A.2d at 186.
169. The decision in *G.F. v. Board of Education*, 1 N.J.A.R. (EDU) 55 (1979), states the general due process protections for students facing long-term suspension or expulsion: written notice of the charges, a list of witnesses to be called in support of the charge, the right to counsel, the right to cross-examination, and the right to enter their own defense.
170. N.J.S.A. 18A:37-4, 5.
171. N.J. Stat. Ann. § 18A:37-5.
172. *Scher v. Board of Education of West Orange*, 1969 S.L.D. 92.
173. *M.W. v. Board of Freehold Regional High School District*, 1975 S.L.D. 127, 132; N.J.S.A. 18A:37-2.4.
174. *R.R. v. Board of Education of Shore Regional School District*, 109 N.J. Super. at 349.
175. N.J.A.C. 6:3-6.7.

176. See 20 U.S.C. 1400 *et seq.*; N.J. Stat. Ann. § 18A:37-2.2 *et seq.*
177. N.J.S.A. 18A:37.2.3, 18A:37-9.
178. N.J.S.A. 18A:37-2.1, 2.2, and 18A:37-8.
179. N.J.S.A. 18A:37-2.1, 2.4., 18A:37-10.
180. N.J.S.A. 18A:37-8.
181. N.J.S.A. 18A:37-2.5, 18A:37-11.
182. *P.N. v. Bergenfield*, see [http://www.edlawcenter.org/ELCPublic/elcnews\\_StateBoardRuling\\_031203.pdf](http://www.edlawcenter.org/ELCPublic/elcnews_StateBoardRuling_031203.pdf)
183. N.J.S.A. 18A:37-2.2, 18A:37-8.
184. N.J. Const., Art. VIII, Sec. 4. para. 1.
185. *Haddad v. Cranford Board of Education*, 1968 S.L.D. 98.
186. N.J.S.A. 18A:37-3.
187. See *School District of Borough of Red Bank v. Williams*, 3 N.J.A.R. (EDU) 237 (1981).
188. N.J.S.A. 18A:6-1.





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