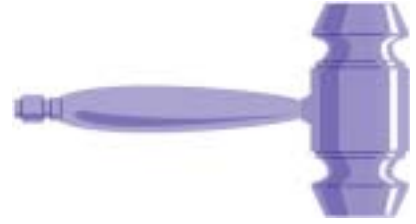


Legal Corner



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Student Rights and Responsibilities: Amendments to Chapter 12 and Related Considerations¹



Chapter 12 of the regulations of the State Board of Education was recently amended, changing some of the fundamental rules pertaining to student discipline.¹ For example, corporal punishment is absolutely prohibited as a disciplinary option. 22 Pa.Code² §12.5. It is on the occasion of the amendments that I will review the fundamental rules and require-

ments pertaining to student rights and responsibilities and suggest practical tips for ensuring compliance with legal requirements.

1. Code of Student Conduct.

Section 12.3(c) of the State Board Regulations provides that:

“Each governing board shall adopt a code of student conduct that includes policies governing student discipline and a listing of students’ rights and responsibilities as outlined in this chapter. This conduct code shall be published and districted to student and parents or guardians. Copies of the code shall also be available in each school library.” 22 Pa. Code §12.3(c).

When this provision was originally promulgated in 1974, school districts across the Commonwealth adopted codes of conduct. However, in the intervening 32 years, some school districts have not updated the codes at all or have not included all school board policies adopted since 1974 pertaining to student discipline, student rights or student responsibilities. It is recommended the policy manual of the school district be reviewed and compared to the code

of student conduct. In the event that any policy pertains to student discipline, student rights or student responsibilities and is not included in the code of student conduct, the code of student conduct needs to be updated to include the missing policy.

Another approach, and an approach that I prefer, is to have a comprehensive code of student conduct that contains all policies³ pertaining to student discipline, student rights and student responsibilities. The code of conduct must be adopted by the school board and, in my opinion, should be adopted as a policy of the board. Any time that the school board determines to adopt a new policy pertaining to student discipline, rights or responsibilities, the code of conduct should be amended to include the change. This approach ensures that the code of student conduct is kept up to date and that all policies pertaining to student discipline, rights and responsibilities are in one place, in one document. In light of the recent amendments to Chapter 12, it is suggested that the code of student conduct of all school districts needs to be rewritten at this time.

2. Mandatory Policies and Procedures.

The new Chapter 12 regulations now mandate that certain procedures be reduced to a written document. For example, section 12.8(b)(2) of the regulations provides that, with regard to formal expulsion hearings, the hearing notice must contain a copy of the expulsion policy, notice that legal counsel may represent the student and a description of the hearing procedures. 22 Pa. Code §12.8(b)(2). Considering the new requirement that the hearing notice contain new and additional information, it is recommended that any form letters that have been used for this purpose be reviewed and updated to ensure conformity with the new regulations.

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Section 12.14(a) mandates that the “governing board of every school entity shall adopt reasonable policies and procedures regarding student searches” and the regulations additionally provide that “students and their parents or guardians [shall be notified] of the policies and procedures regarding student searches.” 22 Pa. Code §12.14(a). Naturally, in light of the requirement contained in section 12.3(c) that rules pertaining to student discipline, rights and responsibilities be contained in the code of student conduct, I recommend that such things as the expulsion policy, hearing procedure, search policies and procedures, etc., be included in the code of student conduct.

The regulations also now mandate that the expulsion decision contain a notice that the student has the right to appeal.

3. Corporal Punishment Prohibited.

Under the prior version of Chapter 12, school districts had the discretion to prohibit or allow corporal punishment. All discretion has now been removed. Corporal punishment is now absolutely prohibited. Section 12.5 defines corporal punishment as “physically punishing a student for an offense.” 22 Pa. Code §12.5(a). Therefore, any school board policy or code of student conduct that purports to allow corporal punishment is no longer valid and the school board should take action to rescind any such policy or code of student conduct.

Although corporal punishment is not allowed, that does not mean that physical force cannot be used under well defined circumstances. Specifically, teachers and school authorities may use reasonable force: **(i)** to quell a disturbance; **(ii)** to obtain possession of weapons or other dangerous objects; **(iii)** for the purpose of self-defense; and **(iv)** for the protection of persons or property. 22 Pa. Code §12.5(b).

Section 1317 of the School Code⁴ provides that:

“Every teacher, vice principal and principal in the public schools shall have the right to exercise the same authority as to conduct and behavior over the pupils attending his school, during the time they are in attendance, including the time required in going to and from their homes, as the parents, guardians or persons in parental relation to such pupils may exercise over them.” 24 P.S.⁵ Statutes in Pennsylvania are cited in one of two ways: **(i)** Purdons Statutes; and **(ii)** the Pennsylvania Consolidated Statutes.

The legal citation to Purdons Statutes is “P.S.” and the citation to the consolidated statutes is “Pa.C.S.” The education statutes are contained in volume 24 of Purdons Statutes—hence 24 P.S. §13-1317.

I have heard some teachers and others argue that as a result of this provision, teachers and principals stand in the position of “*parens patriae*” over students and, therefore, have the right under the School Code to hit students or otherwise use physical force with students. Wrong! Except for the reasons stated, corporal punishment and force is strictly prohibited. Principals and assistant principals need to ensure that any teacher or other school employee who uses force in violation of the Chapter 12 regulations is properly disciplined. A principal's failure to take or initiate disciplinary action⁶ against an employee who has used physical force in violation of the regulations may lead to legal liability.

4. Exclusions Pending School Board Hearings and Decisions.

Anyone who has been involved with a school board hearing knows how hard it sometimes is to schedule a hearing on a date that is available to all concerned. It had not been uncommon for students to be excluded from school pending the scheduling of a school board hearing, or the adoption of an adjudication. The amended regulations now severely limit the ability of school districts to exclude students pending the scheduling of a hearing or the adoption of an adjudication. Under the prior version of the regulations, school districts were permitted to exclude a student from his or her regular placement unless it was determined after an informal hearing that a student's presence in his or her normal class would constitute a threat to the health, safety or welfare of others and it is not possible to hold a formal hearing within the period of the suspension. In such a situation, the student could be excluded from school for more than 10 school days as long as the hearing was not unreasonably delayed. This rule has now been changed. Even where the student's presence in his or her normal class would constitute a threat to the health, safety or welfare of others, a school district cannot exclude the student from school for longer than 15 days unless mutually agreed upon by the parties. 22 Pa. Code §12.6(d).

The amended regulations continue to allow flexibility so as to avoid the scheduling problems. Specifically,



the hearing need not be conducted before the full school board. On the contrary, section 12.8(b) allows expulsion hearings to be held either before the board, a committee of the board or a qualified hearing examiner appointed by the board. 22 Pa. Code §12.8(b).

Regardless of which option is utilized, an expulsion requires the vote of a majority of the entire board. 22 Pa. Code §12.8(b). Those board members who did not preside at or attend the expulsion hearing must read the transcript and exhibits before voting.

5. Timing of Hearing.

The amendments to Chapter 12 provide stricter guidelines with respect to the timing of expulsion hearings. Under the prior regulations, “sufficient notice of the time and place of the hearing” was required to be given. However, under the new regulations, “[a]t least three days’ notice of the time and place of the hearing must be given” 22 Pa. Code §12.8(b)(2). Moreover, the hearing must be held “within 15 school days of the notification of the charges, unless mutually agreed to by both parties.” 22 Pa. Code §12.8(b)(9). However, the regulations allow a hearing to be delayed in the absence of mutual agreement for any of the following reasons: (i) administrative-laboratory reports are needed from law enforcement agencies; (ii) evaluations or other court proceedings are pending due to the student invoking his or her rights under the Individuals with Disabilities Education Act; or (iii) in cases in juvenile or criminal court involving sexual assault or serious bodily injury and delay is necessary due to the condition or best interests of the victim. 22 Pa. Code §12.8(b)(9). Because notice of the expul-

sion hearing must be given by certified mail, 22 Pa. Code §12.8(b)(1), it is important that the certified mail be timed correctly so that the notice is sent within the three calendar day -15 school day window.

6. Hair and Dress.

The State Board of Education considerably altered the rules pertaining to school control over hair and dress. Until the amendments were adopted, the State Board regulations generally left it up to students to decide upon hair and dress. With respect to hair, this remains the case. The regulations provide:

“(b) Students have the right to govern the length or style of their hair including facial hair. Any limitation of this right shall include evidence that length or style of hair causes disruption of the educational process or constitutes a health or safety hazard. Where length or style of the hair presents a problem some types of covering should be considered.” 22 Pa. Code §12.11(b)(repealed).

However, with respect to dress, significant changes have been promulgated: The former regulations provided with respect to dress as follows:

“School officials may not impose limitations on dress unless the attire causes the disruption of the education process or constitutes a health or safety hazard.” 22 Pa. Code §12.11(b)(repealed).

In stark contrast, the new regulations provide: “The governing board may establish dress codes or require that students wear school uniforms. Policies may apply to individual school buildings or to all school buildings.” 22 Pa. Code §12.11(a).

This change was required in order to make the regulations consistent with amendments made to the School Code. In 1998,⁷ the General Assembly added section 1317.3 to the School Code to provide as follows:

“The board of directors in any school entity may impose limitations on dress and may require pupils to wear standard dress or uniforms. Dress policies

may be applicable throughout the school entity or may be applicable to one or more school buildings within the school entity.” 24 P.S. §13-1317.3.

It is important to note that the power to regulate dress is in the school board, not in administrative personnel of the school district. Therefore, if there is an issue or problem with how any student is dressed, principals and assistant principals need to consult the school district’s policy manual first. Second, the code of student conduct needs to be consulted.⁸ Third, because dress is sometimes used by students to convey a message, First Amendment free speech issues must be considered. Only after all of these things are considered, can a principal or assistant principal take action as may be appropriate under the circumstances, and as may be allowed under school district rules.

7. Conclusion.

In the limited space allowed for this article, I was able only to highlight the more significant changes to Chapter 12. There are other changes about which principals and assistant principals need to be aware. Therefore, and in light of the foregoing, it is recommended that principals and assistant principals: **(i)** read Chapter 12 in its entirety; **(ii)** review all written procedures and policies, including the code of student conduct, to ensure that they are consistent with the current version of Chapter 12; **(iii)** amend or adopt any policies or procedures, including the code of student conduct, as necessary, to ensure compliance with Chapter 12; **(iv)** review form letters and other forms and templates that have been used with respect to Chapter 12 issues to ensure that they are consistent with the current version of the regulations; and **(v)** change any letters, forms and other templates as necessary.

Footnotes:

¹ It is assumed that the reader has general familiarity with Chapter 12. In the event that a principal, assistant principal or other school administrator is not familiar with Chapter 12, it is imperative that the regulations be read and understood. The Chapter 12 regulations provide a high degree of regulation of the day-to-day conduct of principals and assistant principals. The regulations can be found in the publication, *Pennsylvania School Laws and Rules, 2006-2007*, or online at www.pacode.com.

² In the 1970’s, a large group of school districts filed a court action challenging the power and authority of the State Board of Education to promulgate and adopt regulations governing student rights and responsibilities. The challenge was based on the theories that there were no laws providing such authority to the State Board. In addition, the School Code contained numerous provisions that arguably granted plenary authority upon local school boards to govern student discipline. The Pennsylvania Supreme Court ultimately ruled that the State Board had the power and authority to adopt regulations on the subject as a general matter. However, the Supreme Court did not rule on the question whether any particular regulation was valid. *Girard School District vs. Pittinger*, 481 Pa. 91, 392 A.2d 261 (1978). Some school attorneys believe that one or more of the provisions in Chapter 12 are invalid and may be successfully challenged. Therefore, if there is any specific regulation that is getting in the way of what you would like to do, the school district solicitor should be consulted to determine if the regulation is valid.

³ The “Pa.Code” is the compilation of all of the regulations of state agencies. It is not the Public School Code. Title 22 of the Pa.Code is where all the education related regulations are published, including regulations of the State Board of Education, standards of the Department of Education and regulations of other education related boards and commissions.

⁴ When I state that the code of student conduct should contain all of a school district’s policy pertaining to student discipline, rights and responsibilities, I am not saying that the provisions of the policy should be in the format of a policy. On the contrary, it is perfectly permissible and preferred that the code of student conduct be written in the format that is custom.

⁵ The “School Code” is to be distinguished from the “Pennsylvania Code.” The School Code is a statute enacted by the General Assembly and is the principal education statute in Pennsylvania. As stated elsewhere in this article, the Pennsylvania Code is a compilation of regulations and rules of state agencies.

⁶ It is recognized that principals and assistant principals in most school districts have little if any power or authority to impose any significant discipline, other than, perhaps, with respect to warnings, reprimands and ratings. However, if there is a serious violation, and I categorize the use of force by a teacher in violation of the regulations as serious, the principal or assistant principal should refer the matter to those in the school district with the proper authority and should appropriately document that they have done that. Remember, if the use of force rises to the level of “abuse” under the Child Protective Services Act, such reporting is mandatory.

⁷ As stated in an earlier footnote, individual provisions in Chapter 12 may not be legally valid. For six years, the dress provisions of Chapter 12 were inconsistent with statute and the State Board did nothing to correct the wrong legal standard.

⁸ As pointed out earlier, the code of student conduct and the policies ought to be the same. Unfortunately, that is not always the case in all school districts.