# NJPSA EDUCATION LAW PRIMER Student Discipline What You Should Know





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# NJPSA EDUCATION LAW PRIMER STUDENT DISCIPLINE: WHAT YOU SHOULD KNOW

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# Introduction

The complaint often heard from teachers and administrators alike is that their hands are tied when it comes to disciplining unruly students. Whatever they do, teachers and administrators have come to expect the inevitable lawsuit, or at least the threat of a lawsuit. That may be true enough because lawsuits can't be stopped - even when teachers and administration do everything by the book. However, while acting within and pursuant to the school laws may not stop lawsuits, it certainly will serve to limit liability -of teachers, administrators and school districts. That's why it's so important to know the rules that define the teacher-student relationship and provide the tools with which teachers and administration can maintain the required order and decorum for learning to take place. This is the intent of this primer.

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# **General Authority**

# What authority does a teaching staff member have to hold students accountable?

# N.J.S.A. 18A:25-2

A teacher or other person in authority over such pupil shall hold every pupil accountable for disorderly conduct in school and during recess and on the playgrounds of the school and on the way to and from school.

The driver shall be in full charge of the school bus at all times and shall be responsible for order; he shall never exclude a pupil from the bus, but, if unable to manage any pupil, shall report the unmanageable pupil to the principal of the school which he attends.

A pupil may be excluded from the bus for disciplinary reasons by the principal and his parents shall provide for his transportation to and from school during the period of such exclusion.

# Causes for Suspension or Expulsion

# What are the causes for suspension or expulsion of pupils?

## N.J.S.A. 18A:37-2

- a. Continued and willful disobedience;
- b. Open defiance of the authority of any teacher or person, having authority over him;
- c. Conduct of such character as to constitute a continuing danger to the physical well-being of other pupils;
- d. Physical assault upon another pupil;
- e. Taking, or attempting to take, personal property or money from another pupil, or from his presence, by means of force or fear;
- f. Willfully causing, or attempting to cause, substantial damage to school property;
- g. Participation in an unauthorized occupancy by any group of pupils or others of any part of any school or other building owned by any school district, and failure to leave such school

or other facility promptly after having been directed to do so by the principal or other person then in charge of such building or facility;

- Incitement which is intended to and does result in unauthorized occupation by any group of pupils or others of any part of a school or other facility owned by any school district;
- i. Incitement which is intended to and does result in truancy by other pupils;
- j. Knowing possession or knowing consumption without legal authority of alcoholic beverages or controlled dangerous substances on the school premises, or being under the influence of intoxicating liquor or controlled dangerous substances while on school premises; and
- k. Harassment, intimidation, or bullying.

# Can students be disciplined for incidents off school premises?

# R.R. v. Bd. of Ed. of Shore Regional H.S. District, 109 N.J.Super. 337 (1970)

Schools may discipline students for activities off school premises and after school hours, if such activities are deemed to pose a risk to students while in school.

## G.D.M. v. Bd. of Ed. of Ramapo Indian Hills Reg. H.S. District (NJ App. Div. 2012) 427 N.J.Super. 246

Court invalidated policy that denied participation in extracurricular activities due to conduct unrelated to school.

## Assaults

What happens if a student assaults a teacher or an administrator?

## N.J.S.A. 18A:37-2.1

a. Any pupil who commits an assault, as defined pursuant to N.J.S.2C:12-1, upon a teacher, administrator, board member or other employee of a board of education, acting in the performance of his duties and in a situation where his authority to so act is apparent, or as a result of the victim's relationship to an institution of public education of this State, not involving the use of a weapon or firearm, shall be immediately suspended from school consistent with procedural due process pending suspension or expulsion proceedings before the local board of education. Said proceedings shall take place no later than 30 calendar days following the day on which the pupil is suspended. The decision of the board shall be made within five days after the close of the hearing. Any appeal of the board's decision shall be made to the Commissioner of Education within 90 days of the board's decision. The provisions herein shall be construed in a manner consistent with 20 U.S.C. Section1400 et seq.

a. Whenever a teacher, administrator, board member, other employee of a board of education or a labor representative on behalf of an employee makes an allegation in writing that the board member or employee has been assaulted by a pupil, the principal shall file a written report of the alleged assault with the district's superintendent of schools. The superintendent to whom the alleged assault is reported or, if there is no superintendent in the district, the principal who received the allegation from the board member, employee, or labor representative shall report the alleged assault to the board of education of the district at its next regular meeting; provided that the name of the pupil who allegedly committed the assault, although it may be disclosed to the members of the board of education, shall be kept confidential at the public board of education meeting.

Any person who fails to file a report of an alleged assault as required pursuant to this subsection may be liable to disciplinary action by the board of education of the district.

Summary:

- 1. Assault by a student of a teacher shall result in the student's immediate suspension.
- 2. Suspension must be in accordance with due process. For a short term suspension tell the student why he is being suspended and afford him an opportunity to be heard.
- 3. For suspensions of 10 days or more the student must be given an opportunity to appear before the board of education.
- 4. Written complaints must be followed up by the principal with a written report to the superintendent who shall then make a report to the board of education.

5. The student's name may not be disclosed to the members of the public.

# What happens if the assault is with the use of a weapon — a knife or other sharp object?

Immediate removal of the student from the educational program.

# N.J.S.A. 18A:37-2.2:

Any pupil who commits an assault upon a teacher, administrator, board member, other employee of a school board or another student, with a weapon, on any school property, on a school bus, or at a school-sponsored function shall be immediately removed from the school's regular education program pending a hearing before the local board of education.

For purposes of this section "assault" means those actions defined under subsection a.(1) of N.J.S. 2C:12-1.

For purposes of this section "weapon" includes but is not limited to those items enumerated in subsection r. of N.J.S. 2C:39-1, except a firearm as defined by N.J.S.2C:39-1f and 18 U.S.C. § 921.

Any student that is removed from the regular education program pursuant to this section shall be placed in an alternative education program. If placement in an alternative education program is not available, the pupil shall be provided home instruction or other suitable facilities and programs until placement is available. The provisions herein shall be construed in a manner consistent with 20 U.S.C. § 1400 et seq. Nothing herein shall be construed as prohibiting the expulsion of a pupil.

## Summary:

- 1. Assault by a student with a weapon shall result in the student's immediate removal from the regular education program.
- 2. Student shall be placed in an alternative education program, and if one is not available, the student shall be provided with home instruction or other suitable facilities and programs.
- 3. The board of education retains the option of expulsion subject to a hearing.

# If a student commits an assault with a weapon, what is the role of the principal?

## N.J.S.A. 18A:37-2.3:

The principal or his or her designee shall be responsible for the removal of any pupil pursuant to section 1 of P.L.1995, c. 128 (C. 18A:37-2.2). The principal or his or her designee shall immediately report the removal of any pupil to the district's chief school administrator. The principal shall also notify the appropriate law enforcement agency of a possible violation of the New Jersey Code of Criminal Justice.

Summary:

- 1. The principal shall immediately report the removal of the student to the superintendent.
- 2. The principal shall notify the police.

# If the student is just unruly - does not commit an assault - can the principal suspend the student?

Yes.

## N.J.S.A. 18A:37-4:

The teacher in a school having but one teacher or the principal in all other cases may suspend any pupil from school for good cause but such suspension shall be reported forthwith by the teacher or principal so doing to the superintendent of schools of the district if there be one. The superintendent to whom a suspension is reported or if there be no superintendent in the district, the teacher or principal suspending the pupil shall report the suspension to the board of education of the district at its next regular meeting. Such teacher, principal or superintendent may reinstate the pupil prior to the second regular meeting of the board of education of the district held after such suspension unless the board shall reinstate the pupil at such first regular meeting.

Summary:

- 1. A principal has the authority to suspend a student.
- 2. The principal must report the suspension to the superintendent.

3. The superintendent shall report the suspension to the board of education at its next regularly scheduled meeting.

Continuation of suspension; reinstatement or expulsion.

## N.J.S.A. 18A:37-5:

No suspension of a pupil by a teacher or a principal shall be continued longer than the second regular meeting of the board of education of the district after such suspension unless the same is continued by action of the board, and the power to reinstate, continue any suspension reported to it or expel a pupil shall be vested in each board.

### N.J.A.C. 6A:16-5.1 Code of Student Safety.

N.J.A.C. 6A:16-5.3 Reporting Violence, Vandalism, Substance Abuse.

# PARENTAL LIABILITY

# Can parents or guardians be held liable for damage to schoolproperty caused by their children and if so, to what extent?

## N.J.S.A. 18A:37-3:

The parents or guardian of any minor who shall injure any public or nonpublic school property shall be liable for damages for the amount of injury to be collected by the board of education of the district or the owner of the premises in any court of competent jurisdiction, together with costs of suit.

#### Board of Ed. of Piscataway v. Caffiero, 173 N.J.Super. 204 (1980) - App. Div.

Parents or guardians of students who damage public or non public school property shall be liable for the amount of the cost of the damage.

# **RIGHTS OF STUDENTS**

# What rights may a student exercise in disciplinary matters?

## N.J.S.A. 18A:37-2.4:

- a. Any pupil removed pursuant to section 1 of P.L.1995, c. 128 (C. 18A:37-2.2 - offense involving assault with a weapon) shall be entitled to a hearing before the local board of education to determine if thepupil is guilty of committing an assault upon a teacher, administrator, board member, other employee of a school board or another student, with a weapon, on any school property, on a school bus, or at a school-sponsored function. If it is found that the pupil is not guilty of the offense the pupil shall be immediately returned to the regular education program.
- b. The hearing shall take place no longer than 30 days following the day the pupil is removed from the regular education program. The hearing is not subject to the provisions of the "Open Public Meetings Act," P.L.1975, c. 231 (C. 10:4-6 et seq.).
- c. The decision of the board shall be made within five days after the close of the hearing. Any appeal of the board's decision shall be made to the Commissioner of Education within 90 days of the board's decision.

## Summary:

- 1. Students are entitled to a hearing.
- 2. The hearing shall take place within 30 days following the day that the student is removed from the regular educational program.
- 3. The board of education shall issue its decision within 5 days of the close of the hearing.

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

In this case, the United States Supreme Court ruled that due process rights for students who are suspended for a period of less than 10 days consist of (1) notice, (2) reason for the suspension and (3) an opportunity for the student to respond.

Students suspended for more than 10 days are entitled to have a hearing before the board of education.

# Can classified students be suspended?

Yes.

## N.J.A.C. 6A:14-2.8 (a):

For disciplinary reasons, school officials may order the removal of a student with a disability from his or her current educational placement to an interim alternative educational setting, another setting, or a suspension for up to 10 consecutive or cumulative school days in a school year. Such suspensions are subject to the same district board of education procedures as nondisabled students. However, at the time of removal, the principal shall forward written notification and a description of the reasons for such action to the case manager and the student's parent(s).

- 1. Notwithstanding (a) above, preschool students with disabilities shall not be suspended, long-term or short-term, and shall not be expelled.
- 2. The district board of education is not required by 20 U.S.C. §§1400 et seq. or this chapter to provide services during periods of removal to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, provided that if services are provided to general education students for removals of 10 or fewer days duration, students with disabilities shall be provided services in the same manner as students without disabilities during such time periods for removals of 10 or fewer days.

## N.J.A.C. 6A:14-2.8(b):

School district personnel may, on a case-by-case basis, consider any unique circumstance when determining whether or not to impose a disciplinary sanction or order a change of placement for a student with a disability who violates a school code of conduct.

## N.J.A.C. 6A:14-2.8(c):

Removals of a student with a disability from the student's current educational placement for disciplinary reasons constitutes a change of placement if:

1. The removal is for more than 10 consecutive school days; or

- 2. The student is subjected to a series of shortterm removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed and the proximity of the removals to one another.
  - i. School officials in consultation with the student's case manager shall determine whether a series of short-term removals constitutes a pattern that creates a change of placement.

Revaluation shall determine whether student's behavior was a manifestation of disability. If it is determined that behavior was manifestation of disability board may not suspend or expel, but may propose change in placement. Change in placement requires parental consent. If behavior is not a manifestation of disability, student may be suspended or expelled, but board is still required to provide education services.

# Zero Tolerance for Guns Act -N.J.S.A. 18A:37-7

Does possession of firearm by a student on school property or at a school function require immediateremoval from the regular education program?

Yes.

# N.J.S.A. 18A:37-8 Offense by pupil involving firearm, removal from school's regular education program

Any pupil who is convicted or adjudicated delinquent for possession of a firearm or a crime while armed with a firearm or found knowingly in possession of a firearm on any school property, on a school bus, or at a school-sponsored function shall be immediately removed from the school's regular education program pending a hearing before the local board of education to remove the pupil from the regular education program for a period of not less than one calendar year subject to modification on a case-by-case basis by the chief school administrator.

For the purposes of this section "firearm" means those items enumerated in N.J.S.A. 2C:39-1f and 18 U.S.C. § 921.

Any pupil that is removed from the regular education program pursuant to this section shall be placed in an alternative education program. If placement in an alternative education program is not available, the pupil shall be provided home instruction or other suitable facilities and programs until placement is available. The provisions herein shall be construed in a manner consistent with 20 U.S.C. §1400 et seq. Nothing herein shall be construed as prohibiting the expulsion of a pupil.

## Summary:

- To be removed from the regular education program, the student must be convicted or be found to knowingly possess a firearm on (1) school property, or (2) on a school bus or (3) at a school sponsored function.
- 2. Removal of the student from the regular education program requires placement in an alternative education program, and if none is available, home instruction or other suitable facilities and programs shall be provided.

# What are the responsibilities of the principal under the Zero Tolerance for Guns Act?

### N.J.S.A. 18A:37-9:

The principal or his or her designee shall be responsible for the removal of any pupil pursuant to section 2 of P.L.1995, c. 127 (C. 18A:37-8). The principal or his or her designee shall immediately report the removal of any pupil to the district'schief school administrator. The district's chief school administrator may modify such removal of a pupil on a case-by-case basis. The principal shall also notify the appropriate law enforcement agency of a possible violation of the New Jersey Code of Criminal Justice.

Summary:

1. The principal has the authority to remove the student.

- 2. The principal must report the removal of the student to the superintendent.
- 3. The superintendent may modify the principal's decision.
- 4. The principal shall notify the police.

# Student is entitled to a hearing. Is it open to the public?

No.

## N.J.S.A. 18A:37-10:

- a. Any pupil removed pursuant to section 2 of P.L.1995, c. 127 (C. 18A:37-8) shall be entitled to a hearing before the local board of education to determine if the pupil was convicted or adjudicated delinquent for possession of a firearm or a crime while armed with a firearm or is guilty of knowingly possessing a firearm on any school property, on a school bus or at a school-sponsored function. If it is found that the pupil is not guilty of these offenses the pupil shall be immediately returned to the regular education program.
- b. The hearing shall take place no later than 30 days following the day the pupil is removed from the regular education program. The hearing is not subject to the provisions of the "Open Public Meetings Act," P.L. 1975, c. 231 (C. 10:4-6 et seq.).
- c. The decision of the board shall be made within five days after the close of the hearing. Any appeal of the board's decision shall be made to the Commissioner of Education within 90 days of the board's decision.

### Summary:

- 1. Students are entitled to a hearing not subject to the Open Public Meetings Act.
- 2. The hearing shall take place within 30 days following the day that the student is removed from the regular educational program.
- 3. The board of education shall issue its decision within 5 days of the close of the hearing.

# Who decides when or whether the student is to return to the regular education program?

## N.J.S.A. 18A:37-11

The chief school administrator shall determine whether the pupil is prepared to return to the regular education program or whether the pupil shall remain in an alternative education program, home instruction or other suitable facilities and programs, in accordance with procedures to be established by the Commissioner of Education.

### N.J.A.C. 6A:16-5.5

Removal of students from general education for firearm offenses - Chief school administrator may modify on a case-by-case basis the removal of a general education student.

#### N.J.A.C. 6A:16-5.6

Removal of students from general education for assaults with weapons offenses. - Chief school administrator may modify on a case-by-case basis the removal of a general education student.

# Does a district continue to have a legal obligation to educate a student who has been adjudged to be delinquent and has been expelled?

Yes.

## In the Interest of G.S. 330 N.J.Super. 383 (Ch. Div., 2000)

The question presented to the Court was whether G.S. had the right to a free public education after he was adjudged a juvenile delinquent and expelled. The Court concluded that G.S. did, and that the Edgewood Public School District had the responsibility for his education, either directly or financially.

# The New Jersey Constitution, Article 8, § 4, para. 1 mandates that:

The legislature shall provide for the maintenance and support of 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. Thus, the Constitution guarantees G.S. the right to free school instruction. The Constitution places the obligation to provide school instruction upon the State. "[T]he State's duty to educate children is a matter of constitutional demand." Pingry Corp. v. Hillside Twp., 46 N.J. 457, 461, 217 A.2d 868 (1966). The New Jersey Constitution is not an empty gesture. It is a bedrock of liberty in this State. We must uphold it. Right to Choose v. Byrne, 91 N.J. 287, 333, 450 A.2d 925 (1982)

Clearly then, the State has the constitutional obligation to provide an education to a juvenile who has been adjudicated delinguent and placed on probation, even though his local school district has expelled him. In 1995, the Legislature recognized this obligation in an analogous situation involving juveniles who have been adjudicated delinguent and placed on probation for possession or use of a firearm on school property or a school bus, or at a school-related function. In such instances, the Legislature has mandated provision of continuing education for such offenders. See, N.J.S.A. 18A:37-7 to 18A:37-12, the "Zero Tolerance for Guns Act." Pursuant to that Act, those offenders shall be removed from the regular education program, and are to be placed in an alternative education program, or be provided home instruction or other suitable facilities and programs.

# **Drugs and Alcohol**

# Districts must have policies for evaluation, treatment referral and discipline.

#### N.J.S.A. 18A:40A-11:

...school districts must have policies and procedures for the evaluation, referral for treatment and discipline of students involved in incidents of possession or abuse of drugs and alcohol on school property or at school functions, or who show significant symptoms of the use of those substances on school property or at school functions.

#### N.J.A.C. 6A:16-4.1(A)

School districts are required to adopt and implement policies and procedures for the assessment, intervention, referral or evaluation of students "whose use of alcohol or other drugs has effected this school performance, or for students who consume or are suspected of being under the influence of or who possess or distribute the following substanceson school grounds pursuant to N.J.S.A. 18A:40A-9, 10, and 11:

- 1. Alcoholic beverages;
- Any controlled dangerous substance, including anabolic steroids, as defined in N.J.S.A. 24:21-2 and 2C:35-2;
- Any chemical or chemical compound that releases vapors or fumes causing a condition of intoxication, inebriation, excitement, stupefaction, or dulling of the brain or nervous system, including, but not limited to, glue containing a solvent having the property of releasing toxic vapors or fumes, as defined in N.J.S.A. 2C:35-10.4; and
- 4. Over-the-counter and prescription medications that are improperly used to cause intoxication, inebriation, excitement, stupefaction, or dulling of the brain or nervous system.

# What is the role of the principal who receives a report that a student may be under the influence of drugs or alcohol?

Arrange for an immediate medical examination of the student.

#### N.J.S.A. 18A:40A-12:

a. Whenever it shall appear to any teaching staff member, school nurse or other educational personnel of any public school in this State that a pupil may be under the influence of substances as defined pursuant to section 2 of this act, other than anabolic steroids, that teaching staff member, school nurse or other educational personnel shall report the matter as soon as possible to the school nurse or medical inspector, as the case may be, or to a substance awareness coordinator, and to the principal or, in his absence, to his

designee. The principal or his designee, shall immediately notify the parent or guardian and the superintendent of schools, if there be one, or the administrative principal and shall arrange for an immediate examination of the pupil by a doctor selected by the parent or guardian, or if that doctor is not immediately available, by the medical inspector, if he is available. If a doctor or medical inspector is not immediately available, the pupil shall be taken to the emergency room of the nearest hospital for examination accompanied by a member of the school staff designated by the principal and a parent or guardian of the pupil if available. The pupil shall be examined as soon as possible for the purpose of diagnosing whether or not the pupil is under such influence. A written report of that examination shall be furnished within 24 hours by the examining physician to the parent or guardian of the pupil and to the superintendent of schools or administrative principal. If it is determined that the pupil was under the influence of a substance, the pupil shall be returned to his or her home as soon as possible and shall not resume attendance at school until the pupil submits to the principal a written report certifying that he or she isphysically and mentally able to return thereto, which report shall be prepared by a personal physician, the medical inspector or the physician who examined the pupil pursuant to the provisions of this act.

In addition, the pupil shall be interviewed by a substance awareness coordinator or another appropriately trained teaching staff member for the purpose of determining the extent of the pupil's involvement with these substances and possible need for treatment. In order to make this determination the coordinator or other teaching staff member may conduct a reasonable investigation which may include interviews with the pupil's teachers and parents. The coordinator or other teaching staff member may also consult with such experts in the field of substance abuse as may be necessary and appropriate. If it is determined that the pupil's involvement with and use of these substances represents a danger to the pupil's health and wellbeing, the coordinator or other teaching staff member shall referthe pupil to an appropriate treatment program which has been approved

by the Commissioner of Health.

b. Same - applies to students suspected of use of anabolic steroids.

Summary:

- 1. The teacher shall report his/her suspicion to the school nurse and the principal.
- 2. The principal shall immediately notify the parent and the superintendent.
- 3. The principal shall immediately arrange for the medical examination of the student by a doctor selected by the parent or by the school doctor or medical inspector, and if there is none, by the emergency room of the nearest hospital.
- 4. A written report shall be furnished by the attending physician within 24 hours.
- 5. If it is determined that the student was "under the influence" the student may not resume attendance at school until a written report is provided stating that the student is physically and mentally able to return.
- 6. If it is determined that the student was under the influence of drugs or alcohol the student shall be referred to the substance awareness coordinator.

# Does the principal have any discretion?

No.

## N.J.A.C. 6A:16-4.3(A)(2):

"In response to every report the principal or his designee shall arrange for the immediate medical examination of the student."

# Does the report have to be furnished within 24 hours of the referral?

Yes.

## N.J.A.C. 6A:16-4.3(A)(7):

A written report of the medical examination shall be furnished to the student's parent, the principal, and the chief school administrator by the examining physician within 24 hours of the referral of the student for suspected alcohol or other drug use.

# Must the student be ex amined by a physician or will examination by the nurse suffice?

The student must be examined by a physician.

## Is a drug test alone sufficient?

No. There must be a physical examination.

The Commissioner has ruled that the statute requires students to be examined by a physician not just a nurse, that the examination must be a medical examination - not just a drug test, and that the designated administrator's role is to arrange for an immediate medical examination of the student - not to validate the observations of the referring staff member.

# In the Matter of the Tenure Hearing of Joseph Graceffo — Are teachers who in good faith report their suspicion held"harmless?"

Yes.

## N.J.S.A.18A:40A-13

No action of any kind in any court of competent jurisdiction shall lie against any teaching staff member, including the substance awareness coordinator, any school nurse or other educational personnel, medical inspector, examining

physician or any other officer or agent of the board... because of an action taken by virtue of the provisions of this act, provided the skill and care given is that ordinarily required and exercised by such other teaching staff member, nurses, educational personnel, or medical inspector, physician... or agents of the board or emergency room personnel.

#### N.J.S.A. 18A:40A-14

Any teacher, guidance counselor, school psychologist, school nurse, substance awareness coordinator or other educational personnel, employed by... public or private schools, who in good faith reports a pupil to the principal or his designee or to the medical inspector or school physician or school nurse in an attempt to help such pupil cure his abuse of substances... shall not be liable in civil damages as a result of making such a report.

# Searches by Public School Officials

# Do searches by school officials have to be predicated on "probable cause?"

No.

#### State v. T.L.O. 469 U.S. 325 (1985)

In the public school context strict adherence to the requirement that searches be based on probable cause undercuts the substantial need of teachers and administrators for freedom to maintain order in the schools.

# When can school officials search a student?

When they have "reasonable suspicion" that the student has participated in activity prohibited by the school.

# In T.L.O., the United State Supreme Court held that:

The obligation of school officials to (a) furnish a thorough and efficient education and (b) the statutory grant of power to school officials to maintain discipline confer the authority to conduct warrantless administrative searches on school premises;

- The 4th Amendment protects students from unreasonable administrative searches and seizures;
- Searches are reasonable when school officials have reasonable grounds to believe that a student possesses evidence of illegal activity or activity that would interfere with school discipline and order, and the search itself is reasonable in scope;

"The legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: First, one must consider "whether the action was justified at its inception... Second, one must determine whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place...

3. Scope of search must be reasonably related to the circumstances that justified the interference in the first place.

# New Jersey Administrative Code provisions governing student searches:

#### N.J.A.C. 6A:16-6.2(b)(5)(i):

All searches and seizures conducted by school staff shall comply with the standards prescribed by the United States Supreme Court in New Jersey v. T.L.O., 469 U.S. 325 (1985).

### N.J.A.C. 6A:16-6.2(b)(5)(ii):

Questions concerning searches conducted by school officials shall be directed to the appropriate county prosecutor.

### N.J.A.C. 6A:16-6.2(b)(5)(iii):

School officials may request that law enforcement authorities assume responsibility for conducting a search or seizure.

#### N.J.A.C. 6A:16-6.2(b)(5)(iv):

No school staff member shall impede a law enforcement officer engaged in a lawful search, seizure, or arrest whether pursuant to a warrant or otherwise.

### N.J.A.C. 6A:16-6.2(b)(5)(v):

School staff shall permit law enforcement authorities, upon their arrival, to assume responsibility for conducting a search or seizure.

### N.J.A.C. 6A:16-6.2(b)(5)(vi):

All inspections of lockers, desks, or other objects or personal property on school grounds involving the use of law enforcement drug-detection canines may be undertaken only with the express permission of the county prosecutor or the Director of the Division of Criminal Justice or his or her designee in the New Jersey Department of Law and Public Safety.

### N.J.A.C. 6A:16-6.2(b)(5)(vii):

Questions concerning the legality of a contemplated or ongoing search, seizure, or arrest conducted by a law enforcement officer on school grounds shall be directed to the county prosecutor or in the case of a search, seizure or arrest undertaken by the Division of Criminal Justice's designee in the New Jersey Department of Law and Public Safety, to the assigned assistant attorney general.

# Cases after T.L.O. — What constitutes reasonable suspicion?

# State v. Moore 254 N.J. Super. 295 (App. Div. 1992)

Student tells a guidance counselor that the defendant possesses a controlled dangerous substance (CDS). Assistant principal receives the report from the guidance counselor. Assistant principal is aware that defendant has been previously disciplined for possession of CDS. Does the assistant principal have enough information on which to conduct a search of the student's book bag? The court said yes.

#### Drake v. County of Essex 275 N.J. Super. 585 (App. Div 1994)

Does a person's membership in a group commonly thought of as suspicious, by itself, establish reasonable suspicion to search? No.

Can school officials consider as part of the totalality of circumstances the fact that a student is a member of a gang? Yes.

Is administration authorized to conduct luggage searches of students on field trips? Yes.

### Desilets v. Clearview Bd. of Ed. 265 N.J.Super. 370 (App. Div. 1993)

Parents challenged a junior high school rule that all students must submit to a search of their hand luggage before field trips. Prior to engaging in such field trips, students had to obtain parental permission, and permission slips contained a statement that hand luggage would be searched. Policy upheld. Court held that search of student's hand luggage prior to boarding bus for field trip did not violate the 4th Amendment. The search was justified based upon the legitimate interest of school administrators and teachers in preventing students from taking contraband on field trips.

# Does a vice principal questioning a student for suspected illegal activity have an obligation to provide Miranda warnings?

No.

# State v. Biancamano 284 N.J.Super. 654 (App. Div. 1995)

Miranda warnings are necessary only where there is "custodial interrogation," defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." The trial judge held that the vice principal had not acted "in a law enforcement capacity," nor was he acting "as an agent for the police at the time of the questioning of defendant." He "was acting in his capacity as a vice-principal whose duties included, '...the welfare and safety' of his students."

# Are locker searches permitted under law?

Yes, but only if students are notified in advance that their lockers are subject to search.

### N.J.S.A. 18A:36-19.2 - Notice required.

The principal or other officials designated by the local board of education may inspect lockers or other storage facilities provided for use by students so long as students are informed in writing at the beginning of each school year that inspections may occur.

#### State v. Engerud, 94 N.J. 331 (1983)

Student has expectation of privacy in school locker absent notice of policy to conduct periodic inspections.

# **Vehicle Searches**

#### State v. Best (N.J. Supreme Court) (2010) 201 N.J. 100

Vehicle searches of students' cars parked on school grounds have to satisfy the "reasonable suspicion" standard, rather than the "probable cause" standard.

# Strip and body cavity searches prohibited.

### N.J.S.A. 18A:37-6.1:

Any teaching staff member, principal or other educational personnel shall be prohibited from conducting any strip search or body cavity search of a pupil under any circumstances.

#### Sanford v. Redding (U.S. 2009)

Strip search of student violates student's 4th Amendment rights.

# Generalized suspicion - Random drug testing.

U.S. Supreme Court upholds random drug testing policy of student athletes where school demonstrates need.

# Veronia School District, 47J v. Action 515 U.S. 646 (1995)

The school district required all potential school athletes, and their parents, to sign a form consenting to urinalysis drug testing. The district tested all athletes at the beginning of their sports season. Thereafter the district would randomly test 10% of the athletes each week. The purpose of the policy was to prevent student athletes from using drugs so as to protect their health and safety, and to provide drug users with assistance programs. **Policy was upheld.** 

U.S. Supreme Court upholds random drug testing policy of students who participate in extra - curricular activities.

#### Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls, 122 S.Ct. 2559 (2002)

The drug policy at issue applied to "competitive extracurricular activities" such as the "Academic Team, Future Farmers of America, Future Homemakers of America, band, choir, pom-pom, cheerleading, and athletics." The policy required allstudents to submit to an initial drug test before beginning an extracurricular activity, to submit to random drug testing during the period of participation, and to "agree to be tested at any time upon reasonable suspicion." The Court held that random suspicionless drug testing of high school students who participate in extracurricular activities does not violate the Fourth Amendment to the Federal Constitution.

# The law in New Jersey - Random drug testing of entire student population is not permitted.

### Odenheim v. Carlstdat-East Rutherford Reg. Sch. Dst.

## 211 N.J.Sup. 54 (Ch. Div. 1985).

School's policy of requiring students to submit urine samples for drug testing violated student's right to be free of unreasonable search and seizure, their right to due process and their legitimate expectation of privacy and personal security. N.J.Const. Art. 1, pars. 1-5, 7; U.S.C.A. Const. Art. 4, § 1 et seq.; Amendments. 1, 3-5, 9, 14.

# Is random drug testing of students in extra-curricular activities permitted?

Yes.

#### Joye v. Hunterdon Cent. Regional High School Bd. of Educ. 176 N.J. 568 (July 9, 2003) - N.J. Supreme Court

## The Court's decision:

"The narrow question remains not whether there is definitive proof concerning drug-testing efficacy, but whether the reasonableness requirement under our State's constitution bars the Board and approving parents from implementing such tests in view of Hunterdon Central's documented drug and alcohol problems... we conclude that it does not."

### Student athletes are role models.

We offer these closing observations. In upholding the testing of student athletes in Veronia, supra. the Supreme Court accepted the school district's view that the district's drug problem had been fueled, at least in part, by the so-called rolemodel" effect of athletes' drug use. According to the Court, that circumstance contributed to the policy's efficacy.

# So are students who participate in extracurricular activities.

We reject the notion that students engaged in extracurricular activities are not role models to the same degree as student athletes. The nostalgic image of the star quarterback as the one most imitated by his peers has been supplemented by other images. Today, the lead actress in the school play, the editor-in-chief of theschool newspaper, and similar leaders in non-athletic settings have joined student athletes, both male and female, in serving as student role models.

## Hunterdon policy upheld.

From that perspective, the Board's decision to include both groups of students within the eligible testing pool appears rational to the Court. According to the Board, it considered Veronia when it adopted its initial policy. As noted by its counsel, that also explains why the Board has not expanded its policy to the entire student population—because federal law, as reflected in Veronia and Earls, has not allowed such expansion. In any event, subjecting all students to testing would eliminate the ability of a conscientious objector to opt out of the eligible pool. As already suggested, that option contributes to the program's reasonableness; its removal, therefore, would jeopardize the program's constitutionality.

# But, testing of general student population is still not permitted.

We emphasize that this is not "a decision opening broad vistas for suspicionless searches[.]" Chandler v. Miller 520 U.S. 305 (1997). The central factor compelling our holding, namely, the unique publicschool context, also serves as its primary inhibitor. By its own terms, today's decision should not extend beyond the schoolhouse walls. We also repeat that any future program will be assessed on the precise record on which it is based within the framework of the special- needs test. Under that test, we conclude that there is room in our State's constitution for school officials to attempt to rid Hunterdon Central of illegal drugs and alcohol in the manner sought here.

## Hunterdon Central Regional Policy

Fully implemented as of September 2000, the expanded policy authorizes "the [school's] administration to conduct random drug testing of all students engaged in extracurricular activities and all students authorized to park on school premises." It defines extracurricular activity as "[a]ny non-credit activity in which a student participates."

The primary objectives of the policy are: "to deter drug use, thereby countering peer pressure which may encourage indulgence" and "to encourage students who use alcohol and drugs to participate in rehabilitative programs[.]" The form. The program requires both the student and his or her parent or guardian to execute a consent form.

The form includes an acknowledgment that the student is eligible for testing "throughout the designated time of participation" in an athletic or non-athletic extracurricular activity or while the student holds a parking permit.

By signing the form, the student indicates: "I understand fully that my performance as a participant and the reputation of my school are dependent, in part, on my conduct as an individual. I hereby agree to accept and abide by the standards, rules and regulations set forth by the [Board] and the sponsors for the activity in which I participate. I authorize the Hunterdon Central Regional High School District to conduct a test on a urine specimen and saliva specimen and/ or breath specimen that I provide on site to test for alcohol and drug use if my name is drawn from the random pool. Pursuant to the Student Random Drug and Alcohol Policy, I also authorize the release of information concerning the results of such test to designated District personnel.

The process. Specifically, each week the athletic director contacts a grade level vice principal and oversees the drawing from a box of ID numbers on the morning of testing. Parents are called to be informed that their child has been selected to be tested and they are given the right to attend if they so [choose]. The athletic director then contacts the appropriate grade level vice principal and the student's schedule is pulled to ascertain the least disruptive time for the testing. At that time, the student is contacted by the vice principal and informed that he or she has been selected for a random drug test. The vice principal then accompanies the student to the nearest health office where the student is interviewed by the nurse and is required to provide a urine sample. The sample is provided in a rest room with the door closed. The sample is tested for adulteration. If the test [for illegal substances] is positive, the parents are called if they are not already there. A second test based on the sample provided is then performed by... an outside testing laboratory. [The laboratory] conducts a gas chromatography mass spectrometry... test which lists the exact chemical nature of the drug. The results of that test are returned to the school within 24 hours. The second test is designed to ensure against false positives.

The consequences for testing positive. For a first infraction, the school suspends the student from participating in the sport or other extracurricular activity, and similarly suspends his or her parking privilege. The suspension remains in effect until the student completes a five-day preventative education program and submits a urinalysis indicating no alcohol or drug use. The school also requires the student to attend a minimum of five counseling sessions with a student assistance coordinator and to undergo further treatment if necessary.

For a second infraction, the school suspends the student from the athletic or non-athletic activity and revokes his or her parking privilege for sixty days, starting from the date of the test that indicated the second violation. The school requires the student to attend a five-day education program, to attend a minimum of ten counseling sessions with a student assistance coordinator, and to resubmit a urinalysis free of alcohol or illegal drugs as of the conclusion of the suspension period. The school also reserves the right to conduct "periodic, unannounced" tests on any student found to have committed a second infraction.

The test result remains confidential. Hunterdon Central treats a student's test result as a confidential health record pursuant to regulations of the New Jersey Department of Education. Those regulations provide that "[i]nformation obtained by the school's alcohol and other drug testing program which would identify the student as an alcohol or other drug user may be disclosed only for those purposes and under those conditions permitted by [federal regulations]." Federal regulations, in turn, prohibit the release of such records except under highly limited circumstances (such as when a court directs their disclosure). 42 C.F. R. sections 2.1, 2.2. Hunterdon Central does not share individual test results with law enforcement authorities.

# Duty of Care for School Personnel — What is the standard?

#### Titus v. Lindburg, 49 N.J. 66 (1967)

The legal responsibility of school personnel is to exercise that degree of care which a person of ordinary prudence, charged with comparable duties, would exercise under the same or similar circumstances.

# Are school personnel indemnified in civil lawsuits?

Yes - in civilmatters for actions arising out of and in the course of the performance of their job duties.

## N.J.S.A. 18A:16-6.

Whenever any civil action has been or shall be brought against any person holding any office, position or employment under the jurisdiction of any board of education, including any student teacher or person assigned to other professional pre-teaching field experience, for any act or omission arising out of and in the course of the performance of the duties of such office, position, employment or student teaching or other assignment to professional field experience, the board shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom; and said board may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

# Are school personnel indemnified in criminal matters arising out of and in the course of the performance of duty?

Yes - upon the dismissal of the criminal charges.

## N.J.S.A. 18A:16-6.1

Should any criminal action be instituted against any such person for any such act or omission and should such proceeding be dismissed or result in a final disposition in favor of such person, the board of education shall reimburse him for the cost of defending such proceeding, including reasonable counsel fees and expenses of the original hearing or trial and all appeals.

# Does the concept of indemnity prevent school personnel from being named defendants in lawsuits?

No - it only means that the board shall assume whatever liability may be imposed, including the reasonable costs of defense.

# Harassment, Intimidation, and Bullying

On January 5, 2011, New Jersey adopted the "Anti-Bullying Bill of Rights Act." N.J.S.A. 18A:37-13 et seq. The purpose of the Anti-Bullying Bill of Rights Act was to strengthen the standards and procedures for preventing, reporting, investigating and responding to incidents of harassment, intimidation and bullying of students on school property (and in certain circumstances off school property) and on school buses, and at school-sponsored functions.

# Definition of Harassment, Intimidation or Bullying (N.J.S.A. 18A:37-14):

- Any gesture, written, verbal or physical act or any electronic communication (either a single incident or a series of incidents);
- That is reasonably perceived as being motivated by either any actual or perceived characteristic such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic;
- That takes place on school property, at a school-sponsored function, on a school bus, or off school grounds as provided for in N.J.S.A. 18A:37-15.3;
- That substantially disrupts or interferes with the orderly operation of the school or the rights of other students

AND

- That a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property; or
- Has the effect of insulting or demeaning any student or group of students; or
- Creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

#### Mandatory Board Policy:

- Every school district must adopt a policy prohibiting harassment, intimidation or bullying on school property, at a schoolsponsored function or on a school bus. (Note: While not specifically required by the law, it may be wise to include in the policy a prohibition on off-school grounds harassment, intimidation or bullying that interferes with the orderly operation of the school).
- Board policy must be adopted through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators and community representatives.
- Board policy must contain, at a minimum, the following components:
  - 1. A statement prohibiting harassment, intimidation or bullying of a student;
  - 2. A definition of harassment, intimidation or bullying no less inclusive than that set forth in N.J.S.A. 18A:37-14 (see above);
  - 3. A description of the type of behavior expected from each student;
  - Consequences and appropriate remedial action for a person who commits an act of harassment, intimidation or bullying;
  - 5. A procedure for reporting an act of harassment, intimidation or bullying including a provision that permits a person to report an act of harassment, intimidation or bullying anonymously; however, formal disciplinary action is not permitted solely on the basis of an anonymous report;
  - 6. A procedure for prompt investigation of reports of violations and complaints;
  - 7. The range of ways in which a school will respond once an incident of harassment, intimidation or bullying is identified, which is to be defined by the principal in conjunction with the school antibullying specialist, but must include an appropriate combination of services that are available within the district such as counseling, support services, intervention services, and other programs, as defined by the commissioner;

- A statement that prohibits reprisal or retaliation against any person who reports an act of harassment, intimidation or bullying and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation;
- Consequences and appropriate remedial action for a person found to have falsely accused another as a means of retaliation or as a means of harassment, intimidation or bullying;
- A statement of how the policy is to be publicized, including notice that the policy applies to participation in schoolsponsored functions;
- 11. A requirement that a link to the policy be prominently posted on the home page of the school district's website and distributed annually to parents and guardians who have children enrolled in a school in the school district; and
- 12. A requirement that the name, school phone number, school address and school email address of the district anti-bullying coordinator be listed on the home page of the school district's website and that on the home page of each school's website the name, school phone number, school address and school email address of the school anti-bullying specialist and the district anti-bullying coordinator be listed.

Pursuant to N.J.S.A. 18A:37-2(k), harassment, intimidation and bullying are acts warranting suspension or expulsion of students.

Note: The NJPSA has published a separate law primer addressing in detail the statute and case law relating to harassment, intimidation and bullying of students.