

HANDLING STUDENT THREATS AND OTHER SERIOUS MISCONDUCT

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Serious Student Misconduct

- Safety
- Law Enforcement
- Hotline
- Searches
- Evidence Preservation
- Due Process



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Serious Student Misconduct

- Off-Campus Misconduct
- First Amendment Considerations
- Consideration of Other District Policies
- Special Education Student
- Legal Counsel
- Insurance Carrier



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Reporting to Law Enforcement

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Report the Following:

1 st and 2 nd Degree Murder	1 st and 2 nd Degree Kidnapping
1 st and 2 nd Degree Rape	1 st , 2 nd and 3 rd Degree Sexual Assault
1 st and 2 nd Degree Sodomy	1 st and 2 nd Degree Burglary
1 st Degree Robbery	Manufacture of a Controlled Substance
Delivery of a Controlled Substance	Possession of a Controlled Substance
Possession of a Weapon	1 st Degree Harassment
1 st Degree Property Damage	1 st Degree Arson
Child Molestation in the 1 st , 2 nd or 3 rd Degree	Voluntary Manslaughter & 1 st and 2 nd Degree Involuntary Manslaughter
Sexual Misconduct Involving a Child	1 st Degree Sexual Abuse
Sexual Assault	Deviante Sexual Assault
1 st Degree Stalking	

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Section 167.117.1

- Section 167.117.1 provides, in pertinent part:
 - In any instance when **any person** is believed to have committed an act which if committed by an adult would be assault in the **first, second or third degree, sexual assault, or deviate sexual assault against a pupil or school employee**, while on school property, including a school bus in service on behalf of the district, or while involved in school activities, **the principal shall immediately report** such incident to the **appropriate local law enforcement agency and to the superintendent.**

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Section 167.117

- Section 167.117 allows for an exception to the strict reporting requirements if an act committed is believed to be **third degree assault AND a written agreement** as to the procedure for reporting such incidents of third degree assault has been executed between the superintendent and law enforcement agency. In those schools, principals shall report these incidents to law enforcement in accordance with the agreement.



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Due Process and Procedure

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Suspension of 10 Days or Less

1. Principal has the authority to suspend for only 10 days or less
2. Principal must provide student with due process in the form of:
 - Written or verbal notice to student of why he/she is suspended
 - Present facts upon which allegation is based if student denies misconduct
 - Permit student to present his/her own version of the facts



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Suspension of 10 Days or Less

3. Principal immediately notifies superintendent of suspension
4. Principal provides student's parents with written notification of the length of and reasons for suspension
5. Superintendent may:
 - Revoke entire suspension or reduce it
 - Affirm the suspension
 - Extend the suspension up to 180 days
 - Recommend suspension for period greater than 180 days or expulsion



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Suspension of Greater than 10 Days Requires Additional Due Process

- Superintendents may suspend for a period not to exceed 180-days
- Notice of Right to appeal
- Suspension stayed UNLESS, student represents a "continuing danger to persons or property or an ongoing threat of disrupting the academic process."
- Suspensions of greater than 180 days only after board hearing
 - Std: Conduct "prejudicial to good order and discipline in the schools or which tends to impair the moral or good conduct of the pupils."
 - Notice of Hearing (including date and time for hearing).



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Off-Campus Misconduct

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Off-Campus Misconduct

- MCE Policy 2610 – Misconduct and Disciplinary Consequences
“Students who engage in significant acts of misconduct off campus which materially and adversely impact the educational environment of district students to the extent allowed by law will be subject to discipline up to and including expulsion.”
- MSBA Policy JG-R1 – Student Discipline
“The district may also discipline students for off-campus conduct that negatively impacts the educational environment, to the extent allowed by law.”



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Test for Off-Campus Student Discipline

- NEXUS TEST (Tinker case):
 - Practical Application: Connection between off-campus speech and **material** and **substantial** interference with efficient school operations.
 - Students can be disciplined for speech that occurs off-campus when a relationship or nexus to the school can be established.



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How to Establish Nexus

- Where did the conduct occur?
- Did any contributing act to the conduct occur on campus?
- Is the conduct reasonably likely to cause a disruption at school?
- What is the likely impact on the school?
- Did the student intend to disturb the educational process?
- Does action need to be taken to protect students or staff?



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Mahanoy Area School District v. B.L. - Overview -

- Supreme Court decision regarding student off-campus speech.
- First Supreme Court decision in over 50 years dealing with student speech.
- Court ruled 8-1 in favor of student B.L.
- Held B.L.'s off-campus speech was protected by the First Amendment.



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Mahanoy Area School District v. B.L. - The Facts -



- B.L. tries out for varsity cheerleading team but only makes the junior varsity cheerleading team.
- Over the weekend, B.L. uses her own cell phone while at a convenience store and posts to her Snapchat stories.
- B.L. had about 250 "friends" on Snapchat including other students.



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Mahanoy Area School District v. B.L. - The Snapchat -

- "F*** school f*** softball
f*** cheer f*** everything."



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Mahanoy Area School District v. B.L. - The Snapchat -

- “Love how me and [another student] get told we need a year of jv before we make varsity but tha[t] doesn’t matter to anyone else? 😏”



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Mahanoy Area School District v. B.L. - The Aftermath -

- Cheer coaches are made aware of B.L.’s Snapchat posts.
- Cheerleaders and other students are “visibly upset.”
- B.L.’s posts were discussed in algebra class taught by a cheer coach for 5-10 minutes for a couple of days.



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Mahanoy Area School District v. B.L. - The Suspension -

- Coaches decide that because the posts used profanity in connection with a school extracurricular activity, they violated team and school rules.
- Coaches suspended B.L. from the junior varsity cheerleading squad for the upcoming year.
- Suspension decision was affirmed by the athletic director, principal, superintendent and school board.
- In response, B.L. brings a lawsuit against the school district.



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The Supreme Court's Decision - Off-Campus Speech -

- A school's interest to regulate student speech remains significant in some off-campus circumstances.
 - Serious or severe bullying or harassment targeting particular individuals.
 - Threats aimed at teachers or other students.
 - The failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities.
 - Breaches of school security devices, including material maintained within school computers.



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The Supreme Court's Decision - Off-Campus Speech -

- Three features of off-campus speech that often, if not always, distinguish schools' efforts to regulate off-campus speech
- **Feature #1** → A school will rarely stand in the place of the student's parents with off-campus speech.
- **Feature #2** → From student speaker's perspective, regulation of off-campus and on-campus speech would include all speech the student utters in a 24-hour period.



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The Supreme Court's Decision - Off-Campus Speech -

- **Feature #3** → School has an interest in protecting a student's unpopular expression, especially when expression takes place off-campus.
 - Representative democracy only works if we protect the marketplace of ideas.
 - Free exchange facilitates an informed public.



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What does the Supreme Court's Decision mean for schools and off-campus speech?

- Confirmed schools DO have interests in SOME circumstances to regulate off-campus student speech.
- Left Tinker in place but added three features that reduce school's interests to regulate off-campus student speech.



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What does the Supreme Court's Decision mean for schools and off-campus speech?

- Describes the analysis as very fact specific.
- Balancing between level of disruption/school's interests vs student's rights.
- Leaves room for future cases to bring claims to help define the parameters of when off-campus speech is and is not protected by the First Amendment.



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Student Threats of Serious Harm

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“True Threats”

- True threat is a “statement that a reasonable recipient would have interpreted as a serious expression of an intent to harm or cause injury to another.”
- Must have intent to communicate statement to another
- Not protected by First Amendment and can be disciplined



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“True Threat” Test

- “Did speaker intend to communicate statement?”
- Would reasonable recipient of communication view it as a threat?



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True Threat Case

- **D.J.M. v. Hannibal Public School District (8th Circuit)**
 - Student IM'd death threats against five other students to a friend, discussed getting a gun, shooting himself, and making the Hannibal known for something
 - The classmate emailed parts of the conversation to the principal
 - Placed in protective custody
 - Student claimed First Amendment rights were violated by District's long-term suspension



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D.J.M. v. Hannibal Public Sch. Dist.

- Eighth Circuit found communication met true threat standard because:
 - Communicated his threat to a classmate
 - Mentioned suicide in connection with a shooting
 - Identified a specific type of gun he could use and listed a specific number of individuals he planned to shoot
 - Admitted depression



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D.J.M. v. Hannibal Public Sch. Dist.

- Eighth Circuit found communication met true threat standard because:
 - Expressed access to weapons
 - Statement that he wanted Hannibal “to be known for something”
 - No one thought he was joking



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D.J.M. v. Hannibal Public Sch. Dist.

- Court also found communication caused substantial disruption because:
 - Parents and students notified school expressing concerns about student safety
 - Parents asked about rumored “hit list”
 - School officials took lots of time to handle situation



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Other Serious Misconduct

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Suspensions when Charged or Convicted of a Crime in Juvenile Court

- Students cannot be readmitted or enrolled into the regular education program (they may be enrolled in an alternative school at the district's discretion) if they have been charged, convicted or a petition has been filed in juvenile court for the following offenses:

(Remember – just these 11 crimes!)

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Offenses:

First degree murder	Second degree murder
First degree assault	Rape in the first degree
Sodomy in the first degree	Statutory rape
Statutory sodomy	Robbery in the first degree
Delivery of a controlled substance	Arson in the first degree
Kidnapping when a class A felony	

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Special Education Student Exception

- Students with disabilities are still entitled to education services and cannot be excluded from the regular education program if crime was related to the disability



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Suspensions when Charged or Convicted of a Crime

- If a student is charged, convicted, or pleads guilty to a **felony** in a court of general jurisdiction (not a juvenile court), the school board **may** suspend the student after notice to the parents or others with custody and a hearing.



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Suspensions when Weapon is brought to School

- Per statute 160.261, a student who brings a weapon to school shall be suspended for not less than one year or expelled, except:
 - The superintendent may modify this requirement on a case-by-case basis
 - May allow student to attend alternative school
 - "Weapon" will be defined by Board policy



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Restrictions for Students Suspended for Violent or Drug-Related Offenses

- If a student is suspended for an offense listed in **Section 160.261.2**, an **act of school violence** or **drug-related activity** defined by district policy as a serious violation of school policy, the suspension shall prohibit the student from coming within 1000 feet of any public school in the district where the student attended unless the Superintendent gives permission and:
 1. Such student is under direct supervision of the student's parent, guardian or legal custodian;



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Restrictions for Students Suspended for Violent or Drug-Related Offenses

2. Such student is under the direct supervision of another adult designated by the student's parents, legal guardian, or custodian, in advance, in writing, to the principal of the school which suspended the student;
3. Such student is in an alternative school that is located within one thousand feet of a public school in the school district where such student attended school; or



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Restrictions for Students Suspended for Violent or Drug-Related Offenses

4. Such student resides within 1000 feet of any public school in the school district where such student attended school, in which case such student may be on the property of his or her residence without direct adult supervision.
 - Any student that violates this provision of his/her suspension is subject to expulsion or further suspension. In making this determination, consideration must be given to whether the student poses a threat to the safety of any child or school employee and whether such student's unsupervised presence within 1000 feet of the school is disruptive to the educational process or undermines the effectiveness of the school's disciplinary policy.



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Suspensions From Other Schools

- A school district may honor a suspension or expulsion from:
 1. another in-state public school
 2. out-of-state public school
 3. private school
 4. charter school
 5. parochial school, IF



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Suspensions From Other Schools

- The superintendent meets with the parents, guardians, or student to determine if the conduct resulting in the suspension or expulsion would have resulted in a suspension or expulsion in the current district and the conduct would have been similarly disciplined. The district may honor the suspension or expulsion to the extent the student would have received the same punishment in the current district.
- If the conduct would not have been similarly disciplined, the district must admit the student.



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Readmission Conference

- A student cannot be readmitted, enrolled or otherwise allowed to attend school after being suspended or expelled from a public or private school for more than 10 consecutive school days for an **“act of school violence”** until a conference is held to review the conduct that resulted in the discipline and any remedial actions necessary to prevent any future occurrences.
- **“Act of School Violence”** means the exertion of physical force by a student with the intent to do serious physical injury to another person while on school property.



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Readmission Conference

- The following people will be included in the conference, but failure to appear does not preclude holding the conference:
 - Appropriate school officials, including any teacher directly involved in the conduct that resulted in the suspension or expulsion.
 - The student, parent/guardian, or any agency having legal jurisdiction, care, custody or control of the student. These parties will receive written notice of the conference.



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Creating a Safe Environment: Enrollment

- Request records from former district within 2 days
- Former district must respond within 5 days
- Where there is reason to suspect that admission will create an immediate danger to the safety of other pupils and employees of the District, the District may convene a **hearing within 5 days** of the request to register and determine whether or not the pupil may register.



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Other Considerations

- Principal Training
- Handbook/Policy Review



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QUESTIONS?

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