

## CHAPTER 12. STUDENTS AND STUDENT SERVICES

### STUDENT RIGHTS AND RESPONSIBILITIES

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#### Authority

The provisions of this Chapter 12 issued under section 408.1 of The Administrative Code of 1929 (71 P. S. § 118.1) (Repealed), unless otherwise noted.

#### Source

The provisions of this Chapter 12 adopted July 26, 1974, effective July 27, 1974, 4 Pa.B. 1530; amended September 27, 1974, effective September 28, 1974, 4 Pa.B. 2075, unless otherwise noted.

#### Cross References

This chapter cited in 22 Pa. Code § 16.65 (relating to confidentiality); and 22 Pa. Code § 711.61 (relating to suspension and expulsion).

**STUDENT RIGHTS AND RESPONSIBILITIES****Notes of Decisions***Construction of Regulations*

In issuing these regulations, the State Board was acting within the field of education and was not exceeding the authority of the grant of legislative rulemaking power contained in section 1317 of The Administrative Code of 1929 (71 P. S. § 367). *Girard School District v. Pittenger*, 392 A.2d 261 (Pa. 1978).

The provisions of 22 Pa. Code §§ 12.1—12.15 (relating to student rights and responsibilities) are to be considered as in *pari materia* with 24 P. S. §§ 5-510, 5-511(a), 13-1317, 13-1318 and 13-1338. *Girard School District v. Pittenger*, 392 A.2d 261 (Pa. 1978).

**STUDENT RIGHTS AND RESPONSIBILITIES****§ 12.1. Free education and attendance.**

(a) All persons residing in this Commonwealth between the ages of 6 and 21 years are entitled to a free and full education in the Commonwealth's public schools.

(b) Parents or guardians of all children between the ages of 8 and 17 are required by the compulsory attendance law to ensure that their children attend an approved educational institution, unless legally excused. Students who have not graduated may not be asked to leave school merely because they have reached 17 years of age if they are fulfilling their responsibilities as students. A student may not be excluded from the public schools or from extracurricular activities because:

- (1) The student is married.
- (2) The student is pregnant.
- (3) The student has a disability as identified by Chapter 15 (relating to protected handicapped students).
- (4) The student is an eligible student identified under Chapter 14 (relating to special education services and programs).

**Authority**

The provisions of this § 12.1 amended under section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).

**Source**

The provisions of this § 12.1 amended February 17, 1984, effective February 18, 1984, 14 Pa.B. 520; amended December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658. Immediately preceding text appears at serial page (279556).

**Cross References**

This section cited in 22 Pa. Code § 12.6 (relating to exclusions from school).

**§ 12.2. Student responsibilities.**

(a) Student responsibilities include regular school attendance, conscientious effort in classroom work and homework, and conformance to school rules and regulations. Most of all, students are responsible to share with the administration and faculty a responsibility to develop a climate within the school that is conducive to wholesome learning and living.

(b) No student has the right to interfere with the education of fellow students. It is the responsibility of each student to respect the rights of teachers, students, administrators and all others who are involved in the educational process.

(c) Students should express their ideas and opinions in a respectful manner.

(d) It is the responsibility of the students to conform to the following:

(1) Be aware of all rules and regulations for student behavior and conduct themselves in accordance with them. Students should assume that, until a rule is waived, altered or repealed in writing, it is in effect.

(2) Volunteer information in matters relating to the health, safety and welfare of the school community and the protection of school property.

(3) Dress and groom to meet standards of safety and health, and not to cause substantial disruption to the educational processes.

(4) Assist the school staff in operating a safe school for the students enrolled therein.

(5) Comply with Commonwealth and local laws.

(6) Exercise proper care when using public facilities and equipment.

(7) Attend school daily and be on time at all classes and other school functions.

(8) Make up work when absent from school.

(9) Pursue and attempt to complete satisfactorily the courses of study prescribed by local school authorities.

(10) Report accurately in student media.

(11) Not use obscene language in student media or on school premises.

**Authority**

The provisions of this § 12.2 amended under section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).

**Source**

The provisions of this § 12.2 amended February 17, 1984, effective February 18, 1984, 14 Pa.B. 520; amended December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658. Immediately preceding text appears at serial pages (279556) and (293057).

**§ 12.3. School rules.**

(a) The governing board has the authority to make reasonable and necessary rules governing the conduct of students in school. The rulemaking power, however, is not unlimited; it must operate within statutory and constitutional restraints. A governing board has only those powers that are enumerated in the statutes of the Commonwealth, or that may reasonably be implied or necessary for the orderly operation of the school.

(b) Governing boards may not make rules that are arbitrary, capricious, discriminatory or outside their grant of authority from the General Assembly. A rule is generally considered reasonable if it uses a rational means of accomplishing some legitimate school purpose.

(c) 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 distributed to students and parents or guardians. Copies of the code shall also be available in each school library.

**Authority**

The provisions of this § 12.3 amended under section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).

**Source**

The provisions of this § 12.3 amended February 17, 1984, effective February 18, 1984, 14 Pa.B. 520; amended December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658. Immediately preceding text appears at serial page (293057).

**Notes of Decisions***Scope of Authority*

The board of school directors exceeded its authority in adopting its "zero tolerance policy," where the policy failed to provide the superintendent with discretion to recommend a modification to the policy's 1-year expulsion requirement for possession of a weapon. *Lyons v. Penn Hills School District*, 723 A.2d 1073 (Pa. Cmwlth. 1999); appeal denied 740 A.2d 235 (Pa. 1999).

*Sufficient Notice*

The District's distribution of its drug and alcohol policy in the student handbook provided to all students—of which Appellant student acknowledged seeing—satisfied any legal requirement as to notice of the District's policy. *T. S. v. Penn Manor School District*, 798 A.2d 837 (Pa Cmwlth. 2002); appeal denied 812 A.2d 1232 (Pa. 2002).

**§ 12.4. Discrimination.**

Consistent with the Pennsylvania Human Relations Act (43 P. S. §§ 951—963), a student may not be denied access to a free and full public education, nor may a student be subject to disciplinary action on account of race, sex, color, religion, sexual orientation, national origin or disability.

**Authority**

The provisions of this § 12.4 amended under section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).

**Source**

The provisions of this § 12.4 amended February 17, 1984, effective February 18, 1984, 14 Pa.B. 520; amended December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658. Immediately preceding text appears at serial page (293058).

**§ 12.5. Corporal punishment.**

(a) Corporal punishment is defined as physically punishing a student for an infraction of the discipline policy. Use of corporal punishment is prohibited.

(b) Teachers and school authorities may use reasonable force under the following circumstances:

- (1) To quell a disturbance.
- (2) To obtain possession of weapons or other dangerous objects.
- (3) For the purpose of self-defense.
- (4) For the protection of persons or property.

**Authority**

The provisions of this § 12.5 amended under section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).

**Source**

The provisions of this § 12.5 amended February 17, 1984, effective February 18, 1984, 14 Pa.B. 520; amended December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658. Immediately preceding text appears at serial page (293058).

**Notes of Decisions***Teacher Disability*

The pretermination procedures afforded a tenured school teacher, who, after being warned, continued to use excessive force on students in violation of the policy on corporal punishment, did not violate due process. *Kramer v. Newman*, 840 F.Supp. 325 (E. D. Pa. 1993); affirmed 16 F.2d 404 (3rd Cir. (Pa.)).

**§ 12.6. Exclusions from school.**

(a) The governing board shall define and publish the types of offenses that would lead to exclusion from school. Exclusions affecting certain students with disabilities shall be governed by § 14.143 (relating to disciplinary placements) and 34 CFR 300.519—300.529 (relating to discipline procedures).

(b) Exclusion from school may take the form of suspension or expulsion.

(1) Suspension is exclusion from school for a period of from 1 to 10 consecutive school days.

(i) Suspensions may be given by the principal or person in charge of the public school.

(ii) A student may not be suspended until the student has been informed of the reasons for the suspension and given an opportunity to respond. Prior notice of the intended suspension need not be given when it is clear that the health, safety or welfare of the school community is threatened.

(iii) The parents or guardians and the superintendent of the district shall be notified immediately in writing when the student is suspended.

(iv) When the suspension exceeds 3 school days, the student and parent shall be given the opportunity for an informal hearing consistent with the requirements in § 12.8(c) (relating to hearings).

(v) Suspensions may not be made to run consecutively beyond the 10 school day period.

(vi) Students shall have the responsibility to make up exams and work missed while being disciplined by suspension and shall be permitted to complete these assignments within guidelines established by the governing board.

(2) Expulsion is exclusion from school by the governing board for a period exceeding 10 school days and may be permanent expulsion from the school rolls. Expulsions require a prior formal hearing under § 12.8.

(c) During the period prior to the hearing and decision of the governing board in an expulsion case, the student shall be placed in his normal class except as set forth in subsection (d).

(d) If it is determined after an informal hearing that a student's presence in his 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 a suspension, the student may be excluded from school for more than 10 school days. A student may not be excluded from school for longer than 15 school days without a formal hearing unless mutually agreed upon by both parties. Any student so excluded shall be provided with alternative education, which may include home study.

(e) Students who are under 17 years of age are still subject to the compulsory school attendance law even though expelled and shall be provided an education.

(1) The initial responsibility for providing the required education rests with the student's parents or guardian, through placement in another school, tutorial or correspondence study, or another educational program approved by the district's superintendent.

(2) Within 30 days of action by the governing board, the parents or guardians shall submit to the school district written evidence that the required education is being provided as described in paragraph (1) or that they are unable to do so. If the parents or guardians are unable to provide the required education, the school entity shall, within 10 days of receipt of the notification, make provision for the student's education. A student with a disability shall be provided educational services as required by the Individuals With Disabilities Education Act (20 U.S.C.A. §§ 1400—1482).

(3) If the approved educational program is not complied with, the school entity may take action in accordance with 42 Pa.C.S. Chapter 63 (relating to the Juvenile Act) to ensure that the child will receive a proper education. See § 12.1(b) (relating to free education and attendance).

#### Authority

The provisions of this § 12.6 amended under section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).

#### Source

The provisions of this § 12.6 amended February 17, 1984, effective February 18, 1984, 14 Pa.B. 520; amended December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658. Immediately preceding text appears at serial pages (295323) to (295324) and (286657).

#### Notes of Decisions

##### *Alternative Instruction*

Local school officials may determine the amount and type of alternative instruction necessary and appropriate in each case involving an expelled student. *Abremski v. Southeastern School District*, 421 A.2d 485 (Pa. Cmwlth. 1980).

##### *Appeal; No Expulsion*

Where the discipline imposed upon the student was three 15-minute after-school detention sessions, the student has no right to a hearing or appeal, as there is no such recourse provided by the regulations. *Schmader v. Warren County School District*, 808 A.2d 596 (Pa. Cmwlth. 2002); appeal denied 820 A.2d 163 (Pa. 2003).

There is no provision in the regulations for an appeal of a school board decision to suspend a student for 10 days or less. *In re Appeal of JAD*, 782 A.2d 1069 (Pa. Cmwlth. 2001); appeal denied at 796 A.2d 987 (Pa. 2002).

##### *Due Process Required*

Expulsion is exclusion from school for a period of more than 10 days. Due process requires that a student subject to expulsion be afforded a hearing. *In re Appeal of JAD*, 782 A.2d 1069 (Pa. Cmwlth. 2001).

Where student was expelled from school for approximately 30 days, due process required that the student be given a formal hearing. *Oravetz v. West Allegheny School District*, 74 Pa. D. & C.2d 733 (1975).

##### *Expulsion Appropriate*

None of the provisions of this section relating to expulsions provide that an expulsion decision, otherwise proper, cannot stand if the expelled student was also suspended for the same offense, and if the period of suspension exceeded the regulatory maximum, due to the failure, for undisclosed reasons, of a student to return to school for a three-day period following a suspension, *Porter v. Board of School Directors of Clairton School District*, 445 A.2d 1386 (Pa. Cmwlth. 1982).

*In General*

Regulations governing the types of offenses that would lead to exclusion from school may be published by individual schools rather than by the Board of Education itself. *Figueroa v. Thompson*, 1 Pa. D. & C.3d 266 (1975).

When the legislature did not delegate power over student conduct and discipline to the State Board of Education, the Board's regulations pertaining to such matters were invalid and unenforceable. *Howard H. v. Wentzel*, 372 A.2d 30 (Pa. Cmwlth. 1977).

*Procedural Violations*

Where defendant school district summarily suspended plaintiffs for a period in excess of 3 days and failed to follow notice and hearing procedures, those portions of the suspension served before proper notice and hearing were expunged from plaintiffs' records. *Mullane v. Wyalusing Area School District*, 30 D. & C.4th 179 (1997).

*School Board Review*

This regulation clearly provides that the decision to suspend a student for no more than 10 days is within the power of the principal. Thus, although the school board agreed to consider the issue of the students' suspensions, that special meeting was nothing more than a gratuitous gesture to the students and their parents. The board's acquiescence to hold the meeting was purely voluntary, and its affirmation of the principal's decision had no legal consequence. *Burns v. Hitchcock*, 683 A.2d 1322 (Pa. Cmwlth. 1996).

*Smoking*

School regulations which restricted student smoker's use of restrooms were not unconstitutional where they were not arbitrary, unreasonable or capricious. *Figueroa v. Thompson*, 1 Pa. D. & C.3d 266 (1975).

**Cross References**

This section cited in 22 Pa. Code § 711.61 (relating to suspension and expulsion).

**§ 12.7. Exclusion from classes—in-school suspension.**

(a) A student may not receive an in-school suspension unless the student has been informed of the reasons for the suspension and has been given an opportunity to respond before the suspension becomes effective.

(b) Communication to the parents or guardian shall follow the suspension action taken by the school.

(c) When the in-school suspension exceeds 10 consecutive school days, an informal hearing with the principal shall be offered to the student and the student's parent or guardian prior to the 11th school day in accordance with the procedures in § 12.8 (relating to hearings).

(d) The student's school entity has the responsibility to make provision for the student's education during the period of the in-school suspension.

**Authority**

The provisions of this § 12.7 amended under section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).



**Source**

The provisions of this § 12.7 readopted February 17, 1984, effective February 18, 1984, 14 Pa.B. 520; amended December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658. Immediately preceding text appears at serial page (286657).

**§ 12.8. Hearings.**

(a) *General.* Education is a statutory right, and students shall be afforded due process if they are to be excluded from school. In a case involving a possible expulsion, the student is entitled to a formal hearing.

(b) *Formal hearings.* A formal hearing is required in all expulsion actions. This hearing may be held before the governing board or an authorized committee of the board, or a qualified hearing examiner appointed by the board. When a committee of the board or a hearing examiner conducts the hearing, a majority vote of the entire governing board is required to expel a student. The following due process requirements shall be observed with regard to the formal hearing:

(1) Notification of the charges shall be sent to the student's parents or guardians by certified mail.

(2) At least 3 days' notice of the time and place of the hearing shall be given. A copy of the expulsion policy, notice that legal counsel may represent the student and hearing procedures shall be included with the hearing notice. A student may request the rescheduling of the hearing when the student demonstrates good cause for an extension.

(3) The hearing shall be held in private unless the student or parent requests a public hearing.

(4) The student may be represented by counsel, at the expense of the parents or guardians, and may have a parent or guardian attend the hearing.

(5) The student has the right to be presented with the names of witnesses against the student, and copies of the statements and affidavits of those witnesses.

(6) The student has the right to request that the witnesses appear in person and answer questions or be cross-examined.

(7) The student has the right to testify and present witnesses on his own behalf.

(8) A written or audio record shall be kept of the hearing. The student is entitled, at the student's expense, to a copy. A copy shall be provided at no cost to a student who is indigent.

(9) The proceeding shall be held within 15 school days of the notification of charges, unless mutually agreed to by both parties. A hearing may be delayed for any of the following reasons, in which case the hearing shall be held as soon as reasonably possible:

(i) Laboratory reports are needed from law enforcement agencies.

(ii) Evaluations or other court or administrative proceedings are pending due to a student invoking his rights under the Individuals With Disabilities Education Act (20 U.S.C.A. §§ 1400—1482).

(iii) In cases in juvenile or criminal court involving sexual assault or serious bodily injury, delay is necessary due to the condition or best interests of the victim.

(10) Notice of a right to appeal the results of the hearing shall be provided to the student with the expulsion decision.

(c) *Informal hearings.* The purpose of the informal hearing is to enable the student to meet with the appropriate school official to explain the circumstances surrounding the event for which the student is being suspended or to show why the student should not be suspended.

(1) The informal hearing is held to bring forth all relevant information regarding the event for which the student may be suspended and for students, their parents or guardians and school officials to discuss ways by which future offenses might be avoided.

(2) The following due process requirements shall be observed in regard to the informal hearing:

(i) Notification of the reasons for the suspension shall be given in writing to the parents or guardians and to the student.

(ii) Sufficient notice of the time and place of the informal hearing shall be given.

(iii) A student has the right to question any witnesses present at the hearing.

(iv) A student has the right to speak and produce witnesses on his own behalf.

(v) The school entity shall offer to hold the informal hearing within the first 5 days of the suspension.

#### Authority

The provisions of this § 12.8 amended under section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).

#### Source

The provisions of this § 12.8 amended through February 24, 1984, effective February 18, 1984, 14 Pa.B. 657; amended December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658. Immediately preceding text appears at serial pages (286657) to (286658) and (295325).

#### Notes of Decisions

##### *Appeal*

Decision of school district hearing officer to transfer student to alternative school for disruptive students following informal hearing after student was suspended was not appealable local agency adjudication. *Tyson v. School District of Philadelphia*, 900 A.2d 990, 992 (Pa. Cmwlth. 2006).

Since the discipline imposed was not expulsion, but rather more school, *that is*, 15 minutes of after-school detention for 3 days, there is no provision for appeal of that decision. *Schmader v. Warren County School District*, 808 A.2d 596 (Pa. Cmwlth. 2001); appeal denied 820 A.2d 163 (Pa. 2003).

A student subject to expulsion has the right to seek recourse in the appropriate court of the Commonwealth. *In re Appeal of JAD*, 782 A.2d 1069 (Pa. Cmwlth. 2001).

#### *Due Process*

Informal hearing process, following public school student's disciplinary suspension, was all process that was due to student; student was not expelled from school district and bringing the full process of judicial system within public school would overburden both the public school system and the courts. *Tyson v. School District of Philadelphia*, 900 A.2d 990, 992 (Pa. Cmwlth. 2006).

Where the school board conducted a hearing at which the District's witnesses testified, and the student was represented by counsel who was given full opportunity to cross-examine the District's witnesses, that proceeding provided sufficient discovery to satisfy the requirements of § 12.8(b)(1)(i)—(ix). *J.S. v. Bethlehem Area School District*, 794 A.2d 936 (Pa. Cmwlth. 2002); appeal denied 818 A.2d 506 (Pa. 2003).

Identical letters sent to a student and his parents, which provided that the recommendation for expulsion was related to two incidents and specifically enumerated the facts surrounding the underlying incidents, complied with due process requirements, where the letters specifically enumerated the charges the school board was considering against the student. *Hamilton v. Unionville-Chadds Ford School*, 714 A.2d 1012 (Pa. 1998).

Due process requirements must be observed in school hearings. Failure to notify the student of all charges pending against such student violates due process and a new hearing must be granted. *Yatron by Yatron v. Hamburg Area School District*, 631 A.2d 758 (Pa. Cmwlth. 1993); appeal denied 647 A.2d 906 (Pa. 1994).

#### *Notice*

Although parents were orally notified of hearing regarding son's suspension beyond 3 days, the additional 4 day suspension decided upon after the hearing was invalid because the school failed to give the parents written notice of the reasons for suspension, as required by subsection (c)(2)(i). *Mifflin County School District v. Stewart*, 503 A.2d 1012 (Pa. Cmwlth. 1986).

When the parent of a student received notice of a disciplinary hearing approximately 24 hours before the hearing was scheduled to commence, such notice was inadequate. *Minnicks v. McKeesport Area School District*, 74 Pa. D. & C.2d 744 (1975).

#### *Procedural Violations*

Where defendant school district summarily suspended plaintiffs for a period in excess of 3 days and failed to follow notice and hearing procedures, those portions of the suspension served before proper notice and hearing were expunged from plaintiffs' records. *Mullane v. Wyalusing Area School District*, 30 D. & C.4th 179 (1997).

#### **Cross References**

This section cited in 22 Pa. Code § 12.6 (relating to exclusions from school); and 22 Pa. Code § 12.7 (relating to exclusion from classes—in-school suspension).

### **§ 12.9. Freedom of expression.**

(a) The right of public school students to freedom of speech is guaranteed by the Constitution of the United States and the Constitution of the Commonwealth.

(b) Students shall have the right to express themselves unless the expression materially and substantially interferes with the educational process, threatens serious harm to the school or community, encourages unlawful activity or interferes with another individual's rights.

(c) Students may use publications, handbills, announcements, assemblies, group meetings, buttons, armbands and any other means of common communication, provided that the use of public school communications facilities shall be in accordance with the regulations of the authority in charge of those facilities.

(1) Students have the responsibility to obey laws governing libel and obscenity and to be aware of the full meaning of their expression.

(2) Students have the responsibility to be aware of the feelings and opinions of others and to give others a fair opportunity to express their views.

(d) Identification of the individual student or at least one responsible person in a student group may be required on posted or distributed materials.

(e) School officials may require students to submit for prior approval a copy of materials to be displayed, posted or distributed on school property.

(f) Bulletin boards must conform to the following:

(1) School authorities may restrict the use of certain bulletin boards.

(2) Bulletin board space should be provided for the use of students and student organizations.

(3) School officials may require that notices or other communications be officially dated before posting, and that the materials be removed after a prescribed reasonable time to assure full access to the bulletin boards.

(g) School newspapers and publications must conform to the following:

(1) Students have a right and are as free as editors of other newspapers to report the news and to editorialize within the provisions in paragraphs (4) and (5).

(2) School officials shall supervise student newspapers published with school equipment, remove obscene or libelous material and edit other material that would cause a substantial disruption or interference with school activities.

(3) School officials may not censor or restrict material simply because it is critical of the school or its administration.

(4) Prior approval procedures regarding copy for school newspapers must identify the individual to whom the material is to be submitted and establish a limitation on the time required to make a decision. If the prescribed time for approval elapses without a decision, the material shall be considered authorized for distribution.

(5) Students who are not members of the newspaper staff shall have access to its pages. Written criteria for submission of material by nonstaff members shall be developed and distributed to all students.

(h) The wearing of buttons, badges or armbands shall be permitted as another form of expression within the restrictions listed in subsection (c).

(i) School officials may set forth the time and place of distribution of materials so that distribution would not materially or substantially interfere with the requirements of appropriate discipline in the operation of the school.

(1) A proper time and place set for distribution is one that would give the students the opportunity to reach fellow students.

(2) The place of the activity may be restricted to permit the normal flow of traffic within the school and at exterior doors.

#### Authority

The provisions of this § 12.9 amended under section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).

#### Source

The provisions of this § 12.9 amended February 17, 1984, effective February 18, 1984, 14 Pa.B. 520; amended December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658. Immediately preceding text appears at serial pages (295325) to (295326), (289657) and (288181).

#### Notes of Decisions

##### *Clearly Established*

Because of the procedural scheme promulgated by the school district, it is not “clearly established” that the plaintiff had a First Amendment right to circulate a petition. *Walker-Serrano v. Leonard*, 168 F. Supp. 2d 332 (M.D. Pa. 2001); judgment affirmed 325 F.3d 912 (3rd Cir. Pa. 2003).

### § 12.10. Flag Salute and the Pledge of Allegiance.

It is the responsibility of every citizen to show proper respect for his country and its flag.

(1) Students may decline to recite the Pledge of Allegiance and may refrain from saluting the Flag on the basis of personal belief or religious convictions.

(2) Students who choose to refrain from such participation shall respect the rights and interests of classmates who do wish to participate.

#### Source

The provisions of this § 12.10 amended February 17, 1984, effective February 18, 1984, 14 Pa.B. 520. Immediately preceding text appears at serial page (17774).

### § 12.11. Hair and dress.

(a) 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.

(b) Students have the right to govern the length or style of their hair, including facial hair. Any limitation of this right must include evidence that length or style of hair causes disruption of the educational process or constitutes a health or safety hazard. When length or style of the hair presents a health or safety hazard, some types of covering shall be used.

(c) Students may be required to wear certain types of clothing while participating in physical education classes, shops, extracurricular activities or other situations when special attire may be required to insure the health or safety of the student.

(d) Students have the responsibility to keep themselves, their clothes and their hair clean. School officials may impose limitations on student participation in the regular instructional program when there is evidence that the lack of cleanliness constitutes a health hazard.

#### Authority

The provisions of this § 12.11 amended under section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).

#### Source

The provisions of this § 12.11 amended February 17, 1984, effective February 18, 1984, 14 Pa.B. 520; amended December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658. Immediately preceding text appears at serial page (288181).

### § 12.12. Confidential communications.

(a) Use of a student's confidential communications to school personnel in legal proceedings is governed by statutes and regulations appropriate to the proceeding. See, for example, 42 Pa.C.S. § 5945 (relating to confidential communications to school personnel).

(b) Information received in confidence from a student may be revealed to the student's parents or guardians, the principal or other appropriate authority when the health, welfare or safety of the student or other persons is clearly in jeopardy.

#### Authority

The provisions of this § 12.12 amended under section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).

#### Source

The provisions of this § 12.12 amended February 17, 1984, effective February 18, 1984, 14 Pa.B. 520; amended December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658. Immediately preceding text appears at serial pages (288181) to (288182).

#### Notes of Decisions

##### *Confidential Communication*

Conversations between an assistant principal and a student are not privileged and confidential under 22 Pa. Code § 12.12 (a) unless acting in the role of guidance counselor. *In re McClellan*, 475 A.2d 867 (Pa. Cmwlth. 1984).

**§ 12.13. [Reserved].****§ 12.14. Searches.**

(a) The governing board of every school entity shall adopt reasonable policies and procedures regarding student searches. The local education agency shall notify students and their parents or guardians of the policies and procedures regarding student searches.

(b) Illegal or prohibited materials seized during a student search may be used as evidence against the student in a school disciplinary proceeding.

(c) Prior to a locker search, students shall be notified and given an opportunity to be present. When school authorities have a reasonable suspicion that the locker contains materials that pose a threat to the health, welfare or safety of students in the school, student lockers may be searched without prior warning.

**Authority**

The provisions of this § 12.14 amended under section 2603-B of The Public School Code of 1949 (24 P. S. § 26-2603-B).

**Source**

The provisions of this § 12.14 amended February 17, 1984, effective February 18, 1984, 14 Pa.B. 520; amended December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658. Immediately preceding text appears at serial page (288182).

**§ 12.15. [Reserved].****Source**

The provisions of this § 12.15 reserved February 17, 1984, effective February 18, 1984, 14 Pa.B. 520. Immediately preceding text appears at serial pages (17776) to (17778) and (34873) to (34874).

**§ 12.16. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Corporal punishment*—A form of physical discipline that is intended to cause pain and fear and in which a student is spanked, paddled or hit on any part of the body with a hand or instrument.

*Governing board*—The board of school directors of a school district, joint school committee of a joint school or joint vocational school, intermediate unit board of directors, or the board of trustees of a charter school or cyber-charter school.

*Prekindergarten*—A program operated by a school district or by a community agency under contract from a school district that is open to children who are at least 3 years of age and completed prior to the school district's entry age for kindergarten, unless individual exceptions to the age requirements are made by the school district.

*School entity*—A local public education provider (for example—public school, charter school, cyber-charter school, area vocational-technical school or intermediate unit).

*Student assistance program*—A systematic process designed to assist school personnel to identify issues, including alcohol, drugs and others, which pose a barrier to a student’s learning and school success. Student assistance is a systematic process using effective and accountable professional techniques to mobilize school resources to remove the barriers to learning, and, when the problem is beyond the scope of the school, to assist the parent and the student with information so they may access services within the community.

*Student services*—Services designed by a school entity to support the instructional program and to help students attain their educational and career goals.

(i) Services may include school guidance counseling, health services (under Article XIV of the Public School Code of 1949 (24 P. S. §§ 14-1401—14-1423) and 28 Pa. Code Chapter 23 (relating to school health)), psychological services, social work and home and school visitor services.

(ii) School entities may supplement, but may not supplant, these services through school-based, school-linked, or coordinated services provided by locally available social and human services agencies.

#### **Authority**

The provisions of this § 12.16 issued under section 2603-B of The Public School Code of 1949 (24 P. S. § 26-2603-B).

#### **Source**

The provisions of this § 12.16 adopted December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658; amended December 15, 2006, effective December 16, 2006, 36 Pa.B. 7542. Immediately preceding text appears at serial pages (315963) to (315964).

## **STUDENT RECORDS**

### **§ 12.31. General requirements.**

(a) The governing board of every school entity shall adopt a plan for the collection, maintenance and dissemination of student records

(b) Copies of the adopted plan shall be maintained by the school entity and updated as required by changes in State or Federal law.

(c) Copies of the plan shall be submitted to the Department only upon request of the Secretary.

#### **Authority**

The provisions of this § 12.31 amended under section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).



**Source**

The provisions of this § 12.31 amended through February 17, 1984, effective February 18, 1984, 14 Pa.B. 520; amended December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658. Immediately preceding text appears at serial pages (288182) and (227273).

**Cross References**

This section cited in 22 Pa. Code § 339.32 (relating to services).

**§ 12.32. Elements of the plan.**

The plan for student records must conform with applicable State and Federal laws, regulations and directives identified in guidelines issued by the Department.

**Authority**

The provisions of this § 12.32 amended under section 2603-B of The Public School Code of 1949 (24 P.S. § 26-2603-B).

**Source**

The provisions of this § 12.32 amended through February 17, 1984, effective February 18, 1984, 14 Pa.B. 520; amended December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658. Immediately preceding text appears at serial page (227273).

**Cross References**

This section cited in 22 Pa. Code § 339.32 (relating to services).

**§ 12.33. [Reserved].****Source**

The provisions of this § 12.33 reserved December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658. Immediately preceding text appears at serial pages (227273) to (227282) and (256349).

**Notes of Decisions***Personal Files*

In that notes taken by the school district psychologist during interviews with fourth graders were not maintained for his use in counseling the pupils, the confidentiality concept of guideline # 2.4 does not defeat the parents' right of access to the notes as was agreed prior to the interviews. *Parents Against Abuse in Schools v. Williamsport Area School District*, 594 A.2d 796 (Pa. Cmwlth. 1991).

**Cross References**

This section cited in 22 Pa. Code § 51.72 (relating to student).

**SERVICES TO STUDENTS****§ 12.41. Student services.**

(a) Each school entity shall prepare a written plan for the implementation of a comprehensive and integrated K-12 program of the student services based on the needs of its students. The plan shall be prepared and revised in accordance

with the time frames and procedures described in § 4.13(c) (relating to strategic plans). Services offered by community agencies in public schools shall be coordinated by and under the general direction of the school entity. The plan must include policies and procedures for emergency care and administration of medication and treatment under The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§ 780-101—780-144) and guidelines issued by the Department of Health. The Department of Health guidelines are available from the Division of School Health, Department of Health, P.O. Box 90, Harrisburg, Pennsylvania 17108. A school district that operates a prekindergarten program shall address its prekindergarten program in the plan developed under § 4.13(c). A school entity shall make its student services plan available for public inspection and comment for a minimum of 28 days prior to approval of the plan by the school entity's governing board.

(b) Though the variety of student services offered will differ from school to school depending upon its size and the needs of its students, the following categories of services shall be provided by each school entity in planning its student services:

(1) Developmental services for students that address their developmental needs throughout their enrollment in school. Developmental services include guidance counseling, psychological services, health services, home and school visitor services and social work services that support students in addressing their academic, behavioral, health, personal and social development issues. When prekindergarten is offered, these services must include nutritional services or referrals. Nutritional services include:

- (i) Federal and State funded school meal programs.
- (ii) Special Supplemental Feeding Program for Women, Infants and Children (WIC).
- (iii) Food Stamp Program.
- (iv) Pennsylvania Fresh Foods Program.
- (v) Local food and nutrition services for children and families.

(2) Diagnostic, intervention and referral services for students who are experiencing problems attaining educational achievement appropriate to their learning potential.

(i) Student services staff use diagnostic services to identify barriers that limit a student's success in school. Intervention services actively engage student services staff in activities planned to reduce or eliminate specific barriers to student success.

(ii) Student services staff may arrange for referrals to other school-based or school-linked professionals or may refer parents and guardians to appropriate community-based services for assistance.

(3) Consultation and coordination services for students who are experiencing chronic problems that require multiple services by teams or specialists.

- (i) Consultation services are used by student services staff, in partnership with parents or guardians, to obtain assistance to address barriers and issues that are outside the scope of the student services professional.
  - (ii) Consultation and coordination services may be used to assist in the diagnosis, intervention or referral of students who face barriers to success.
  - (iii) Coordination services connect school resources with other available resources to assist students in meeting their educational objectives.
- (c) Student services must:
- (1) Be an integral part of the instructional program at all levels of the school system.
  - (2) Provide information to students and parents or guardians about educational opportunities of the school's instructional program and how to access these opportunities.
  - (3) Provide career information and assessments so that students and parents or guardians might become aware of the world of work and of a variety of career options available to individual students.
  - (4) Provide basic health services outlined in Article XIV of the Public School Code of 1949 (24 P.S. §§ 14-1401—14-1423) for students and information to parents or guardians about the health needs of their children.
- (d) When student assessments using individual surveys are administered, parents or guardians shall be informed of the nature and scope of the surveys and of their relationship to the educational program of their child, consistent with section 445 of the General Education Provisions Act (20 U.S.C.A. § 1232h) regarding protection of pupil rights. Parents or guardians, or the student if the student is 18 years of age or older, shall have the right to refuse to participate in the survey by means of procedures established by the school entity.
- (e) Persons delivering student services shall be specifically licensed or certified as required by statute or regulation.
- (f) The Department will provide guidelines and technical assistance to local education agencies in planning student services.

#### Authority

The provisions of this § 12.41 issued under section 2603-B of the Public School Code of 1949 (24 P.S. § 26-2603-B); amended under sections 2603-B and 2604-B of the Public School Code of 1949 (24 P.S. §§ 26-2603-B and 26-2604-B).

#### Source

The provisions of this § 12.41 adopted December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658; amended December 15, 2006, effective December 16, 2006, 36 Pa.B. 7542; amended July 15, 2016, effective July 16, 2016, 46 Pa.B. 3815. Immediately preceding text appears at serial pages (323759) to (323760) and (371249).

#### Cross References

This section cited in 22 Pa. Code § 4.13 (relating to strategic plans).

**§ 12.42. Student assistance program.**

School entities shall plan and provide for a student assistance program under section 1547(g) of the Public School Code of 1949 (24 P.S. § 15-1547(g) regarding alcohol, chemical and tobacco abuse program).

**Authority**

The provisions of this § 12.42 issued under section 2603-B of The Public School Code of 1949 (24 P.S. § 26-2603-B).

**Source**

The provisions of this § 12.42 adopted December 2, 2005, effective December 3, 2005, 35 Pa.B. 6510, 6658; amended December 15, 2006, effective December 16, 2006, 36 Pa.B. 7542. Immediately preceding text appears at serial page (315967).

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