Student Vandalism and Public Schools: The Scope of the Illinois Educators’ Directive to Discipline

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I. INTRODUCTION

Four days prior to the outset of summer vacation, a break in occurred at the Thomas middle school. Unnamed student suspects, upset at being excluded from the yearly field trip, pried two plexiglass windows off their frames to gain access inside the school. The students, ages eleven and thirteen, vandalized the entire building.

Upon entering the classroom, the vandals overturned desks, scattered textbooks, urinated on the floor, and ignited a roll of paper towels; an adjoining library was similarly wrecked. Continuing their siege, the culprits discharged dry-cell fire extinguishers in the hallway, smashed pint-sized milk cartons against the kitchen wall, and emptied two large boxes of vegetables on the floor. Damage to the institution totaled $300.

Members of the school board, still uncertain of their rights and responsibilities after consulting counsel, opposed any disciplinary measures against the students.¹

II. OVERVIEW

The situation is common. Across the country, officials answerable for secondary education are continually frustrated by pupils’ malicious destruction and theft of school property.² According to an annual Gallup Poll, lack of student discipline is consistently ranked the

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¹ The events portrayed occurred in Carbondale, Illinois in the Spring 1985. The facts surrounding the crime were taken from reports of the Carbondale Police Department. (available at the Northern Illinois University Law Review).

biggest problem confronting educators today. The statistics reflect vandalism's persistent presence.

While authorities disagree as to the exact cost vandalism aimed at public education imposes on taxpayers, all concur that the figure is colossal. Estimates have ranged from $200 to $600 million annually. The lower end, however, has been criticized as "grossly understated," as it fails to account for the price of increasing insurance rates and security. Broken down, a $500 million bill represents approximately $10 per student a year, or $55,000 per school district. This loss could finance for an entire year a school breakfast program designed to feed 133 children.

Among vandals favorite escapades are breaking windows and setting fires. Every month, students commit 2400 acts of arson in public institutions. A large district could buy a new school with the money it spends each year replacing windows. Some youth simply will not be outdone. Reports abound of their blowing apart toilets with cherry bombs, or leaving bunsen burners ignited in a laboratory and turning on the gas jets hoping that the room might eventually explode. Schools reportedly consume the vandalism dollar as follows: 1) fire damage—39.6 cents, 2) glass breakage—25.4 cents, 3) property destruction—19.6 cents, and 4) equipment theft—15.4 cents.


7. Id. at 7.

10. Flaherty, supra note 8, at 29.
12. Id.
Although Illinois does not compile data specifically related to the ruin of its schools, a report from the Office of Education suggests the problem in this State is no less than that in any other. Contrary to what one might expect, vandalism is not limited to the metropolitan area: "Property crime . . . is generally spread . . . evenly across the standard demographic categories of family socioeconomic background, race, sex and size of community."14

Much which is beyond the scope of this article has been written on the causes and cures of student vandalism. As the studies note, its effects clearly reach further than the dollars expended on destroyed and stolen property. Probably its most serious consequence is the disruption of the educational process. Consequently, school boards and administrators, especially at the secondary level, must exercise broad authority to punish wrongdoers and a fortiori preserve that system which is the linchpin of American society.

This article will focus on the ability of instructional policymakers and implementers to act decisively against student vandals, free from the fear that courts will second-guess their sound discretion. Since officials generally prefer suspension or expulsion for egregious conduct such as vandalism, leaving corporeal punishment to correct classroom misbehavior, the legal ramifications of the former options will be emphasized. Following a brief summary of school discipline’s development, the focus turns to a discussion of the federal constitutional standards by which all public educators are bound. Illinois lawmakers’ treatment of the relevant issues will then be considered.

14. Id. at 7. See also Goldman, Restitution for Damages to Public School Property, 11 J. L. & EDUC. 147-48 (1982); Final Report, supra note 4, at 34.
17. Suspension is generally a function of a school administrator and involves exclusion from school for a short period of time. Expulsion, on the other hand, is a function of the school board and concerns a much longer period. Lawmakers have not yet defined what exact time frames constitute either of the two measures. R. VACCA & H. HUDGINS, LIABILITY OF SCHOOL OFFICIALS AND ADMINISTRATORS FOR CIVIL RIGHTS TORTS § 4.5 (1982).
At that point, an analysis of the introductory scenario is in order. Lastly, the author includes an appendix setting forth a proposed regulation which may assist educators in drafting rules to confront student vandalism.

III. IN LOCO PARENTIS

Prior to free public education and compulsory attendance laws, instructors possessed virtually unlimited authority to discipline their pupils provided the punishment at least tenuously related to the well-being of the class. Such control arose from the concept of *in loco parentis*—the idea that the master acted as a parent in chastising the student. As Blackstone first stated in his Commentaries:

[The parent] may also delegate part of his parental authority . . . to the tutor or schoolmaster of his child; who is then *in loco parentis*, and has such a portion of the power of the parent committed to his charge, *viz*, that of restraint and correction, as may be necessary to answer the purposes for which he is employed.

In the United States, this precept was initially construed to mean that unless a teacher inflicted permanent physical injury upon the child motivated by malice, courts would presume his judgment correct. But eventually, judges realized the unfairness of this approach,
and began to review disciplinary matters under a reasonableness standard. They continued, however, to give the instructor much deference.

Although teachers commonly utilized the doctrine of *in loco parentis* as a defense to actions alleging their use of excessive corporeal punishment, some early decisions applied the principle to affirm school administrators’ determinations excluding students from the classroom. Still, these cases are anomalies. As it relates to discipline, the maxim that an educator stands in the shoes of a parent never had much luck expanding beyond the realm of a spanking.

This is not to say that courts ever granted school officials any less discretion in deciding the necessity for suspension or expulsion. In *McCormick v. Burt*, a student’s suit against school directors for damages arising from a purportedly improper suspension, the Illinois Supreme Court stated the general rule: “It is not enough to aver the action of such officers was erroneous, but it must be averred and

excess, some barbarity. In our schools in England many boys have been maimed, yet I never heard of an action against a schoolmaster on that account.

Boyd v. State, 88 Ala. 169, 173, 7 So. 268, 270 (1890) (quoting 2 Boswell, *Boswell’s Life of Johnson* 89-96 (1772)).


Because of the state courts’ construction of the *in loco parentis* doctrine, even today in Illinois a student must prove that a teacher acted in a wilful and wanton manner before civil liability will be imposed for an unjustified paddling. Holt v. Cross, 121 Ill. App. 3d 695, 696, 460 N.E.2d 8, 9 (5th Dist. 1983); Baikie v. Luther High School S., 51 Ill. App. 3d 131, 134, 320 N.E.2d 389, 392 (1st Dist. 1974). Whether a teacher’s corporeal punishment amounts to criminal battery, however, is tested by its reasonableness. People v. Ball, 58 Ill. 2d 36, 40, 317 N.E.2d 54, 57 (1974).


29. While some courts invoked the doctrine to uphold administrators’ searches of students under the fourth amendment, the Supreme Court of the United States repudiated that approach in New Jersey v. T.L.O., 469 U.S. 325 (1985), finding that such actions were governed by a reasonable suspicion standard. *Id.* at 332 n.2 & 341-43.

30. 95 Ill. 263 (1880).
proved that such action was taken in bad faith, either wantonly or maliciously.\textsuperscript{31}

Today, neither the \textit{in loco parentis} doctrine nor subjective good faith shields school boards and administrators from liability.\textsuperscript{32} While officials continue to wield substantial disciplinary authority over their students, the exercise of that power is legal in nature and thus ultimately subject to the United States Constitution.\textsuperscript{33}

IV. CONSTITUTIONAL LIMITATIONS

Over the past twenty years, courts have clarified substantially the constitutional minima with which public schools must comport in determining whether to exclude a student.\textsuperscript{34} Since the Supreme Court of the United States' 1969 declaration in \textit{Tinker v. Des Moines School District} that students do not shed their constitutional rights at the schoolhouse gate,\textsuperscript{35} federal forums have addressed a bevy of complaints alleging unlawful exclusion from the classroom.\textsuperscript{36} That pupils

32. See infra note 106.
34. As state officials, the overseers of public education are unquestionably subject to constitutional restraints. See e.g., Tarter v. Raybuck, 742 F.2d 977, 981 (6th Cir. 1984), cert. denied, 470 U.S. 1051 (1985).
35. 393 U.S. 503, 506, 511 (1969). In \textit{Tinker}, three students who wore black armbands to school in protest of the Vietnam conflict were suspended for violating a written policy against such activity. Characterizing the armbands as a form of symbolic speech protected by the first amendment, the Court held the prohibition could not be sustained where the record failed to show that the students' conduct might substantially disrupt school activities. \textit{Tinker} v. Des Moines School Dist., 393 U.S. 503, 509 (1969).

A discussion of how first amendment considerations might affect educators' judgment in disciplinary proceedings is outside the present subject matter's domain. See generally Annotation, \textit{First Amendment Rights of Free Speech and Press As Applied to Public Schools—Supreme Court Cases}, 73 L. Ed. 2d 1466 (1987). An argument that acts of vandalism constitute symbolic speech is indefensible. Actions which interfere with the maintenance of proper discipline in the operation of the school have never been accorded constitutional protection. See Bethel School Dist. v. Fraser, 478 U.S. 675, 685 (1986); \textit{Tinker}, 393 U.S. at 509, 513. Compare Hazelwood School Dist. v. Kuhlmeier, 108 S. Ct. 562, 569 (1988) (question of whether first amendment compels authorities to tolerate particular student speech as decided in \textit{Tinker} differs from question of whether Constitution requires them to condone content of school-sponsored publication).
36. These actions are uniformly brought by way of 42 U.S.C. § 1983 which, in effect, provides the remedy for a "constitutional tort" committed by a public
have both procedural and substantive guarantees is now well established.

A. PROCEDURAL DUE PROCESS

A few state courts, as early as the late 1800's, recognized as a matter of common law a school official's duty to provide a suspended child with a hearing. In 1887, a Pennsylvania county court ruled a public institution could not justify expelling a student without giving him a fair chance to rebut the accusations against him by confronting witnesses. But this was not the general rule in Illinois or elsewhere. Illinois decisions apparently required nothing more than the authorities' consideration of "some evidence" in connection with the incident. Not until the Fifth Circuit's 1961 ruling in Dixon v. Alabama State Board of Education did a federal court recognize the student's right to a hearing as constitutionally mandated.


37. E.g., Bishop v. Rowley, 165 Mass. 460, 462, 43 N.E. 191, 192 (1896). See also H. TRUSSLER, ESSENTIALS OF SCHOOL LAW 18 (1927) (all students should have common law right to a hearing).


39. See People ex rel. Bluett v. Board of Trustees, 10 Ill. App. 2d 207, 210-11, 134 N.E.2d 635, 637 (1st Dist. 1956) (student has no right to a hearing prior to expulsion from a public university); Smith v. Board of Educ., 182 Ill. App. 342, 346-47 (1913) (high school pupil accused of misconduct is not entitled to present evidence of innocence to school board).


42. 294 F.2d 150 (5th Cir.), cert. denied, 368 U.S. 930 (1961). See generally Annotation, Right of Student to Hearing on Charges Before Suspension or Expulsion From Educational Institution, 58 A.L.R.2d 903 (1958).

Children still have no right to be heard before the infliction of corporeal punishment. Ingraham v. Wright, 430 U.S. 651, 672-78 (1977), held that while corporeal punishment in public schools implicates constitutionally protected liberty interests, common law remedies are fully adequate to afford due process in view of
Dixon arose when black students of the Alabama State College were expelled without a hearing for engaging in civil rights demonstrations and protests. The students claimed they were arbitrarily deprived of their right to public education without due process of law, and the appellate court agreed. Due process required notice and some opportunity to be heard before the students of a state institution could be disciplined for misconduct.43

The Supreme Court subsequently left no doubt as to the necessity of procedural safeguards for a public school student facing suspension or expulsion when it decided Goss v. Lopez.44 Reasoning that state free public education and mandatory attendance laws created a legitimate claim of entitlement to secondary instruction, and hence a protectable property interest under the fourteenth amendment, Justice White for the majority believed the prerogative of educators to maintain order in the schools, while broad, was not unlimited: "At the very minimum . . . students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing."45

In considering a suspension of ten days, the Court held that nine students charged with various misdeeds within the Ohio public school system, one of which was the destruction of property,46 were at least entitled to oral notice of the complaint against them and, if they denied it, an explanation of the evidence and a chance to present their respective stories. While the process due could immediately follow the misconduct, the students could be removed prior to rudimentary hearing only if they exhibited a continuing imminent danger to the academic process. To prevent the diversion of educational resources, the Court stopped short of affording the accused the full scale protections of a criminal trial. It noted, however, that a longer competing educational concerns. See generally Annotation, Administration of Corporal Punishment in Public School System as Cruel and Unusual Punishment Under Eighth Amendment, 25 A.L.R. Fed. 431 (1975).


45. Goss v. Lopez, 419 U.S. 565, 579 (1975) (emphasis in original). While the Court also recognized a liberty interest based upon the students' right to a good reputation, its later holding in Paul v. Davis, 424 U.S. 693, 712 (1976) that reputation was not liberty within the meaning of the fourteenth amendment casts serious doubt on this earlier conclusion. See Paul, 424 U.S. at 730-31 n.15 (Brennan, J., dissenting).

46. Goss, 419 U.S. at 570.
suspension, or expulsion might require more formal procedures.47 Courts in defining the parameters of procedural due process after Dixon and Goss have uniformly asked what is fair and reasonable in view of the educational concerns unique to the school setting.48 They have recognized that school disciplinary proceedings must retain a degree of flexibility if the informality of the educational experience is to be preserved.49 Consistent with Goss, courts generally agree that the hearing may possess an aura not present in the courtroom.50 The rules of evidence do not apply and thus, hearsay is admissible.51 Moreover, no right to cross-examine or confront witnesses usually exists.52 Of course, the accused is guaranteed an impartial decision-maker, but even a hearing officer’s participation in a prosecutorial or testimonial capacity does not create bias per se.53 Proof of actual bias is required.54 Most cases also conclude that the student has no right to a Miranda warning,55 counsel,56 a list of witnesses,57 or a summary

47. Id. at 581-83.
52. E.g., Nash, 812 F.2d at 664; Boykins, 492 F.2d at 711-02; Winnick v. Manning, 460 F.2d 545, 549 (2d Cir. 1972); Newsome v. Batavia Local School Dist., 656 F. Supp. 147, 150 (S.D. Ohio 1986), rev'd on other grounds, 842 F.2d 920 (6th Cir. 1988).
55. E.g., Betts v. Board of Educ., 466 F.2d 629, 631 n.1 (7th Cir. 1972).
56. E.g., Henson v. Honor Comm., 719 F.2d 69, 74 (4th Cir. 1983); Gabrilowitz v. Newman, 582 F.2d 100, 104 (1st Cir. 1978); Linwood v. Board of Educ., 463 F.2d
of the testimony prior to hearing. The due process clause likewise does not require an opportunity to appeal.

As will be discussed, courts, absent a prejudicial procedural defect, will almost always sustain a decision to suspend or expel an unruly student if some evidence exists to support the school officials’ conclusion. Even if the student admits guilt, however, due process may still contemplate a hearing on the question of what discipline is warranted for the misconduct. In Betts v. Board of Education of Chicago, a high school sophomore confessed to sounding false fire alarms, and was forced to transfer. Although acknowledging her admission negated the need for any factual determination, the Seventh Circuit Court of Appeals nevertheless established that where a penalty “tantamount to expulsion” is involved, officials must give the pupil an opportunity to present a mitigative argument.

Determining the “process due” in every instance is not a simple task. The test of whether a student has received procedural due process is one of “fundamental fairness in the light of the total circumstances.” The Supreme Court per Justice Brandeis established long ago that “a hearing granted does not cease to be fair, merely because rules of evidence and of procedure applicable in judicial proceedings have not been strictly followed ... or because some evidence has been improperly rejected or received.” A transgression of procedural due process occurs only where the defects in the hearing result in substantial prejudice to the aggrieved party.


57. E.g., Keough v. Tate County Bd. of Educ., 748 F.2d 1077, 1081-82 (5th Cir. 1984); McClain v. Lafayette County Bd. of Educ., 673 F.2d 106, 110 (5th Cir. 1982); Linwood, 463 F.2d at 770; Nash v. Auburn Univ., 621 F. Supp. 948, 954 (M.D. Ala. 1985), aff’d, 812 F.2d 655 (11th Cir. 1987).

58. Keough, 748 F.2d at 1081-82; McClain, 673 F.2d at 110.


60. E.g., Smith v. Little Rock School Dist., 582 F. Supp. 159, 162 (E.D. Ark. 1984) (“if there is evidence to support the decision of a school board, it is improvident for the court to render a contrary judgment”).

61. 466 F.2d 629 (7th Cir. 1972).

62. Id. at 633. Accord Lamb v. Panhandle Community Unit School Dist., 826 F.2d 526, 528 (7th Cir. 1987); McClain v. LaFayette County Bd. of Educ., 673 F.2d 106, 110 (5th Cir. 1982).


65. Id. Accord Keough v. Tate County Bd. of Educ., 748 F.2d 1077, 1083 (5th Cir. 1984); Sykes v. Sweeney, 638 F. Supp. at 274, 279 (E.D. Mo. 1986).
Because the court must judge each case individually, the above generalizations regarding the desire for certain procedures in a disciplinary hearing may not always apply. The severity of the proposed sanction determines the validity of the process used. School boards and administrators would be wise to provide the suspect prompt written notice and ample time to prepare in every instance where expulsion is a possibility. Although they have no power to subpoena witnesses, officials should also allow free confrontation of those willing to testify. Some courts have recognized that a student facing expulsion should be allowed to confront those having knowledge of the relevant facts. Others have found a right of the accused to counsel.

Goss v. Lopez teaches that the desire for certain procedures must be balanced against the potential impediment to the educational atmosphere: “To impose in each such case even truncated trial-type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness.” Unluckily for educators, the concept of procedural due process simply does not lend itself to a fixed set of rules applicable to all controversies.

B. SUBSTANTIVE DUE PROCESS

Like its procedural counterpart, due process’ substantive component is equated with fairness. Dixon anticipated the application of this notion as well: “Turning then to the nature of the governmental


67. Dillon v. Pulaski County Special School Dist., 468 F. Supp. 54, 58 (E.D. Ark. 1978), aff’d, 594 F.2d 699 (8th Cir. 1979); Gonzales v. McEuen, 435 F. Supp. 460, 469 (C.D. Cal. 1977); Marin v. University of Puerto Rico, 377 F. Supp. 613, 623 (D.P.R. 1974). A few courts have also found in cases involving long-term suspensions that the suspect should receive a list of witnesses and a summary of their testimony prior to the hearing. See Keough, 748 F.2d at 1081.


69. Goss, 419 U.S. at 583.

power to expel the plaintiff, it must be conceded . . . that that power is not unlimited and cannot be arbitrarily exercised. Admittedly, there must be some reasonable and constitutional ground for expulsion or the courts would have a duty to require reinstatement."

Whether school officials' decision to suspend or expel a student will be considered arbitrary has come to depend principally upon two questions: 1) Did the accused have adequate notice that the misconduct might justify disciplinary sanctions? 2) Is the penalty so disproportionate to the offense as to bear no rational relationship to a legitimate end?

1. Fair Warning

The rule that individuals must be given some warning of improper behavior before they may be penalized for so acting is fundamental to due process. The reason is two-fold. First, a person of ordinary intelligence must be able to understand what conduct is forbidden so that he or she can freely decide whether to engage in certain activity. Second, laws which provide indefinite standards may foster arbitrary enforcement by public officials. A statute or regulation which forbids an act "in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." Courts will declare penal laws subject to many interpretations void for vagueness.

In *Whitfield v. Simpson,* a three-judge district court, convened under the former 28 U.S.C. § 2281 to consider enjoining application

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77. ILL. REV. STAT. ch. 122, para. 10-22.6(a) (1987). See also id. at para. 10-22.6(b) (empowering school board or its designated official to suspend students guilty of gross disobedience or misconduct). In accord with paragraph 10-22.6 is paragraph 34-19 of the School Code which allows the Chicago Board of Education to "expel, suspend or otherwise discipline any pupil found guilty of gross disobedience, misconduct or other violation of the by-laws, rules and regulations." See infra notes 109-17 and accompanying text.
of the statute, instead upheld a sixteen year old student’s expulsion for speaking improperly to teachers and leading song in school despite the board’s failure to pass any rule forbidding such activities. The majority opinion reasoned that the language of the statute was clear and definite of understanding, and therefore constitutional. If legislation had to expressly enumerate the many situations which its drafters might have had in mind when writing the bill, “it would nigh be impossible to pass any intelligent law.” A common sense interpretation of the statute was left in the first instance to the authorities charged with governing student conduct. Only if the law was unfairly applied would the court intervene.

Relying on the Seventh Circuit’s earlier decision in Soglin v. Kauffman, Circuit Judge Cummings dissented, arguing paragraph 10-22.6(a) failed to supply the clear and narrow standards required by due process. In Soglin, the court held that University of Wisconsin officials’ allegations of “misconduct” against students who openly protested the on-campus presence of recruiters from Dow Chemical could not pass constitutional muster. Because the university made no reference to any preexisting rule which supplied a fair guide for the accused, their actions could not serve as the basis for their expulsion. The disciplinary standard of “misconduct,” without more, fell for vagueness. Judge Cummings could not distinguish Soglin—something the majority had not attempted to do.

The Seventh Circuit subsequently adopted Judge Cummings’ view and rejected Whitfield in Linwood v. Board of Education of Peoria when, in order to sustain the statute’s validity, the court construed it as a grant of power to school officials enabling them to formulate specific standards of conduct. The board expelled Linwood after finding him responsible for striking other students at school. The high school’s student code expressly defined physical assault as behavior worthy of suspension or expulsion. The court held that paragraph 10-22.6 was not void as a vague proscription of student activity but was to be “implemented by appropriate rules adopted by the local school board.”

82. Id. at 896.
83. 418 F.2d 163 (7th Cir. 1969).
84. Whitfield, 312 F. Supp. at 897-98 (Cummings, J., dissenting).
86. 463 F.2d 763 (7th Cir.), cert. denied, 409 U.S. 1027 (1972).
board to reasonably define and interdict the acts or omissions which may be penalized by suspension or expulsion.\textsuperscript{87} The decision declined, however, to grant unruly students free reign of schools without written codes of conduct. A pupil committing an offense egregious by any standard has no standing to claim a lack of fair warning.\textsuperscript{88}

In view of \textit{Linwood}, school authorities are well advised to enact a body of clear and specific guidelines to govern student behavior. Given the authorities' need to impose sanctions for a wide range of unanticipated conduct disruptive of the educational process, school disciplinary rules certainly do not require the detail of criminal laws.\textsuperscript{89} But a code of student conduct, complete with a list of possible sanctions for its contravention, not only will prevent due process contests on the basis of inadequate warning, but also will assist functionaries in reaching a prompt decision on the merits of each case.

As \textit{Linwood} indicated, officials' hands are not tied for want of a written rule if the offense violates accepted standards of behavior and is truly gross. Courts do not wish to inhibit educators in facing a problem of discipline simply because there is no preexisting rule on the books.\textsuperscript{90} A judge would be hard pressed to accept vandals' assertions that they had insufficient notice of their crime's consequences. But school officials must remember to specifically inform students when conduct arguably warranting disciplinary measures will actually justify such penalties.\textsuperscript{91}

2. \textit{Rational Relationship}

Once school officials have ensured a suspect fair warning and appropriate procedures, the only viable constitutional issue remaining involves the suitability of the chosen punishment. In that regard, the Supreme Court of the United States in \textit{Wood v. Strickland}\textsuperscript{92} made clear the point. \textit{Wood} involved two high school students' challenge to their expulsion for violating a regulation prohibiting the possession of alcoholic beverages at school-sponsored activities. The United States Court of Appeals for the Eighth Circuit found that the plaintiffs had been denied substantive due process, since the decision to expel

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  \item \textsuperscript{87} Linwood \textit{v. Board of Educ. of Peoria}, 463 F.2d 763, 768 (7th Cir.), \textit{cert. denied}, 409 U.S. 1027 (1972).
  \item \textsuperscript{88} \textit{Id}.
  \item \textsuperscript{89} Bethel School Dist. \textit{v. Fraser}, 478 U.S. 675, 686 (1986).
  \item \textsuperscript{90} Richards \textit{v. Thurston}, 424 F.2d 1281, 1282 (1st Cir. 1970).
  \item \textsuperscript{91} HUDGINS & VACCA, \textit{supra} note 20, at 299.
  \item \textsuperscript{92} 420 U.S. 308 (1975).
\end{itemize}
them was based on insufficient evidence as well as an erroneous reading of the rule.\textsuperscript{93} The Supreme Court disagreed:

Given the fact that there was evidence supporting the charge against respondents, the contrary judgment of the Court of Appeals is improvident. It is not the role of federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion. Public high school students do have substantive and procedural rights while at school. But § 1983 does not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings or the proper construction of school regulations. The system of public education that has evolved in the Nation relies necessarily upon the discretion and judgment of school administrators and school board members, and § 1983 was not intended to be a vehicle for federal court corrections of errors in the exercise of that discretion which do not rise to the level of violations of specific constitutional guarantees.\textsuperscript{94}

Assuming therefore that educators will not act arbitrarily and impose punishment where literally no evidence exists to support guilt,\textsuperscript{95} or interpret their rules in a way with which no reasonable person could agree,\textsuperscript{96} courts will strike down a sanction only if it is not rationally related to the objective of providing an orderly and effective learning atmosphere.\textsuperscript{97}

Perhaps the leading case finding no rational relationship between a student’s offense and the selected punishment is \textit{Cook v. Edwards}.\textsuperscript{98}

\textsuperscript{94} Wood, 420 U.S. at 326 (emphasis in original).
\textsuperscript{95} McDonald v. Board of Trustees, 375 F. Supp. 95, 102-04 (N.D. Ill.), aff’d, 503 F.2d 105 (7th Cir. 1974) ("some evidence" must support school’s decision to discipline student).
\textsuperscript{96} Board of Educ. v. McCluskey, 458 U.S. 966, 970 (1982) (case may be hypothesized where school board’s interpretation of its rules is so extreme as to violate due process).
\textsuperscript{98} 341 F. Supp. 307 (D.N.H. 1972). \textit{See also} Lee v. Macon County Bd. of Educ., 490 F.2d 458, 460 & n.2 (5th Cir. 1974) (sentence of permanent expulsion from school remanded to board for determination of whether apparent disparity between penalty and offense was justified).
In *Cook*, District Judge Bownes, now sitting on the First Circuit Court of Appeals, held that the indefinite expulsion of a fifteen year old girl was unwarranted where she went to school intoxicated one time because of difficulties with her parents, and created no disturbance. The decision found that to exclude a student from the classroom without evidence of any threat to school discipline was fundamentally unfair.\(^9\)

Yet, lawsuits successfully advancing a lack of rational basis argument are rare. Absent extenuating circumstances, courts permit educational authorities to exercise wide discretion in passing judgment.\(^10\) One judge aptly stated: "For the Court to inject itself into the manner in which school administrators wish to discipline school children would constitute a significant intrusion by the Court into an area of primary educational responsibility."\(^11\)

Officials may even discipline a pupil for improper behavior occurring off school premises if a sufficient nexus exists between the misdeed and the pedagogical process.\(^12\) For instance, in *Caldwell v. Cannady*\(^13\) the district court sustained the expulsion of students for possessing marijuana off school grounds and after school hours. Although characterizing the scope of educators' authority to discipline as a "troublesome issue," the court reasoned that because student drug use might adversely affect the educational environment, a rule which forbid such activity was a reasonable exercise of the school board's discretion.\(^14\)

In determining whether authorities lawfully disciplined a student for misconduct, courts place primary emphasis upon the punishment's reasonableness in light of the general welfare and best interests of the school. The time and place of the occurrence are secondary considerations. Any misconduct which threatens the good order of the school may subject a student to exclusion from the classroom.\(^15\)

\(^9\) *Cook*, 341 F. Supp. at 311.

\(^{10}\) Epley, *supra* note 70, at 772.


\(^{12}\) *See generally* Annotation, *Right to Discipline Pupil for Conduct Away From School Grounds or Not Immediately Connected With School Activities*, 53 A.L.R.3d 1124 (1973).


\(^{14}\) *Id.* at 838.

\(^{15}\) See, e.g., Krasnow v. Virginia Polytechnic Inst., 551 F.2d 591 (4th Cir. 1977) (ban on use and possession of drugs off campus upheld as basis of disciplinary action); Pollnow v. Glennon, 594 F. Supp. 220 (S.D.N.Y. 1984), aff'd, 757 F.2d 496 (2d Cir. 1985) (student's suspension for assaulting non-student off school premises sustained).
School officials have a duty to protect the system's pupils and property from injury, and to see that public education is not jeopardized.\textsuperscript{106}

V. ILLINOIS LAW

Under the state constitution, the General Assembly has plenary authority, albeit implicit, to establish a system of student conduct in Illinois.\textsuperscript{107} The legislature, in turn, has deemed it appropriate to delegate that prerogative to those presumably better able to determine the specific needs of public education. The provisions of the Illinois School Code\textsuperscript{108} concerning discipline are broadly worded, granting school boards the power to promulgate specific rules and regulations for their districts. As a result, educators are necessarily given much discretion in enacting reasonable guidelines by which to maintain order in the schools.

The Code contains two provisions relating to the suspension and expulsion of public school pupils. As previously discussed, paragraph 10-22.6 permits authorities to exclude students guilty of "gross disobedience or misconduct."\textsuperscript{109} While only the board can expel an unruly

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\textsuperscript{106} At this point, it is proper to note that school officials sued individually for damages due to a student's purported constitutional deprivation may assert the affirmative defense of qualified immunity. This shield, designed to provide public officers freedom to perform their duties without the fear of harassing litigation and monetary liability, applies if the functionaries in disciplining a student did not violate "clearly established" constitutional rights:

\[ \text{Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful action generally turns on the "objective legal reasonableness" of the action, assessed in light of the legal rules that were "clearly established" at the time it was taken. . . .} \]

The contours of the [pupil's] right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.


Notwithstanding the (in)applicability of the immunity defense, the Illinois legislature has directed that school boards indemnify individual members and employees for legal damages arising from performance of their duties. ILL. REV. STAT. ch. 122, paras. 10-20.20, 34-18.1 (1987).

\textsuperscript{107} See ILL. CONST. art. X, § 1 ("[s]tate shall provide for an efficient system of high quality public educational institutions").

\textsuperscript{108} ILL. REV. STAT. ch. 122, paras. 1-1 to 36-1 (1987).

\textsuperscript{109} Id. at para. 10-22.6.
student, it may authorize the superintendent or principal by regulation to suspend a pupil for not more than ten days. Similarly, paragraph 34-19, which applies solely to school districts in excess of 500,000 residents, directs the Chicago Board of Education to establish rules providing for a "uniform system of discipline" and empowers it to expel or suspend a student for misdoings. Of course, the Seventh Circuit's decisions in Linwood and Soglin teach that all districts must publish written rules to govern student behavior if they wish to minimize the possibility of constitutional challenges to their disciplinary actions. Thus, the counterpart to paragraph 34-19's behest for express regulations applicable to downstate school districts is paragraph 10-20.5. It allows school boards "to adopt and enforce all necessary rules for the management and government of the public schools."

Any complete canon of student conduct must contain procedural as well as substantive precepts. Once authorities suspect that a student has engaged in "misconduct" as they have defined the term, the procedures employed to determine culpability become all too impor-

110. Id. at para. 10-22.6(a). Subsection (a) grants the school board the power "[t]o expel pupils guilty of gross disobedience or misconduct, and no action shall lie against them for such expulsion. . . ."
111. Id. at para. 10-22.6(b). Subsection (b) grants the school board the power "[t]o suspend or by regulation to authorize the superintendent of the district or the principal, assistant principal, or dean of students of any school to suspend pupils guilty of gross disobedience or misconduct. . . . and no action shall lie against them for such suspension. . . ."
112. Id. at para. 34-1 (Article 34 applies only to cities having a population exceeding 500,000).

In legislating Article 34, the General Assembly recognized the problems inherent in the supervision of an educational system composed of over 590 public schools. Because the complexities of the Chicago school district demanded a highly competent and independent board, the legislature concluded that its members should be governed by a separate set of laws. See Latham v. Bd. of Educ., 31 Ill. 2d 178, 184, 201 N.E.2d 111, 115 (1964) (upholding constitutionality of Chicago Board of Education).
113. ILL. REV. STAT. ch. 122, para. 34-19 (1987);
The board shall . . . establish by-laws, rules and regulations, which shall have the force of ordinances, for the proper maintenance of a uniform system of discipline for both employees and pupils, and for the entire management of the schools. . . . It may expel, suspend or otherwise discipline any pupil found guilty of gross disobedience, misconduct or other violation of the by-laws, rules and regulations. . . .
114. Linwood v. Board of Educ., 463 F.2d at 763.
115. Soglin v. Kaufmann, 418 F.2d at 163.
117. Id.
tant. Article 34 of the School Code\textsuperscript{118} leaves the chosen procedures entirely to the Chicago board's judgment. Under paragraph 10-22.6, however, a school board may expel a pupil "only after the parents have been requested to appear at a meeting of the board, or with a hearing officer appointed by it, to discuss their child's behavior."\textsuperscript{119} If a hearing officer is appointed, he or she is required to file a written summary with the board, which will then take the action it finds appropriate.\textsuperscript{120} The board must likewise promptly notify the parents of their child's suspension.\textsuperscript{121} Upon request, the board or its authorized agent will then review the sanction in the presence of the parents.\textsuperscript{122}

Noticeably absent from paragraph 10-22.6 is the requirement, enunciated in \textit{Goss},\textsuperscript{123} that prior to suspension a student is at least entitled to notice of the charges and some chance to respond. The statute also fails to ensure the individual threatened with expulsion any real opportunity to be heard. It does not demand that the accused be permitted to speak or refute the evidence. Because of these shortcomings, the law is subject to attack.\textsuperscript{124} Although no court has

\textsuperscript{118} \textit{Id.} at para. 34-1 to 34-128.
\textsuperscript{119} \textit{Id.} at para. 10-22.6(a).
\textsuperscript{120} \textit{Id.} Subsection (a) reads in relevant part:

\begin{quote}
Expulsion shall take place only after the parents have been requested to appear at a meeting of the board, or with a hearing officer appointed by it, to discuss their child's behavior. Such request shall be made by registered or certified mail and shall state the time, place and purpose of the meeting. The board, or a hearing officer appointed by it, at such meeting shall state the reasons for dismissal and the date on which the expulsion is to become effective. If a hearing officer is appointed by the board he shall report to the board a written summary of the evidence heard at the meeting and the board may take such action thereon as it finds appropriate.
\end{quote}

\textsuperscript{121} \textit{Ill. Rev. Stat.} ch. 122, para. 10-22.6(b) (1987).
\textsuperscript{122} \textit{Id.} Subsection (b) reads in relevant part:

\begin{quote}
Any suspension shall be reported immediately to the parents or guardian of such pupil along with a full statement of the reasons for such suspension and a notice of their right to a review, a copy of which shall be given to the school board. Upon request of the parents or guardian the school board or a hearing officer appointed by it shall review such action of the superintendent or principal, assistant principal, or dean of students. At such review the parents or guardian of the pupil may appear and discuss the suspension with the board or its hearing officer. If a hearing officer is appointed by the board he shall report to the board a written summary of the evidence heard at the meeting. After its hearing or upon receipt of the written report of its hearing officer, the board may take such action as it finds appropriate.
\end{quote}

\textsuperscript{123} 419 U.S. at 565.
\textsuperscript{124} \textit{See supra} notes 44-69 and accompanying text.
addressed its constitutionality, educators who afford students accused of wrongdoing only those measures set forth in paragraph 10-22.6 may find themselves involved in a lawsuit.

With the advent of the § 1983 civil rights action, state court suits challenging a public school suspension or expulsion as violative of the Illinois School Code are relatively uncommon. Rather, students today prefer to characterize their grievances in constitutional terms. Illinois is not precluded from affording students greater due process protections than required by the Federal Constitution, but it has yet to do so. And until it does, federal courts within the State will most likely continue to entertain the majority of lawsuits questioning school authority. Since Goss, Illinois forums have reported no cases discussing the procedural aspect of a pupil’s constitutional guarantees. In the zone of substantive rights, however, the applicable law is settled.

Regardless of whether a plaintiff expressly rests his objection upon the substantive assurances of due process, contemporary Illinois courts have uniformly held that school authorities’ determinations to exclude a disruptive student shall be disturbed only if “arbitrary, unreasonable, capricious or oppressive.” That no public official’s

125. In Davis v. Thompson, 79 Ill. App. 3d 613, 399 N.E.2d 195 (5th Dist. 1979), plaintiff challenged the constitutionality of paragraph 10-22.6, but the court declined to reach the issue. Because the complaint failed to allege the facts which precipitated the punishment, it failed to state a cause of action. Id. at 616, 399 N.E.2d at 197-98.


128. Wilson v. Collinsville Community Unit School Dist., 116 Ill. App. 3d 557, 562, 451 N.E.2d 939, 942 (5th Dist. 1983). Accord Clements v. Board of Educ., 133 Ill. App. 3d 531, 533, 478 N.E.2d 1209, 1211 (4th Dist. 1985) (where student contended public school officials subjected her to improper treatment, but no deprivation of constitutional rights was alleged, standard to determine propriety of punishment was whether it was arbitrary or capricious); Myre v. Board of Educ., 108 Ill. App. 3d 440, 452, 439 N.E.2d 74, 82 (3d Dist. 1982) (Alloy, J., dissenting) (test for reviewing alleged substantive due process violation resulting from in-school suspension is whether action of the board is arbitrary and capricious in that a rational
decision has been overturned in Illinois on that account is not surprising given the law's history of deferring to educators' sound judgment. The court reiterated the view of American jurisprudence in *Donaldson v. Danville Board of Education*, a decision upholding plaintiff's three-day suspension for fighting in school:

School discipline is an area which courts enter with great hesitation and reluctance—and rightly so. School officials are trained and paid to determine what form of punishment best addresses a particular student's transgression. They are in a far better position than is a black-robed judge to decide what to do with a disobedient child at school. . . . Because of their expertise and their closeness to the situation—and because we do not want them to fear court challenges to their every act—school officials are given wide discretion in their disciplinary actions.

VI. STUDENT VANDALS

Considering courts' unwillingness to place their judgment ahead of educators who are privy to the situation, the most disturbing aspect of disciplining student vandals appears to be catching them. Because most acts of vandalism occur after school or on the weekends, few reported cases address the problem. Those decisions discussing the offense, however, leave no doubt that excluding the culprits from the classroom promotes the school district's legitimate interest in preserving the system.

An example is the Mississippi Supreme Court's recent opinion in *Clinton Municipal Separate School District v. Byrd*. In that case, two students caught painting on a high school wall were suspended for a semester pursuant to a written policy of the board. Plaintiffs thereafter instituted a suit challenging the propriety of the chosen punishment. Reasoning that the power to determine the matter had
been committed by law to the school authorities, the court upheld the sanction despite disagreeing with what it perceived as a harsh decision:\textsuperscript{134} ""The rule at issue here and the punishment . . . fairly viewed further substantial legitimate interests of the school district. . . . What the board has done . . . violates no rule of law which has been called to our attention, nor any right secured to these girls by any such rule."\textsuperscript{135}

Some state legislatures have recognized the adverse consequences of vandalism on public education and have enacted laws specifically permitting the suspension or expulsion of pupils responsible for destroying school property regardless of when the misconduct occurs.\textsuperscript{136} In New Jersey, for example, statutory law dictates that ""[a]ny pupil . . . who shall cut, deface or otherwise injure any school property, shall be liable to punishment and to suspension or expulsion from school."\textsuperscript{137} Interpreting a similar version of the statute,\textsuperscript{138} the New Jersey Superior Court in \textit{Board of Education v. Hansen} stated that ""[t]he Legislature has authority to impose restrictions on those seeking to attend public schools and can suspend or expel for events happening outside of school hours."\textsuperscript{139}

The New Jersey legislature has acknowledged that damage to school property caused by the wilful misdeeds of students substantially interferes with the general welfare and best interests of the school and its operation. While the Illinois General Assembly has placed much more discretion with educational authorities regarding student discipline for destructive acts, no meaningful distinction can be drawn between a legislature promulgating specific rules and a legislature giving the school board the power to do so.

Assuming some evidence was present in addition to their exclusion from the field trip to implicate the students portrayed in the opening paragraphs, school officials could have properly suspended them for a short period after a hearing consistent with \textit{Goss} and its progeny. Although only four days remained before the close of the term, and the suspects might have missed final exams, the Seventh Circuit in

\textsuperscript{135} Id. at 241-42.
\textsuperscript{136} E.g., \textit{IND. CODE ANN.} § 20-8.1-5-4(b)(1)(C), (c) (Burns Supp. 1988); \textit{KY. REV. STAT. ANN.} § 158.150(1)(a), (b) (Baldwin 1987); \textit{MISS. CODE ANN.} § 37-11-19 (1972); \textit{MONT. CODE ANN.} § 20-5-201(2) (1987); \textit{S.D. CODIFIED LAWS ANN.} § 13-32-5 (1982).
Lamb v. Panhandle Community Unit School District\(^{140}\) recently ruled that such a sanction, while lacking compassion, does not alone raise problems of constitutional proportions.

In *Lamb*, the principal suspended the plaintiff, a senior in high school, for the final three days of the school year after the student admitted drinking whiskey on a class outing. Consequently, Lamb missed final exams and was unable to graduate due to failing grades. Affirming the dismissal of the complaint, the court of appeals agreed with the district court that "a different disposition . . . might have been worked out because of the timing."\(^{141}\) Nonetheless, the court realized the question was not whether it agreed with the principal's decision, but only whether he had abused his discretion in so acting. The court felt he had not.

A more difficult question concerns the legality of a suspension or expulsion to begin at the onset of the fall semester. The Office of the Illinois Attorney General believes a school board may not expel a student for more than the remaining academic year.\(^{142}\) Its position, however, relies solely on dicta from an 1889 decision of the Illinois Appellate Court. In *Board of Education v. Helston*,\(^{143}\) a fourteen year old boy was indefinitely suspended from school in November for refusing to give authorities the name of another pupil who apparently wrote obscenities on the schoolhouse. The trial judge ordered the child reinstated and adjudged costs against the board. On appeal, the Third District reversed only the award of costs. Because the school year in which the plaintiff was suspended had ended, the court presumed he was no longer "debarred of school privileges."\(^{144}\) Therefore, the question of his reinstatement was moot.

Perhaps where a student has already served a lengthy expulsion, as did Helston, extending the punishment into the fall term would be deemed arbitrary. The severity of the sanction must be commensurate

\(^{140}\) 826 F.2d 526 (7th Cir. 1987).

\(^{141}\) Lamb v. Panhandle Community Unit School Dist., 826 F.2d 526, 530 (7th Cir. 1987).


\(^{143}\) 32 Ill. App. 300 (3d Dist. 1889).

\(^{144}\) Board of Educ. v. Helston, 32 Ill. App. 300, 304 (3d Dist. 1889). The court reasoned:

It appears from the record that the relator was suspended from the school November 9, 1888, until he would comply with the requirements of the board. This suspension would not be construed to continue beyond the school year then current, and as that year has now expired the relator presumably is not now debarred of school privileges. The only point having legal significance remaining in the record is as to the costs in the court below which were adjudged against the board.

*Id.*
with the extent of the damage. But the Attorney General’s opinion does not account for the situation where the misconduct occurs immediately prior to or during summer vacation. No court has decided the due process ramifications of that issue, and the few commentators who have mentioned the problem disagree.\footnote{145}

Vandalism threatens to impede the educational process at all times. School authorities have a responsibility not only to deter potential offenders, but also to preserve the facilities which are so germane to a quality education.\footnote{146} While courts must ensure that officials afford student vandals procedural and substantive guarantees, they cannot reasonably force educators to withhold punishment until the school is destroyed. Must authorities wait until vandals burn down the schoolhouse during summer vacation to safely conclude that the educational process has been disrupted and that the perpetrators may be excluded from the classroom? Surely not.

\section*{VII. Conclusion}

The education of our nation’s youth is not the responsibility of judges, but of parents, teachers and school officials. When properly informed of student’s rights, Illinois educators may fulfill their duty to maintain good order in the schools confident that their actions comply with the Constitution and will not be disturbed by the courts. The prompt correction of student vandals is necessary to discourage further misrule. There is no place for hesitancy in confronting a problem which costs taxpayers hundreds of millions of dollars each year. The words of a nineteenth century Illinois Appellate Court ring true today: “It need not be argued that the defacement of a public school building . . . is an intolerable offense and that the most radical measures should be resorted to, if necessary, to prevent a repetition of it.”\footnote{147}

\footnotetext{145. Compare Voorhees, \textit{supra} note 25, at 200 (authorities have no jurisdiction to expel pupils after the school year’s end) with W. Gaukerke, \textit{What Educators Should Know About School Law} 51 (1968) (authorities may govern student conduct during summer vacation).}

\footnotetext{146. See Rulison v. Post, 79 Ill. 567, 571 (1875) (twin aims of suspension and expulsion are punishment of the child and preservation of order).}

\footnotetext{147. Board of Educ. v. Helston, 32 Ill. App. 300, 305 (3d Dist. 1889).}
APPENDIX

The proposed regulation attempts to incorporate the constitutional and statutory principles of which Illinois educators should be aware prior to disciplining student vandals.

PROPOSAL

Whereas students' intentional destruction and theft of school property jeopardize the academic process, the board of education, vested with the duty to preserve the facilities and good order necessary to achieve educational objectives, hereby promulgates the following guidelines, consistent with pupils' constitutional and statutory rights, to assist in confronting student vandalism:

Any student who wilfully defaces, destroys, or steals school property, or assists another in so doing, regardless of the timing of the offense, is subject to suspension and/or expulsion from school. The board of education, superintendent, principal, or assistant principal may suspend a student found guilty of such offense for a period not to exceed ten (10) days, consistent with the procedures outlined in part (A) below. Only the board of education may expel a student found guilty of such offense, consistent with the procedures outlined in part (B) below. No expulsion shall extend beyond the remainder of the academic year; provided that, if the offense occurs during summer break, the expulsion may extend through the next academic year.

(A) Prior to suspending a student for a violation of this rule, the appropriate authority, enumerated above, must orally notify the accused of the charges against him/her, and explain the evidence in support thereof. The student, at that time, must be afforded an opportunity to deny the charges, proffer his/her version of the facts, and discuss the penalty warranted for the offense. Consistent with the evidence, the authority must then absolve or suspend the student. The length (not to exceed ten days) and nature (in- or out-of-school) of any suspension is within the sound discretion of the suspending officer.

Any suspension must be reported immediately to the parents or guardian of the student, along with a statement of the basis for the discipline and a notice of a right to review. Upon prompt request of the parents or guardian, the school board will meet to review and consider the action of the suspending officer. At that time, the parents or guardian may appear before and discuss the suspension with the
board of education, which shall then take the action it deems appropriate.*

This right of review shall not stay the decision of the suspending officer.

(B) Prior to expelling a student for a violation of this rule, the board of education must notify the accused, and his/her parents or guardian, by certified mail of the charges, and briefly describe the evidence in support thereof. Such notice must inform the student, and his/her parents or guardian, of the right to appear at a meeting of the board, set for a date not less than six (6) days after mailing, to contest the charges, proffer the student’s version of the facts, and discuss the penalty warranted for the offense. At the meeting, the student shall have the right to be accompanied by retained counsel, to present witnesses in his/her favor, and to confront those having knowledge of the relevant facts. Consistent with the evidence, the board of education must then absolve or expel the student. The length (not to exceed the remainder of the academic year) of any expulsion is within the sound discretion of the board.

Nothing in this rule shall prohibit the board of education from affording students greater substantive and procedural protections than provided herein.

* As noted in the text, due process does not require that a student be provided an opportunity to appeal a suspension. See supra text accompanying note 59. A student does have a right, however, to appeal a suspension under Illinois law. See supra notes 121-22 and accompanying text.