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## Student Misconduct and Zero-Tolerance Policies in Schools

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### Case Digest Summary

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This past October, an African-American student at Spring Valley High School in Columbia, South Carolina, suffered injuries to her arm, neck and back after a white school resource officer flipped the girl out of her chair, dragged her across the classroom floor, and handcuffed her. The encounter apparently started when the sophomore refused to stop using her cellphone and ignored requests by school staff to leave the classroom. The incident was captured on a classmate's cellphone and went viral (<http://goo.gl/enYflk>). In addition to her injuries, both the student and the classmate who filmed the incident were charged under South Carolina's "disturbing schools" law—a misdemeanor criminal charge punishable by up to 90 days in jail and a \$1,000 fine. That statute makes it unlawful "to interfere with or to disturb in any way . . . the students or teachers of any school" or "to act in an obnoxious manner" on school premises. That it is acceptable to arrest teenagers for acting in an "obnoxious" manner is indicative of the fairly unfettered discretion that school officials have to . . . punish student misconduct.

In light of Columbine, Sandy Hook and other lesser-known instances of school violence, officials need to be vigilant about student misbehavior. But excessive responses by school officials can also harm children. Indeed, the arrest of the South Carolina student in the above scenario exemplifies some of the extreme discipline taken by school officials today. According to a study by the Vera Institute of Justice, by 1997, 79 percent of officials had adopted so-called "zero-tolerance policies" in schools. Today, many school districts have made their disciplinary policies more punitive by expanding the list of punishable offenses, hiring school police officers to monitor schools, limiting discretion in discipline, and permitting staff responses that include physical restraint, expulsion and referral to law enforcement.

As special-education attorneys, we witness discipline disproportionately applied to one specific subgroup of students with particular frequency—children with disabilities. According to the U.S. Department of Education, students with special-education needs are twice as likely to receive an out-of-school suspension (13 percent) than students without disabilities (6 percent). Although they comprise 12 percent of the national student body, they represent 25 percent of students arrested or referred to law enforcement, 58 percent of those placed in seclusion or involuntary confinement, and 75 percent of those physically . . . restrained. In Pennsylvania, the statistics are nearly identical.

Although zero-tolerance policies typically compel uniform discipline, these practices can conflict with federal and state laws that mandate individualized educational response plans for children who qualify for special-education services. For example, under the Individuals with Disabilities Education Act (IDEA), when a child's behavior impedes his or her learning, the school must consider a range of positive interventions that could include a functional behavioral assessment (FBA) and a positive behavioral intervention plan (BIP). FBAs seek to understand the function of a student's problem behavior and the factors that trigger that behavior. A BIP is intended to reduce or eliminate targeted behavior by, at a minimum, setting well-defined goals around behavior, teaching replacement behaviors that serve similar functions as the target behavior, providing incentive systems, and modifying conditions that trigger misconduct.

The IDEA also provides for certain procedural protections when a school seeks to suspend a student for more than 10 days. In practice, schools sometimes exploit this rule by removing students with disabilities for no more than 10 days to avoid IDEA obligations, which could include an individual education plan meeting, a BIP and an FBA. Furthermore, according to the Vera Institute of Justice, rather than reducing the likelihood of disruption, school suspensions and expulsions double the risk that a student will repeat a grade, which itself is a strong

predictor of dropping out. Studies have shown that students who are retained a grade are 68 percent more likely to leave school before graduation. At least one study has correlated suspension or expulsion for a discretionary offense that did not include a weapon with a three-fold increase in a student's likelihood of becoming involved in the juvenile justice system in the following academic year. Additionally, the rates of suspension and expulsion, physical restraint, and referral to law enforcement for students with disabilities suggest that schools are failing to adequately program for students either through appropriate individualized education plans, adequate FBAs, or the development of appropriate BIPs.

While there has been a steady push since the '90s toward "zero-tolerance," disciplinary policies that rely on harsher punishments do not appear to decrease misbehavior. Instead, these policies contribute to the creation of a school-to-prison pipeline. According to the National Council on Disability, 85 percent of youth in juvenile detention facilities would qualify for special-education services, yet only 37 percent of them receive such services in school. Then, following their time in a juvenile detention facility where they typically receive inadequate special-educational services, students often find it difficult to re-enter traditional schools for a number of reasons, including the fact that these students have fallen further behind their peers.

As the late Sen. Edward Kennedy stated upon the reauthorization of the IDEA in 1997:

"Discipline should never be used as an excuse to exclude or segregate children with disabilities because of the failure to design behavioral management plans, or the failure to provide support services and staff training. It is critical that schools use the new discretion with utmost care. Research tells us that suspension and expulsion are ineffective in changing the behavior of students in special education. When students with disabilities are suspended or expelled and their education is disrupted, they are likely to fall farther behind, become more frustrated, and drop out of school altogether."

These words ring as true now as they did almost 20 years ago. With an unacceptable level of violence pervading our schools, officials need to be ever-mindful of Kennedy's admonition as they seek to balance the needs for measured order with their responsibility to nurture the unique potential of each child they educate—especially for those children whose disabilities cause them to act out on school campuses. •

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