

For your review, the following is a list for your basic understanding and practice in public school suspension appeals.

DUE PROCESS

(Supreme Court case)

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

Cannot be deprived of right to attend public school without due process of law in short term suspension appeals in public school.

- Basic principles:
1. Notice
 2. Opportunity to be heard

(NC Federal District Court case)

Givens v. Poe, 346 F.Supp. 202 (1972)

Procedural Safeguards for long term suspensions

You have a right to:

1. Notice
2. Full hearing (after adequate notice)
3. Impartial tribunal
4. Examine exhibits and other evidence
5. Be represented by counsel
6. Confront and examine adverse witnesses
7. Present evidence on behalf of student
8. Make recording of proceeding
9. Have facts and law judged on a standard of substantial evidence

(NC Supreme Court case)

Leandro v. State, 346 N.C. 336 (1997) and Hoke County v. State, 358 N.C.605 (2004).

All children in NC –have a fundamental state constitutional right to the “equal opportunity to receive a sound basic education”.

(NC Appeals cases)

In Re Roberts, 150 NC App. 86 (2003)

Right to be represented by counsel (but not at public expense) in an evidentiary appeal hearing of a long term suspension from North Carolina public schools.

State v. Davis, 126 NC App 415 (1997)

G.S. § 115C-391 (emphasis added).

As evidenced by the statute, the primary goal of suspension and expulsion is the protection of the student body. Furthermore, the statute clearly states that when a child ceases to be a threat to the safety of other students, the board should readmit the student. G.S. § 115C-391(d). This section alone evidences the legislature's intent that school suspension and expulsion be primarily used as tools to ensure student safety. Any punishment that a particular child suffers is merely incidental to the purpose of protecting the school community as a whole.

In Re Jackson, 84 NC App. 167 (1987)

“A student's right to an education may be constitutionally denied when outweighed by the school's interest in protecting other students, teachers, and school property, and in preventing the disruption of the educational system. As a general rule, a student may be constitutionally suspended or expelled for misconduct whenever the conduct is of a type the school may legitimately prohibit, and procedural due process is provided. Reasonable regulations punishable by suspension do not deny the right to an education but rather deny the right to engage in the prohibited behavior.”

SEARCH AND SEIZURE

(Supreme Court case)

New Jersey v. T.L.O., 469 U.S. 325 (1985)

The Supreme Court determined that a search of a student’s purse, conducted by a school official, and with some level of suspicion that the purse contained contraband, did not require that level of suspicion be probable cause.

(4th Circuit case)

Woffard v. Evans, 390 F.3d 318(2004)

School officials must have leeway to maintain order on school premises and secure a safe environment in which learning can flourish . . . Imposing a rigid duty of parental notification or a per se rule against detentions of a specified duration would eviscerate the ability of administrators to meet the remedial exigencies of the moment. (ref. to T.L.O.)

(NC Appeals cases)

In re D. D., 146 NC App. 309 (2001)

The *T.L.O.* standard governs searches conducted by resource officers working “ ‘ in conjunction with’ school officials,” where these officers are primarily responsible to the school district rather than the local police department.

In the matter of: J.F.M. and T.J.B., 607 S.E.2d 304 (2005)

“In light of the underlying rationale for the extension of *T.L.O.*’s standard for temporary detainment of a pupil as found in *Woffard*, and its extension to searches by resource officers working in conjunction with school officials as found in *In re D.D.*, we hereby find applicable the *T.L.O.* standard to incidents where a resource officer, acting in conjunction with a school official, detains a student on school premises.”

Practicality demands that a school administrator must be able to rely on some autonomy by a resource officer in conducting an investigation on school premises, and we believe this necessarily includes an officer’s ability to detain a student outside the presence of an administrator for the purpose of presenting them to an administrator.

