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BACKGROUND PAPER FOR POLICY IMPLEMENTATION WORKSHOP ON STUDENT SUSPENSIONS & EXPULSIONS AT AMERICAN CIVIL LIBERTIES UNION BIENNIAL CONFERENCE, JUNE 8-11, 1972, UNIVERSITY OF COLORADO, BOULDER, COLORADO.

In July, 1969, sixty of the nation's school superintendents (largely from urban areas) held a three-day work conference on "Student Unrest in the High Schools." Among their conclusions were: [1]

-- "Students resort to confrontation only after they have experienced repeated rebuffs at the hands of administrators. In other words, they have no alternative but to revolt."

-- "The schools are impervious to change, excepting change that is inconsequential."

-- "The schools are structures of authority in which reliance is placed on suspensions, expulsions, and other forms of discipline, in order to mold the individual to fit into the system."

In light of the above, the following samplings of dropout and suspension statistics are instructive.

New York City: The Citizens Committee for Children reported in 1970 that only 60% of the students originally admitted to the class of 1968 in the city's public high schools actually made it through to graduation.[2] A 1971 report by the New York Civil Liberties Union revealed that, according to the Board of Education's statistics, a total of approximately 14,000 official suspensions took place during the 1969-70 school year. Moreover, every one of 115 suspensions which the NYCLU was able to investigate involved either a substantive or procedural violation of the Board of Education's and the state's own laws on suspension.[3]

Dayton: The yearly suspension rate is reported as approximately 3,500. A "Dropout Profile" book, compiled by the Dayton Board of Education, shows that 1,380 students dropped out of the city's high schools during the 1969-70 school year.

Dallas: 12,00 student suspensions have already occured this year, according to the Dallas Times Herald. Two suspension cases involving conflicting lower court decisions on due process rights are being appealed to the U.S. Court of Appeals for the Fifth Circuit.

Alabama: In Jefferson, Mobile, and Montgomery Counties, student suspensions average 1200-1500 a day.

California: A recently released report by the U.S. Civil Rights Commission estimated that if present school dropout rates continue, 130,000 Chicano students in grades one through six will not complete a high school education; and the corresponding figure for blacks would be 60,000 dropouts out of an elementary school enrollment of 190,000 students.

On a regional basis, a survey by the Teachers Rights Division of the National Education Association Council on Human Relations found that by mid-February of this year, 2,720 student expulsions and suspensions had already taken place in

southern desegregated schools in at least eight states.* The New York Times recently reported that approximately 800,000 teen-agers deop out of school each year in the United States.

Many informed observers maintain that a large number of so-called "dropouts" are, in fact, "pushouts." NYCLU Executive Director Ira Glasser has described them as "kids the school district wants to get rid of as quickly as possible." He contends that "frequently these students are not officially dismissed but are simply told to go home until they hear from the school. They never do." In other reported instances, students who have been suspended one or more times within the same month or the same semester and who have fallen behind in class work because of the loss of school hours, are encouraged to leave when they reach the minimum age requirement. Principals have sometimes been known to circumvent the law by recurrent use of the 5 day suspension (or 10 day, depending on the particular law) which aviods the hearing requirement but serves to keep unwanted students out of school until they do, indeed, "drop out." **

The preponderance of suspensions of black and other minority group students has raised the charge that racial considerations are involved. Reports on the situation in the south cite testimony that students in segregated schools who assert themselves are often labeled "wrong students" and are simply told "to get out and never come back." In Dallas, where questions have been raised about the increasing number of suspensions of black students, school officials have refused a school board trustee's request for statistics on suspensions by ethnic breakdown.

Commenting on the relationship between suspensions and dropouts, Dan Geringer, a writer on school affairs, has observed: "Suspension is the first step in a clearly documented pattern. Several suspensions add up to expulsion from school, or dropping out. Expulsion or dropping out ends up as juvenile court referral. Juvenile court referral ends up as jail."[4]

The rising incidence of so serious an action as student suspensions and expulsions raises many questions for civil libertarians. A primary concern is to assure that suspended students are accorded a due process hearing, going to court where necessary to establish this right. But beyond that, the hearings provide a unique opportunity to gain insight into what is going on in the schools vis-a-vis the testimony of administrators. Where large numbers of students at a particular school are engaging in rebellious behavior, the question must be asked, "why?" And further, what can the ACLU do to alleviate the conditions within the schools that are creating these crisis situations?

This workshop will explore ways of dealing with these problems, As background for the discussion, this paper will briefly summarize the current status of the law on procedural due process and describe some of the techniques and strategies employed by ACLU affiliates and other groups to advance and protect the rights of students in the nation's public schools.

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* Copies of the NEA report on "Council on Human Relations Action on Student Displacement" will be available at the Biennial Conference Workshop.

** Some so-called "opportunity transfers" are essentially expulsions. For example, in 1969, 678 students were "excluded" from a New York City high school without notice or hearing, but with the promise that they would have the opportunity to attend other schools. This promise was not kept. NYCLU took the case to court and the judge ordered school officials "to comply with elementary concepts of equal protection and due process." Most of the students were subsequently reinstated.

I. THE STATUS OF THE LAW

A. Case Law[5]

The courts have recognized that the student's right to a public education cannot be denied without meeting constitutional due process requirements, substantively and procedurally. They have defined due process to meanthat such fundamental rights as freedom of the press and speech cannot be restricted when their exercise does not cause substantial and material disruption of the educational process. Relying on the standards laid down for college students in Dixon v. Alabama State Board of Education, the decided cases involving due process for secondary school students seem to agree that, as a minimum, requirements include adequate notice, statement of the charges and an opportunity for a fair hearing.* Beyond this, the right to other procedural safeguards has not been clearly established, as for example:

a) Cross-examination. Some courts have upheld this right for students on the college level but it has been asserted in only one case involving a high school expulsion.**

b) Right to counsel. There is a definite split of authority on this issue but several courts have now ruled in favor of representation by counsel.***

c) The privilege against self-incrimination. There seems to be only one case in which a court recognized the likelihood that school officials might intimidate students while investigating a situation.****

d) Impartial tribune. In a few instances courts have enjoined enforcement of expulsion orders because the tribunal at the hearing was biased or had prejudged the case.***** Recently, a Michigan State Circuit Court reversed the administrative suspension of a public school student on the grounds that the principal, who was the chief accuser and witness against the student, also acted as hearing officer.

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* Other rulings of interest include: High school students may need even more careful adherence to procedural due process than university students because of their inexperience and immaturity (Sullivan v. Houston Ind. Sch. Dist., 1969); Misbehavior by students does not preclude the courts from securing to them their constitutional rights of due process (Soglin v. Kaufman, W.D. Wisc., 1968); "Adequate notice" includes explanation of the charges to student and parent and evidence that the charges were understood (Hobson v. Bailey, W.D. Tenn., 1970).

** Tibbs v. Bd. of Education of the Township of Franklin, N.J. A. 2nd 1971.

*** Goldwyn v. Allen (N.Y.S. Sup. Ct., 1967); R.R. v. Board of Education of Shore Regional H.S. (N.J. Ch. Div. 1970); Jones v. Gillespie (Ct. of Comm. Pl., Phila., 1970).

**** Goldwyn v. Allen, supra.

***** Sullivan v. Houston, supra; Wasson v. Townbridge (2d Cir., 1967).

e) Record for review. In the same Michigan case (above), the court also noted that a record must be kept of the initial proceedings and a transcript made available to the student. With a few exceptions, this appears to be in line with the trend of judicial thinking. U.S. Supreme Court Justice Harlan held, in his separate opinion in Gault: "The court must maintain a written record, or its equivalent, adequate to permit effective review on appeal or in collateral proceedings."

Another area in which there is not as yet a clear-cut precedent involves the question of how long a student may be suspended before a hearing is required. The courts have generally recognized that a suspension for a "substantial" period of time has the same effect on a student's liberty as an expulsion. There is disagreement, however, as to whether a suspension of ten days constituted a sufficiently "substantial" period to mandate the safeguards of due process.*

B. Statutory Law[6]

A 1970 survey of state statutes and regulations concerning student dismissals revealed widespread deficiencies in protecting student rights. Only 19 make mention of a "notice" requirement and only 14 provide for a "hearing." In most instances, the provision for a "hearing" is related to expulsion only and must be requested by the student or his parents. Most of the laws are so vague and incomplete that methods of implementation are almost completely left to local interpretation.

In many states, the expulsion power and the right of review is delegated to the school board. A companion survey of 135 randomly selected school districts indicated that local school administrators and boards of education often accord an accused student elements of procedural due process in excess of those mandated by state statutes or regulation.

II. TECHNIQUES & STRATEGIES TO ESTABLISH DUE PROCESS

A. Legislative

Those who wish to work through the legislative process have two avenues -- the state assemblies or local school districts.

1. The State Assemblies

As was noted in the previous section, few state statutes or regulations currently afford the student facing disciplinary action adequate due process safeguards. A bill on this issue was before the Washington State Legislature during the past session. The lobbying tactics used by the ACLU of Washington in connection with this and other bills of civil liberties interest have been outlined by the affiliate Legislative Director, Rick Hull.

"Last session we put out legislative memoranda on about 30 bills. They were written by members of our board of directors or by cooperating attorneys who had special expertise in whatever subjects the bills covered. They were reviewed by the legislative staff and the Executive Director in order to give them all the same format. . . .

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* But see Jones v. Gillespie (suspensions in the Philadelphia public schools limited to five days in the absence of procedural due process).

"About once a week, I distributed a status sheet of all the bills we were following to all members of the legislatire as well as friendly secretaries of legislators and of administrative offices and lobbyists from friendly organizations. Once a week we had a meeting of what we called the 'Good Guys Lobby' where lobbyists from friendly organizations met in the Secretary of State's office for lunch to tell each other what we knew of the progress of certain bills. Towards the end of the session we had members from all over the state come to Olympia for Civil Liberties Day. They were given instructions on how to lobby, a list of our bills that were still alive and of committee members to be pressured. . . We had chapter phone trees going in 24 chapters. One chapter got 11 callers to call every member of the Rules Committee which was holding up the hitchhiking bill.

"In addition, as the chapter coordinator, I frequently visit chapters. I ask each chapter to set up meetings with legislators in their area whenever I visit between sessions. We are now working in the interim of drafting bills we want next time. I also attend interim committee hearings and get chapter people to attend when they are in the chapter area.

"My whole effort is conceived as having two equally important goals. First, the embodiment of ACLU policy in legislation; second, the organizing of ACLU members towards having a commitment ot participate in the legislative process as well as litigation. Thus our program was designed to involve as many members as possible. . . in a people's lobby. . . . When the capital is swarming with student, housewife, retired, and unemployed ACLU volunteers, the whole atmosphere of both the legislature and of the ACLU is improved."

Arthur E. Thomas, Director of the Center for the Student Citizenship, Rights, and Responsibilities in Dayton has suggested lobbying techniques along the following lines:

"An image should be created around the bill that will tell assemblymen that its passage is sought by people whom they see as their constituency. Therefore, (a) try to get the bill introduced by a person of power who is a member of the majority party; (b) get white, middle-class mothers to front for the bill rather than black or poor people who are likely to be the beneficiaries; (c) get a well-known, highly respected retired teacher or principal to advise legislators about favorable action in other states; and (d) go to the legislature armed with documented materials and resolutions in support of the bill's position from professional education associations, parent groups and teacher organizations, if such combined support can be obtained. In addition, try to interest a young, ambitious legislator who needs a cause to champion that he thinks will advance his career. The aid of the governor might also be sought, but only if he has power and influence; otherwise, leave him out of it. And finally, get the 18 year olds to lobby for the bill. They represent a sizeable new voting bloc and attention will be paid."

2. Local School Districts *

Many school districts have promulgated procedures for due process, some on their own initiative, others by court mandate. However, experience has shown that in most districts, there are either no regulations or that existing regulations are inadequate.

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* These strategies, as well as many of those to follow, were suggested at a legislative workshop at the recent National Conference on Corporal Punishment in the Public Schools, sponsored by the ACLU and the American Orthopsychiatric Association, where the two issues were seen as inter-related.

Lobbying at the local level may roughly parallel strategies suggested for state legislatures. However, local PTA's, community pressure groups, sympathetic church groups, and the students themselves can do more face-to-face campaigning to convince their local board members that it is politically advantageous to establish fair rules of due process. Some recommended tactics are:

1) Mount a publicity campaign (the media, fliers, panel discussions, speakers bureau, letters to newspapers, etc.) with broad student participation.

2) Find key women in several neighborhoods who are known to have the respect of members of their community. Once convinced of the worthiness of the cause, they will get the troops together -- inthe laundromat, the supermarket, the bar, and door-to-door.

3) Get representatives of national organizations to hold inquiry sessions with students on the issue. The media can't ignore this and the exposure will help focus public attention on the problem.

Essentially, the school administrators, Boards of Education, and the community at large have to be persuaded that procedural fairness is of value not only to the individual student concerned but to the general climate of the school in its day-to-day operation; that it exemplifies to the entire student body the basic democratic concepts of justice and fair play; and that it is of projected benefit to society by virtue of a future citizenry that has learned to respect the rule of law. This may be fairly simple to do in a suburban school system that has relatively few discipline problems. But in a city school district which may have experienced disruptive behavior and abusive action on the part of students, attempts to limit or impede the suspension power of the principal will probably encounter strong opposition.

B. Rulings by State Attorneys General

Where a local school board is not receptive to adopting regulations recognizing the full range of student procedural rights, and where it seems undesirable to force the issue in the courts, it may be useful to seek a policy statement from the state attorney general. For example, the Michigan CLU was instrumental in obtaining a ruling from the attorney general that the State Board of Education is empowered to make rules governing student suspension and expulsion which must prevail over local school regulations, and that it is also vested with the right to review disciplinary decisions of loval school boards. As an outgrowth of this development, the State Board promptly ordered a local school board to provide due process hearings for several suspended and expelled students and also provide alternative learning services for the period of their separation from school.

III. IMPLEMENTATION OF DUE PROCESS

A. Monitoring the Schools

Experience has demonstrated that adoption of even the most carefully developed provisions for protection of student rights are often deliberately ignored or abused by resistant administrators. Some "follow-up" strategies include:

1) Once due process regulations are put into effect, this information should be widely disseminated to parents and children, through flyers ("if you are suspended") or ACLU publications which have wide circulation, naming the ACLU as a

resource. Enlist the aid of other organizations, particularly those working directly with minority groups, in distributing this material of informing people of its availability. Students can also be trained as advocates to go into the community and educate parents about the law. The very fact that parents and students have been apprised of the law serves to limit the power of the principal to violate it.

2) After a reasonable period, a corps of volunteers should periodically check with principals of problem schools to ascertain how the new regulations are working. This kind of monitoring will also help to foster observance of the spirit as well as the letter of the law.

3) Where consistent violation is suspected in a particular school, enlist the students in a kind of Nader's Raiders project to check attendance records and report to the ACLU on who has disappeared from the classrooms.

4) It may be worthwhile to document the number of illegal suspensions in problem school districts for presentation to the U.S. Department of HEW suggesting that federal funds be withheld from these districts. In addition, if there is found to be substantiation of the charge that suspensions and "push outs" are frequently used as a tool of racism, HEW might be persuaded to issue strong warnings against these practices.

B. The Lay Advocate System

NYCLU has trained teams of non-lawyers to represent injured students and their parents in confrontations with school administrators in approximately the way draft counselors function for young men facing conscription. The advocates are non-lawyers, trained in school law. They accompany students and parents to suspension hearings, organize community support, meet with public officials, testify at school board hearings, etc. Ira Glasser, NYCLU's Executive Director, and Alan Levine, Director of its Students Rights Project, described this effort in Civil Liberties, April, 1972, as follows:

> We have worked closely with these groups and in many cases refer student and parent complaints to them. We had thought originally of providing a published list of such organizations, with telephone numbers, in the back of our Student Rights Handbook but there were simply too many of them. . . NYCLU has, however, distributed about 200,000 handbooks, and many groups have taken large quantities, stamped their own name, address and telephone number on a space provided on the back and passed them out at the schools and in the community.
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> All this has worked well. The existence of these groups has relieved us of the problems which are not amenable to or do not require legal action, has provided students and parents with help at suspension hearings far beyond what even our fulltime student rights staff of five could provide, and has provided the communities with lawyers when they were needed.
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> The work of lay advocates is crucial as a complement to litigation in the effort to establish student rights. Frankly conceived as adversarial, lay activities provide a necessary service. Since they require relatively large numbers of people, they are not suitable for ACLU staff, but they are very suitable for ACLU membership. . . There is a role, and a substantial one, for teams of citizen advocates going into the schools, advising students and parents of their rights, and pressuring school officials to obey the law.

C. Ombudsman-type Plans

1) Parent/ombudsmen. In New York City, a center staffed by specially trained parent volunteers has been established to handle complaints and inquiries from parents and community residents (student complaints are also accepted) about the schools under the central Board of Education's jurisdiction (high schools and special schools). The volunteers research and check complaints, then call back the parties and tell them the action being taken. Public service spot announcements on TV give the Center's phone number.

2) Student ombudsmen. The Dayton, Ohio Center for the Study of Student Citizenship, Rights and Responsibilities (a federally funded program with a mandate to explore and defend student rights) has trained a corps of students to work directly with students having recurrent difficulties in school. Their effort is directed towards helping hostile students use non-violent means to effect change in the school system.

3) Teacher ombudsmen. Specialists called variously "crisis" teachers, counselors, or student-affairs coordinators, have been installed in several schools across the country to deal expeditiously with student grievances and to serve as a liaison between students, teachers, and administrators as a means of defusing potentially explosive situations. In Cleveland, one high school has started a new counseling service where a counselor is given a "case-load" of students who are chronically tardy, truant, indifferent, or obstreperous and he works with them within the school setting.

D. Grievance Procedures

Some school systems have adopted an orderly grievance machinery as a means of resolving student dissatisfactions and disputes. The ACLU of Michigan has outlined procedures for two levels of grievances: (1) those complaints that are potentially resolvable within the school in which they originate; and (2) those which involve policies or procedures that are territorially beyond the school's prerogative to handle.

E. Community-Student Action

In Alabama, suspension of black students are increasing at an enourmous rate. Whenever such suspensions are overturned, "victory celebrations" are held throughout the black community. Parents and friends give parties, local disc jockeys talk about it, and local ministers preach about it. The whole effort is directed towards educating the community, students, and parents to their rights through the medium or forum they are most likely to listen to.

The black community in Prattsville, Alabama recently had cause for a major "victory celebration." To commemorate Martin Luther King's birthday, black junior high school students wore black armbands to school. The next day some white students appeared with white armbands, whereupon the black students announced that thay would continue wearing the black armbands throughout the week. The principal threatened suspension but 180 students wore them anyway. They were all suspended. The students immediately contacted the Director of the American Friends Service Committee Community Relations Program in nearby Montgomery and, with the aid of their parents and prominent members of the community, a strategy was mapped out to mobilize the entire black community in a protest action against the suspensions. Committees were set up to distribute flyers, to telephone neighbors, to go from

door-to-door, and within a few days, the principal and the school superintendent were bombarded with angry phone calls. The students called a press conference which got them broad newspaper and TV coverage. They and their parents then arranged conferences with school officials and, within two days, all the students were reinstated.

It may be appropriate before concluding to deal with the question of when, if ever, suspensions or expulsions are justifiable. Some people say "never," maintaining that students misbehave in reaction to the arbitrary use of administrative authority, to threats, harassment and physical and psychological abuse; and to pervasive administrative and educational deficiencies inthe public school system. In the opinion of Phay and Cummings, authors of a highly regarded work on this issue, the serious action of suspension is a "poor method of discipline" and can be justified only in a few situations. "One justified occasion is when a student's continued presence on the school grounds endangers the proper functioning of the school or the safety or well-being of himself or other members of the school's community. (Involving for example, intentional destruction of school property, willful assault on a school employee, or the knowing possession, handling, or transmission of dangerous weapons or instruments.) Another is that rare instance when the suspension offers the only effective way of both communicating to the student that his conduct was unacceptable and emphasizing to his parents that they must become immediately involved and should accept a greater responsibility in helping the student meet school standards for acceptable conduct. When either of these situations exists, the student should be removed from the school. When neither exists, other ways of dealing with the problem should be sought."[7]

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NOTES

1. Vincent C. Flemmings, Student Unrest in the High Schools: A Position Paper, Center for Urban Education, New York, N.Y., June 1970.

2. Public Education Association, The High School Consultative Councils: Off to a running start?, New York, N.Y., September 1970.

3. New York Civil Liberties Union, Suspension Procedures in the New York City Public Schools: A Report on the Failure to Implement Legal Rights of Students, February 1971.

4. Dan Geringer, Chocolate Faces in Vanilla Places (and other great suspenders of our times), Rap of Dayton, Center for Student Citizenship, Rights and Responsibilities, Dayton, Ohio, June 1971.

5. This section was drawn primarily from: Robert E. Phay and Jasper L. Cummings, Jr., Student Suspensions and Expulsions: Proposed School Board Codes Prohibiting Serious Student Misconduct and Establishing Procedures for Dealing with Alleged Violations, Institute of Government, The University of North Carolina at Chapel Hill, 1970; William G. Buss, Procedural Due Process for School Discipline: Probing the Constitutional Outline, University of Pennsylvania Law Review, February 1961; and Robert A. Butler, The Public High School Student's Constitutional Right to a Hearing, National Clearinghouse for Legal Services Review.

6. This section was drawn from: S. Voelz, The Legal Status of Pupil Suspension and Expulsion and Due Process, August 1970 (an unpublished doctoral dissertation in College of Education Library, University of Iowa).

7. Phay and Cummings, op. cit.