

1975 WL 29748 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
April 22, 1975

***1 RE: Student Discipline Act and Long-term Suspension**

Mr. M. Hayes Mizell
Representative
Board of Commissioners
Richland County School District #1
1616 Richland Street
Columbia, SC 29201

Dear Mr. Mizell:

I regret that my case load has made it impossible for me to answer your request for an opinion until this time. You requested an opinion on whether or not a school board must initiate and conduct a hearing in expulsion cases, even where the student or his parents do not appear. In addition you specifically requested an opinion as to whether or not the above statute applies to disciplinary action in cases involving the expulsion for less than the remainder of the year or, in other words, long-term or indefinite suspension. There is a gap in the student discipline act between suspensions for ten (10) days at a time not to exceed thirty (30) days per year (§ 2 & 3) and suspensions for the remainder of the year (§ 4). Consequently, long-term suspensions or expulsions from school for a period less than the remainder of the year would involve Board action, which would have to comply with any due process requirements, which, however, are not spelled out in the above statute. While it is up to the Board to determine what these requirements shall be, such requirements should fall somewhere between the minimal requirements for short-term suspension and the due process requirements for suspension for the remainder of the year or permanent expulsion. In summary, the due process requirements for long-term suspensions should be at least those for short-term suspensions, i.e., written notice and informal hearing prior to suspension and possibly as great as those for permanent suspension or suspension for the remainder of the year, which include written notice, right to legal counsel, and 'all other regular legal rights, including the right to question all witnesses.'

As for the question relating to the Board's responsibility in initiating and conducting the hearing, even where the student and parents or counsel did not appear, I am of the opinion that the School Board must initiate and conduct a hearing in each case in order to prevent an arbitrary or unreasonable action on its part which would be overturned by a reviewing court. It is clear from § 1 of the Student Discipline Act and court cases that suspension can be only for cause; therefore, the Board must have before it the grounds for such suspension for expulsion. The burden is clearly on the School Board to show that the presence of each individual student materially affects the educational process in the school before suspending or dismissing the pupil. See [Rumler and Nichols v. Board of Trustees, 327 Fed. Supp. 729 \(4th Cir. 1971\)](#), [Massie v. Henry, 455 Fed. 2D 779 \(4th Cir. 1972\)](#).

In conclusion, a school board, in my opinion, must initiate and conduct a hearing in each long-term suspension or expulsion case prior to such expulsion, except in cases of emergency, in order to comply with the minimal due process requirements and in order to present to the board the grounds for such suspension or expulsion, even if the student, his parents, or counsel choose to absent themselves from such proceedings.

***2** Please contact me if I can provide any further assistance.

Sincerely,

Hardwick Stuart, Jr.
Assistant Attorney General

ATTACHMENT

P.S. Prior hearing is now requirement. See U. S. Supreme Court case Goss v. Lopez, 43 Law Week 4181 (1/21/75).

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