

*Schools - Pupils
Conduct & Discipline*



STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

September 10, 1974

Opinion No. 74- 312

Gerald S. Franklin
Superintendent of Schools
Unified District No. 490
Butler County
Box 590
El Dorado, Kansas 67042

Dear Superintendent Franklin:

You inquire whether the procedural requirements set out at K.S.A. 72-8901, et seq., for the suspension or expulsion of students applies to the suspension or expulsion of a student only from an individual class within the student's academic schedule, or whether it applies only to expulsion or suspension from all classes.

The terms "expulsion" and "suspension" are not defined. K.S.A. 72-8901 provides only that the

"board of education of any school district may suspend or expel, or by regulation authorize any certificated employee or committee of certificated employees to suspend or expel, any pupil or student guilty of any of the following"

The duration of any suspension or expulsion is fixed by K.S.A. 72-8902, which provides in part thus:

"(a) No suspension shall extend beyond the current school semester and no expulsion shall extend beyond the current school year. A suspension may be for a short term not exceeding five (5) school days, or for an extended term exceeding five (5) school days. A short term suspension may be imposed upon a pupil or student forthwith, and without affording such pupil or student or his parents or guardians, a hearing thereon."

Gerald S. Franklin
September 10, 1974
Page 2

The purpose of the act, of course, is to assure that procedural due process rights are extended to students facing disciplinary action in the form of suspension or expulsion. The act recognizes that a hearing is not required in all instances. Thus, for a short term suspension, i.e. one not exceeding five days, no hearing is required. For extended suspension or expulsion, a hearing is required, and the student must be afforded an opportunity to respond to the charges upon which the proposed action is based. Thus, the protection afforded by the procedural requirements is measured, in a general way, in accordance with the general rule that "[w]hat is required to meet procedural due process . . . appears to be controlled by the circumstance of each case." Barker v. Hardway, 283 F.Supp. 228 (S.D.W.Va. 1968).

When a student is subject to disciplinary suspension or expulsion from one or more classes, and not from school in its entirety, the effect upon the student may be equally serious. For example, completion of the course may be required for graduation or necessary to satisfy other requirements of the curriculum. Extended suspension or expulsion from one or two or less than all of the student's classes may be as severe as suspension or expulsion from all of them.

Thus, there seems every reason to construe the act as requiring that when any suspension or expulsion is contemplated, whether from the entire school or from individual classes or courses, that the procedural requirements of the act be followed. If a student is proposed to be suspended from a course for not more than five days, no hearing is required. If, on the other hand, it is proposed to suspend the student from a class for more than five days, or to impose expulsion, there is every reason to construe such a "suspension" or "expulsion" as one within the meaning of K.S.A. 72-8901, et seq., and for which the procedural requirements of that act must be followed.

Certainly, a "suspension" is equally a suspension whether it involves one, two or all of a student's classes. Accordingly, we conclude that K.S.A. 72-8901, et seq., must be followed in such cases.

Very truly yours,



VERN MILLER
Attorney General

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