LEGAL MAILBAG – FEBRUARY 1, 2024

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The "Legal Mailbag Question of the Week" is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors.
Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag,

Our middle school is fully committed to the restorative practice approach to discipline. Our "cleaning with meaning" approach extends to all areas of our school. By way of example, should a student write on a desk, the student is given cleaning materials to remove the damage themselves versus some disconnected punitive measure.

Recently a student was disciplined for writing on a wall with a marker. As is our usual practice, the custodian was asked for cleaning materials to provide the student so the student could clean off his own graffiti. Unfortunately, the materials the custodian provided were not as "green" as they should have been, and the child's mother is now claiming that we violated child labor laws by making her child clean and endangered him by providing a hazardous cleaning solution!

Should we simply sweep this restorative approach under the rug?

Signed,
Mr. Clean

Dear Mr. Clean:

Legal Mailbag appreciates your good question and will not gloss over the legitimate questions raised about the creative discipline process you describe. The concern is whether school officials have the legal authority to impose such discipline, and Legal Mailbag must express some doubt about that.

The statutes clearly set forth authorized disciplinary interventions:

- Removal ("an exclusion from a classroom for all or part of a single class period, provided such exclusion shall not extend beyond ninety minutes" – Conn. Gen. Stat. § 10-233a(b)).
- In-school suspension ("an exclusion from regular classroom activity for no more than ten consecutive school days, but not exclusion from school, provided such exclusion shall not extend beyond the end of the school year in which such in-school suspension was imposed" – Co Gen. Stat. § 10-233a(c)).
- Suspension ("an exclusion from school privileges or from transportation services only for no more than ten consecutive school days, provided such exclusion shall not extend beyond the end of the school year in which such suspension was imposed" – Conn. Gen. Stat. § 10-233a(d)).
- Expulsion ("an exclusion from school privileges for more than ten consecutive school days and shall be deemed to include, but not be limited to, exclusion from the school to which such pupil was assigned at the time such disciplinary action was taken, provided such exclusion shall not extend beyond a period of one calendar year" – Conn. Gen. Stat. § 10-233a(e)).

The question here is whether other disciplinary interventions are authorized, such as the restorative practice that you describe. A decision of the Connecticut Supreme Court suggests that the answer to that question is no. However, consideration of the "in loco parentis" role of school officials and customs established in our schools suggests otherwise.

In Campbell v. New Milford Board of Education, 193 Conn. 93 (1984), the Connecticut Supreme Court considered a claim that an attendance policy was unauthorized because it provided for grade reductions for unauthorized absences and for loss of course credit under specified circumstances. The parent in that case claimed that the policy was "ultra vires," i.e., in excess of the school district's legitimate authority, because authorized disciplinary interventions are limited to those set forth in the statutes (as described above). The court ruled in favor of the school district, holding that the attendance policy was not disciplinary, but rather an academic measure of effort. Based on the court's reasoning in that case, however, Legal Mailbag has a concern that disciplinary interventions other than those listed in the statute may not be authorized.

That said, Legal Mailbag knows that school districts often deal with low-level disciplinary problems with detention and even Saturday detention when a student does not attend detention as assigned. Those interventions are not listed in the statutes, but Legal Mailbag is not aware of any court or administrative decisions holding that assigning detention is unauthorized. It may be that a court would find detention unauthorized if anyone cared enough to challenge it. However, a court could also find that detention is an authorized exercise of in loco parentis ("in the place of the parent") authority intended to correct behavior, whether or not detention is considered a disciplinary intervention.

Applying these legal principles to the question you posed, Legal Mailbag has the following advice for you. First, you may stay the course, employ the restorative practices that you described, and see if an objecting parent sues the district. Please note that, if a parent claims that such a restorative response to student misconduct is unauthorized, the parent may point out that the in loco parentis principle on which you may rely applies only in the absence of a parent, not when a parent expressly objects to actions by school officials. If you take this approach and get sued, Legal Mailbag can refer you to a great lawyer to represent you and your school district.

Alternatively, when such situations arise, you can reach out to the parent and present the restorative approach as an intervention the parent can permit in lieu of traditional discipline, such as in-school suspension. Legal Mailbag presumes that many parents will embrace the principles of the restorative approach your district follows. The few that do not will be free to insist that you take a more traditional disciplinary approach. If the parent does so, you will be free to impose in-school suspension and avoid the uncertainties described above.