

School Discipline

Advanced Juvenile Law
May 14, 2014
UNC School of Government
Presented by Jane R. Wettach

Purpose of seminar



- Give judges understanding of how the school discipline process works and may interact with juvenile & criminal proceedings

Overview

Relates only to public schools

Relates mostly to removal from school

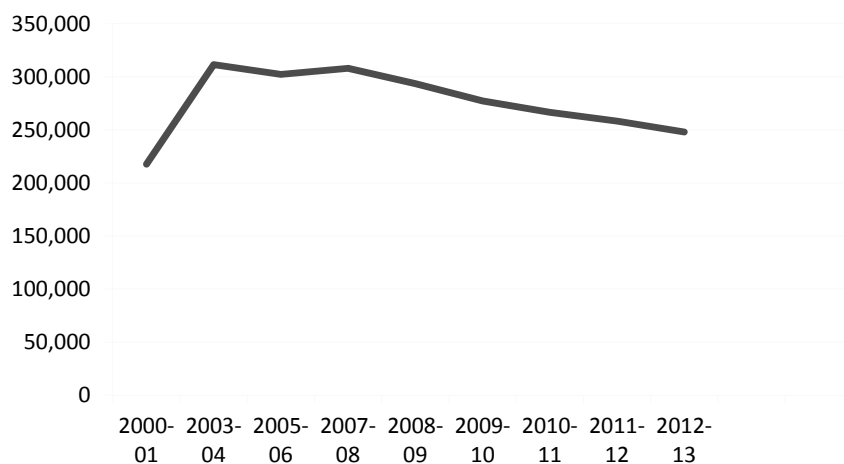
Short-term suspension : 1 – 10 days

Long-term suspension: more than 10 days, but with an end-date

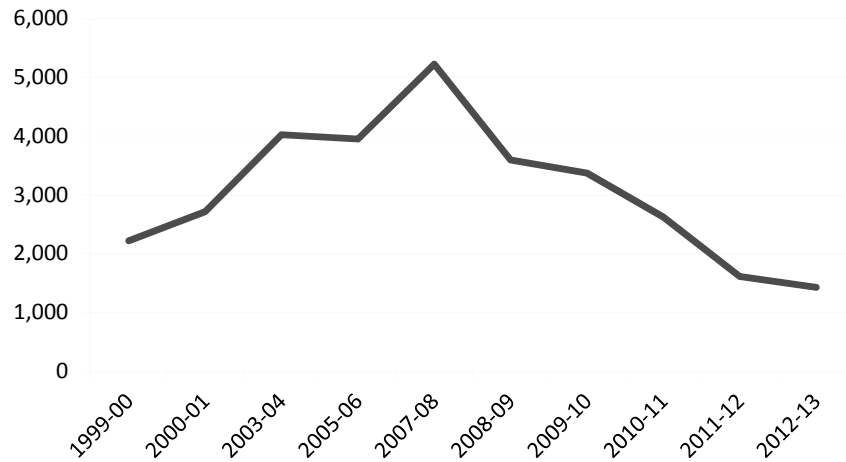
Expulsion: indefinite removal



Short-term suspension trend:
total number of suspensions imposed



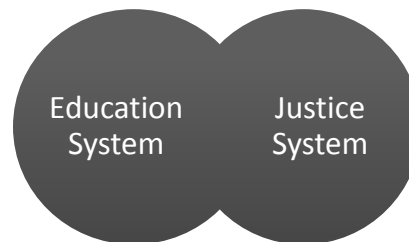
Long-term suspension trend: total number of suspensions imposed



Interrelationship between Education System and Justice System

- Same students “in trouble” in both systems
 - Unstable home lives
 - Poverty
 - Emotional issues
 - Limited academic success
 - Disabilities

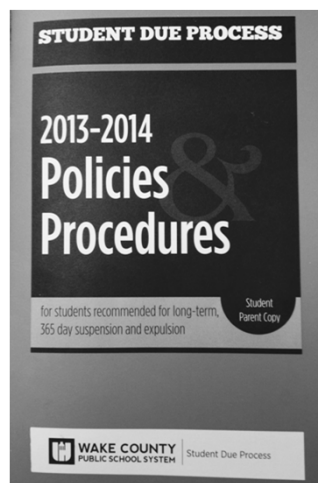
- Dual punishment
 - Suspension and court referral



School-based offenses/juvenile complaints

Fiscal Year	Total Complaints	SBO	Percent	
FY 07-08	45,114	17,877	39.63%	
FY 08-09	41,092	17,090	41.59%	
FY 09-10	38,870	16,381	42.14%	
FY 10-11	37,274	15,780	42.34%	
FY 11-12	36,243	15,961	44.04%	
FY 12-13	32,281	15,220	47.15%	
FY 13-14	24,096	11,012	45.70%	* As of May 5, 2014

Local law



- Local school boards develop a “Code of Conduct”
 - Prohibited conduct
 - Consequences
 - Procedures

Limitations on local policies

- U.S. Constitution
 - 5th/14th Amendment: right to due process
 - 4th Amendment: no “unreasonable” search & seizure
 - 1st Amendment: modified speech protection



State constitution

- Fundamental right to “sound, basic education” -- Art. 1, Sec. 15; Art. 9, Sec. 2;
- Leandro v. State
- Right to alternative school during suspension
 - Unless there is an important or significant reason for refusing to offer

King v. Beaufort Co. Bd. of Educ.



Federal legislation

- Gun Free Schools Act
 - Requires districts to “expel for not less than one year a student who . . . brought a firearm to a school or . . . possessed a firearm at school”
 - Allows administrator to modify on case-by-case basis



State legislation

- Complete revision in 2011
 - N.C. Gen. Stat. §115C-390.1 et seq
 - Encourages use of alternatives to suspension
 - Outlawed “zero tolerance”
 - Limits suspension for off-campus conduct
 - Must have “direct and immediate impact on school safety or orderly operation of school”
 - Limits suspension for truancy to 2 days
 - Codifies right to alternative school

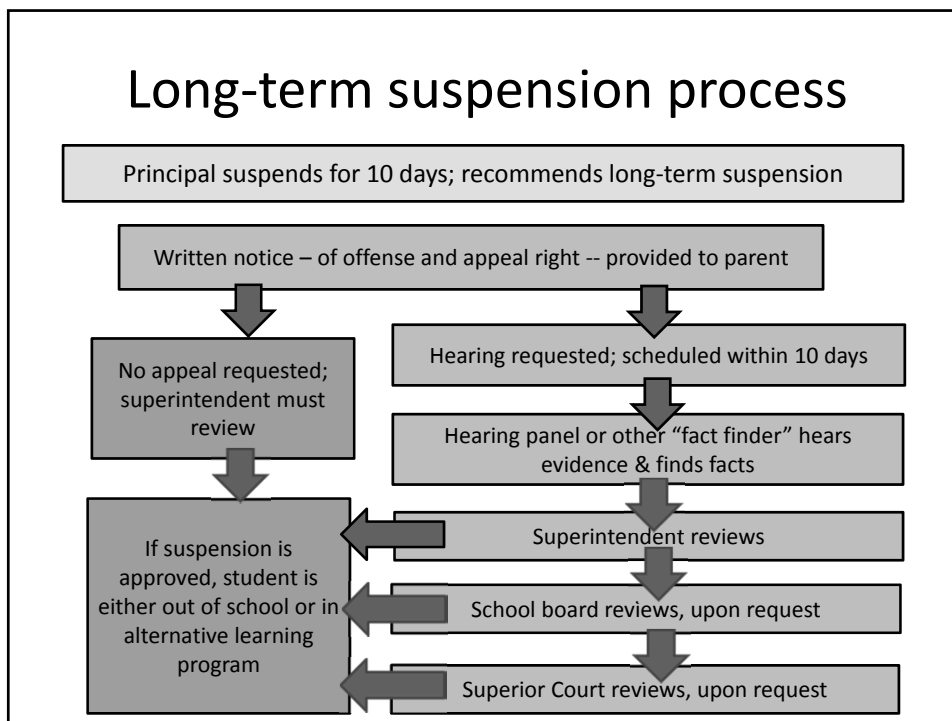
State legislation

- Required hearing procedures
 - Written notice
 - Held within 10 days
 - Right to counsel
 - Access to evidence
 - Cross examination
 - Written decision
 - Appeal

State legislation

- Limitations on hearing procedure
 - Must be requested
 - Rules of evidence do not apply
 - No subpoenas
 - No discovery
 - No presumption of innocence
 - “Substantial evidence” burden of proof
 - Out of school during appeals

Long-term suspension process



Suspension ↔ Juvenile Court



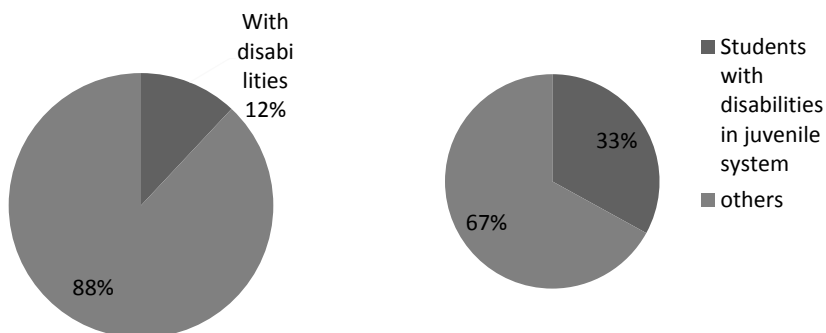
- School suspension process happens BEFORE juvenile court process
 - Student must testify in school hearing, losing 5th amendment protection
- Suspended student *cannot* abide by court order to attend school (unless full-time alternative is provided)

Students with disabilities

- Conditions that can affect a child's abilities to follow rules
 - Autism
 - Emotional disability
 - Intellectual disability
 - Speech language impairment
 - ADHD



Students with disabilities – those eligible for special education



Education rights of students with disabilities



- Identification
- Evaluation
- Individualized services
- Placement, as much as possible, in regular classrooms
- Limited protection from long-term school removal

Discipline & Special Ed Students

- No restrictions: suspension from school for up to 10 days
 - Consecutive or cumulative
- Limitations on suspension for more than 10 days



IDEA Discipline Protections



- Manifestation Determination Review (MDR)
- Continuation of FAPE
- Functional Behavior Assessment
- Behavior Intervention Plan

Manifestation Determination Review

- No long-term suspension if the conduct in question was—
 - Caused by or had a direct and substantial relationship to the child’s disability, OR
 - Was a direct result of the school district’s failure to implement the IEP
- Exception: student who brought a weapon or drugs to school, or caused serious bodily injury, may be removed for 45 school days to an alternative setting

Manifestation Determination Review

- No manifestation: proceed with suspension,
 - BUT continue with FAPE in an alternative setting and receive, as appropriate, a functional behavioral assessment and behavior intervention services
- Manifestation: no suspension allowed,
 - BUT services & placement can be reviewed and changed, and receive a functional behavioral assessment and behavior intervention services
- MDR results are appealable
 - But child stays in alternative setting pending the appeal

- Juvenile court judge can
 - Ask about child's disability
 - Ask about results of MDR
 - Discourage referrals from schools in cases where the child's disability interfered with appropriate behavior
 - Discourage referrals in minor cases that should be handled in school only

