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COLLISION OF INDIVIDUAL RIGHTS

ERIC G. RODRIGUEZ

Eric G. Rodriguez
Walsh Gallegos Treviño Russo & Kyle,
P.C.
San Antonio, TX
erodriguez@wabsa.com
210.979.6633

COLLISION OF INDIVIDUAL RIGHTS IN SCHOOLS

Introduction

Schools present a unique setting where the individual rights of persons often come into conflict. One of the primary examples of this tension exists between the obligation of school administrators to ensure a safe school environment while at the same time delivering an appropriate education to the violent and dangerous student with a disability who receives special education services and frequently engages in behavior that results in injury to people or property destruction. In these circumstances, school principals will sometimes ask “what about the rights of the others kids in the classroom to remain safe and receive an education?”

Other circumstances inviting conflicts between individual rights is presented in the context of providing accommodations to students with disabilities due to severe allergies, and in the context of permitting service animals into classrooms and school grounds. Imagine a circumstance in which a child who requires a service dog at school to access his education attends class with another student who has a severe allergic reaction to pet dander. How does an educator address that scenario in a way that affords both students access to their education while ensuring that required accommodations are provided?

Additionally, there are often times when the relationship between parents and the school district become strained when the rights of a parent related to her child’s education encroaches on a teacher’s ability to educate the kids in the classroom. Other instances of disruption to the educational process may come as a result of a student’s expression or speech, though communicated off campus and on social media.

This paper does not attempt to comprehensively navigate all the possible intersections and conflicts of individual rights at schools. The legal underpinning and framework for this paper focuses primarily on how schools address the rights of children with disabilities. Simply put, students with disabilities, and their parents, have more rights under state and federal law than the other typically developing non-disabled children at school. However, some cases will be examined that fall outside of the disabilities context; these cases mostly have to do with student expression and the school’s use of discipline in response to expression that has occurred off-campus.

Emphasis will be placed on the scenarios described above, with some consideration for the ethical dilemmas inherent in advising schools and educators on how to navigate those challenging circumstances.

School Safety vs. “Appropriate” Education

➤ Managing Behavior at School

The Texas Education Code, at Chapter 37, requires school districts in Texas to adopt a student code of conduct to establish standards for student conduct. Additionally, Chapter 37 effectively mandates a balancing of rights in the context of certain considerations that are required when school officials make discipline determinations.

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Selected provisions from the Tex. Educ. Code at Ch. 37:

“(a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:

...

(4) specify that consideration will be given, as a factor in each decision concerning suspension, removal to a disciplinary alternative education program, expulsion, or placement in a juvenile justice alternative education program, regardless of whether the decision concerns a mandatory or discretionary action, to:

- (A) self-defense;
- (B) intent or lack of intent at the time the student engaged in the conduct;
- (C) a student's disciplinary history; or
- (D) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;”

See Tex. Educ. Code §37.001(a)

➤ **Removal of Student by Teacher**

Chapter 37 of the Texas Education Code also attempts to address the conflict that is sometimes presented between the right of an unruly or disruptive student to receive an education versus the classroom teacher's duty to educate an entire classroom with limited disruption to the educational process.

“REMOVAL BY TEACHER. (a) A teacher may send a student to the campus behavior coordinator's office to maintain effective discipline in the classroom. The campus behavior coordinator shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001 that can reasonably be expected to improve the student's behavior before returning the student to the classroom. If the student's behavior does not improve, the campus behavior coordinator shall employ alternative discipline management techniques, including any progressive interventions designated as the responsibility of the campus behavior coordinator in the student code of conduct.

(b) A teacher may remove from class a student:

- (1) who has been documented by the teacher to repeatedly interfere with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn; or
- (2) whose behavior the teacher determines is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn.

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