

***Off Campus Misconduct:
When Should a District Take Action?***

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Imagine this scenario; a student complains to her principal on one of the last days of school that she was shot over lunch by another student from his car with a paintball gun. The student was walking the short distance home for lunch, as the school had an open lunch policy, when she was attacked by the other student. When she was hit by the paintballs, she was not on school property. The impact of the paintballs left several welts and bruises on the student's body, ultimately requiring a precautionary trip to the hospital. Prompt investigation uncovers other witnesses corroborating the story about the attack. Soon the victim's parents are calling into the school demanding to know what is going on and what the school plans to do about it.

Missouri public school districts face similar situations frequently. The key question in such circumstances is may the school discipline the attacking student for actions which occurred off school property. The purpose of this article is to provide schools with the legal framework necessary to make such difficult decisions and demonstrate how schools may legitimately discipline students for off campus misconduct.

The Law on Off Campus Misconduct Discipline

By Missouri statute, schools may discipline students for conduct which is prejudicial to good order and discipline in the school or which tends to impair the morale or good conduct of the pupil. Additionally, all Missouri public schools are required to create and maintain a discipline policy, which provides guidelines to parents and students for student behavior. While the statutes are silent on the issue of off campus misconduct, there is a strong argument to be made that if the off campus conduct is prejudicial to the good order and discipline of the school, then it may be disciplined as if the inappropriate conduct had actually occurred on school property.

This interpretation is supported by case law, where courts reviewing school district discipline for off campus conduct have created a test for the propriety of such discipline. The nexus test, as it is referred to, requires a school to show a nexus, or connection, between the act occurring off campus and the impact on the educational environment. The nexus test should be incorporated in some form into the district's policies and regulations, so as to make parents and students aware of the district's authority in this area and how it will make decisions on such incidents. The policies used by most districts include this language, but districts should consult their policies prior to discipline to ensure compliance and the consistent application of discipline.

When conducting the nexus test, the issue typically involves a determination of when the conduct occurring off campus becomes prejudicial to the good order of the school. Many courts making this determination have examined the facts to see if the conduct off campus resulted in a material and substantial disruption in the work and discipline of the school. Essentially, administrators faced with making these difficult decisions should ask whether the conduct is likely to impact the school. Similarly, schools should also examine whether the discipline is needed to protect its students or staff. Depending on the answers to these questions, the conduct may be subject to discipline, even though it did not occur on school grounds.

Reason for Close Examination Prior to Discipline

While the law does permit public school districts to discipline for off campus misconduct there are a number of issues administrators need to be cognizant of when making such decisions. One such issue, which is becoming more difficult to address, is the line between school and home with respect to internet, and other electronic, communications. As blogs, social forms, texting, and the like become more widely used, the number of incidents requiring school consideration has also increased. When discussing these electronic issues, schools should be aware of the First Amendment rights of the students. Courts are loath to restrict a student's free speech rights in most circumstances, requiring an almost de facto higher threshold of disruption before a court will agree the incident required discipline. As this area in particular is still developing, no bright line test has been created to guide schools. The principles discussed in this article should guide schools in dealing with such situations, but appropriate consideration of all the issues should be given before disciplining students for electronic communications occurring off school grounds.

Similarly, schools should also consider the possibility that attempting to discipline for off campus misconduct may leave them liable to claims the schools are accepting responsibility for students even when they are off school property. The issue here is one of parental expectations, and this argument has been made, albeit unsuccessfully to date. The common sense approach to these situations is to avoid assuming responsibility for monitoring students at all times, but maintaining discipline when the off campus conduct interrupts the school's ability to educate its students. Consequently, we would advise schools to reserve discipline for off campus misconduct to those situations posing a genuine risk of harm to students or staff. One potential guide would be those incidents which would be considered criminal acts such as assaults, drug possession/sale, weapon possession/use, etc.

Application of Rules to Scenario

In examining the paintball hypothetical there are a number of factors indicating discipline in this instance is appropriate. First, the incident occurred during the school day. Also, the incident, while not technically on school property, would have been very close as the student was walking home for lunch. The incident also involved a paintball gun, which is a weapon, or at the very least an object meant to imitate a weapon. Moreover, the incident

could be classified as an assault. Finally, the incident caused a disruption to the school environment as the victim reported the incident to the school and was absent from her classes while reporting the incident and receiving medical assistance. These combination of factors result in a conclusion the off campus action, here the shooting of a student with a paintball gun, was sufficiently connected to a disruption in the school educational environment, the reporting and medical assistance, as to substantiate a decision to discipline the conduct.

While the example shows how schools should proceed with their analysis of these situations, there are any number of additional factors which could further complicate matters. This article should provide a framework for making these difficult decisions, but schools should consult with their legal counsel when encountering any unique situations, particularly those related to communications occurring off campus, which may cause disruptions to the school environment.