To: Assistant General Counsel
From: Melanie S. Berks
Subject: Federally-Granted Rights to Expel Students
Date: February 6, 2011

QUESTION PRESENTED

Are federally granted rights given to states to expel or suspend students in public school districts?

SHORT ANSWER

No, while there is no specific federal right to expel, federal courts will support state school districts' expulsions and suspensions as long as they are done in good faith.

STATEMENT OF FACTS

Under Illinois law, students have a right to public education and if a student commits egregious conduct under Illinois law, as long as due process is giving in an expulsion hearing, the school district has a right to expel a student. While the right to suspend or expel a student is given under Illinois law, we look to see if there are federal laws or rules in place that grant a school district the right to expel or suspend a student.

DISCUSSION

Constitution and Fundamental Rights

The United States Constitution classifies certain rights as particularly valuable to individuals and deems them "fundamental rights." (Daniel Pollack & David Schnall, *Expelling and Suspending Students: An American and Jewish Legal Perspective,* 9 New Eng. J. Int'l & Comp. L. 334, 335 (2003). These rights are given the highest level of protection under the Constitution and receive the strictest level of scrutiny on review. *Id*. The Supreme Court has held that the right to an education is not a fundamental right, and strict scrutiny protection does not automatically apply. *Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 459 (1988). Rather, through several landmark decisions, the Court has permitted each state to

make its own determination whether to classify education as a fundamental right. The end result is that each state is permitted to place its own level of protection on educational laws. *Id.* at 337.

Since the right to an education is not a fundamental right granted in the Constitution, a different level of scrutiny is used, not as strict as if a right were fundamental. When a non-fundamental right, i.e. education, is infringed upon, courts will use a rational relations test, which requires that a state have a legitimate purpose for restricting or denying a non-fundamental right. The means chosen by the state need only be rationally related to achieving the desired end. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 40 (1973). In the *San Antonio* case, the court held that education is not a fundamental right guaranteed in the Constitution. Courts will defer to the state when applying this rational relations test and will assume there is a legitimate purpose and rationality for a decision without the state showing that the means they used were the best possible available. *Williamson v. Lee Optical, Inc.,* 348 U.S. 483, 487 (1955). In another Supreme Court case, *Plyler v. Doe,* the court expanded on the *San Antonio* opinion stating, "Education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when people are denied the opportunity to absorb values and skills on which our society rests" and agreed that the right to education is more than a normal governmental benefit and is different from other social welfare legislation. 457 U.S. 202, 221 (1982). In *Ingraham v. Wright* still upheld that education is not a fundamental right guaranteed in the Constitution, "the appropriate means of school discipline is committed generally to the discretion of school authorities subject to state law." 430 U.S. 651, 682 (1977). Several state constitutions clearly provide that education is a fundamental right and the states can invoke a strict scrutiny standard of review when such rights are compromised. The right to review school discipline is a state right, because there is no federal right to public education, but the states can invoke a strict standard of review in discipline cases and a student's Constitutional rights cannot be

violated in the review; courts will use the strict standard of review in federal court cases if that right has already been granted by the state.

Expulsions

In regards to expulsions, the Supreme Court has stated that school districts must comply with important procedural safeguards before suspending or expelling a student. *Goss v. Lopez*, 419 U.S. 565 (1975). In *Goss*, the Court declared when a state decides to provide public education; it must recognize that students have a property interest in education protected by the Due Process Clause. *Id.* at 574. The Fourteenth Amendment forbids the state to deprive any person of life, liberty, or property without due process of law and the Court deemed education as a property interest. *Id.* at 572. "Protected interests in property are normally not created by the Constitution. Rather, they are created and their dimensions are defined by an independent source such as state statutes or rules entitling the citizen to certain benefits." *Id*. When a state that grants the right to public education, it alone has to make the rules for the receipt or denial of that education. The right to an expulsion or suspension hearing comes from the Due Process clause under the Fourteenth Amendment, even if not granted under a state statute. Under the Due Process requirements, students must be warned that certain types of behavior can result in long-term suspension or expulsion, and the student and his or her parent must be informed of the specific charges and grounds for expulsion. Pollack at 341, citing *Grayned v. City of Rockford*, 408 U.S. 104 (1972). The hearing requirement is only that the hearing take place before the student is expelled and the charges against the student must be supported by substantial evidence. *Id*. As long as the hearing is performed in good faith without a gross deprivation of rights, courts will generally uphold the decision of school authorities. *Id*.

Expulsions and suspensions might also be contested on the basis that the conduct occurred outside of school hours and school property. Several federal courts have held that this is not a reason to overturn an expulsion or a suspension. In *Pollnow v. Glennon*, the court said, "charges of off-campus for

non-school-related conduct are sufficient bases for suspension from school." 594 F. Supp. 220, 224 (S.D.N.Y. 1984). When reviewing whether to punish a student for conduct outside of school, the courts look to the effect of the student's behavior on school discipline and safety. 53 *A.L.R.3d 1124,* 2a. Students may not be expelled for exercising a constitutional right outside of school (i.e. participating in a demonstration); while punishment for out-of-school fighting and other violent acts has been held lawful, because there is an apparent direct connection between the misconduct and school safety. Additionally, some courts have held an expulsion is proper if the incident occurred outside of school and is in violation of the school code. *Id*.

CONCLUSION

While no actual federal laws exist that grant state school districts directly the right to expel a student, the federal courts will uphold student expulsions as long as no Constitutional rights (the Due Process clause in particular) are violated. The standard of scrutiny for review is lower in expulsion cases because education is not a fundamental right guaranteed by the Constitution, and courts will only hold expulsion issues to a strict scrutiny level of review when the state's constitution has given that standard. The right to a public education has to be granted individually by the states and the federal courts will defer to state law in determining if an expulsion was proper, but will take into consideration a student's Constitutional rights even if not mentioned in the state statute, and if all requirements are met courts will defer to a school's decision in an expulsion or suspension case.