

Policy Connection

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Editor

Policy Connection is a free quarterly publication provided by the KSBA Policy Service that is sent to all board members, superintendents, and others who request to receive it.

LOCAL BOARD OPTIONS REGARDING BOMB (AND OTHER) THREATS*

Recent bomb (and other) threats against school districts are causing disruptions to the educational environment. In general, bomb threats are reportable to law enforcement per Administrative Procedure 05.43 AP.1. Policy 09.2211 also requires district employees to make certain reports required by law. Local boards have the option to seek criminal or juvenile charges, as applicable, against the alleged perpetrators, subject an offending student to disciplinary sanctions up to and including expulsion, request restitution in connection with juvenile or criminal proceedings and/or offer a reward for information leading to an arrest or conviction. Key statutes are referenced below.

KRS 158.150 - A student may be subject to expulsion for threatening conduct. In addition, the language that allows students to be expelled without services defines triggering "threatening behavior" to include "any other behavior which may endanger the safety of others."

- Must be tied to the student discipline code. Check your code and seek advice of counsel. Keep in mind students subject to expulsion are entitled to a board hearing. A student discipline code/policy crosswalk is attached to this correspondence.

- Higher standard of proof is required to expel without services – clear and convincing evidence the student posed a threat to the safety of other students or school staff and could not be placed into state-funded agency program.
- Unless there is language to the contrary in the district student discipline code or board policies and subject to additional procedures and exceptions for special education students, a student making a bomb threat may be subjected to expulsion without services.

Key Criminal Statutes (partial descriptions)

KRS 508.075 - Terroristic threatening in the first degree. Applies to a person who intentionally makes false statements that he she or another person has placed a weapon of mass destruction on school property, property that is the site of a school function, or a school vehicle. This is a Class C felony that can result in a prison term of five to ten (5-10) years.

KRS 508.078 - Terroristic threatening in the second degree. Applies to a person who threatens to commit any act likely to result in death or serious physical injury to students, teachers, staff, or volunteers of a public or private school. This is a Class D felony punishable by one to five (1-5) years in prison.

KRS 508.080 - Terroristic threatening in the third degree. Applies to a person who threatens to commit any crime



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likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person OR who intentionally makes false statements for purposes of causing the evacuation of a building, place of assembly, or facility of public transportation. This a class A misdemeanor punishable by ninety (90) days to twelve (12) months in jail.

RESTITUTION

As part of the disposition of a juvenile case, the court may order the child or his parent(s), guardian, or person exercising custodial control to make restitution to any injured person to the extent, in the sum and upon the conditions as the court determines. KRS 635.060. A parent, guardian, or custodian is entitled to an opportunity for a hearing before payment is ordered and the court is to base same on a finding that the failure to exercise reasonable control or supervision was a substantial factor in the child's delinquency. Note: In a juvenile case, the court's statutory authority to order restitution is triggered after an adjudication that the juvenile committed an offense. For general background on a court's discretion to order restitution in a juvenile case, see *R.S. v. Com.*, 423 S.W.3d 178 (Ky. 2014). This case also has a discussion regarding the availability of restitution from adult offenders.

OAG 92-63 - Permissible for school district to offer a reward to solve a crime and to deter others regarding vandalism of school property. Same rationale would appear to apply to a bomb threat.

Link to *Kentucky School Advocate* article "School districts scrambling to deal with outbreak of threats":

<http://www.ksba.org/Bombthreatsatschools.aspx>

Policy References 01.11, 05.43, 09.2211, 09.425, 09.426

Administrative Procedure Reference 05.43 AP.1

**A special thank you to KSBA Staff Attorney John Fogle for providing this information and Kentucky Center for School Safety Executive Director Jon Akers for valuable insight.*

WELCOME TO OUR NEW SUBSCRIBERS!

Online Manual – Northern Kentucky Cooperative for Educational Services (NKCES)

eMeeting Service – Leslie County Board of Education, Kentucky Valley Educational Cooperative (KVEC)

MILEAGE RATE UPDATE

If your district reimburses for mileage at the state rate, be advised that the rate per mile effective January 1 through March 31, 2016, is 39¢ per mile. This information can be reviewed quarterly via this link:

<http://finance.ky.gov/services/statewideacct/Pages/travel.aspx>

Policy References 03.125/03.225

SAVE THE DATE – UPCOMING KSBA 2016 CONFERENCES: SEE OUR WEBSITE TO REGISTER FOR THESE IMPORTANT EVENTS

February 26-28

KSBA Annual Conference, Galt House, Louisville

February 26

KOSAA Meeting, Galt House, Louisville

March 21

Student Records Confidentiality Update, Marriott Griffin Gate, Lexington

Your online connection

If you currently receive a paper edition of this newsletter, but would prefer to get it via email ONLY, please send your request to Katrina Kinman (katrina.kinman@ksba.org), along with your school district and position (employee, board member, etc.). We appreciate your helping KSBA save printing and mailing costs.



Local Code of Acceptable Behavior and Discipline A Statute-Board Policy Crosswalk

KRS	EXPLANATION	POLICY/PROCEDURE
<p>KRS 158.148</p>	<p>(4)(a) Each local board of education shall be responsible for formulating a code of acceptable behavior and discipline to apply to the students in each school operated by the board. The code shall be updated no less frequently than every two (2) years, with the first update being completed by November 30, 2008.</p> <ul style="list-style-type: none"> • Superintendent/designee - responsible for implementation and supervision of code • School Principal - responsible for administration and implementation of code • School Council - responsible for selection and implementation of appropriate discipline/classroom management techniques to carry out code • Board - responsible for establishing a process for a two-way communication system for notification of emergencies 	<p>02.4241/School Council Policies 05.4/Safety (Facilities) 09.438/Student Discipline Code 09.438 AP.1/Reporting of Code Violations 09.438 AP.21/Parent Notification of Code Violation</p>
<p>KRS 158.154 KRS 158.156 KRS 158.444 KRS 525.070 KRS 525.080</p>	<p>(4)(b) The code shall contain the type of behavior expected from each student, the consequences of failure to obey the standards, and the importance of the standards to the maintenance of a safe learning environment where orderly learning is possible and encouraged.</p> <p>(c) The code shall contain:</p> <ol style="list-style-type: none"> 1. Procedures for identifying, documenting, and reporting incidents of violations of the code and incidents for which reporting is required under KRS 158.156; 2. Procedures for investigating and responding to a complaint or a report of a violation of the code or of an incident for which reporting is required under KRS 158.156, including reporting incidents to the parents, legal guardians, or other persons exercising custodial control or supervision of the students involved; 3. A strategy or method of protecting from retaliation a complainant or person reporting a violation of the code or an incident for which reporting is required under KRS 158.156; 4. A process for informing students, parents, legal guardians, or other persons exercising custodial control or supervision, and school employees of the requirements of the code and the provisions of this section and KRS 158.156, 158.444, 525.070, and 525.080, including training for school employees; and 5. Information regarding the consequences of violating the code and violations reportable under KRS 158.156 or 158.444. 	<p>09.4/ Student Behavior 09.221/Supervision of Students 09.221 AP.1/Supervision of Students 09.2211/ Employee Reports of Criminal Activity 09.2211 AP.21/Documentation of Reporting Required by Law 09.422/ Bullying and Hazing 09.422 AP.21/Bullying Reporting Form 09.4281/Grievances 09.42811/Harassment and Discrimination 09.438/Student Discipline Code 09.438 AP.1/Reporting of Code Violations</p>
<p>KRS 158.148</p>	<p>4)(d)The principal of each school shall apply the code of behavior and discipline uniformly and fairly to each student at the school without partiality or discrimination.</p>	<p>09.42/Student Conduct 09.431/Due Process 09.42811/Harassment and Discrimination</p>

Student Discipline Guidelines and Related Policies

Formation of Code - Acceptable Behavior/Discipline Recommendations

<p>Classroom Management Techniques (identify appropriate discipline and classroom management techniques to carry out the code).</p>	<p>02.4241/School Council Policies 09.43/Student Disciplinary Processes</p>
<p>Expected Behavior (identify types of behavior expected from each student)</p>	<p>06.34/Conduct on Bus 06.342/Hazards in and on Bus 08.2323/ Access to Electronic Media 09.4/ Student Behavior 09.422/Bullying and Hazing 09.423/Use of Alcohol, Drugs and Other Prohibited Substances 09.4232/Tobacco 09.425/Assault and Threats of Violence 09.426/Disrupting the Educational Process 09.4261/Telecommunication Devices 09.427/Dress and Appearance</p>
<p>Consequences (identify consequences for failure to obey the standards)</p> <p>KSBA NOTE: Many districts develop a sliding scale of consequences based on the severity of the offense. It is recommended that “zero tolerance” penalties be avoided so that staff members are provided sufficient discretion to determine the appropriate response based on the specific facts and to avoid automatic responses that can pose potential due process issues.</p>	<p>06.34/Conduct on Bus 09.123/Absences and Excuses 09.4294/Driver’s License Revocation 09.432/Detention 09.433/Corporal Punishment 09.434/Suspension 09.4341/Alternative Education 09.435/Expulsion</p>
<p>Responsibilities (identify student, parent teacher, counselor, and principal responsibilities)</p>	<p>09.42/Student Conduct 09.43/Student Disciplinary Processes</p>
<p>Due Process (identify procedures for student due process because of school suspension, exceptional children, primary)</p>	<p>09.431/Due Process 09.434/Suspension 09.4341/Alternative Education 09.435/Expulsion</p>
<p>Non-Discrimination (cite reasons why the code of behavior and discipline should be uniformly applied to each student at the school without partiality or unlawful discrimination)</p>	<p>08.131/Students with Disabilities 09.42811/Harassment/Discrimination</p>
<p>Communication (establish procedures for school postings, dissemination to guidance counselors, use in student discussion, inclusion in school handbooks and providing copies for employees and parents)</p>	<p>09.438/Student Discipline Code</p>
<p>School Property Incidents (identify procedures for school property incidents and law enforcement)</p>	<p>05.48/Weapons 09.421/Care of School and Personal Property 09.436/Search and Seizure 09.4361/Police Officers in the School</p>
<p>Immediate Removal from the Classroom (develop procedures for threatening or violent student removal or suspension from the classroom)</p>	<p>09.425/Assault and Threats of Violence 09.425 AP.21/Record of Removal</p>

Student Discipline Guidelines and Related Policies

Formation of Code - Acceptable Behavior/Discipline Recommendations

Intervention Strategies (discipline action up to and including expulsion from school for weapons, drug, assault, and abuse violations) (dropout prevention for requesting districts and KDE dropout reporting requirements)

- 05.48/Weapons
- 08.141/At-Risk Students
- 09.423/Use of Alcohol, Drugs and Other Prohibited Substances
- 09.425/Assault and Threats of Violence
- 09.438/Student Discipline Code

Other Pertinent Provisions

KRS	EXPLANATION	POLICY/PROCEDURE
KRS 158.148	(4)(e) A copy of the code of behavior and discipline adopted by the board of education shall be posted at each school. Guidance counselors shall be provided copies for discussion with students. The code shall be referenced in all school handbooks. All school employees and parents, legal guardians, or other persons exercising custodial control or supervision shall be provided copies of the code.	09.438/Student Discipline Code
<p>KSBA RECOMMENDATIONS:</p> <ul style="list-style-type: none"> • Include contact information (email address, telephone number) for key District and school administrators. • Include an acknowledgement form for the student and parent to sign and return to school to keep in the student's file. • Although there is no requirement to review the code annually, either a committee or a designated administrator should review the annual policy update received from KSBA each spring for code implications. • Include the code in student handbooks • Post a copy of the code in the schools and on the District and school websites. • Request that the Board direct its attorney to review the code each time it is amended. 		