



Probation Officers: A Key to Unlocking Judicial Review of Student Discipline Actions

Indiana's school discipline statutes limit a court's judicial review of a student's suspension or expulsion to whether the school corporation acted without following the required statutory procedures. Thus, in the vast majority of cases, a student and his parents have no genuine recourse, beyond an appeal to the school board, to appeal his suspension or expulsion. As Justice Robert Rucker reiterated in South Gibson School Board v. Sollman, 768 N.E.2d 437, 441 (Ind. 2002), the Nation's public education system necessarily relies on the discretion and judgment of school administrators and board members. Setting aside decisions of school administrators, which the Court may view as lacking in compassion or wisdom, is not the Court's role. Id.

However, the Indiana Supreme Court has carved out a little known "exception" to the judicial review parameters. In West Clark Community Schools v. H.L.K., 690 N.E.2d 238, 241 (Ind. 1997), the Court held that the juvenile court could act upon a probation officer's motion for injunctive relief to prevent the school from expelling a student. Fourteen-year-old H.L.K. was adjudicated a delinquent child in June 1995. The juvenile court placed H.L.K. on probation and awarded custody to H.L.K.'s aunt. As a condition of probation, H.L.K. had to attend school regularly with no unexcused absences or tardiness.

In August 1995, the school board expelled H.L.K. from school until January 1996. In expelling H.L.K., the school board followed the mandatory procedures outlined in Indiana's student discipline statute. Subsequently, both H.L.K.'s aunt and probation officer petitioned the juvenile court to prevent the school corporation from expelling H.L.K. At the hearing on the motion, the school corporation argued the juvenile court did not have jurisdiction to change a student discipline decision by the school corporation.

The juvenile court granted the aunt's and probation officer's motions, finding that H.L.K. would "suffer irreparable injury by continued expulsion," and that expulsion was not warranted and would defeat the successes already achieved during H.L.K.'s probationary period. *Id.* at 240. On appeal, the Court reversed the juvenile court's decision. *Id.*

On transfer, the Indiana Supreme Court distinguished who is pre-empted from seeking judicial review by the student discipline statute. Under the juvenile court jurisdiction statute, the court has authority to "control the conduct of any person in relation to a child" upon a motion from, among others, the juvenile court, a child's parent or guardian, a probation officer, or a prosecuting attorney. Indiana Code 31-32-13-1(1). The student discipline statute, however, pre-empts the juvenile court's jurisdiction when either a student or his parent motions for relief from school imposed discipline. *H.L.K.*, 690 N.E.2d at 241. Thus, a student or his parent must first appeal a school's discipline decision to the school board. *See* I.C. 20-8.1-5.1.14 (d). Judicial review of the school board's decision is then limited to procedural rather than substantive due process issues. *See* I.C. 20-8.1-5.1-15.

The Court recognized that the judicial review provisions outlined in the student discipline statute are available only to the disciplined student and his parent, guardian, or guardian ad litem. H.L.K., 690 N.E.2d at 241. By finding that the student discipline statute only applies to certain categories of persons, the Court reasoned that the statute does not pre-empt the authority of other persons, such as probation officers, to motion the juvenile court to control the conduct of any person in relation to a child. Id. Broadly stated, Indiana statutory law authorizes juvenile courts to control the conduct of any person in relation to a child under the jurisdiction of the court upon the motion of a probation officer, a caseworker, the prosecuting attorney, the attorney for the county office of family and children, or any other person providing services to the child or the child's parent. See id. at 242. This includes controlling suspension and expulsion of students already within the juvenile court's jurisdiction. See id.

However, when called upon, the Court emphasizes judicial restraint. Id. Exercise of a juvenile court's authority should be carefully circumscribed and utilized only after considering the best interests of the child, the best interests of the school and its students, and when no reasonable alternatives exist. Id.

For H.L.K., the Court's decision didn't mean much. By the time her case reached the Court of Appeals, it was moot. But for other students already under the juvenile court's jurisdiction who are later suspended or expelled, the decision provides another avenue of relief. Probation officers or caseworkers, where warranted, may motion for injunctive relief to prevent suspension or expulsion.

For example, a probation officer may consider motioning for relief where a student is in therapy and does not pose a threat to the school's teachers or students.

Another scenario may be where a student has committed a minor offense and his family is willing to work with the court and school to identify other alternatives such as community service. These examples highlight situations where, in the best interests of a child already under the Court's jurisdiction, a probation officer may want to consider motioning the Court for relief from a school's decision to suspend or expel the student.