ATTORNEY GENERAL'S OPINIONS

Attorney General Opinions related to school attendance, discipline and dropout prevention are summarized below. The full text of the opinions can be found in ***Supplemental Publication 523: Reference Guide for Child Welfare and Attendance,*** available through the Office of School and Community Support, Louisiana Department of Education, P.O. Box 94064, Baton Rouge, Louisiana 70904 or by contacting the Office of the Attorney General, Civil Division, Baton Rouge, Louisiana, P.O. Box 94005.

ATTENDANCE

Habitual absenteeism and LEA responsibilities - Opinion No. 96-155 (1996)
No authority can be cited for dropping a child from school rolls through age sixteen, though only students actively attending school should be counted for MFP purposes.

Maximum Age Limit - Opinion No. 90-564 (1990)
Although the school board is obligated to provide an educational opportunity for adults similar or equal to that of teenagers, they are not required to allow adults admission to regular high schools. If for a valid reason, as defined in R.S. 17:104, the Ascension Parish School Board sets a maximum age limit for students in high schools, and creates a viable alternative for adults as required by Article VIII, Sec. 1 of the Louisiana Constitution of 1974, this office sees no reason to conclude that the regulation is impermissible.

DRUG FREE ZONE

Areas administered by the Office of State Parks - Opinion No, 90-499 (1990)
According to Legislative Act 293 of 1990, in addition to "school property," the expanded drug free zones shall cover, "…any building or area owned by the state or by a political subdivision and all parks and recreational areas administered by the Office of State Parks." These amendments merely enlarge the areas where drug free zones are in force.

Physical range of Drug Free Zones - Opinion No. 90-124 (1991)
A drug free zone is an area inclusive of any property used for school purposes by any school, within one thousand feet of any such property, and school buses. For purposes of this Section, "school" means any public or private elementary, secondary, or vocational technical school in Louisiana and "school property" means all property used for school purposes, including but not limited to school grounds.

The 1000-foot drug free zone under R.S. 17:405 must extend in a straight line in all directions from the outermost boundary of the school ground.

EXPULSIONS/SUSPENSIONS

Make-up work suspension fewer than ten days - Opinion No. 98-178 (1997)
A pupil shall not receive credit for schoolwork missed due to his initial removal from the classroom. The statute is silent concerning requiring the pupil to nevertheless complete the work prior to allowing readmission. It is within the local boards discretion to either allow or not allow credit for work performed during the in school suspension. A pupil shall not receive credit for work missed while he is suspended for up to ten days. The principal may nevertheless require the completion of all assigned school and homework, which would have been assigned and completed by the student during the period of suspension prior to allowing readmission.

Governing authority in case of a suspension - Opinion No. 92-841 (1993)
Once a student has been suspended from school, a hearing has been conducted on the merits, and the superintendent of schools or his designee has made a decision pursuant to LSA-R.S. 17:416 (A)(1)(c) that decision is final. The parish school board is not authorized to remit any portion of that decision, as that authority is reserved to the superintendent. Only the superintendent or his or her designee, and not the school board have the authority to conduct a hearing after an appeal by the student's parents.

Felony indictment: felony conviction - Opinion No. 92-711 (1992)
A student who has been indicted on a charge of manslaughter cannot be suspended or expelled prior to the conviction on this charge. However, if the student poses a continued danger to any person or property or an ongoing threat of disruption to the academic process, he or she shall be immediately removed from the school premises without the benefit of the procedure as described in LSA-R.S. 17:416(A)(1)(b). Additionally, a student who is convicted or pleads guilty to the offense of manslaughter for acts occurring off campus and not related to school may be expelled based solely on these acts.

Felony conviction - Opinion No. 93-147 (1993)
A school board may expel a student based upon a felony conviction even if his appeal is pending, provided the required two-thirds vote is met.

Mandatory expulsion - Opinion No. 92-399 (1992)
Under provisions of La. R.S. 17:416, where a student shall be expelled for possession of a firearm on school property, possession includes both physical possession and also constructive possession, if the firearm is subject to the dominion and control of the student.

Under provisions of La R.S. 17:416, the superintendent must expel a student found in possession of a firearm on school property for the proscribed period of time.

Under provisions of La. R.S. 17:416, where student shall be expelled for possession of firearm on school property, the school board may not modify or reverse the expulsion, if the student was found in possession of a firearm on school property.

Damage or destruction to school property; damage to private property on school premises - Opinion No. 94-397 (1994)
… It is the opinion of this office (Attorney General's Office) that LSA-R.S. 17:416.1(A) allows the Beauregard Parish School Board to implement reasonable disciplinary and corrective measures such as requiring students who damage private property on school grounds during a school activity to make restitution. However, it does not appear that the remedial provision of the Beauregard Parish School Board Policy…applies to damage or destruction of private property. For the remedial provision to apply to private property, an amendment to the Board's policy would be necessary.

Suspension from riding a school bus - Opinion No. 94-124 (1994)
Provided the system's school bus riding rules are within the guidelines as set forth by LSA-R.S. 17:416, the Board is within its legal rights to suspend a student from riding a school bus to and from school if he or she violates the rules.

Alternative educational program; student fees for materials of instruction and for transportation - Opinion No. 95-365 (1995)
Notwithstanding any provision of R.S. 17:158 to the contrary, a school system shall not be required to provide transportation to any student suspended or expelled from school pursuant to the provisions of R.S. 17:416 and remaining under the supervision of the governing authority of the school system taking such action pursuant to Subsection A of this Section, if providing such transportation for the student will result in additional transportation cost to the school system. No school system shall be liable for any suspended or expelled student providing his own transportation pursuant to the provision of this Section.

Possession of illegal narcotics, drug controlled substances on school property/at school event (16 years and over) (under 16 - Opinion No. 97-365 (1997)
Any student sixteen years of age or older who is found guilty of simple possession of any illegal narcotic drug, or other controlled substance on school property, on a school bus, or at a school event is required to be expelled from school for a minimum of twenty-four (24) calendar months.

Any student who is under sixteen years of age and in grades six through twelve who is found guilty of simple possession of any illegal narcotic drug, or other controlled substance on school property, on a school bus is required to be expelled from school for a minimum of twelve (12) calendar months.

Distribution of controlled substances Opinion No. 95-160 (1995)
The prohibition against the distribution of controlled substances by students on school property extends to prescription drugs falling within the definition of controlled substances.

Expulsion hearings - Opinion No 88-226 (1989)
There is no specified time by which a student expulsion hearing should be held.

FUND RAISER/USE OF FUNDS

Guidelines for fund raising projects; student fees - Opinion No. 93-456 (1993)
Individual schools may legally engage in activities designed to raise funds to purchase textbooks and other instructional materials, without regard to the socioeconomic standing of the community within which the school is situated. Further, students may be charged reasonable fees from school to school and from classroom to classroom to cover costs related to educational activities in furtherance of the goals of the particular course.

Booster club funds; principal's signature on checks - Opinion No. 93-93 (1993)
According to LSA-R.S. 17:414.3 all monies raised by clubs or organizations which are within the school must be deposited in the school fund. Further, monies raised by groups outside the school which are donated to the school must also be deposited in the school fund. Monies in the school fund may only be withdrawn in accordance with LSA-R.S. 17:414.3B(3), which requires the signature of the principal.

Parish Police Jury Fund; student' expenses for national conferences - Opinion No. 93-418 (1993)
The Avoyelles Parish Police Jury is constitutionally authorized to aid student in paying costs of attending the National Youth Leadership conference.

Assessing a student fee to defray the cost of paper and administrative supplies - Opinion No. 93-224 (1993)
No statute specifically authorizes a student fee for paper and administrative supplies. No statute specifically forbids such a fee. A local school board is authorized to "make such rules and regulations for its own government, not inconsistent with law or with the regulations of the State Board of Elementary and Secondary Education, as it deems proper." LSA-R.S. 17:81(C). A local school board under this statute has the authority to charge the fee at issue.

STUDENT RECORDS

Transfer of record: students' debts to LEA - Opinion No. 96-36 (1996)
The holding of a student's records in order to force debt repayment is an action with contradicts the primary objective of the Louisiana school system and results in punishment of the child when the debt is either the result of the parents' nonpayment or the result of some action by the child. In order to continue to foster the goal of providing children with a complete education and to follow the law as stated in Louisiana Civil Code Article 2318, the school district's recourse should be against the parents and not the child. Therefore, it is the opinion of this office that a school district may not hold the records of an elementary or secondary school student in order to force payment of a debt. To the extent previous Attorney General Opinions are in conflict this decision, they are reversed.

Retention of inactive school records - Opinion No. 92-307 (1992)
Data of students who have left the system, personnel information, and state reports that constitute public records must be retained 3 years. However, we do not believe the requirement that public records must be maintained for three years would preclude a requirement by the State Board of Elementary and Secondary Education from requiring the record of a student's name, address, grades, attendance record, classes attended and year completed be maintained for a longer period of time or indefinitely.

Retention of student records: length of time required for maintenance of records; permission to destroy - Opinion No. 93-285 (1993)
The Public Records Act applies to records held by a school, school board or superintendent unless such records are confidential in nature. Confidential or personal information concerning a student is not subject to the Act but schools and superintendents are required to keep records, pursuant to LSA - R. S. 17:415, as prescribed by the Superintendent of Education.

Schools and school boards must also follow BESE rules concerning the retention of such records. In the absence of any rule mandating the retention of such records, school boards may adopt their own policies for the retention and destruction of student records after the student has ceased to be enrolled in school.

Withholding student records to force payment of a debt - Opinion No. 96-36 (1996)
The holding of a student's records in order to force debt repayment is an action with contradicts the primary objective of the Louisiana school system and results in punishment of the child when the debt is either the result of the parents' nonpayment or the result of some action by the child. In order to continue to foster the goal of providing children with a complete education and to follow the law as stated in Louisiana Civil Code Article 2318, the school district's recourse should be against the parents and not the child. Therefore, it is the opinion of this office that a school district may not hold the records of an elementary or secondary school student in order to force payment of a debt. To the extent previous Attorney General Opinions are in conflict this decision, they are reversed.

Confidentiality of records - Opinion No. 93-106 (1993)
A law enforcement agency may not release to school authorities the name of a juvenile student arrested for drug trafficking on or off school property or the name of a juvenile student merely suspected of such activity except upon court order since those records are confidential.

TUITION

Student residing outside governmental boundaries of LEA - Opinion No. 95-426 (1996)
LSA-R.S. 17:105 and LSA-R.S. 17:555 allow for children of one parish to be sent to another parish and for the transfer of school funds to cover the educational cost of such attendance. However, they do not appear to permit the Jefferson Davis Parish School

Board to require a student and/or parent or guardian thereof who resides outside Jefferson Davis Parish to pay tuition for the student to attend school in Jefferson Davis Parish.

MISCELLANEOUS OPINIONS

Drug Free Zones - Opinion No. 90-499 (1990) Act No. 293 of 1990 does not prohibit the consumption or possession of alcohol in areas administered by the Office of State Parks. Drug Free Zones apply to narcotic drugs, not alcohol. The common definition of drugs and alcohol is that of two different substances. The amendment added to Act No. 293 does not include nor does the statute apply to alcoholic beverages. The statute merely expands the areas, which can be designated as drug free zones.

Compensation to Parents - Opinion No. 90-414 (1991)
Parish school boards cannot constitutionally compensate parents of children for transportation cost; only the State Department of Education has a legal obligation to do so.

Suspension; Expulsion - Opinion No. 92-399 (1992)
Under provisions of LA. R.S. 17:416, where a student shall be expelled for possession of a firearm on school property, the school board may not modify or reverse the expulsion if the student was found in possession of a firearm on school property.

Audiotaping of conversations - Opinion No. 96-183 (1996)
One party consents to audio taping of conversation is legal under the applicable Louisiana and Federal law; as long as the taping is not done for the purpose of committing any criminal, tortious or other injurious act.

Student safety; extent of LEA responsibility before and after school hours - Opinion No. 98-140 (1998)
The responsibility of the School Board would not begin or end at the same time for all possible factual situations. Therefore, to determine whether a school board is responsible for the safety of a student, the facts and circumstances of each situation must be assessed. As the jurisprudence indicates there must be proof of negligence in failing to provide the required supervision and proof of a casual connection between the lack of supervision and the cause of the accident. Also, the risk of injury must be reasonably foreseeable, constructively or actually known, and preventable if the requisite degree of supervision had been exercised.

Probable cause for search - Opinion No. 97-82 (1997)
Using a K-9 dog to detect a drug scent on a person constitutes a search of the person. Since reasonable suspicion of wrongdoing must exist before a valid dog sniff can occur. A dog sniff cannot be used to establish reasonable suspicion to conduct a stop, nor the probable cause to conduct a search, pursuant to LSA - C.Cr.P. art. 215.1.

CONGRESSIONAL AND ADMINISTRATIVE HIGHLIGHTS

The information presented below is excerpted from actual court cases. Refer to the citations provided to obtain the full text of these decisions.

Abuse Reports (1998 WL 821927 (KY) Opinion by Justice Joseph Lambert
The fact that a teacher and a counselor made reports of suspected child abuse by another teacher to the principal of the school does not relieve the teacher and the counselor of their mandatory statutory obligation to report suspected abuse to state authorities.

Assaults (1997 WL 909968) *Roe v. Catholic Diocese of Memphis, Inc*.
A Tennessee appellate court has held that a sexual assault by a four-year-old male preschooler upon another male preschooler of the same age in a school restroom was unforeseeable to the Catholic school as a matter of law, and therefore the school could not be found to have proximately caused the injuries to the victim.

***Detention of Student* (1996 WL 606900) *People v. Parker* (III. App. 1 Dist.) (Opinion by Judge Michael J. Gallagher**
The detention by a police officer of a student who, after entering a public high school which had a metal detector in the lobby through which students were required to pass, had turned to leave was an impermissible seizure under the Fourth Amendment. Thus a gun which the student admitted possessing after he was stopped was a product of the impermissible seizure.

Dress Code - Gang Symbols (1997 WL 163605 (C.A. 8-Iowa)) *Stephenson v. Davenport Community School District*
The Eighth Circuit Court has held that a school district's regulation prohibiting gang symbols, without providing any definition of what constitutes a gang, was void for vagueness. The term "gang", without more, was fatally vague. Further, the district's regulation allowed school administrators and local police unfettered discretion to decide what represented a gang symbol.

Extracurricular Activities *Todd v. Rush County Schools*, (C.A. 7-Ind. 1998)
A program under which all high school students who wished to participate in extracurricular activities had to consent to random and suspicionless urine testing for alcohol, unlawful drugs, and cigarette usage did not violate the student's Fourth Amendment right to be free from unreasonable searches. The program was designed to deter drug use and protect the health of the students involved. The reasons compelling drug testing of athletes, which had previously been upheld, also applied to students in other extracurricular activities.

Student Discipline (1998 WL 297458 (Ga. App.)) *Daniels v. Gordon*
A middle school teacher's grasping of a student's face when he would not look at her as she addressed him was not "corporal punishment." Thus, it did not violate Georgia statutes governing the administration of such punishment.

Student Records (1997 CQ US HR 503
The General Education Provisions Act would be amended to allow state and county prosecutors access to student records in certain cases, under bill (H.R. 503) introduced in the House of Representatives. Specifically, section 444 (b) of the General Education Provisions Act would be amended by adding at the end of a provision that "*Nothing in this section shall be construed to require a State of county prosecutor to obtain a court order to receive student information, before or after adjudication, if the information sought pertains to a criminal investigation or prosecution of such student."*

Student Searches *Jenkins v. Talladega* City Board of Education., 95 F. 3d 1036 (C.A. 11-Ala. 1996)
Two teachers who strip-searched two eight-year old elementary girls twice based on an accusation by a classmate that they had stolen $7.00 could not have believed that the Fourth Amendment allowed such a search. Thus, the teachers were not entitled to qualified immunity from 1983 actions arising out of the search.

Student Searches *In Interest of S.S.*, 1996 WL 392112 (Pa. Super.)
A school employee's search of a student at his high school, which resulted in a charge of delinquency based on the student's possession of a weapon on school property, was reasonable, even though it was not based on any individualized suspicion of misconduct. The search was conducted in the same manner to all students, was minimally intrusive, and was justified due to the high rate of violence in area schools. The school's interest in ensuring security and educating its students far outweighed the student's privacy interest, and the search, as conducted, was reasonably related to the school's interest in promoting student safety.