

JIA—Student Due Process Rights

Due Process

Pursuant to the Fourteenth Amendment of the U.S. Constitution, students who have allegedly violated a policy and are subject to disciplinary action are entitled to due process. Generally, due process involves a “prudent person” standard insofar as the due process procedures are reviewed on the basis of whether a reasonable person would believe them to be reasonable in the circumstances. When a student is being suspended for 10 days or less, or some lesser discipline is imposed, the student is entitled to “rudimentary” due process. In the event the student may be expelled, the due process is formal in nature.

Minimum due process procedures must be followed when an administrator suspends a student for any period of time up to a maximum of ten days. These procedures include:

- A. Informing the student verbally or in writing of the charge against him/her;
- B. Informing the student of the basis of the charge; and
- C. If the student denies the charge, the administrator must give the student the opportunity to tell her/his side of the story.

Written records must be kept of all suspensions, and written notice shall be provided the parents or guardians of the action taken as a result of the hearing and the reason for the action.

If the presence of the student in the school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, an administrator may suspend the student immediately for ten days or less and comply with the above procedures in the immediate future.

Rudimentary Due Process

In the event the contemplated discipline is suspension or some lesser penalty, the student is entitled to “rudimentary” due process, which involves oral or written notice of the charges against the student and a fair opportunity to be heard. “Rudimentary” due process is informal and typically occurs directly after the misconduct. Generally, the Administrator, or designee, meets with the student, informs him of the allegations and, literally, asks the student to respond with his/her story of the events. Based on that interview, and any other information the school official may have, a determination as to whether or not to suspend the student is made.

Formal Due Process

In more serious matters, the student may have the right to a formal due process hearing, as set forth in Idaho Code §33-205. Such a hearing is before the Board. The student is specifically entitled to the following due process rights:

- Written Notice to the parent or guardian of the student, stating:
 - The grounds for the proposed expulsion or denial or enrollment;

- Time and place where such parent or guardian may appear to contest the action of the board;
- The right of the student to be represented at the hearing by an attorney;
- The right to produce witnesses and submit evidence on his or her own behalf; and
- The right to cross-examine any adult witnesses who may appear against him or her.
- The student does not have the right to cross-examine other students.

Such notice must be delivered to the parent by a means or in a manner reasonably calculated to provide actual notice to the person. Generally, the notice is personally delivered to the parent or guardian or is sent by regular mail. Certified mail may also be used as it provides verification as to whom and when the delivery occurred. If the notice is sent by certified mail, it should also be sent by regular mail as some individuals will refuse to accept a certified or registered letter.

- Full and fair hearing on the proposed expulsion or denial of enrollment. The hearing must provide the student a meaningful opportunity to respond to the allegations. Such opportunity must be reasonable in the circumstances, given the age and development of the student involved and the seriousness of the allegations.

References *Idaho Code §33-206*