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STUDENT DISCIPLINE - DUE PROCESS REQUIREMENTS

School districts are often confronted with situations in which students engage in conduct that is in violation of district policies that rises to the level that necessitates the imposition of discipline. Section 1318 of the Pennsylvania Public School Code and Chapter 12 of the State Board of Education regulations govern how to properly impose discipline in these situations. This article highlights the different due process requirements that must be provided to the student for various degrees of discipline.

If the discipline is a suspension for 1-3 school days, the student is not entitled to a formal due process hearing. Rather, the student is only afforded an opportunity to explain his or her position after being told what he or she is accused of doing. No prior written notice must be provided to the student. A suspension of this period of time provides the student with the least amount of due process protection.

If the discipline is a suspension for 4-10 school days, the student is entitled an informal hearing. The informal hearing must be held within 5 days of the beginning of the suspension and the student must receive written notification of the reasons for the suspension. At an informal hearing, the student is permitted to speak and produce witnesses on his or her own behalf but has no right to have an attorney present. It is good practice to provide written notice of the informal hearing to parents when they pick up their child on the day of the incident. Often, parents will agree to hold the hearing at that time and not wait for a later date.

If the discipline is for more than 10 school days at one time, the discipline is considered an expulsion. In this case, the student is entitled to a formal hearing before the entire school board or a committee of the school board. Written notice of the charges must be provided to the student prior to the hearing. The hearing must be recorded and the student has the right to counsel, the right to testify, the right to call witnesses, and the right to present evidence on his or her own behalf. It is the district's burden to establish guilt. If proven, a punishment phase of the hearing is conducted in which the school board considers whether expulsion is appropriate. In reaching that conclusion, mitigating circumstances are considered as well as the student's prior discipline, attendance, academic, and extracurricular records. After the hearing, the school board develops findings of fact and conclusions of law and votes upon whether expulsion is permanent or for some lesser amount of time.

Therefore, as discussed above, the length of discipline to be imposed dictates what due process procedures need to be followed. In short, the more severe the discipline to be imposed, the more due process protections are provided for the student. Failure to do so could result in a subsequent lawsuit and the reversal of the discipline.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

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