


School Boards and Student Disciplinary Hearings

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Overview

- ▶ Alaska Statutes governing discipline
- ▶ Alaska Constitution
 - ▶ Right to attend school
 - ▶ Right to life, liberty, the pursuit of happiness
- ▶ Due Process Clause
 - ▶ Procedural rights
 - ▶ Notice and an opportunity to be heard



Alaska Statutes Addressing or Relating to Student Disciplinary Hearings

AS 14.30.045

- ▶ Provides that a school age child may be suspended or denied admission to the public school entitled to attend only for the following:
 - ▶ Continued willful disobedience or open and persistent defiance
 - ▶ Behavior that is inimicable to the welfare, safety, or morals of other pupils or a person employed or volunteering at the school
 - ▶ A physical or mental condition that in the opinion of a competent medical authority will render the child unable to reasonably benefit from the programs available or will cause the attendance of the child to be inimicable to the welfare of other pupils
 - ▶ Conviction of a felony that the governing body of the district determines will cause the attendance to be inimicable to the welfare or education of other pupils.

AS 14.03.080(f) Right to Attend School

- ▶ (a) A child of school age is entitled to attend public school without payment of tuition...in the school district in which the child is a resident...
- ▶ (f) This section does not require a school district to admit a child or person currently under suspension or expulsion under AS 14.03.160 in that or another school district.

AS 14.03.160 Suspension or expulsion of students for possessing weapons

- ▶ A school district shall expel for at least one year a student who violates AS 11.61.210(a)(8) while possessing a firearm, as defined under 18 U.S.C. 921;
- ▶ A school district may suspend for at least 30 days, or expel for the school year permanently, a student who violates AS 11.61.210(a)(8) while possessing a deadly weapon, other than a firearm.
- ▶ Administrative officer of a district may on a case-by-case basis reduce or otherwise modify the expulsion or suspension

How can a student return from expulsion or long-term suspension?

- ▶ School may impose conditions
 - ▶ AS 14.30.047 Admission or readmission when cause no longer exists.
 - ▶ (b) a child who has been suspended from or denied admittance to a school for any other cause provide by AS 14.30.045 shall be permitted to attend school when it reasonably appears that the cause has been remedied.
 - ▶ What does this mean?

Student Rights Under Alaska Constitution



Breese v. Smith, 501 P.2d 159 (Alaska 1972)

- ▶ Supreme Court held that the School Board's decision to expel Breese for willful disobedience of the hair length regulation violated Breese's constitutional rights.
 - ▶ Alaska constitution, article 1, section 1: "... All persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry. . ."
 - ▶ Alaska constitution, Article VII, section 1: "The legislature shall by general law establish and maintain a system of public schools open to all children of the State..."

Breese v. Smith (cont)

- ▶ Court held that Article 1, section 1 of the Alaska Constitution's liberty right means students attending public educational institutions in Alaska possess a constitutional right to wear their hair in accordance with their personal tastes.
 - ▶ This right is not absolute
 - ▶ State must show a compelling interest to justify intrusion on right, which they could not show here.

Procedural Due Process Rights and Student Disciplinary Hearings



Goss v. Lopez, 419 U.S. 565, 581 (1975).

- ▶ A student is guaranteed, at a minimum, notice and a hearing prior to suspension or expulsion from public school.
- ▶ In Goss, the U.S. Supreme Court recognized that “[s]tudents facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have, and an opportunity to present his side of the story.”

Linwood v. Board of Education, 463 F.2d 763 (7th Cir. III, 1972)

- ▶ To be fair, an expulsion procedure must offer a student an opportunity to be heard in a "meaningful manner." This includes:
 - ▶ timely and adequate notice of the charges,
 - ▶ with a reasonable opportunity to prepare for and meet them;
 - ▶ an orderly hearing in keeping with the nature of the subject matter involved;
 - ▶ the right to be represented by counsel,
 - ▶ to call and examine witnesses, to cross-examine the opposing witnesses; and
 - ▶ consideration of the evidence by an impartial tribunal with action based thereon.

Wynar v. Douglas County Sch. Dist., 728 F.3d 1062 (9th Cir 2013).

- ▶ A student was expelled for threatening violence via text messages.
- ▶ After expulsion, the student alleged his due process rights were violated because he was not provided with evidence in advance of the hearing and because no witness testified to any disruption and hence he could not cross-examine on that point.
- ▶ The court held that neither additional procedure was constitutionally required:
 - ▶ "In determining whether Landon received adequate due process, we consider Landon's interest in his education at Douglas High School; 'the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and Douglas County's interest, including the not-insignificant burdens that the additional safeguards would entail. We note that administrative proceedings need not cleave to strict state evidentiary rules.'"
- ▶ In other words, court uses a balancing approach.

The amount of process
due depends on the
severity of the discipline
imposed.

Conclusion

- ▶ Discipline must be in accord with statutes
- ▶ Make sure you are aware of District procedures
 - ▶ At minimum student must be given notice and an opportunity to be heard
 - ▶ Hearing must provide opportunity for student to present defense including right to be represented by counsel, to call and examine witnesses, to cross-examine witnesses, and consideration of the evidence by an impartial tribunal.
 - ▶ Hearing is confidential
 - ▶ School Board should only consider evidence presented at hearing, no ex parte communication with either party
- ▶ Coordinate with special education department, as needed
- ▶ Be aware of student constitutional issues