

Nuts and Bolts

{ How to Conduct a Flawless Disciplinary Hearing

⌘ Due process

- ⌘ Notice and an opportunity to be heard
- ⌘ We all have a basic sense of what is fair

⌘ Proof-test your decisions

- ⌘ And your policies!

⌘ Build a record

What are you trying to
accomplish?

- ⌘ An administrator suspends a student for more than 10 days
 - ⌘ The suspension may be unconditional for a specified period of time or subject to reasonable terms and conditions
 - ⌘ What does this mean?
- ⌘ The administrator must then give immediate written or actual notice of the suspension and the right to appeal to the parent/guardian
- ⌘ Notice of the appeal must be given within five days by the student, the parent/guardian, or a teacher upon the request of the student
 - ⌘ Notice may be oral or written

How do you get to the hearing?

- ⌘ The appeal is to the board of education or a disciplinary hearing authority (DHA) appointed by the board
 - ⌘ At least one licensed employee, but the DHA may have as many members as there are members of the board
- ⌘ The DHA must hear the appeal within 10 days
 - ⌘ Must give written notice of date, place, and time to student, parent/guardian, the administrator who ordered the suspension, and any teacher who filed the appeal
- ⌘ Be sure that your board policies are clear and that the administration is following them

Who conducts the hearing?

⌘ Do you have a DHA?

⌘ How many members does the DHA have and have they been appointed?

⌘ What role does the director play?

⌘ Appeal from DHA to the board?

⌘ Zero tolerance?

⌘ How is the record to be prepared?

⌘ May the student have an attorney?

⌘ Newsome v. Batavia Local School District, 842 F.2d 920 (6th Cir. 1988)

⌘ How are these policies communicated?

What about board policies?

- ⌘ This is a formal hearing
 - ⌘ Remember the purpose
 - ⌘ Protect the record
- ⌘ How does this inform the arrangement of the room?
 - ⌘ Who sits where?
 - ⌘ How is the record being taken?
- ⌘ Are you going to have witnesses?
 - ⌘ Where do they stay?
 - ⌘ Do you have different procedures for different offenses?

Conduct of the hearing

- ⌘ The Chair calls the hearing to order at the specified time
 - ⌘ He or she asks everyone to introduce himself or herself on the record
 - ⌘ Start with the DHA, then the Administration, then the student
- ⌘ The Chair then states for the record...
 - ⌘ The offense, including the conduct and the date the student committed it;
 - ⌘ The proposed suspension; and
 - ⌘ The date the student filed the appeal
- ⌘ The Chair then explains the procedures the DHA will follow, including the role of any attorney
 - ⌘ Ask if there are any questions and if there is understanding

Convening the hearing

- ⌘ The administrator presents his case
 - ⌘ He need not call witnesses; he may summarize his investigation instead
 - ⌘ Isn't that hearsay?
 - ⌘ He need not even disclose the students whom he interviewed!
 - ⌘ Protects whistle-blowers
 - ⌘ The student does not have the right to cross-examine the administrator
 - ⌘ But the DHA can and should ask questions
- ⌘ The student presents his defense
 - ⌘ He may call witnesses to rebut the administrator's case, or he may offer an explanation himself
 - ⌘ But he does not have a right to have an attorney present his case
 - ⌘ So what if he wants his attorney to sit with him?
 - ⌘ Again, the DHA can and should ask questions

Presentation of the evidence

- ⌘ The Chair may adjourn the DHA for private deliberations or it may deliberate in the hearing room
- ⌘ The decision
 - ⌘ The DHA must summarize the facts upon which it has based its decision; and the facts must have been adduced in the hearing!
 - ⌘ The DHA may affirm the suspension, reverse the suspension, modify the suspension, assign the student to night school or alternative school, etc.
 - ⌘ Note: In the case of a zero tolerance offense, the DHA just decides guilt or innocence
 - ⌘ Wait – are you really dealing with a zero tolerance offense?
 - ⌘ The DHA must set forth the rationale for its decision in view of the facts it has found to be true
- ⌘ Upon conclusion, the Chair closes the hearing

Deliberation

- ⌘ The student or the administrator may appeal to the board within five days
- ⌘ In the case of zero tolerance offenses...
 - ⌘ The director may modify the punishment before it goes to the board
 - ⌘ The board may sustain or reverse the DHA on the record, or it may hear an appeal, but its jurisdiction is limited to guilt or innocence and whether due process was followed
 - ⌘ Be sure you are dealing with a zero tolerance offense!
- ⌘ In all other cases...
 - ⌘ Board policy may require the director to hear the case first
 - ⌘ The board may grant a hearing, or it may decide the appeal on the record from the DHA
 - ⌘ But it may not impose a more severe punishment without granting a hearing

Post-hearing due process

- ⌘ IDEA permits school officials to assign SWDs to an alternative school for up to 45 days, regardless of whether the behavior is a manifestation, for
 - ⌘ Carrying or possessing a weapon;
 - ⌘ Knowingly using or possessing illegal drugs; or
 - ⌘ Inflicting serious bodily injury
 - ⌘ *I.e.*, substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty
- ⌘ This is NOT the same thing as zero tolerance
 - ⌘ It is merely an exception to stay-put
 - ⌘ Meaning, school officials have to determine whether a 45-day placement is warranted
- ⌘ What procedures should they follow?

45-day interim alternative placement

- ⌘ *Tenn. Code Anno.* § 49-13-105(b)(8) provides that charter schools are to protect the due process rights of students
 - ⌘ So how does that inform the relationship local boards have with charters regarding disciplinary appeals?
 - ⌘ What about alternative schools?
 - ⌘ And what about accountability?

Charter schools



Questions?