

# STUDENT DISCIPLINE AND EXPULSION: WHAT HOLDS UP IN COURT?

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While all educators aim to create an environment where every student thrives and flourishes, we know that there are times when a student's actions require discipline or expulsion. Those are always difficult decisions. However, certain factors can make such decisions even more complicated, especially if serious ramifications could result. For example, what if the student is a senior and the offense has to be reported to colleges? What if you are dealing with a difficult parent? What if the student has sensitive medical issues?

In these and other difficult circumstances, it is not uncommon for parents to quarrel with your disciplinary decision. In fact, it is becoming increasingly common for parents to seek legal recourse in the face of an adverse decision. Such legal recourse usually comes in the form of a claim that the school breached its contractual obligations to the student and their family.

## WHAT TEST DO THE COURTS USE TO UPHOLD PUNISHMENT?

Courts generally provide schools broad discretion in determining what your rules, guidelines, and disciplinary processes will be. They will look to see whether you have met standards which ensure "fundamental fairness" in the process. This is the test used for all private K-12 institutions, colleges, and

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universities with respect to their relationships with their students. When determining whether fundamental fairness has been satisfied, courts generally look at five factors.

## 1. *Clear Guidelines*

First, your school must have a **set of guidelines** for student and parent behavior, and must show that the student and parent were aware of the policies. These guidelines are often found in the school's enrollment contract, student/family handbook, and other published policies. In order to successfully rely on your policies as the basis for discipline, it is critical that all of your policies and guidelines are clear regarding the prohibited or expected behavior and the consequences for violation of same.

Unfortunately, many institutional policies are not clearly written and leave room for dispute. In order to establish knowledge of the policies, it is helpful to have signed receipts from parents and students acknowledging that they received the handbook. Additionally, it is helpful to have evidence that the student and parents received training on the various policies.

## 2. *Fair And Thorough Investigation*

Second, your school must conduct a **fair and thorough investigation** of the allegations or circumstances surrounding the alleged infraction. As an initial matter, the investigation must be conducted by an appropriate person who is, among other things, impartial and trained on how to handle the type of investigation at issue. The school agent conducting the investigation must ensure that it is comprehensive, that they have interviewed all individuals with knowledge of the events, and that they have viewed all evidence available, including texts, emails, social media postings, phone logs, etc.

### 3. *Opportunity To Respond*

Third, it is essential that your investigation include the **opportunity for the student to respond** to the allegations before determining discipline. Typically, this is the last step of the investigation. However, in the event the student provides new information, your school must investigate further and follow up on those new leads.

### 4. *Consistency*

Fourth, your school must **consistently follow its own policies and investigation** procedures when determining the proper level of discipline. For instance, if your policy provides for peer review for certain infractions, then that procedure must be followed. Further, if your disciplinary guidelines state that skipping class will result in detention, then that is the punishment that should be imposed unless school policy provides otherwise, as discussed below.

It is critical to not only follow school policy when imposing discipline, but also when gathering evidence during the investigation. For example, if your policy does not allow you to inspect a student's cell phone, any discipline doled out as a result of such a search may not be upheld.

### 5. *Not Arbitrary Or Capricious*

Lastly, your school must not act in an **arbitrary or capricious** manner. One of the main factors courts look at in making this determination is whether the policy has been consistently applied to others who have engaged in similar infractions. If there are inconsistent results, those results must be based on written policies that allow your school to deviate from the prescribed discipline by weighing other

factors such as level of cooperation, overall student history, or prior disciplinary infractions.

## **WHAT ARE THE POSSIBLE CONSEQUENCES?**

If a court finds that your process or decision was not fundamentally fair, then the expulsion can be reversed and the student reinstated. Clearly, this can be a very uncomfortable outcome. Also, if the contract provides for prevailing party attorneys' fees in the event of a dispute, you may be required to pay the student's attorneys' fees—which can be sizable if the case goes to trial.

## **BEST PRACTICES**

You should review your handbook and policies on an annual basis to ensure they are a realistic portrayal of your school's current practices. Make sure that you have a signed acknowledgment of receipt from the student or the student's family and retain any evidence of training on the policies. Also, ensure that the proper school personnel engages in a thorough investigation, which must include an opportunity for the accused to be heard and provide his or her side of the story.

When considering serious discipline, review prior similar cases to ensure that you are consistently applying your policies and discipline. While no educator enjoys imposing serious student discipline, it is a necessary component of the job and can carry serious consequences for the student—and also for your school if not done carefully.

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