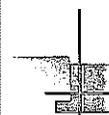




Due Process

School Based Discipline



Due Process

- Due process means fundamental fairness and substantial justice.



Due Process: Substantive

- The potential consequences of the incident involved determines the amount of investigation and degree of due process that occurs.
 - The greater the consequences the more in-depth the due process.



Due Process

- Consists of three essential elements
 - Notice
 - An opportunity to be heard.
 - The right to defend in an orderly proceeding.



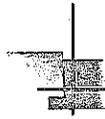
Due Process

- There are two types of due process.
 - *Formal*: used when a parent desires a hearing before the School Board (or it could be used in regard to ESE issues that are unable to be mediated).
 - *Informal*: what is utilized at the school site in determining action taken by school officials.



Due Process: Informal

- Allegation
- Investigation
- Result (Judgment)



Due Process: Allegation

- Allegation
 - Via disciplinary referral, student complaint, parent complaint, witnessed incident, etc....
 - Written notice of allegation including (if known):
 - Who
 - What
 - When
 - Where
 - How
 - Witnesses



Due Process: Allegation (Notice)

- Communicate with alleged perpetrator:
 - What they are accused of.
 - Make sure the individual understands what he/she is being accused of and what action could result if the allegations are founded.
 - If you realize that the alleged incident may involve suspension then it is important that you inform the alleged perpetrator that you are conducting an informal hearing to determine what action if any is warranted.



Due Process: Investigation *(Opportunity to be heard)*

- Allow the alleged perpetrator to make a written statement of his/her involvement if any. The following information should be included (if known):
 - Who, What, When, Where, How, Witnesses
 - Have the alleged perpetrator sign statement.
 - See Handout DP-1



Due Process: Investigation

- Call witnesses for both "sides" and emphasize:
 - Confidentiality of their statement (within reason).
 - They need to be honest in their written statement as you will be comparing their statement to others.
 - Only relate what they actually heard or saw....not hearsay.
 - They need to include who, what, when, where, why, and witnesses (if known).
 - Witnesses are to be separated and not allowed to discuss the incident with others.
 - Once a student makes the written statement, read and interview him/her alone regarding their statement. Make notes of interview.
 - Compare witness statements and if necessary re-interview.



Due Process: Result

(informal hearing)

- Compare witness statements.
- Discuss findings with alleged perpetrator.
- *Alleged perpetrator is given the opportunity to dispute findings.*
- Review all evidence prior to a judgment. Determine if enough evidence is available for judgment (student receives benefit of the doubt if it exists).
- Make judgment based upon evidence (witness statements) and determination of action to be taken based upon school's disciplinary plan and Code of Conduct.
- Inform alleged perpetrator and parents of result.



Due Process: Tips

- NEVER tell a student he/she is being suspended without conducting the due process hearing.
- Regardless of how many times the student has had a referral he/she must receive a due process hearing (remain objective).
- If there is no doubt of a student's guilt (you witnessed it yourself), he/she must still receive a due process hearing. Get a written statement from the student and any other "witnesses".
- Do not hesitate to call the parent prior to a judgment being made if you believe their input can be used in the investigation.



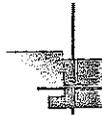
Due Process: Tips

- Do not interject personal opinions (“if you were my child”, “if I were your parent”).
- Avoid using the phrase, “it is out of my hands” when communicating with parents. Use facts regarding reasons for results (“The Student Code of Conduct states that in a situation such as this we take the following course of action:”).
- Make sure you have a copy of the student’s Code of Conduct test to verify knowledge of consequences for certain behavior (administer the test school-wide at the beginning of each semester after reviewing the Student handbook and Code of Conduct).



Due Process: Tips

- When questioning students regarding an incident that must be reported to law enforcement do not state that you won’t have the student arrested if they are honest with you or that you will ask law enforcement “to go easy” on them:
 - Schools do not arrest students: law enforcement makes the determination if he/she will arrest based on evidence. Schools discipline according to SRCS Policies.



Due Process : Tips

- When a student is suspected of having a weapon or drugs, he/she is to be escorted by a school employee to the interview site.
- The student is not to be left unsupervised until it is certain he/she does not possess the item.
- When obtaining a student from class, embarrassment/ suspicion can be avoided by communicating to the teacher that you need to see the student and they need to bring their belongings since you are busy and they may not get back to class prior to the class change.



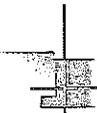
Due Process: Tips

- Know the individual teacher's classroom management plan.
- Have a copy on file of each teacher's plan to refer to.
- You may have some questions you need to ask the teacher with regard to a referral they have written based upon your interview with the student. Assure the teacher that you are looking for clarification based upon the student interview.
- There may be times that you will have the teacher address the student in your presence during the process of the investigation if the student alleges that the teacher is making false accusations.



Due Process: Tips

- Never disagree with a teacher in front of a student.
- If a teacher has not made an appropriate judgment call, you need to discuss with the teacher the problems with his/her decision and how to handle the situation in the future.



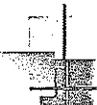
Due Process: Searching

- You may search students if you have *reasonable suspicion* that they are in possession of an item they should not have.
- Explain to the student that for his/her and others safety that you need to ask him/her if he/she have something he/she shouldn't and search him/her for the item if necessary. (Do you have something you shouldn't have at school?" "Do you have something that belongs to someone else?").
- You must inform the student of what he/she allegedly has and offer him/her the opportunity to produce the item prior to being searched. Do not search the student without another school official present.
- Do not ask the student at any time to remove any garment(s) other than his/her outerwear (such as a jacket, sweater).
- If the student is found not to possess the alleged item, ask him/her why someone would think that he/she would?



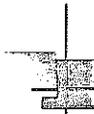
Due Process: Interviewing

- It may be necessary to call several students or detain several students at once. Reasons to do so are:
 - To minimize the spreading of the incident account.
 - To determine who and how many are involved.



Due Process: Interviewing

- Do not let the students talk among themselves.
- Have the students fill out an Incident Report:
 - This keeps the students engaged
 - Gives you the opportunity to get a timely account of the incident
 - If the students are the one's involved in the incident, it provides them a "time-out" period (to cool down, gather thoughts)



Due Process: Interviewing

- Let the students know what they are being interviewed about (indicate the incident not details: "Something happened between two students on the bus, did you see what happened?, "Did you hear what the students said to each other?").
- Make sure the student understands the information you want from them is what they actually saw or heard, not what someone else tells them.



Due process: Interviewing

- Always interview students individually.
- Let the student know that his/her statement to you is confidential and that you do not share their name with anyone unless it is a school official who has a need to know.



Due Process: Interviewing

- If the incident is possibly drug related, make sure the following questions are asked:
 - Who gave you the item?
 - What did the person tell you it was?
 - What did you think or believe it was?
 - Where and when did you see/receive it?
 - Did any one else see/receive it?



Due Process: Interviewing

- If the incident involves aggressive contact between students, have the students checked by the Health Tech even if they claim to not be injured.



Due Process

Questions?

