

## II. Laws Relating to School Discipline

### A. The Equal Protection Clause/Title VI of the Civil Rights Act of 1964

The Fourteenth Amendment of the United States Constitution prohibits all public schools from discriminating on the basis of race, color or national origin. Title VI of the Civil Rights Act of 1964 similarly prohibits discrimination by any school system that receives "federal financial assistance". The United States Supreme Court has held that only intentional discrimination violates the Fourteenth Amendment, but intentional discrimination is generally quite difficult to prove. See Gerstein and Gerstein, at §§ 15.1-15.2. However, evidence that might support a legal claim for discrimination in discipline is evidence, for instance, that a black student engaged in the same activity as a white student and had the same or similar discipline or academic background, but was punished more harshly than the white student, or the black student was punished and the white was not. A consistent pattern of this type of differential punishment is even more compelling evidence that racial bias is the cause of the different treatment and, thus, violates the 14<sup>th</sup> Amendment and Title VI. Looking at the statistics for discipline in a school by race is often helpful in assessing these patterns. In fact, when the statistics reveal the disproportionate administration of discipline on minority students, parents may file a complaint with the Office for Civil Rights alleging that such a disproportion alone violates Title VI's prohibitions and implementing regulations, regardless of whether there is evidence that intentional discrimination is the cause of the disproportion.

### B. Due process and Fairness/Hearings under Goss v. Lopez

Because states have guaranteed children the constitutional and statutory right to a free education, the Fourteenth Amendment provides that this right cannot be withdrawn absent certain procedures to ensure that the state does not deprive any person of life, liberty or property without due process of law. These procedures are commonly and collectively known as "due process". The United States Supreme Court has accordingly held that due process requires schools to provide some level of notice and hearing to students facing disciplinary action such as suspension or expulsion. Goss v. Lopez, 419 U.S. 565 (1975). In order to avoid unfair suspension or expulsion, due process requires that students be given notice and a chance to respond. The type and length of punishment will dictate how formal the procedures must be. Some of the due process procedures that may be applied in Arizona are set forth in section III.C below. Typically, a suspension of less than 10 days requires general notice and informal hearing – enough to permit a student to give his or her version of events before suspension is imposed. Goss v. Lopez. Longer suspensions will require more formal procedures. For further discussion, see "Opportunities Suspended: the Devastating Consequences of Zero Tolerance and School Discipline Policies" at 34-36.

### C. Notice of Charges, Pre-Hearing Suspensions, Hearing Panels

In the case of a proposed expulsion or long-term suspension, schools must give students specific notice of the charge, including the specific conduct at issue and the rule that was violated. Punishment should not be imposed until a finding of guilt has been

made. However, pre-hearing suspensions have been upheld in cases where schools have reasonable grounds to believe that a student's presence was a danger to other students. To satisfy due process in the case of a pre-hearing suspension, a hearing must take place as soon as practicable after the suspension. Goss v. Lopez.

Hearings should be conducted by impartial hearing officers. Generally, absent a showing of bias, school administrators who participated in the investigation or otherwise have knowledge of the charges are not disqualified from participating as hearing officers. At the hearing, the student has the right to tell her version of events or, in essence, defend herself. What type of "defense" she will be allowed to mount will depend on the severity of the punishment the school wants to impose. For instance, Georgia law provides that school boards may establish disciplinary tribunals to conduct the hearings for students whom the school intends to suspend or expel for 10 or more days. In these tribunals, a student has the right to confront and cross-examine witnesses and to be represented by counsel. However, for in-school suspension or isolating a student in the hallway for the rest of class, a hearing might consist of nothing more than the teacher stating that she believes the child has done "x" and then asking the child to respond, after which the teacher decides a penalty. The following chart is a list of general tips that parents and/or students should keep in mind in defending the student's interests in these proceedings.