

## **QUICK GUIDE: WHAT TO LOOK FOR AT THE DUE PROCESS HEARING**

### **\*\*\*\* Important note about this Quick Guide \*\*\*\***

Each school district has different policies and procedures. This packet contains only general information, so it is important to review the specific school district's policies.

#### **Questions to ask before the hearing:**

- What provisions of the student code is the student accused of violating?
  - Read the student code carefully. Sometimes the student's conduct did not violate the specific terms of the policy.
- What are the hearing procedures?
  - Read the procedures carefully. If the student fails to follow the policies, the school may prevent the student from exercising certain rights.
  - Example: Some policies require the student to notify the school, in writing, several days before the hearing if they intend to call witnesses.
- Does the student admit the alleged conduct?
  - If yes, the student's best argument will be that the punishment is too severe for the conduct or for the particular student.
    - Gather evidence that may convince a principal or hearing officer that they should be lenient or that this was a one-time mistake.
    - Examples: The student has mental health problems and recently began counseling; the student has no disciplinary history prior to this event; student has been through a lot of difficult and really needs to be in school.
    - Ask people who know the student well (pastor, neighbors, mentor) to come to the hearing and say good things about the student. If they can't come, have them write out and sign a statement saying those things.
  - If no, the students will need evidence to dispute the charges.
    - Think about what witnesses, documents, or other evidence will help prove that the student did not do what he or she is accused of.
    - Gather as much of it as you can for the hearing.
    - Do whatever you can to get people to come who can help support your position. If they can't come, at least get a written statement.
- What is the nature of the evidence likely to be presented against the student?
  - If there is physical evidence or written reports (police reports or a school incident report), you should request copies before the hearing and review them in order to be prepared.
  - If the evidence against the student is likely to be oral testimony, think about what the witnesses are likely to say and prepare (write out questions beforehand) what to ask those witnesses.
- Do you have the student's records, including discipline record and grades?
  - Request the student's "cumulative academic file" from the school and review it. The principal will use any negative information in the file against your student, so be prepared to talk about the positive things.
- Does the student receive special education services (have an individualized education program (IEP) in place, or been referred for testing)?
  - If yes, see **Quick Guide: School Discipline for Special Education Students**

### Questions to ask during the hearing:

- Did the person speaking personally observe or experience what he or she is talking about?
  - Example: Often principal will testify, “Another student told me that [the accused student] did ...” but the other student is not at hearing.
  - Example: Principals may present written statements from other students who are not present about what they saw.
  - **If not, make the following argument:** “That testimony violates the student’s rights for two reasons: (1) Due process requires that the student be able to cross-examine witnesses against them, and the actual witness is not present to answer questions; and (2) because the person who actually witnessed the event is not present and cannot be questioned, the hearing officer cannot determine if what they told this person is believable and accurate.”
  - **If not, also ask what steps the principal took to verify that the person’s statements are true.** Examples: Did the person actually see what happened or instead rely on what other people said happened? Does the person know the accused student – are they enemies? Is the person friends with any victim or another student who is helped by their statement?
  - If principal took no steps or otherwise cannot answer these questions, argue that the hearing officer should not give weight to this evidence.
- Did the principal talk to any other students besides the witness against your student?
  - Principals often only present evidence that hurts (incriminates) your student, even if they received information that would help (exculpate) your student.
- Are you able to ask questions to the school’s witnesses?
  - You should be able to *respectfully* ask questions to the school’s witnesses and have them answer the questions you ask.
  - If the witness does not fully answer a question, respectfully state that you do not believe your question was answered and ask it again.
- Were other students involved in the incident?
  - If they received significantly lighter punishments, this may show an unfair application of punishments.
- Have other students been involved in similar incidents in the past? What were the punishments for those students?

### Questions to ask after the hearing:

- Did I receive a written decision from the hearing officer?
  - If not, request a copy of the decision.
- Did you receive a tape recording or written transcript from the hearing?
  - If not, request it.
- If the hearing officer upheld the suspension, what should I do next?
  - You can appeal the decision to your local school board, although there is a time limit on how long you have to request this appeal (look at the local board policies).
  - The Board appeal usually occurs before the entire Board or just a few members. You will be given a limited amount of time to argue why the suspension should not be upheld.
  - Usually, the Board will not consider new evidence.