Understanding Due Process

Or

What is due process and how does it work at school?

What is due process and how does due process work for students? The general notion behind due process is that people should not lose governmentally supported rights or privileges unless there are processes in place to assess the situation and assure that rights or privileges are revoked in a “fair” manner. I short, due process is a double-check or second opinion that verifies that rights or privileges are lost for a good reason … not a bad reason.

The Fourteenth Amendment provides the constitutional support for due process. Specifically, government agencies cannot take away “liberty or property” unless due process is afforded to the person experiencing the loss. There is also a direct correlation in the amount of due process and the amount of loss … the smaller the loss … the smaller or briefer the due process … the greater the loss … the greater or more extensive the due process.

To be more specific, let’s say a student uses a weapon or does something that substantially disrupts school. This type of offense would likely result in a long-term suspension from school. Since students are entitled to a “free and appropriate public education” (FAPE), students in these and similar situations are entitled to fairly extensive due process. This would include an appeal with the principal, a district level hearing, a Board of Education hearing and a day in court … if provided by law.

On the other hand, let’s say a student lost parking privileges on campus or lost the privilege to participate on a sports team or lost the privilege to wear certain clothes to school or lost the liberty of walking across the stage at graduation, these students might receive a brief or minimal discipline … or no formal school discipline at all. Students in these and similar situations would be entitled to very little due process … probably a conversation with the principal or superintendent. The difference is that these are privileges or liberties … not property rights.

Most of the time school due process works pretty well. I have actually seen a few occasions when school discipline was overturned or changed as a result of due process. School related due process works well because most folks are reasonable and accept school liberty and property losses when they have done something inappropriate. It also works well because schools typically investigate, reference school law, reference school board policy and consider mitigating or aggravating factors before issuing significant discipline.

However, there are some folks who expect and sometimes demand extensive due process when they have experienced a minor loss or no loss at all. They expect to have multiple hearings and court proceedings over a day of in-school detention or a parking ticket or because someone else was successful (and they weren’t) or because someone else was disciplined too much or too little (in their opinion). While due process is very important, it is not a forum for disagreeing with decisions about other people. It is also not a forum established for the purpose of changing or ignoring previously established laws or policies. Due process is designed to make sure we only lose “liberty or property” when we have done something that causes us to experience such a loss.