

The Right to Due Process of Students and Teachers
in Public K-12 School Settings

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Background of the Legal Issue

The Fourteenth Amendment of the United States Constitution affords all citizens the right to “due process of the law;” meaning that no government—whether Federal or State—nor persons acting as representatives of the government may deprive another person of their right to life, liberty or property without following the proper legal procedures. According to McCarthy, Eckes, and Decker (2018, p. 11), the courts have identified two forms of due process under the law: procedural due process and Substantive due process. “*Procedural due process*,” they continue, “ensures fundamental fairness if the government threatens an individual’s life, liberty, or property interests... [while] *substantive due* process requires that state action be based on a valid objective with means reasonably related to attaining the objective.”

This Amendment of the Constitution is of particular importance in the context of public schools since (public) education is a state function. As a result, schools and their officials are considered actors of the State and are therefore required to afford the protections of the Fourteenth Amendment—and all other Amendments—to all persons within their school. Unfortunately, many educators are unaware of the Constitutional rights of students and teachers within buildings, which has resulted in numerous—otherwise avoidable—legal challenges.

Learning Objectives

By the end of this lesson, teachers will be able to:

- *identify the Constitutional Amendment that affords citizens the right to due process under the law,*
- *articulate the difference between procedural and substantive due process, and*
- *articulate at least three specific rights of students and/or teachers within public schools.*

Instructional Strategies and Learning Tasks

This activity is intended to be conducted within an hour-and-a-half-long faculty meeting.

Activator/Motivation:

(~7 minutes)

1. Kahoot! Activity
 - a. This activity ought to include five questions, each of which depicts a situation in which participants need to determine if a student *can* be disciplined (not whether they *should* be disciplined).
 - b. Example(s): student wearing a “Make America Great Again” hat, student wearing a t-shirt depicting “420,” a student with an “odd” hairstyle.

Review Learning Objectives:

(~3 minutes)

1. Display all learning objectives in presentation
2. Describe the importance of the session’s activities

The Law:

(~35 minutes)

1. **The Incorporation Doctrine**
 - a. As a result of the due process rights granted by the Fourteenth Amendment, rights delineated within the Bill of Rights cannot be restricted by other governmental bodies (such as State or local governments)
 - i. This is the case even if a State or local government's ruling document(s) does not expressly grant said Constitutional rights onto its citizens
2. **Guiding Principle**
 - a. According to McCarthy (2018, p. 108), "the government, *including public school boards*, must have a compelling justification to curtail citizens' expression, even of unpopular viewpoints"
 - b. Applicable to other fundamental rights, too
3. **Student Expression via Tinker v. Des Moines Independent School District (1969)**
 - a. Student suffered a ten-day suspension for wearing a black armband protesting the Vietnam War
 - i. School recently created a policy banning such armbands upon learning of the planned protest
 - b. SCOTUS deemed that "students were punished for expression that was not accompanied by any disorder or disturbance, [and] ruled that 'undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.'" (McCarthy, p. 108)
 - c. Student's right to *substantive due process* was violated
 - d. Considered to be the *gold standard* of student free-speech, and thus due process
 - e. SCOTUS and other courts have since slowly chipped away at this *gold standard*; adding certain exceptions to this freedom
 - i. Describe the exceptions
 - f. Figure 5.3 from the McCarthy text (p. 113)
4. **Student Discipline via Goss v. Lopez (1975)**
 - a. Process matters!
 - i. In the event that a punishment is "too harsh", courts will give them the benefit of the doubt *so long as* the student was granted proper due process
 - b. Explain the case
 - i. Students claim they were unlawfully suspended without due process

- ii. SCOTUS determined that education is a “property” right made available to all students, so their fundamental “right to property” was violated
 - c. Fourth Amendment protects persons from unwarranted searches and seizures
 - i. Reasonable suspicion standard (McCarthy, p. 214)
 - 1. “Is the search justified at its inception?”
 - 2. “Is the scope of the search reasonable?”
 - d. Random searches:
 - i. Permissible under the reasonable suspicion standard
 - ii. Cannot require **blanket** searches, individualized suspicion only
5. ***Rights of Teachers via Pickering v. Lopez (1968) and Garcetti v. Ceballos (2006)***
- a. *Pickering v. Lopez*
 - i. Description: teacher writes letter-to-editor critical of the School Board’s allocation of funds within a bond vote, teacher is fired shortly after
 - ii. Outcome: SCOTUS sides with teacher, determines that teacher’s right to due process was violated
 - b. *Garcetti v. Ceballos*
 - i. Description: an employee of the LA District Attorney’s office was fired for the public communication of information
 - ii. Outcome: speech as part of one's official duties is not protected
 - c. Public vs. personal concern
 - d. Forum matters!

Application of Content to Practice:

(~25 minutes)

1. Participants work in groups of three-to-five in determining the outcome of numerous situations they might encounter as teachers and future school leaders
 - a.
2. With about seven minutes remaining, groups share out their recommendations and conversations ensue
3. Principal gives final advice afterwards

Assessments:

(~20 minutes)

1. Teachers work in the same groups to either:
 - a. create an information pamphlet for other/future teachers
 - b. develop a “know your rights” handout for students or teachers
2. Another Kahoot!

Self Reflection

I've always had an interest in government, politics, and policy, especially education policy. During my undergraduate career, I interned with Senator Kirsten Gillibrand, worked for a Congressional campaign during the 2012 cycle, and interned at the US Department of Education in the Summer of 2013. Although these experiences were many years ago, this class reminded me of the immense joy I had during each of them. Throughout much of my time at SPA, I felt *less-than* because of my age, my job, and my level of experience. This was certainly not the case in this class, though—I was able to *really* test my knowledge and understanding of the (legal) world on a daily basis.

This class has made me question whether or not I want to continue down the current path I'm on. Right now, my school district values experience over education. Since my experience is *less-than* that of many of my peers, I likely won't be considered for a promotion at any point soon. That said, I'm not even sure if committing myself to such a lonely, thankless job is really what I want to do. At the end of the day, I want to effect change throughout a *system*, not just a school, and want to be able to combine my love of government, politics, and education policy in a unique way. If I'm somehow able to affect state education policy, this would surely have a greater effect on more people. If I were able to challenge current policies, say those related to student and teacher rights, this, too, could have made a greater impact on a greater number of people.

This class has proven to be an absolutely phenomenal learning experience for me. I was telling my boyfriend before the summer started how excited I was to learn more about the law and how it was applied to education. ORLA 4033 far exceeded my expectations and I believe

I've gained a lot of *practical* skills and knowledge because of it. I'm now contemplating a future that involves law school, as I feel like this would better equip me in affecting educational policy, especially when combining my experiences and training as an educator and school leader.

Obviously, I need to talk with more people about the practicality of this plan, but I'm very interested in it, mainly as a result of this class. So, for this, I thank you.