

Due Process in charter authorizing and governance: A primer

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Due process:

- "No state shall deprive any person of life, liberty or property without due process of law"
- Federal and State Constitutions have similar clauses



Due process is required:



- When the *State* takes action:
 - Clearly this applies to authorizers
 - States, courts split on whether charter schools are "state actors"
- To actions against a *Person*
 - "Persons" generally include corporations
 - But political subdivisions may not be "Persons"
 - States, courts split on whether charter are "persons"



Due process requires:

- That the government not act arbitrarily or unreasonably (substantive due process)
- That government procedures be fair (procedural due process)



Elements of procedural due process in adjudications:

- Notice before action is taken
 - How much? How detailed?
- An opportunity to be heard
 - Right to review evidence against you
 - Right to tell the other side of the story
- By an impartial decision-maker
 - Free from conflicts
 - No bias
 - No financial interest in the outcome



Process "due" does not mean a trial

- Nature of "right" and type of action affects process required:
 - No jury trial for a parking ticket
 - Termination of governmental benefits require evidentiary hearings, but denial of initial applications may not
 - Loss of right to practice profession may require appeal process
 - Legislation often mandates procedures



Process "due" does not mean a trial



- Impartiality of administrative proceeding may not match judicial proceedings
- Example: Charter Revocation
 - Charter authorizer will generally have made prior decisions about charter
 - Attorney for authorizer may have recommended revocation, then seek to advise on hearing process
 - Authorizer may have financial interest in outcome



Process "due" does not mean a trial

- Example: "Summary" Charter Revocation
 - California law allows "summary" charter revocation only in exigent circumstances, based on written finding of:
"severe and imminent threat to the health or safety of pupils"
 - Statute still provides for right of appeal for charter school



Due process in suspensions/expulsions:

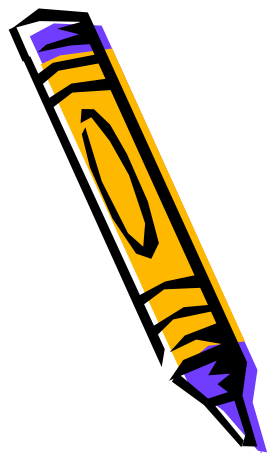
U.S. Supreme Court says 10 day pupil suspension warrants due process:

- Hearing of some sort required
- Notice and opportunity to be heard in short time frame
- State laws have conformed, but
 - California's Charter Schools Act allows charter schools to develop their own processes



Due process in teacher discipline/dismissals?

- Termination of public employment accorded considerable due process
- Ninth Circuit says Arizona charter schools are not "State actors" in employment matters



Due process in competitive bidding:



- When competitive bidding is mandated is primarily statutory
 - No bidding typically mandated for charters school contracting
 - Services contracts generally don't require bidding
 - Federal funds may require meeting minimum standards for procurement



Due process in competitive bidding/public contracting

- Even if *not* required by statute if agency bids, process must be fair
 - Rules agency sets must be followed or award can be set aside
 - Agency can't change rules in the middle of game to benefit one bidder

