

The State of South Carolina



Office of the Attorney General

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November 4, 1994

The Honorable Merita A. Allison
Member, House of Representatives
Post Office Box 93
Lyman, SC 29365

Dear Representative Allison:

You have requested the opinion of this Office as to whether the General Assembly, constitutionally, could amend expulsion procedures for public school students so that a student could be granted another chance to stay in school and avoid expulsion for an offense provided that the parents of the student agreed to waive the right to a hearing if the student is expelled at some future date during that school year. As you know, S.C. Code Ann. § 59-63-240 (1990) currently provides for notice and a hearing for a student being expelled from school.

Dixon v. Alabama State Board of Education, 294 F.2d 150, 156 (5th Cir. 1961) held that "...the State cannot condition the granting of even a privilege upon the renunciation of the constitutional right to procedural due process." Although § 59-63-240 provides for a statutory hearing procedure, constitutional rights to due process exist upon expulsion. Goss v. Lopez, 419 U.S. 565, 42 L.Ed.2d 725, 95 S.Ct. 729, 740 (1975).¹ Goss held that, at least in the context of short term suspensions not exceeding ten days, a student must be given oral or written notice of the charges, and if he denies them, an explanation of the evidence that the authorities have, and an opportunity to present his side of the story. Goss did not address the hearing procedure for expulsions but noted that more formal procedures might be required than for suspensions. Id., 95 S.Ct. at 741. A previous

¹ The Court held that if the student posed a continuing danger to persons or property or an ongoing threat of disrupting the academic process, he or she may be removed from school immediately with the notice and hearing to follow as soon as practicable.

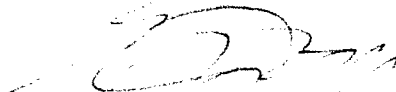
The Honorable Merita A. Allison
November 4, 1994
Page 2

opinion of this Office held that a school district must conduct a hearing in each long term suspension or expulsion case prior to expulsion, except in cases of emergency, in order to comply with minimum due process requirements. Ops Att'y Gen., April 22, 1975.

The type of opportunity to be heard that must be provided under the Constitution for expulsions need not be determined in this Opinion in that, the above authority makes clear that at least the due process requirements for short term suspensions must be provided in the case of an expulsion and, possibly, more. See also Huellmantel v. Greenville Hospital System, 303 S.C. 549, 402 S.E.2d 489, 491 (Ct.App. 1991); Board of Curators of University of Missouri v. Horowitz, 435 U.S. 78, 55 L.Ed.2d 124, 98 S.Ct. 948, 953 (1978). Accordingly, under Dixon and the other authority, the State cannot constitutionally require that a student waive his or her due process right to an opportunity to be heard in the event of expulsion as to any disciplinary problems in the future in order to be given a second chance to avoid expulsion for an earlier matter.

I hope that this information is of assistance to you. If you have other questions, please let me know.

Yours very truly,

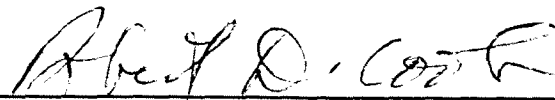


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