



California Private School Hit With \$1 Million Verdict for Expelling Students Without “Due Process” – The 3 Steps Your School Should Take

Insights

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A California jury just punished a private school that expelled two students for off-campus activity with a \$1 million dollar verdict – an outcome that should compel schools around the country to ensure they are applying due process in discipline cases. The May 6 jury award in *A. H. vs. Saint Francis High School of Mountain View* came in a case brought by two students who argued that the school failed to conduct a thorough investigation before quickly expelling them for allegedly donning “blackface” and sharing related images on social media. What are the three things your school should do to avoid a similar fate?

“Blackface” Determination Leads to Quick Expulsion

The two students had been expelled from their private Catholic high school after a photo surfaced of them online wearing dark, liquid masks on their faces. While the school reached the conclusion that the boys were engaging in “blackface” (wearing face paint in a racially derogatory manner), the students alleged that they were wearing green face masks in solidarity with their friend who was suffering from acne. They said that their mother had bought them the face mask, and the light green clay turned darker green (almost black) as it dried.

The photo was originally posted online by the boys in 2017, and later resurfaced in 2020 in response to the Black Lives Matter movement. In June 2020, the photo sparked a parent-led protest condemning the two students.

Within 24 hours of the protest, and without giving the boys an opportunity to respond to the allegations or defend their position, the school administrators told the students that they could either withdraw or be involuntarily expelled. The students refused and were immediately expelled.

Jury Awards Million-Dollar Verdict for Lack of Due Process

After 20 days of testimony and several days of jury deliberations, the jury found in favor of the students. In addition to the \$1 million in damages, the jury required the school to reimburse the students for tuition in the approximate amount of \$70,000 each.

Why is This Important for California Schools?

At the time of this verdict, California case law had already made it clear that public educational institutions – including public K-12 schools and universities – had to comply with minimum due process requirements before expelling a student in the face of these types of allegations. This form of due process is governed by the U.S. Constitution and applies to public entities.

On the other hand, for private schools, California courts have instead used a standard of “fair procedure.” The jury’s verdict in this case affirms that private K-12 schools (including religious schools) must comply with the concept of fair procedure before imposing discipline on students. Indeed, many other states have similar standards. Even if not, it is often considered a best practice to apply these principles to disciplinary decisions. Check with your legal counsel to ensure you are complying with the correct legal standards at your institution, and also following your school’s own governance documents.

Fair Procedure in a Nutshell

Fair procedure generally requires (1) notice and (2) a hearing. The court in the *Saint Francis High School case* asked the jury to consider whether the school notified the students in advance of the allegations and gave them a reasonable chance to respond before deciding to expel.

The most natural and common way for schools to comply with these requirements in disciplinary situations would be to conduct a fair and thorough investigation before imposing student discipline. Student discipline should also be based on articulable and published school rules and policies.

Part of an investigation would include interviewing the accused students; presenting them with the allegations (giving them notice); and allowing them a full opportunity to respond, offer evidence, and suggest witnesses to be interviewed (a hearing.) The investigation would then arrive at a conclusion of fact based on a “preponderance of the evidence” standard, or a “more likely than not” outcome.

If Saint Francis had conducted a proper investigation in this instance, the investigation may have uncovered an array of evidence giving context to the situation and supporting the school’s decision – one way or another. Indeed, if the school had uncovered evidence demonstrating that the students had “more likely than not” engaged in racially driven behavior, the school could have relied on an investigative report to justify expulsion. But the school did not. Accordingly, based on the principles applicable to other educational institutions, the jury sided with the students.

What Should Private Schools Consider to Avoid Potential Liability in Discipline Cases?

Regardless of where your school is located, you should consider taking the following three steps to provide accused students with a fair procedure.

- **Interview the accused.** As discussed above, this is the most important aspect of the investigation in that it’s the only way to satisfy “due process” or “fair procedure.” The interviewer should present the allegations to the accused directly, give them a full opportunity to respond directly to

the allegations, and allow them to “argue” their case by providing documentary evidence and suggesting witnesses.

- **Interview a balanced array of witnesses.** This is important in ensuring the general fairness of the investigation. It’s important to ask both the accused and the complainant for suggestions of witnesses to interview. From there, the investigator can make their own selection of witnesses, ensuring that the selection is balanced.
- **Collect all necessary and relevant documents.** It’s important to ensure that the investigator is collecting all documents that are referenced by the people interviewed, that are within the school’s possession, and that could otherwise be useful to the investigation.

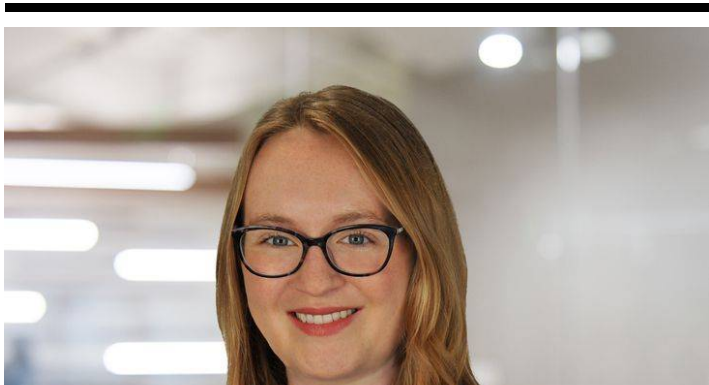
Conclusion

As this case makes clear, it can be especially tempting for schools to make hasty decisions in the face of heightened political climates, and pressure from the public. Indeed, schools face a tremendous amount of pressure from multiple avenues, including teachers, students, parents, and even the general community. For this very reason, though, it is especially important for schools to conduct thorough investigations in response to these situations, to fairly weigh all competing factors, and to ultimately protect the institution from costly lawsuits.

According to news sources, Saint Francis intends to appeal this decision, which means that we may be given more clarity on the legal implications of this verdict at the appellate level. We will be monitoring this case closely and publishing updates as the law evolves.

If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any other attorneys in the [Education Practice Group](#). We will continue to monitor the latest developments and provide updates as warranted, so you should ensure you are subscribed to [Fisher Phillips’ Insight System](#) to gather the most up-to-date information.

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