



**FAIRNESS IN SCHOOL DISCIPLINE
IN PENNSYLVANIA:**

**A GUIDE FOR ATTORNEYS AND ADVOCATES
WHO REPRESENT STUDENTS**

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Board of Education, 22 Pa. Commw. 240, 243 – 44 (Pa. Commw. Ct. 1975) (school board solicitor's acting as both judge and prosecutor is improper); *Pittsburgh Board of Public Education v. M.J.N. by N.J.N.*, 524 A.2d 1385 (Pa. Commw. Ct. 1987) (“[W]hen the legal staff of a public agency consists of two attorneys, one which supervises the other, and while one acts in his customary capacity as advisor to the Board the other acts as prosecutor, impermissible commingling has occurred.”).

The actions of the school superintendent (or other witnesses) at the expulsion hearing can also create impartiality problems. Although no reported cases have addressed this issue in the context of a student disciplinary hearing, several cases have held that, where a superintendent testified against a *teacher* during a disciplinary proceeding and then was present at the school board’s deliberations on the matter, an appearance of bias was created. See *Occhipinti v. Board of School Directors*, 408 A.2d 1189 (Pa. Commw. Ct. 1979) (impermissible commingling where superintendent testified against teacher in an employee disciplinary hearing, then was present during board’s deliberations); *Department of Education v. Oxford Area School District*, 356 A.2d 857 (Pa. Commw. Ct. 1976) (similar holding). Further, an unpublished Commonwealth Court decision held that the mere presence of an adverse witness – in that case, again, the superintendent – during the board’s deliberations violated the student’s right to an impartial hearing. *Raffensberger v. Hempfield School District*, No. 2376 C.D. 1997 (Pa. Commw. Ct., July 13, 1998).

4. *The hearing decision*

As we have noted, an expulsion decision by a school board is an “adjudication” of a local agency. 2 Pa.C.S.A. § 101. Therefore, expulsion hearings must be conducted in accordance with 2 Pa.C.S.A. §§ 551 *et seq.*, which requires, at § 555, that the hearing result in a written adjudication containing “findings and reasons,” and that the adjudication be served upon the parties in person or by mail. The decision must be accompanied by notice of the right to appeal. 22 Pa. Code 12.8(b)(1)(x).

If the hearing was held before a committee of the school board, the decision is not final until it has been approved by the full board. 22 Pa. Code § 12.8(b).



C. School police, but not school officials, must give *Miranda* warnings

In *In re R.H.*, 791 A.2d 331 (Pa. 2002), the Pennsylvania Supreme Court considered – in the context of a juvenile delinquency case – whether a student suspected of vandalism was entitled to receive *Miranda* warnings before being questioned by a school police officer. Stating that “school police are constitutionally indistinguishable from municipal police,” the court held that *Miranda* warnings were required. As a result, the evidence was suppressed with respect to the juvenile proceeding.

The situation differs if school officials, but not school police, are involved in the questioning of a student. See *G.C. v. Bristol Township School District*, 2006 WL 2345939 (E.D. Pa. 2006) (school officials who question a student about behavior that may violate school rules need not provide *Miranda* warnings). Interviews conducted by school officials are also exempt from the requirements of the Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. § 1232h, which allows a student to refuse surveys or interviews regarding illegal, anti-social, self-incriminating or demeaning behavior. *Haas v. West Shore School Dist.*, 915 A.2d 1254, 1259 (Pa. Commw. Ct. 2007).

Any illegal or prohibited materials seized during any student search (not just a locker search) may be used as evidence against the student in a school disciplinary proceeding. 22 Pa. Code § 12.14.