

## Does Your Student Disciplinary Policy Address Participation by Legal Counsel?

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Students in public colleges and universities occasionally challenge student disciplinary actions based on an alleged denial of due process when schools place limits on the involvement of legal counsel. For the most part, courts have rejected such challenges, noting that the rights of students facing school discipline are not the same as those afforded defendants in criminal proceedings. Recently, the District Court for the Western District of Pennsylvania held in [\*Simms v. Penn State University - Altoona, et al.\*](#), that students facing criminal charges do not have the right to have an attorney actively participate in disciplinary hearings conducted by a college or university. The lawsuit in *Simms* stems from an altercation between two students that resulted in both a student disciplinary hearing as well as criminal charges. Under the school's policy, Simms was allowed to prepare for her disciplinary hearing with her attorney, however, her attorney was not permitted to actively participate in the hearing itself. This led to a claim filed in federal court alleging that the school's policy violated her constitutional right to due process. Counsel for Simms argued that she was forced to either remain silent during the hearing or testify without counsel present, which could impact the pending criminal matter. Student disciplinary processes at public colleges and universities implicate a student's "liberty and property interest" in an education. As such, public institutions are required to provide accused students with due process in accordance with the Fourteenth Amendment. Private institutions are generally not required to adhere to the same requirements applicable to their public counterparts. Students facing discipline by private colleges and universities are not entitled to constitutional protection under the Fourteenth Amendment, unless it is established that the private institution is a state actor. As such, private schools routinely prohibit students from bringing an attorney to a disciplinary hearing. To be clear, all students are able to retain counsel and obtain legal advice even where institutional policies (public or private) exists that prevent or limit the involvement of counsel in the actual disciplinary proceedings. In *Simms*, the court determined that the policy in question did not violate the student's due process rights. Judge Gibson notes in the decision that "any additional safeguards provided by allowing Simms' attorney to actively participate' in her hearing are outweighed by the administrative costs of requiring Penn State Altoona to make its student disciplinary procedures more adversarial, specialized and bureaucratic." Active participation by counsel in such proceedings has not been addressed by the U.S. Third Circuit Court of Appeals. However, other circuit courts have rejected challenges of this type noting that involvement of attorneys in disciplinary proceedings would undesirably shift the tone of discipline cases from educational to adversarial, serve to lengthen the process, and would result in significant additional costs. Finally, it is important to note that student discipline cases are subject to judicial review under state law for breach of contract between the student and the institution. Most educational institutions, both public and private, have adopted student handbooks and manuals that establish

standards and procedures governing the discipline process. Courts have routinely held that institutions must adhere to the procedural requirements they have communicated to students governing such proceedings, and that failure to do so provides a means of challenging any disciplinary action taken. If you have any additional questions regarding this decision, or if we can provide any assistance to review your current policies, procedures, and practices, please do not hesitate to contact any of the attorneys in [Barley Snyder's Education Practice Group](#).