

Bureau of Indian Affairs, Interior

§ 42.6

process procedures in disciplinary proceedings in all Bureau-funded schools. To comply with this part, each school must:

- (1) Respect the constitutional, statutory, civil and human rights of individual students; and
 - (2) Respect the role of Tribal judicial systems where appropriate.
- (b) All student rights, due process procedures, and educational practices should, where appropriate or possible, afford students consideration of and rights equal to the student's traditional Native customs and practices.

§ 42.2 What rights do individual students have?

Individual students at Bureau-funded schools have, and must be accorded, at least the following rights:

- (a) The right to an education that may take into consideration Native American or Alaska Native values;
- (b) The right to an education that incorporates applicable Federal and Tribal constitutional and statutory protections for individuals; and
- (c) The right to due process in instances of disciplinary actions.

§ 42.3 How should a school address alleged violations of school policies?

(a) In addressing alleged violations of school policies, each school must consider, to the extent appropriate, the reintegration of the student into the school community.

(b) The school may address a student violation using alternative dispute resolution (ADR) processes or the formal disciplinary process.

(1) When appropriate, the school should first attempt to use the ADR processes described in § 42.4 that may allow resolution of the alleged violation without recourse to punitive action.

(2) Where ADR processes do not resolve matters or cannot be used, the school must address the alleged violation through a formal disciplinary proceeding under § 42.7 consistent with the due process rights described in § 42.7.

§ 42.4 What are alternative dispute resolution processes?

Alternative dispute resolution (ADR) processes are formal or informal proc-

esses that may allow resolution of the violation without recourse to punitive action.

(a) ADR processes may:

- (1) Include peer adjudication, mediation, and conciliation; and
- (2) Involve appropriate customs and practices of the Indian Tribes or Alaska Native Villages to the extent that these practices are readily identifiable.

(b) For further information on ADR processes and how to use them, contact the Office of Collaborative Action and Dispute Resolution by:

(1) Sending an e-mail to: cadr@ios.doi.gov; or

(2) Writing to: Office of Collaborative Action and Dispute Resolution, Department of the Interior, 1849 C Street NW., MS 5258, Washington, DC 20240.

§ 42.5 When can a school use ADR processes to address an alleged violation?

(a) The school may address an alleged violation through the ADR processes described in § 42.4, unless one of the conditions in paragraph (b) of this section applies.

(b) The school must not use ADR processes in any of the following circumstances:

(1) Where the Act requires immediate expulsion ("zero tolerance" laws);

(2) For a special education disciplinary proceeding where use of ADR would not be compatible with the Individuals with Disabilities Education Act (Pub. L. 105-17); or

(3) When all parties do not agree to using alternative dispute resolution processes.

(c) If ADR processes do not resolve matters or cannot be used, the school must address alleged violations through the formal disciplinary proceeding described in § 42.8.

§ 42.6 When does due process require a formal disciplinary hearing?

Unless local school policies and procedures provide for less, a formal disciplinary hearing is required before a suspension in excess of 10 days or expulsion.