

## GUEST COLUMN

## The end is near for absolute power in private California high schools

By Krista L. Baughman

Students accused of misconduct at private high schools around the country are at the mercy of school administrators, who often act as judge, jury and executioner in cases of student discipline.

Peruse the Student-Parent Handbook of a private school today and you might notice a trend: administration often reserves the “sole discretion” and “absolute right” to determine when student conduct is right or wrong – without providing its students with any definition of these terms. Frequently, students are kept in the dark regarding what they are accused of having done and are denied a chance to explain their side of the story, offer evidence in their defense, or seek review of the disciplinary decision.

And these issues are poised to affect more and more students nationwide as the marketplace for private education continues to grow. In more than half of states, parents can use state voucher money towards their children’s education, causing the proliferation of “micro-schools” and other non-traditional options. And the sparse regulation of these institutions allows for unchecked power to school officials in administering discipline and punishment.

Thankfully, some states have addressed this issue by requiring private schools to afford basic due process rights to students accused of misconduct. Consider the California Supreme Court’s 2023 deci-



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sion in *Boermeester v. Carry*, which held that universities must provide fair procedure to students before expelling them. In that case, “fair procedure” was found to exist where an expelled student at the private University of Southern California had been given notice of the allegations, a meaningful opportunity to provide his version of events and provide potential witnesses, a chance to review and respond to the evidence against him, and an appeal.

Last month, this right to fair procedure at private universities was extended further, to protect students at private California high schools. In the case of *A.H. et al. v. Saint Francis High School* (Santa Clara County Superior Court), two students were required to leave

their high school for having appeared in a photograph that other students falsely claimed to be “black-face.” The photo had been taken several years earlier, when the boys were still middle schoolers, and showed them wearing green acne facemasks in support of one boy’s diagnosed acne. Without affording the boys a meaningful process to explain the truth through evidence, St. Francis High School forced them out, citing undefined terms and “sole discretion” clauses in its Student-Parent Handbook as justification for its decision. No review of the decision was permitted.

Regrettably, these boys are not alone. Private schools have long enjoyed largely unchecked power to punish or expel students for a

**Krista L. Baughman** is a First Amendment and civil rights trial lawyer and partner of Dhillon Law Group, Inc.



panoply of innocent conduct, such as picking up a note on which someone else had written an unsavory word, sitting next to a student who happened to disturb a school meeting, or singing a song about something unpleasant that happened on campus. Schools have expelled students who have become “problematic” because they requested a classroom change after enduring verbal abuse and public shaming by their teacher. Some schools have used their students as scapegoats when necessary to deflect blame from the adminis-

tration or to appease powerful donors. And they’ve gotten away with it because they are largely outside the reach of the state and federal laws that guard against discrimination or due process violations.

Fortunately for the students in *A.H. v. St. Francis High School*, their story was allowed to go to a jury, which found that the school had violated their rights to fair procedure and awarded them \$1 million for their pain and suffering, plus tuition reimbursement and related costs. Their case paves the way to curb the procedural abuses run-

ning rampant at California secondary schools.

But this shouldn’t stop with California. More must be done to ensure that private high schools across the country do not wield absolute power when it comes to discipline and expulsion decisions, and that children do not become the casualty of hasty decision-making or half-baked procedures. While California’s right to fair process evolved through the courts, the problem could be more efficiently remedied by the legislature, with laws that provide baseline due pro-

cess requirements for students of all grade levels, nationwide.

To be sure, as the *Boermeester* court acknowledged, there are “practical limitations on the ability of private institutions to provide for the full airing of disputed factual issues,” and no one expects schools to function as courts do. But all students deserve “adequate notice of the charges and a meaningful opportunity to be heard,” and more legislators should pass laws requiring private and public schools to afford at least this modicum of due process to their students.