

MIDDLE SCHOOL LESSON PLAN

APPLYING DUE PROCESS

Students will be asked to consider what it means to have due process under the law as they work in small groups to examine the application of due process in various scenarios.

Materials (linked online)

- [“Applying due process” PowerPoint presentation](#)
- [“Requirements of Due Process” Handout](#)
- [Due Process Scenarios Handout](#)

Grades: 6–8

Time: 50–75 minutes

Procedure

Ask students:

Have you heard the term “due process”? What do you think it means?

Encourage students to share their thoughts about what “due process” might mean. Highlight notions of “following fair rules” if students offer them as definitions.

Share a formal definition of “due process” with students:

Due process (noun):

- (1) An orderly way of doing things;
- (2) Steps taken to ensure an outcome that results from the fair treatment of parties involved;
- (3) Rule that a legal case must be done in a way that protects the rights of all of the people involved.

Ask students:

Did you know that our Constitution mentions due process?

Students might identify the Fifth Amendment in the Bill of Rights or the Fourteenth Amendment. Use the accompanying Power Point presentation, or other copies of the Constitution that are available, to highlight both of these mentions. Remind students that the Constitution was written in 1787. The Fifth Amendment was included in the Bill of Rights and ratified in 1789. For this lesson, students will focus on the Fourteenth Amendment. Explain to students that the Fourteenth Amendment became part of the Constitution in 1868, after the Civil War. It is the Constitution’s longest amendment, with five sections and over 400 words.

Share the first section of the Fourteenth Amendment with students:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Discuss the text with students:

What guarantees are included in Section 1 of the Fourteenth Amendment?

Encourage students to read the text of the Fourteenth Amendment, clause by clause, and discuss what each clause means. Students should identify that Section 1 promises citizenship to anyone born in the United States; the “privileges and immunities,” or benefits of national citizenship; due process of the law; and equal protection of the laws.

According to the Fourteenth Amendment, what can’t a state government do to someone without due process of law?

The government can’t take away a person’s life, their freedom, or their property or possessions.

Do you think it is important to have an “orderly way of doing things” when it comes to legal procedures or court proceedings? Why?

Encourage students to share their thoughts about why it might be important to have established rules in place during court or other proceedings. Explain the importance of applying a fixed set of rules to obtaining fair and consistent results.

What types of legal rights do you think due process provides to people?

Students might identify a variety of rights, including the right to a lawyer, the right to a fair trial, the right to a jury, the right to know what you’re being charged with, and the right to see evidence and cross-examine witnesses.

Do you think that due process might apply to situations outside of court, or legal proceedings?

Students might identify situations at school, after school, in the community, or on sports teams where due process might be applied.

Ask students:

Let’s think about the rules our legal system has in place to meet the requirements of due process. Can you think of what some of these might be?

Allow students to brainstorm what they think are requirements that the legal system has in place to ensure due process.

Share and review the “Requirements of Due Process in Court” Handout:

Explain that these requirements for due process were developed by a judge named Henry Friendly in 1975. He tried to identify the elements of due process in court that made proceedings fair to people involved so that everyone could understand what was necessary. Discuss the requirements with students as you review the list. Discuss any words that might be confusing. Emphasize that the requirements make the process fair to everyone involved.

As a party in court, you are entitled to the following 8 requirements for due process:

- (1) An unbiased judge and jury.
- (2) An opportunity to have a lawyer with you.
- (3) Notice of the charges being filed against you and why.
- (4) An opportunity to present reasons why the charges against you should not be filed.
- (5) The right to present evidence and the right to know what evidence the opposing party has against you.
- (6) The right to call witnesses and the right to cross-examine, or question, the witnesses that the other party might call against you.
- (7) A decision in your case that is based only on the evidence that has been presented during the case.
- (8) A decision in your case that is written down and explained and includes clear explanations of any facts of your case.

Adapted from Judge Henry Friendly, “Some Kind of Hearing,” 1975.

Divide students into three groups:

Explain to students that they will be looking at scenarios (to the right) to determine if due process is being followed or if they think the people in the situation are being treated fairly. Distribute the “Due Process Scenarios” handout to students. Each group will be asked to read and answer questions about a different scenario. After groups have discussed their questions, they will present their scenarios and answers to the class.

Ask each group to answer the following questions about their scenario:

- What happened in your scenario?
- What facts are missing that you wish you knew?
- Based on the facts that you have, were the requirements for due process violated? What was unfair about the scenario?
- What could each of the characters have done differently to make the scenario more fair or to ensure due process?

Wrap-Up

What do you think the government, or courts, need to provide to help ensure that everyone’s due process rights are protected?

The government needs to make sure that people are getting a fair trial and that procedures are being followed.

What steps can you take to ensure that your due process rights are protected?

Allow students to offer ideas about how they might stay informed of their rights or help others to learn.

Scenarios

Scenario 1

Mrs. Jasper, the science teacher, finds several beakers broken on the floor of the science classroom. She makes all of the students in the science class remain following class and tells them someone must confess to breaking the beakers in order for everyone to leave. She asks each student to write a note telling her what they know about the broken beakers. Three students each write notes that say “I saw Ann break the beakers.” One of the students, Michelle, was angry with Ann after they had argued earlier in the week. Mrs. Jasper reads the three notes and tells Ann to go with her to the school office.

Students might identify several aspects of this scenario as violating due process. In particular, Ann was not offered an opportunity to tell her story or to confront the evidence against her before being accused of something that she might not have done.

Scenario 2

The park manager in City Village discovers the statue in Town Square Park covered with graffiti. He reviews security footage from the previous night and sees what appears to be a young man wearing a baseball cap spray painting the statue. William, a local middle schooler who wears baseball caps and walks through the park to and from school each day, is walking past the statue, on his way home, when the park manager stops him and starts talking to him. The park manager asks William if he knows anything about the vandalized statue. William tells the park manager that he is not comfortable with the ranger’s questions and asks if he can go home to his parents. The park manager tells William that he thinks William vandalized the statue and will report it to the local police.

Students might identify a variety of ways in which characters in this scenario violate due process. Students might suggest that the park ranger should have reported the graffiti to police first, rather than accusing anyone of vandalism. William is not offered an opportunity to call his parents, share his perspective, or see the video evidence against him.

Scenario 3

Reggie is accused of cheating on a math test, while Reggie’s friend, Robin, is accused of helping him. There is a policy at Reggie and Robin’s school that anyone caught cheating or helping someone to cheat on a test will be suspended for three days. After some questioning by Ms. Smith, the math teacher, both Reggie and Robin admit to cheating on the math test. Ms. Smith fills out a report about the incident and submits it to the school office. Based on the report, Reggie is suspended for cheating, while Robin is not.

Students should identify that Robin’s punishment in this scenario is not consistent with the school policy.



Requirements for Due Process

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Due Process Scenarios

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Applying Due Process

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State

shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

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Due process in the U.S. Constitution

Fifth Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, **without due process of law**; nor shall private property be taken for public use, without just compensation.

the power to enforce, by appropriate legislation, the provisions of this article.

Due process in the U.S. Constitution

Fourteenth Amendment, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, **without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws.

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Scenario discussion questions:

What happened in your scenario?

What facts are missing that you wish you knew?

Based on the facts that you have, were the requirements for due process violated? What was unfair about the scenario?

What could each of the characters have done differently to make the scenario more fair, or to ensure due process?

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