ABSTRACT

Student discipline is essential for student learning. School leaders are authorized by Local Boards of Education to administer student discipline consequences when the code of conduct is violated. This helps to ensure a safe and orderly environment, which is a primary responsibility of school administrators. However, students’ individual rights such as due process must also be respected during enforcement of board approved discipline policies. This inherent conflict of a safe and orderly environment and respecting individual student rights creates a potential dilemma for school leaders, especially in light of recent acts of school violence. This legal research reviews student discipline cases appealed to the Georgia State Board of Education in the two years from 2012-2013. Consideration is given to the types of cases appealed and the grounds for appeal in all 87 cases. Because only 5 cases were reversed or remanded in two years, these specific cases have been examined thoroughly for trends and practical knowledge to be used by all stakeholders including school administrators, teachers, students, parents, and Local Board of Education members.

INDEX WORDS: Student discipline, Due process, School law, School safety, Student rights, Georgia State Board of Education rulings
A LEGAL ANALYSIS OF STUDENT DISCIPLINE CASES APPEALED TO THE GEORGIA
STATE BOARD OF EDUCATION 2012-2013

by

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A LEGAL ANALYSIS OF STUDENT DISCIPLINE CASES APPEALED TO THE GEORGIA
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DEDICATION

This is dedicated to my family, Paige, Barrett, and Bailey Bowen. I am thankful to God for your love, support, and daily presence in my life. In addition, I am grateful to my mother, Patricia Bond, for continuing to believe in me through thick and thin.
ACKNOWLEDGEMENTS

I would like to thank Dr. John Dayton for his guidance through this process. Your patience, encouragement, and calming influence have been instrumental for me. I hope to have the same influence over others as you have had on me. I am also thankful for Dr. Sally Zepeda, whose advice I have benefitted greatly from through this and other degree programs at UGA. I must acknowledge my professional mentor, Dr. Sheila Kahrs, who has supported me throughout my graduate studies. I appreciate your wisdom and insight.
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CHAPTER 1
INTRODUCTION

Statement of the Problem

It is common for school administrators to spend the majority of their work days handling student discipline issues. Further, student discipline is essential to learning. Therefore, it logically follows that student discipline is a significant and worthwhile topic of study for school leaders. With the recent increase in concern for school safety, and the reality we live in a litigious society, it is even more crucial that we examine and review current student discipline practices from a legal perspective. Recent school violence incidents have triggered elevated levels of public concern and increased scrutiny on school boards and administrators to ensure the safety of all students. But, at what cost are we securing our schools, and are the democratic principles of a free society and individual rights being properly respected?

Are school systems and administrators going too far with disciplinary actions against students? Are individual student rights being sacrificed in the name of safety and security? Who is protecting students’ rights in discipline hearings and appeals of prior disciplinary rulings? This study will examine current practices in the assignment of discipline consequences, the appeals process for students seeking relief of prior rulings, and alternative strategies to avoid exclusionary discipline practices.

It is hoped that the results of this study will bring greater awareness to school administrators concerning the detrimental effects of exclusionary discipline practices on young people in our country. These practices are particularly harmful to black males, students from
economically disadvantaged households, and students with special needs (Gregory, Skiba, & Noguera, 2010; Arcia, 2007; Losen & Skiba, 2010). These subgroups arguably need more support from our school organizations, not more punishment.

**Dilemma of School Safety and Student Rights**

School leaders are faced with a dilemma of maintaining a safe and orderly school environment while also respecting the individual right of each student to a free and adequate public education. Personal, physical safety is a pervasive and reasonable expectation of all parents and guardians each day they send their most valuable possessions, their children, off to school. Parental concerns related to their child’s school typically begin and end with the feeling of security they have that students are protected and safe while attending school or school functions. This sense of security comes from trust in school officials that student safety is a daily priority above all other concerns.

Balancing the commitment to school safety and the respect for students’ individual rights guaranteed by the U. S. and State Constitutions is a daily challenge for school administrators. This inherent conflict is most pronounced in dealing with student discipline and the unfortunate, but sometimes necessary actions that administrators take to remove unruly, potentially unsafe students from the general school setting.

A free and adequate public education is guaranteed to Georgia citizens in Article 8 Section 1 of the Georgia Constitution, which states:

*Public education; free public education prior to college or postsecondary level; support by taxation.* The provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia. Public education for the citizens prior to the college or postsecondary level shall be free and shall be provided for by taxation. The expense of other public education shall be provided for in such manner and in such amounts may be provided by law.
This provision unequivocally mandates that there must be a free and adequate public education offered to all citizens and even goes as far as identifying the revenue source of this public education – taxation. There is no exception that denies this right to people of any specific gender, race, religion, ethnicity, or those with disabilities. This right of free and adequate public education extends equally to all citizens.

In addition to being a guaranteed right of all citizens, education is required by state law. Compulsory school attendance laws mandate attendance in public, private, or home school programs to at least the age of sixteen, as stated below in the Official Code of Georgia:

Mandatory attendance in a public school, private school, or home school program shall be required for children between their sixth and sixteenth birthdays. Such mandatory attendance shall not be required where the child has successfully completed all requirements for a high school diploma. O.C.G.A. § 20-2-690.1

As a guaranteed individual right and an official requirement according to state statute, education of our citizens is deemed a vital responsibility of the state of Georgia.

In Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), possibly the most widely known U.S. Supreme Court ruling regarding education, Chief Justice Warren wrote in the majority opinion:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. 347 U.S. 483

It is obvious in this Court opinion from nearly 60 years ago that education is not just seen as a right or requirement of all people, but also a duty of the state. This responsibility of
educating the citizenry rests with each state-empowered local Board of Education and school administrator employed in their service.

The conflict facing school administrators is determining at what point a student’s actions have infringed on other students’ rights to that same free and adequate public education they are also guaranteed. When a student creates an unsafe environment by threatening the security of others and the general order of the school, administrators are empowered to remove the offending student from the regular school population through disciplinary actions such as In-School Suspension (ISS), Out-Of-School Suspension (OSS), change of placement to an Alternative school setting or Expulsion for a specific period of time. In some cases expulsion can be permanent and accompanied by criminal charges resulting in additional sanctions from the justice system.

The connection between schools and law enforcement has created additional concerns regarding the alleged criminalization of our youth. Just like citizens who commit certain criminal acts lose some of their individual rights, so do students who commit certain Code of Conduct offenses. Stader (2004) found:

School leaders have a legal obligation to keep school safe. They also have an ethical obligation to examine the consequences of their actions and, if necessary, make changes in policy and practice to not only keep schools safe but also to protect individual students from the capricious application of policy (p. 65).

The decisions made by administrators have a far reaching impact on the offending students as it often affects their future opportunities both in and out of school. Removal of students from the instructional setting must be a last resort (Brown & Beckett, 2006). Do school administrators have this same philosophy when considering suspension or expulsion of students? Especially those students under the compulsory attendance age of sixteen. What safeguards are put in place to protect the rights of students being punished for discipline infractions?
Student’s Right to Due Process

Beyond an individual student’s right to free and adequate public education, a second legal consideration of student discipline and potentially removing students from school is their constitutional right to due process. Due process clauses are found in the Fifth and Fourteenth Amendments of the United States Constitution and the Georgia Constitution (Article I, Section I). They exist to ensure that American citizens are not punished unfairly by federal or state governments by being deprived of their life, liberty, or property without due process of law (Dayton, 2013). Due process can be divided into two categories: Substantive and Procedural. Under a substantive due process claim the court examines the fairness of the content of the law or governmental action. However, the more common application of due process is under procedural due process where the court considers procedures of fairness to protect individuals from governmental powers. It is in these procedures or steps where the large majority of due process claims related to schools occur. This could be interpreted to mean that what school systems and administrators do is not as controversial as how they do it.

In 1975 the Supreme Court ruled in Goss v. Lopez 419 U.S. 565 (1975) that students were entitled to due process in school discipline cases involving suspension for ten days or less. The Court found that students had a property interest and liberty interest in public education, both protected under the Fourteenth Amendment. The Court further stated that students facing suspension “must be given some kind of notice and afforded some kind of hearing” (495 U.S. 565). The impact of Due Process requirements on local school administrators and their treatment of students in discipline cases has prompted most districts to put clear protocols in place regarding notice and hearing. This usually exists in the form of standard letters notifying parents or guardians of the offense against the Code of Conduct and prescriptive discipline hearings.
involving panels, hearing officers, or both which take great care in allowing students, parents, and/or legal representation to be heard by responding to the respective charges.

In theory, these safeguards in place should be enough to ensure that procedural due process requirements are met in all districts, while also giving administrators an avenue for removal of dangerous students threatening the security of the school. In reality, there has been great concern regarding fairness because hearing officers and panels are typically made up of school personnel, system administrators, and/or Board of Education members. It is worthwhile to explore student discipline cases by asking the following questions: How many student discipline cases appealed to the state Board of Education are based on claims of due process violation? How many of these cases were overturned?

**Individual right of students to Equal Protection of Laws**

The Equal Protection Clause, as it is often referred to, appears in the last sentence of Section 1 of the Fourteenth Amendment. The clause immediately follows the due process provision and guarantees all U. S. citizens within its jurisdiction the equal protection of laws. Essentially, this bans discrimination and requires that states treat all people the same.

“Fundamental fairness requires equal treatment of all persons in equal circumstances” (Dayton, 2013, p. 267). This clause in the Constitution leaves little doubt that governmental entities who intend to treat people differently better have reasonable, relevant grounds for doing so. Equal protection complaints in education are often based on race or gender. A student’s race or gender is not relevant to a child’s right to an education; therefore, it should not be considered when making judgment decisions like school discipline including whether to suspend or expel students. It would appear to be impossible to make a case for suspending or expelling a student based on one of these criteria.
Equity in School Discipline

The Achievement Gap is a term referring to different levels of student achievement between different subgroups of students. Along with the disproportionate levels of student achievement among subgroups, there is also a discipline gap. This term describes the different rates of disciplinary referrals among different subgroups of students. Because office discipline referrals carry consequences that directly affect student achievement and student success in school, it makes sense to examine this contributing factor. Arcia (2007) reported that students with the most suspension days had lower achievement levels. She stated, “Suspensions have a detrimental effect on achievement and are used most often with students who can least afford to be outside of the classroom” (p. 457).

Higher levels of discipline referrals for black students were noted as far back as 1975 when the Children’s Defense Fund (CDF) found that while black students made up only 27.1% of student enrollment, they accounted for 42.3% of the suspensions (Children’s Defense Fund, 1975). It was reported that 1 in 8 African-American students were suspended at least once, while only 1 in 16 white students were suspended at least once.

Minority students are being denied an opportunity to learn at alarmingly higher rates than students of other subgroups due to the disproportionate rates of suspension from school for disciplinary punishment (Losen & Skiba, 2010; Arcia, 2007; Rocque, 2010). However, schools with higher suspension rates are not receiving the same publicity as those with lower test scores. Is this an indication that we as a society value minimum performance on standardized tests more than fulfilling the promise of our constitution by educating all students? Because of the established connection between high suspension rates and lower performance, it only stands to reason that citizens in districts with disproportionately higher suspension rates based on race
would have grave concerns about their school district’s operational effectiveness. Certainly, this should be of equal or greater priority than standardized test scores.

Different standards of childrearing due to different socioeconomic and ethnic cultures are commonly cited as a challenge in school discipline administration and equity (Brown & Beckett, 2006). Children from minority and low socioeconomic backgrounds often teach different standards of behavior at home and at school. The teachers and administrators working in the schools that these children attend might not come from the same background as their students, which can create the miscommunication and differing behavioral expectations leading to increased discipline referrals for a particular group of students.

Gregory and Mosely (2004) studied teachers’ views on the discipline gap and found that teachers identified numerous factors for why students have discipline problems, but chose to largely avoid the impact of race and culture on classroom behavior. Over 90% of the teachers in this study never discussed the possibility that classroom practices or teacher bias might contribute to the discipline gap by identifying or encouraging misbehavior by certain groups of students. When asked about behaviors of their black students, most teachers attributed this to the “problem nature of African-American students, families, or communities” (p. 26).

It is clear from recent statistics that females are much less likely to receive discipline referrals and/or school suspensions for behavior than their male counterparts (Brown & Beckett, 2006). But, the disproportion is not as skewed for gender as for race. Losen and Skiba (2010) found that males of each racial group were at greater risk for suspension, but also found that Black females were more likely to be suspended than Hispanic or White males. The researchers dismissed the effect of economic disadvantages due to similar rates of poverty for Black students and Hispanic students, yet far different rates of suspension from school.
While gender is certainly a factor increasing rates of office referral and suspension, it lags behind race and students with disabilities as factors predicting the largest disproportion of school discipline consequences. Differences in referral rates between boys and girls could be attributed to differences in their behavior, and not necessarily teacher or administrator bias. However, gender should be considered, along with race, when developing programs to combat the discipline gap.

Landmark State BOE Cases Regarding Student Discipline

The Georgia State Board of Education (SBOE) makes rulings on student discipline cases filed in response to previous rulings of Local Boards of Education (LBOE). Cases filed with the SBOE are considered appeals of lower level cases ruled on by a LBOE, which rule on appeals from local disciplinary hearings, which exist to offer students and their representatives a chance to be heard regarding discipline charges and impending sanctions. This is an important process to consider when reviewing SBOE student discipline cases. These cases have been presented, heard, and ruled upon several times before arriving to the state level on appeal. As is common with legal rulings, decisions of the SBOE are based primarily on existing federal and state laws, SBOE rules and regulations, and prior SBOE case rulings. Several cases are continually referenced in SBOE student discipline rulings and applied to other cases with similar situations. A review of these landmark cases and a discussion of their relevance and application in new and future SBOE student discipline cases will follow.
Research Questions

This study was designed to investigate the following research questions:

1) What types of student discipline cases are most commonly appealed to the Georgia State Board of Education?

2) What legal grounds for appeal are most often cited by appellants?

3) How often are cases upheld?

Research Design

This study employed the use of black letter law research methods. Black letter law methods involve reviewing the facial text of Constitutions, court rulings, statutes, Board of Education policies and rulings, and other published sources of information to construct meaning and possibly suggest improvements of current practices. This study produced the most current research on these issues. As Dayton noted, “The end product of legal research is like a snap-shot in time. There is no ‘end’ in legal research because the law is constantly changing” (Dayton, 2013, p. 10).

Legal research has existed much longer than qualitative or quantitative research methods, but is similar to qualitative methods in that it begins with gathering and analyzing relevant evidence or data and is followed by a synthesis of research (Dayton, 2013, p. 8). See chart below which illustrates Legal Research: A Reductive Process.
This study examined cases appealed to the Georgia State Board of Education from 2011 through 2013. The rulings of the board were dissected to answer the research questions previously listed. These cases are appeals, which by definition involve issues that have already been appealed to and ruled on by Local Boards of Education.

Limitations

This study only examined public school student discipline appeal cases going to Georgia’s State Board of Education in the past two years. The primary limitation is that only Georgia State BOE cases are considered and only those appeals filed appropriately in the past two years. Many cases are ruled on locally by Local Boards of Education and are never appealed to the Georgia State Board of Education. Another limitation would be that only public school student discipline appeals were considered.
CHAPTER 2
REVIEW OF THE LITERATURE

Historical and Legal Foundations

Equity in School Discipline

The Achievement Gap is a term referring to different levels of student achievement between different subgroups of students. Along with the disproportionate levels of student achievement among subgroups, there is also a Discipline Gap (Losen & Skiba, 2010). This term describes the different rates of disciplinary referrals among different subgroups of students. According to many, there is a strong relationship between these two occurrences (Mendez & Knoff, 2003; Arcia, 2006). Students with the most suspension days generally have lower achievement levels (Arcia, 2007). She stated, “Suspensions have a detrimental effect on achievement and are used most often with students who can least afford to be outside of the classroom” (p. 457). When disciplinary sanctions include removal from the classroom setting by way of office visits, placement in detention, suspension, or even expulsion, it becomes obvious that the discipline gap has a direct influence on the achievement gap (Gregory, Skiba, & Noguera, 2010).

Federal and State accountability measures have tried to address the achievement gap by highlighting disparities among subgroups, but not without some casualties along the way (Swain & Noblit, 2011; Fenning & Rose, 2007). As Cregor and Hewitt (2011) point out regarding accountability measures in the No Child Left Behind Act, “Suspension and expulsion rates have spiked since the law’s enactment….with its narrow focus on standardized test scores, [NCLB]
has given schools the perverse incentive to push out those students who exhibit challenging behavior or who do not meet testing standards” (p. 6). Pushing out substandard test-takers who misbehave in schools might technically help close the achievement and discipline gap from a statistics standpoint, but it constitutes irresponsible abuse of power by administrators and a disregard for serving the public interest of educating society’s youth.

Racial Inequities in School Discipline

Higher levels of discipline referrals for black students were noted as far back as 1975 when the Children’s Defense Fund (CDF) found that while black students made up only 27.1% of student enrollment, they accounted for 42.3% of the suspensions (Children’s Defense Fund, 1975). It was reported that 1 in 8 African-American students were suspended at least once, while only 1 in 16 white students were suspended at least once.

Interestingly, CDF findings were only a few years after desegregation and full integration of our nation’s schools had taken place. The disproportions highlighted in this research could be attributed to the recent integration of schools at that time and the possibility of teachers, school officials, and fellow students committing racist acts towards black students prompting an increase in behaviors or racist administration of discipline policies. There is no disputing the racial unrest existing in public schools in the early seventies, but sadly, the disproportionate levels have remained consistent for almost forty years.

Suspensions increased for all students from 1973 to 2006 (from 3.7% to 6.9%), but more dramatically for certain subgroups of students. Black students have seen an increase from 6% to 15% and Hispanic from 2.7% to 6.8%, while White students have increased at a slower rate from 3.1% to only 4.8% (Losen & Skiba, 2010). The rates are highest for Middle Schools students with an average suspension rate of 11.2% in 2006, 28.3% for Black males as opposed to 10% for
White males. Interestingly, there is an even greater disproportion between Black females and White females, 18% to 4%.

More recent data from Losen & Gillespie (2012) indicate national suspension rates have risen to 17%, or 1 out of every 6, for Black students and only 1 out of every 20 for White students, and 1 out of 50 for Asian Americans. When Black students with disabilities were considered, the rate for suspension was 25%, or 1 out of every 4 students. The chain reaction of suspension, which triggers lower attendance rates and lower academic achievement, signaling higher retention rates and lower graduation rates, must be acknowledged and studied for the true crisis that it represents. The fact that many of these suspended students then become incarcerated demonstrates the school-to-prison pipeline many researchers have chronicled (Sealey-Ruiz, 2011 and Fowler, 2011). Higher rates of discipline referrals, specifically suspension, are one of the strongest predictors of involvement in the juvenile justice system (Losen & Gillespie, 2012).

Many researchers argue that more suspensions have not created safer environments in schools, but simply created new problems like the discipline gap (Arcia, 2006; Losen & Skiba, 2010). Others even believe that suspensions may reinforce misbehavior instead of deterring it (Atkins et al, 2002). Suspensions certainly have an adverse effect on student achievement due to lost instructional time by being excluded from the educational process. There is no denying that has affected minority students in a more dramatic fashion that White students and could be part of the reason for problems later in life including limited career choices and a greater likelihood of criminal activity with resulting prison time (Losen & Skiba, 2010; Mendez & Knoff, 2003; Rocque, 2010). According to Balfanz, Spiridakis, Nelid, & Legters (2003), suspension in middle school is a key predictor of incarceration in ninth grade. They also noted that the vast majority
of students (more than 85%) who are incarcerated in the ninth grade eventually drop out even after returning to school following their incarceration (p. 78).

Minority students are being denied an opportunity to learn at alarmingly higher rates than students of other subgroups due to the disproportionate rates of suspension from school for disciplinary punishment (Losen & Skiba, 2010; Arcia, 2007; Rocque, 2010). However, schools with higher suspension rates are not receiving the same publicity as those with lower test scores.

Some have hypothesized that the disproportionate number of black students receiving discipline referrals and suspensions is a result of their actual behaviors and not a product of racial discrimination or bias on the part of schools or school districts. However, Skiba, Michael, Nardo, & Peterson (2002) studied over 11,000 students in 19 middle schools in an urban Midwestern public school district, and their results were consistent with numerous other studies which found an increased frequency of discipline referrals among black students. While black students made up 56% of student enrollment, they accounted for 66.1% of referrals, 68.5% of suspensions, and 80.9% of expulsions. When behaviors were examined, these researchers found differences in the types of behaviors leading to discipline infractions. White students were more likely to be referred for more objective reasons like smoking, vandalism, leaving without permission, and obscene language. Black students were more likely to receive discipline referrals for more subjective behaviors like disrespect, excessive noise, and threats.

Because of cultural and social differences in expectations among racial groups, it is reasonable to assume that some of the subjective behaviors that black students received discipline referrals for could have been misunderstood or misinterpreted by teachers or administrators of different racial and socioeconomic backgrounds. Fowler (2011) discovered “Wide variation in disciplinary referral rates between school districts suggests that where a
student attends school, and the nature of the offense, determines the likelihood of disciplinary action” (p. 16). This goes to the notion that teacher or administrator bias, whether conscious or subconscious, could be contributing to the overrepresentation of black students receiving more frequent and more serious discipline consequences and challenges the notion that black students are getting harsher discipline sanctions because they are engaging in more inappropriate behaviors (Arcia, 2007; Huber et al., 2006).

In a study of 45 elementary schools and nearly 29,000 students, Rocque (2010) attempted to control for student behaviors in order to determine if the disproportional frequency of discipline referrals was based on bias or more frequent behaviors by minority students. He found that while the likelihood of black students being referred was significantly reduced, there was still a higher proportion of African-American students receiving discipline referrals. While the study was done with elementary students and controlling for behavior not above reproach in method, the results still support the belief that black students may not be treated fairly related to discipline policies and procedures by schools.

Arcia (2007) found higher rates of suspensions for Black and Latino students in middle school. They were 1.5 to 2 times more likely to be suspended and this increased as they went from elementary to middle school. Mendez and Knoff (2003) found that almost half of all Black males and one third of all Black females had experienced at least one suspension by middle school, but the reasons for this overrepresentation were not obvious. Possibilities identified by the researchers include “increased behaviors, cultural and social misunderstanding, a lack of teacher training, classroom and/or school climate, or worse, discrimination” (p. 44). While socioeconomic status was considered due to a high percentage of Black students receiving free/reduced lunch, this was not supported when examining Latino suspension rates. A high
percentage of Latino students received free/reduced lunch, but experienced much lower suspension rates than their black peers. It is clear from the elementary and middle school data that the discipline gap tends to widen as students get older with more students being suspended and a higher percentage of Black students receiving suspensions.

**Gender Inequities in School Discipline**

It is clear from recent statistics that females are much less likely to receive discipline referrals and/or school suspensions for behavior than their male counterparts (Brown & Beckett, 2006). But, the disproportion is not as skewed for gender as for race. Losen and Skiba (2010) found that males of each racial group were at greater risk for suspension, but also found that Black females were more likely to be suspended than Hispanic or White males. The researchers dismissed the effect of economic disadvantages due to similar rates of poverty for Black students and Hispanic students, yet far different rates of suspension from school.

Gregory, Skiba, & Noguera (2010) noted that “males of all racial and ethnic groups are more likely than females to receive disciplinary sanctions” (p. 60). Skiba (2001) explains gender disproportions might be based on male students’ tendencies to participate in more serious behavioral offenses than female students. However, the racial divide seemed more prevalent and unable to be explained through logic and reasoning.

Hinojosa (2008) reported that males were 51% more likely to be suspended from school (61% more likely to have In-school Suspension) than female students. Many studies found higher incidences of office referrals and suspensions for males (Skiba, Peterson, & Williams, 1997; Nichols, Ludwin, & Iadicola, 1999). Bryan, Day-Vines, Griffin, & Moore-Thomas (2012) conducted a study to determine which students were more likely to be referred to the school counselor for behavior concerns. Their results were similar to other studies in that race and
gender were both substantial factors in predicting referrals. They found that males were more likely to be referred by both Math and English teachers for behavioral concerns. While these referrals did not result in office visits or suspensions, it echoes other findings that gender is commonly a factor in behavioral concerns.

Sullivan, Klingbeil & Norman (2013) found that “Black students, boys, students from lower SES households, and students with disabilities were overrepresented among those suspended” (p. 110). However, when examining for multiple suspensions, gender was less of a factor and “being Black and/or receiving special education was significantly associated with risk of multiple suspensions” (p. 110).

While gender is certainly a factor increasing rates of office referral and suspension, it lags behind race and students with disabilities as factors predicting the largest disproportion of school discipline consequences. Differences in referral rates between boys and girls could be attributed to differences in their behavior, and not necessarily teacher or administrator bias. However, gender should be considered, along with race, when developing programs to combat the discipline gap.

Efforts to Assure Fairness

The first effort focuses on the classroom, the origin of most discipline referrals (Skiba et al., 2002). The disparities in student discipline tend to occur more commonly on the classroom level (Skiba, 2001). The frequency of referrals to the office for minority students is where much of the disproportion exists. These are typically teacher-initiated referrals in response to student misbehavior, and usually committed by the neediest of students (Rocque, 2010). There is less disparity by race and gender once the referral has reached the office. There appears to be less disproportion in assigning consequences than there is in the teachers’ determinations to originate
the referral. As previously noted, it has been found that many referrals for Black students involve more subjective behaviors including defiance, disruption, or disrespect (Gregory & Ripski, 2008) while White students’ referrals were based more on objective, clearly defined offenses like truancy and smoking (Blake, Butler, Lewis, & Daresnbourg, 2011; Skiba et al., 2002).

It is logical to examine classroom practices in dealing with student behavior to better ensure consistency and fairness across all subgroups of students. Where dealing with minority students is concerned, culturally relevant practices and interventions have had success (Bryan et al., 2012). Helping teachers to connect with and understand students’ backgrounds and environments can only lead to more positive, productive relationships, which in turn should curb the need for discipline referrals (Sullivan et al., 2013).

In many secondary classrooms, cultural discontinuity or misunderstanding may create a cycle of miscommunication and confrontation for African-American students, especially male adolescents. Teacher training in appropriate and culturally competent methods of classroom management is likely, then, to be the most pressing need in addressing racial disparities in school discipline. (Skiba, 2001, p. 336)

The necessary training to develop culturally relevant pedagogy could become a more prevalent piece to pre-service teacher preparation (Sealey-Ruiz, 2011) or a vital component of school systems’ professional learning plans, but the need obviously exists. The argument could be made that the most meaningful gains in subgroup achievement, and in turn the biggest reduction in the achievement and discipline gaps, could come from better preparing teachers to manage their classrooms with regards to student diversity. Specifically, how to effectively manage minority students in the classroom could reduce the need for office referrals and the resulting exclusionary and detrimental disciplinary sanctions so often administered.
One management approach is described as a relational approach where teachers try to connect with students about their lives and be available to their emotional needs. This approach is designed to build student trust in teacher authority with the hope of gaining more compliance and a cooperative spirit in the classroom. Gregory & Ripski (2008) found lower incidences of student defiance in high school classrooms where teachers used the relational approach to establish themselves as trustworthy to students.

The second effort being proposed here involves a paradigm shift to more positive behavioral interventions, as opposed to simply using traditional negative consequences leading to student removal from learning environment (Butler et al., 2012; Swain & Noblit, 2011). A program that has shown great success for some schools and enormous potential for others is Positive Behavioral Support (PBS), also known as Positive Behavioral Interventions and Support (PBIS). “PBIS began as an intervention for students with disabilities….Students with disabilities and minority students share a common experience of being marginalized within the school system” (Fenning & Rose, 2007, p. 538). PBIS later expanded to address behavioral concerns with at-risk students and eventually became implemented for all students in schools and districts throughout the nation.

Gregory and Ripski (2008) noted this “behavioral approach emphasizes the use of positive reinforcement to strengthen cooperative behavior…and reduces office referrals” (p. 339). PBIS is typically implemented on a school or system level to ensure consistency throughout the organization. Clear expectations are established with clear consequences, but also rewards and positive reinforcement of desired behavior is
repeatedly recognized and celebrated. “PBIS is based on the proven model that children perform best when they are explicitly taught what to do” (Fowler, 2011, p. 18).

Much evidence supports the belief that many students, especially Black students, are being unfairly and arbitrarily suspended from school for ill-defined behaviors that could have been handled, and in some areas of the nation are being handled, in a much more responsible fashion (Civil Rights Project, 2000; Rocque, 2010). PBIS attempts to address this concern by involving teachers and students in identifying clear behavioral goals and precise, objective definitions of certain behaviors that have historically been subjectively interpreted.

Thirdly, it has become incumbent on school leaders to include student discipline data in the pool of statistics frequently studied along with academic data (Sullivan et al., 2013). In an effort to guarantee fair and equal justice for all students, school systems must begin to disaggregate discipline data on a regular basis to identify and address disproportional representation in office referral totals. By bringing this to the attention of everyone involved systems can practice transparency and build trust among stakeholders that is sorely lacking in many districts. Equitable discipline policies and practices can be effectively assessed only by reviewing student discipline data (Fenning & Rose, 2007).

The final effort emphasized here to promote fair and lawful discipline policies has to do with the formation of the policies themselves. Sugai and Horner (2002) suggest enacting more proactive policies focusing on the prevention of behaviors rather than the punitive policies normally in place. Schools with more proactive, rather than reactive procedures, tend to exhibit fewer disciplinary problems than others (Christle, Nelson, & Jolivette, 2004).
Codes of conduct are usually local board-approved policies that school administrators use daily to deal with various discipline infractions. Many districts have begun to solicit public input, even hold town hall meetings, to involve community members in the development of these policies that govern student behavior. Cincinnati Public Schools implemented a district-wide code of behavior by involving all stakeholders with the purpose of attaining consensus, finding common ground among community and school staff, and presenting a united front needed when implementing new policy changes of this kind (Brown & Beckett, 2006).

School boards and scholars have recognized the need to step back from the Zero Tolerance policies of the 1980’s and consider a more developmentally appropriate approach to dealing with behaviors of students. The term Zero Tolerance itself is not becoming to education or any endeavor related to children. Browne-Dianis (2011) found that “schools across the United States have employed an unforgiving system of discipline in which children and youth are punished for punishment’s sake” (p. 25). In many cases these policies have eroded the trust between students and school personnel and actually increased misbehavior, instead of serving as a deterrent as originally promised. Zero Tolerance has increased the number of students being excluded from American public schools, which as discussed in prior sections is the shirking of sacred duties entrusted to school personnel.

Origins of Due Process

Due process clauses are found in the Fifth and Fourteenth Amendments of the United States Constitution and exist to ensure that American citizens are not punished unfairly by federal or state governments by being deprived of their life, liberty, or property without due process of law. Due process also requires that citizens be given proper notice of legal
proceedings and a hearing including an opportunity to present evidence on their own behalf. Dayton (2013) stated, “Due process is the framework and lifeblood of any legitimate legal system, establishing substantive standards for fundamental fairness and a procedural system for conducting impartial hearings” (p. 92).

Due process can be traced back at least 800 years to English law and the Magna Carta. Known as the Great Charter, the Magna Carta was originally issued in 1215. This document was unique as it was the first attempt to limit the authoritative powers of the King and protect the individual rights of his subjects. Pressured by a potential rebellion in his country and physical threat, King John begrudgingly agreed to sign the Magna Carta. The monumental charter enumerated a host of legal rights for citizens while also limiting the King’s powers and eventually became the cornerstone of English Common Law as well as an antecedent to the Constitution of the United States of America.

The Magna Carta was originally written in Latin and was preceded by the Charter of Liberties in 1100 in which King Henry I had spelled out specific limits to his authority. The original version was not divided into clauses, but was later translated and organized that way for readability and to simplify later repeals of certain elements of the charter. There were several changes to the charter with updated versions released in later years, but several tenets of the original charter still exist today. One of these enduring rights of citizens was codified in Clause 39 of the original 1215 version (later combined with Clause 40 and amended to Clause 29 in Charter of 1297), and states,

No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land. To no one will we sell, to no one will we refuse or delay, right or justice . . .
This particular clause is the origin of the phrase, “law of the land”, which is used throughout history in numerous legal and constitutional documents.

In Colonial America, the Magna Carta is constantly referred to in various charters and documents related to freedom and individual rights. Later, the Magna Carta exerted as a heavy influence on the U.S. Constitution with “the law of the land” serving as the basis for the Due Process clauses contained in the Fifth and Fourteenth Amendments of the U.S. Constitution. The Fifth Amendment states that the federal government will abide by due process of law. The Fourteenth Amendment was later added after the U.S. Civil War and directed the states to not deprive citizens of life, liberty, or property without due process of law. By addressing this right twice in the U. S. Constitution, it is made clear just how important this concept is to a free people.

Due process is evident in Georgia’s state constitution as it appears at the very beginning in the Georgia State Bill of Rights. Article I, Section I of Georgia State Constitution states, *Paragraph I: Life, liberty, and property.* No person shall be deprived of life, liberty, or property except by due process of law. “The underlying concept is that government may not behave arbitrarily and capriciously, but must act fairly according to established rules” (Monk, 2000, p. 170). Due process can be divided into two categories: Substantive and Procedural (Dayton, 2013). Under a substantive due process claim the court examines the fairness of the content of the law or governmental action. However, the more common application of due process is under procedural due process where the court considers procedures of fairness to protect individuals from governmental powers.

From a school practice perspective, procedural due process appears to be a more common concern. In 1975 the Supreme Court ruled in *Goss v. Lopez* that students were entitled to due
process in school discipline cases involving suspension for ten days or less. The Court found that students had a property interest and liberty interest in public education, both protected under the Fourteenth Amendment. The Court further stated that students facing suspension “must be given some kind of notice and afforded some kind of hearing” (495 U.S. 565). Lower court rulings were affirmed calling for more formal hearings and written notice for suspensions of longer than ten days. Plainly stated, the more serious the offense and longer the suspension, the more due process is due. This typically refers to more formal notice and a more formal hearing.

The impact of Due Process requirements on local school administrators and their treatment of students in discipline cases has prompted most districts to put clear protocols in place regarding notice and hearing. This usually exists in the form of standard letters notifying parents or guardians of the offense against the Code of Conduct and prescriptive discipline hearings involving panels, hearing officers, or both which take great care in allowing students, parents, and/or legal representation to be heard by responding to the respective charges.

In theory, these safeguards in place should be enough to ensure that procedural due process requirements are met in all districts, while also giving administrators an avenue for removal of dangerous students threatening the security of the school. In reality, there has been great concern regarding fairness because hearing officers and panels are typically made up of school personnel, system administrators, and/or other system employees with the appeal of local hearing decisions going to the local Board of Education. Discipline hearings usually involve a school bringing a charge and proposed sanction against a student. It is reasonable for students and their representatives to have concerns when the officials who sit in judgment during these cases also happen to be fellow professional colleagues, and often supervisors, of these school
officials bringing the charges. Also, there is concern because the appeal of the hearing ruling goes to the local Board of Education, who employs all the school personnel.

**Equal Protection of Laws**

The Equal Protection Clause, as it is often referred to, appears in the last sentence of Section 1 of the Fourteenth Amendment. The clause immediately follows the due process provision and guarantees all U. S. citizens within its jurisdiction the equal protection of laws. Essentially, this bans irrational discrimination and requires that states generally treat all people the same under the same circumstances. As Dayton noted, “Fundamental fairness requires equal treatment of all persons in equal circumstances” (Dayton, 2013, p. 267). This clause in the Constitution leaves little doubt that governmental entities who intend to treat people differently had better have reasonable, relevant grounds for doing so. Equal protection complaints in education are often based on race or gender. A student’s race or gender is not relevant to a child’s right to an education; therefore, it should not be considered when making judgment decisions like school discipline including whether to suspend or expel students. It would appear to be impossible to make a case for suspending or expelling a student based on one of these criteria.

While the Equal Protection Clause was obviously necessary in the days following the abolishment of slavery due to widespread discrimination against Black citizens, especially in southern states, there is still a need to reference this landmark doctrine due to unequal treatment of certain groups of citizens. Unfortunately, this unequal treatment appears to be evident in public schools regarding student discipline and exclusionary consequences disproportionately assigned to minority groups of students. Monk (2000) said, “The Fourteenth Amendment is cited more often in modern litigation than any other. In fact, many constitutional scholars
believe that, through its wide scope and promise of equality, the Fourteenth Amendment created a new Constitution” (p. 213).

**Civil Rights Act of 1964**

The Civil Rights Act of 1964 outlawed discrimination on the basis of race, ethnicity, religion, and gender. The legislation also ended unfair voter registration practices, school segregation, and unfair hiring practices involving discrimination of the aforementioned subgroups. While the Fourteenth Amendment had already promised equality with a guarantee of Equal Protection of Laws, Civil Rights legislation in response to the turmoil of the 1960’s is still considered the landmark piece of legislative action intended to level the playing field for all Americans. Its impact on schools in general was enormous because it solidified the Brown ruling from nine years earlier that mandated the end of racial segregation in American public schools. While total compliance was still six or seven years away, it was obvious at this point that there was a drastic change on the way for the country and its schools.

Title VI of the Civil Rights Act of 1964 specifically prohibits discrimination on the basis of race, color, or national origin and governed programs or activities receiving federal financial assistance. This directly affects public schools as they annually receive federal money in their school budgets. School systems found to be in violation of this statute face termination of funds or legal action from the Department of Justice. Local and state school systems have lamented federal mandates in the past as they strive to maintain local control of schools, but few have ever been able to turn down the federal money. This is even more evident in the current challenging economic landscape of public schools. Along those lines, defending yourself or your district against criminal charges pursued by the Department of Justice could prove to be quite costly as well. While compliance should be the norm from an ethical and legal perspective, it is even
more necessary when considering the financial impact that loss of federal funds or legal expenses could have on a school or school system.

Title VII of the Civil Rights Act prohibits employment discrimination based on race, color, religion, sex, or national origin. This legislation should affect hiring practices in schools provoking a systematic, color-blind approach to hiring teachers and administrators. While this does not appear to have a direct impact on student discipline practices, it could affect the diversity of a school’s faculty and administrative staff. This diversity and the potential increase in cultural competence among staff members can definitely have an impact on frequency of student discipline referrals for some minority groups of students, most notably African American students. Diversity and cultural competence could have an effect on general student and community morale and the appearance of overall fairness where discipline is concerned. It could potentially reduce the number of referrals for subjective, hard to define behaviors like disrespect and disruption.

The Office for Civil Rights (OCR), a sub-agency of the U.S. Department of Education, enforces these and other Civil Rights laws. Complaints can be made directly to this governmental agency bypassing local schools and local and state Boards of Education. While no school, school system, or administrator wants the stigma of discrimination associated with their practices, there are also the real penalties of losing funds and/or being prosecuted for crimes related to the violation of the Civil Rights Act of 1964 in dealing specifically with student discipline. While it is difficult to prove intentional bias or discrimination on the part of schools or administrators, it still warrants very close self-evaluation of fair student discipline practices, especially involving exclusionary sanctions against students.
One potential consequence of schools operating under the fear of OCR punishments for unfair practices is that they could fail to take action against certain dangerous students thereby creating the unsafe school conditions previously discussed. The dilemma of maintaining safe and orderly schools while also respecting individual rights of students comes about in the area of either over-punishing or under-punishing student behaviors. It is understandable how certain administrators could adopt a damned-if-I-do and damned-if-I-don’t attitude at certain times.

Other Federal Laws Impacting Student Discipline

The Individuals with Disabilities Act, or IDEA, was originally enacted in 1975 to provide services for children with identified disabilities affecting their ability to receive a free and appropriate education. There have been several amendments to the original act, most recently in 2004, but it remains one of the most referenced and powerful pieces of legislation ever passed from the education perspective. IDEA required that students have Individualized Education Plans (IEPs) with a prescriptive plan for educating students with certain disabilities. IEPs are determined by IEP committees made up of parents/guardians, teachers, and other school/system personnel who meet periodically to address the services that disabled students receive. Members make recommendations and agreements are established that dictate what school systems do to help disabled students receive a free and appropriate education with accommodations to help them overcome their particular disability.

Where student discipline is concerned, the particular disability the student has can affect their behavior and the services they receive because of their behavior. Behavior Intervention Plans (BIPs) are put in place for students with emotional or behavioral disabilities to provide appropriate strategies for dealing with behaviors. As long as the BIP is being followed and the student is not suspended for more than ten school days or recommended for a change of
placement, most consequences for Special Education students are fairly similar to regular education students. However, if long term suspensions or a change of placement becomes necessary, there must by a manifestation hearing conducted to determine if the behaviors of the student are a result of their disability. If it is determined that the behaviors are a manifestation of the disability, then the school is limited in the sanctions that can be administered.

Recent changes in IDEA occurring in 2004 included some policy changes that gave administrators more authority to remove special education students from school if they bring weapons, drugs, or if they harm others creating an unsafe setting. These changes and increased latitude for administrators were no doubt driven by concerns for student safety following acts of school violence involving students with disabilities. Still, there remains differences in special education and regular education students as McCarthy & Soodak (2007) reported, “IDEA’s discipline provisions mean that students with disabilities and their nondisabled peers can receive different consequences for the same behaviors, challenging traditional notions of fairness” (p. 458). This further contributes to the dilemma for administrators as they can be torn between removing a potentially dangerous student from school, but also violating federal legislation designed to protect that disabled student and their right to an education.

Like IDEA, Section 504 of the Rehabilitation Act of 1973 offers protection for students with disabilities by making it illegal to remove or deny students’ rights based solely on their disability. Section 504 can be applied in cases where students don’t qualify for Special Education or IDEA protection because the definition for disability is broader and encompasses more students and their conditions. Many students, especially those with ADHD or a physical disability, who don’t qualify for Special Education services do qualify for a 504 plan. These plans are typically shorter than the aforementioned IEP and only address the specific
accommodation needed for the specific disability. There are fewer requirements for components of 504 plans, but parents still maintain the rights of due process if they disagree with a school’s decision on contents of the 504 plan.

Though not as frequent as IDEA, Section 504 plans can impact administrator decisions on discipline consequences if the stated disability is one that could affect student behavior, like ADHD. In these cases administrators must realize that students with disabilities are different from students without disabilities. They must also recognize that treating students with disabilities differently regarding discipline sanctions is not only acceptable, it is required.

The No Child Left Behind (NCLB) Act of 2001 contains a section titled, Unsafe School Choice Option. This section requires that states develop a statewide policy allowing for students who attend a persistently dangerous school or those who have been victims of a violent crime at school to transfer to another school. Federal funds are tied to compliance with this section of NCLB. Initially, all states had to define persistently dangerous schools by identifying what violent acts were to be reported by each school system. Each year each state must certify in the form of an USCO report that they are monitoring the identified acts of violence by obtaining this information from each public school in the state.

The impact of USCO on local administrators is significant for several reasons including the risk each year of having their school identified as persistently dangerous. If a school meets the level of violence to receive this designation, any and all students could immediately request a transfer to another safe school. This would undoubtedly fall back on the administrators in the building likely prompting action by the school system related to personnel assignments. The community would certainly be disappointed at their neighborhood school being labeled as persistently dangerous and could voice grievances and seek changes with the Board of
Education. Many administrators would cite USCO as one of many reasons why allowing potentially dangerous students to remain in schools can lead to more violence and potential consequences for the school, the district, and personnel. Administrators would be more likely to seek exclusionary discipline consequences for students committing acts of violence in hopes of preventing future acts.

Tracking the Steps of a Discipline Referral

Student discipline referrals typically originate on the school level, most commonly by teachers in response to student behavior in a variety of different settings on school campus. Some exceptions to this may involve behavior at extra-curricular events sponsored by the school or at other school events off campus. However, the vast majority of referrals are a result of student behavior on school campus during school hours. Either electronically or by hard copy, a referral form is submitted to the appropriate administrator whose job is to review the information in the referral and meet with the student in question to discuss the referral. This first level of due process involves clearly sharing the information in the referral with the student while also identifying the section of the Code of Conduct allegedly violated. The student should be given opportunity to respond and explain their side of the story. At this point, the administrator makes a decision to proceed with assignment of consequences or to investigate the matter further by speaking with faculty, staff, or students who may have relevant, helpful information.

The severity of a discipline offense dictates the level of disciplinary action taken by the school administrator, but also dictates the level of due process due to the student and their guardians. For instance, if a student was being counseled, warned, or assigned a minor consequence like lunch detention, a parent conference would not be necessary. A simple phone call or written notification would suffice. However, if a student was receiving a major
disciplinary sanction like Out of School Suspension (OSS) or a change of placement to the Alternative School, it would be required to notify parents immediately (usually by phone and in writing) and offer them an opportunity to be heard either in a formal or informal hearing.

It is fairly common for an informal hearing to either lead to acceptance of the assigned consequences or a request by the guardians for a formal hearing moderated by a hearing officer, a tribunal, or both. Some school systems employ Disciplinary Hearing Waivers for parents/guardians to sign if they accept a consequence without the need for a formal hearing. It is strongly advised that any administrator seeking a waiver should thoroughly explain all elements being agreed upon in the waiver. As with many legal proceedings, there is the possibility of a negotiation between the parents and the administrators similar to a plea bargain agreement in a criminal case would involve a guilty plea in exchange for a reduced sentence. It is strongly advised that administrators proceed with caution when negotiating a reduction in sanctions in exchange for an admission of guilt. One of the cornerstones an administrator must rely on in student discipline is consistency. Parents and students are keen to the notion of fairness and treating all students the same for similar offenses.

If a formal hearing is requested by either administrators or parents, the process usually begins with notification to the superintendent or designee in charge of hearings on the system level. In addition, formal notice to the student and their parents by way of registered U. S. Mail or personal delivery by a neutral third party official is recommended. The letter would clearly outline the charges against the student with specific reference to Code of Conduct, Official Code of Georgia, or other governing documents with an explanation of the right to be represented by legal counsel if desired. The hearing is usually scheduled very quickly due to the student’s status and attendance in school being affected by the hearing outcome.
There are two general types of disciplinary hearings. The first involves a hearing officer who presides over the hearing and makes the final judgment as to guilt or innocence (Phase 1) and determination of consequences (Phase 2). The second type of hearing might have a hearing officer present to facilitate the hearing, but the decisions of guilt and assignment of consequences would be made by a tribunal panel usually made of school officials appointed by the Superintendent, but unrelated to the case or its participants.

The results of this hearing can be appealed to the Local Board of Education who can choose to make changes to the punishment assigned, either increasing or decreasing sentence. The ruling of the LBOE can be appealed by notifying the local Superintendent following the proceedings. The Superintendent then compiles the necessary information and notifies the SBOE of the requested appeal. The SBOE ruling can then be appealed to the Superior Court in the district where the LBOE is located, which is presumed to be the home district of the appellants (students and their parents/guardians). Below is a graphic illustrating the tracking of a discipline referral from initiation through the various steps of appeal.
Landmark Student Discipline Cases in Georgia

The Georgia State Board of Education (SBOE) makes rulings on student discipline cases filed in response to previous rulings of Local Boards of Education (LBOE). Cases filed with the SBOE are considered appeals of lower level cases ruled on by a LBOE, which rule on appeals from local disciplinary hearings, which exist to offer students and their representatives a chance to be heard regarding discipline charges and impending sanctions. This is an important process to consider when reviewing SBOE student discipline cases. These cases have been presented, heard, and ruled upon several times before arriving to the state level on appeal. As is common with legal rulings, decisions of the SBOE are based primarily on existing federal and state laws, SBOE rules and regulations, and prior SBOE case rulings. Several cases are continually referenced in SBOE student discipline rulings and applied to other cases with similar situations.
The following is a description of these landmark cases and a discussion of their relevance and application in new and future SBOE student discipline cases.

*Ransum v. Chattooga County Board of Education*, (Ga. SBOE 1977-02) is a commonly referenced case in SBOE rulings. This case was an appeal by a teacher who was not being offered a contract for employment, but it’s still frequently cited in student discipline cases because of the precedence established regarding evidence. There was conflicting evidence offered in this case involving incompetence and willful neglect of duties by a teacher. The principal testified to various examples of incompetence and neglect on the teacher’s part. The teacher offered explanations to some of the accusations and denials to other claims. The conflicting evidence resulting from different stories by the principal and teacher in question caused the SBOE to cite the previously adopted “any evidence rule”, which states that the SBOE will not weigh the evidence on appeal. SBOE vowed to uphold any LBOE decision if there is any evidence at all to support the claims of the LBOE.

The *Ransum* case and the “any evidence rule” cited therein is clearly a decided advantage for the LBOE in all types of cases. Appellants in student discipline cases, usually the students, have an uphill battle if their case on appeal is based on disputing statements or evidence already on record. The SBOE has established that evidence accepted earlier in the process at lower levels of the dispute is good enough for them. Ironically, in the *Ransum* case, the SBOE ruled in favor of the appellant and reversed the LBOE decision to non-renew the teacher for cause. It is surprising that a case so frequently cited for the “all evidence rule” and commonly used in decisions to sustain or support LBOE rulings actually ended in a reversal for the appellant.

A similar case, *Antone v. Greene County Board of Education* (Ga. SBOE 1976-11), involved the acceptance of evidence and the support of the LBOE during appeal rulings by the
SBOE. This case also involved not offering a teacher a contract due to incompetence and insubordination. In the Antone decision, the SBOE stated, “a decision by the local board of education will not be disturbed unless an abuse of its discretion is shown and where there is any evidence to support the decision below, it will not be overturned.”

*F.W. v. DeKalb County Board of Education* (Ga. SBOE 1998-25) was a student discipline appeal reviewed by the SBOE. F.W. disputed specific evidence accepted on record during the tribunal on the local level in DeKalb County. The SBOE cited *Ransum*, but added the following statement, “The tribunal sits as the trier of fact and, if there is conflicting evidence, much decide which version to accept.” The SBOE also added to the Antone language of not disturbing a LBOE decision unless abuse of discretion or the decision is so “arbitrary and capricious as to be illegal.”

The implication for students or schools involved in SBOE appeals is that disputing evidence already in record on a tribunal level is a losing proposition, unless it can be proven that the LBOE or tribunal acted on a lack of evidence, abused its discretion, or acted so arbitrarily and capriciously as to be illegal. This presents a challenging level to overcome.

Along with requests to consider conflicting evidence, the SBOE is often asked to consider the level or degree of discipline imposed by a tribunal or LBOE. In *B.K. v. Bartow County Board of Education*, (Ga. SBOE 1998-33), the student challenged the decision of the local tribunal and LBOE to a short-term expulsion due to drug use on campus. The student admitted during the discipline tribunal to attempted cocaine use at school so the appeal was not a dispute of guilt or innocence, but a claim that the punishment was too severe. The SBOE offered the following response, “A local board of education is charged with the responsibility of managing the operation of its schools, and, in matters of discipline, the State Board of Education
cannot substitute its judgment for the judgment of the local board.” The ruling went on to say that they don’t believe the LBOE made any errors in their judgment. This strong statement of support for the LBOE presents an uphill battle for students appealing LBOE student discipline decisions to the SBOE.

Appellants often attempt to bring up new information or ask that new issues be ruled upon by the SBOE. *Hutchenson v. DeKalb County Board of Education*, (Ga. SBOE 1980-05) is a commonly referenced response to such requests. *Hutchenson* involved a principal who was suspended five days without pay for hindering an investigation by the LBOE. On appeal to SBOE, the appellant, Mr. Hutchenson, contended that the tribunal was biased and he was denied due process rights. Both of these claims were dismissed with the explanation, “If an issue is not raised at the initial hearing, it cannot be raised for the first time when an appeal is made.”

*Sharpley v. Hall County Board of Education*, (Ga. SBOE 1981-20) is also frequently cited along with *Hutchenson* in similar cases involving new claims at appeal that were not noted in original hearing. The SBOE was clear that its job is to look at the case as it existed during lower level hearings, not to allow new hearings with new information to take place.

Students with disabilities are frequently involved in school law cases due to the impact of numerous pieces of legislation and previous judicial rulings. Student discipline cases appealed to the SBOE frequently involve issues related to Special Education or disabilities. The most referenced case in this area recently has been *M.G. v. Gwinnett County Board of Education* (Ga. SBOE 2004-40). This particular case involved a student suspended for inappropriately touching female students on the school bus. The student appealed that the LBOE was in violation of IDEA, the Individuals with Disabilities Education Act, 20 U. S. C. § 1400.
The SBOE response stated,

The State Board of Education does not have jurisdiction over issues that arise under IDEA. Instead, IDEA has its own sets of rules and procedures for challenging the action of a local school system and the Office of State Administrative Hearings has jurisdiction to hear complaints concerning violations of IDEA. *M.G. v. Gwinnett County*, (Ga. SBOE 2004-40)

This represents another roadblock for appellants looking to SBOE for relief in matters involving students with disabilities.

There are numerous cases each year in which students express an interest in appealing LBOE and tribunal rulings to the SBOE, but fail to file brief or request oral argument. Whether or not the students change their minds, are unable to obtain needed resources, or simply miss deadlines is unknown, but in these cases the SBOE deems the cases abandoned and they are dismissed without any follow-up from SBOE. The most frequently cited case in this area is *Chris v. McIntosh County Board of Education*, (Ga. SBOE 1995-47), which involved a student being expelled for stealing teacher property.

Finally, the issue of mootness is addressed in *J.S. v. Gwinnett County Board of Education*, (Ga. SBOE 2006-37), and has been commonly referenced in numerous cases since. J.S. was a student accused of providing fireworks that were set off at a football game. The student claimed that the evidence was not credible. The SBOE ruled that since the time period of the punishment had passed, and they could offer no relief to the student, the case was dismissed due to being moot. Several cases have argued against the mootness rule due to a student’s record being unnecessarily damaged and that affecting future opportunities for the student. In each claim such as this, the SBOE thoroughly reviews the specifics of each case for merit related to this position.
Chapter Summary and Implications for Practice

Student discipline is a dynamic task for school administrators involving respect to all major stakeholders including teachers, parents, community, and especially students. Equity, school safety, and rights of students are just a few considerations driving administrator decisions in this area.

Research findings have consistently found that Black students, specifically Black males, receive disproportionately more office referrals and harsher sanctions than other students. While many factors have been considered to explain this overrepresentation, none can entirely account for the skewed referral frequency rates. Of chief concern is that many of the sanctions involve exclusion from the classroom and contribute to both the discipline gap and achievement gap evident in student discipline and achievement data. Research on gender disproportion in discipline data is not as compelling, but still warrants further study and consideration by scholars and practitioners.

Efforts to address the glaring disproportions include better preparing our teachers to be more culturally responsive in diverse classrooms, including more proactive discipline programs designed to explicitly teach desired behaviors and using positive reinforcement to reward compliance, regular reviews of discipline data by teams of school personnel for the purpose of identifying and combating unequal treatment of students, and amending or simply trashing the unforgiving, ineffective Zero Tolerance policies of previous decades in favor of developmentally appropriate ones designed to keep students a part of schools rather than pushing them out.

The dilemma administrators face of keeping schools safe and orderly while respecting individual student rights is a legitimate, warranted concern. Most educators’ mission is to help and educate kids, not to exclude them from the process. The nature of professionals in education
should be to try and help needy students, not try to remove them from schools, which often sentences them to challenging conditions with little chance for a high quality of life. However, there does come a time when concern for the masses outweighs an individual’s situation. When certain students put other students or school staff at risk, they must be addressed with sometimes harsh discipline sanctions involving removal.

Where school discipline is concerned, an administrator’s chief duty in assigning consequences is to be fair and consistent with local policies and state mandates. This includes respecting the rights of students to a free and adequate public education, due process rights, and the rights included in Civil Rights and Students with Disabilities legislation. From the Magna Carta and English Common Law in the 1200’s to the current school setting there is a pervasive framework for how to govern and lead people in a fair and just way. Due process serves to protect citizens against the government and is vitally necessary, even in a democratic society, to allow citizens to be notified and to be heard before they can be deprived of life, liberty, or property. While due process was not precisely defined as a constitutional right, it was clearly addressed by Goss v. Lopez regarding its presence in school discipline cases.

There is never a situation where notice and hearing should be bypassed for convenience or an attempt to conceal student discipline rulings. Race and gender should never be considered when making decisions regarding student discipline and removal from school setting. Conversely, students with disabilities do have a legal and ethical right to receive different discipline consequences than regular education students.

In addition to discussing equity, school safety, due process and other individual student rights, this chapter attempted to outline the student discipline process by tracking the steps of a discipline referral with a description of the various levels of appeal. The State Board of
Education handles student discipline appeals of Local Boards of Education rulings and offers several cases that serve as references or landmark cases establishing the SBOE role in student discipline controversies. These cases have been discussed here and clearly outline a pattern of support for LBOE decisions provided the local decisions are not arbitrary and capricious. Local school administrators and board members have a duty to not only respect the rights of individual students, but also to respect the process of appeals by making rational, fair, and legal decisions regarding student discipline without emotion or favoritism.

Hopefully, administrators will exhaust all other options before assigning consequences that remove students from the school setting. When administrators face the difficult dilemma of balancing school safety and student rights, it is advised that officials use removal as a last option and err on the side of the student with consideration of their future options and chance for success. In addition, it is highly suggested that all legal processes including assignment of sanctions, discipline hearings, and appeals be conducted with the utmost respect to protecting student rights and practicing ethical and fair proceedings leading to more fair and just outcomes. School officials should avoid at all costs the practice or appearance of unfair rulings against their students.
CHAPTER 3
AN ANALYSIS OF STATE BOARD OF EDUCATION RULINGS

This chapter analyzes student discipline cases appealed to the Georgia State Board of Education during the 2012 and 2013 calendar years. The following research questions will be addressed:

1) What types of student discipline cases are most commonly appealed to the Georgia State Board of Education?

2) What legal grounds for appeal are most often cited by appellants?

3) How often are cases upheld?

There were 87 student discipline cases appealed to the Georgia State Board of Education during 2012 and 2013. Not all of these cases were pursued by the appellants. In some of these cases the State Board of Education was notified of the intent to appeal, but the appellant abandoned the appeal. Appellants either changed their mind or failed to file the appropriate brief or request for argument for some other reason. In those cases the appeal is dismissed.

Other reasons for dismissal of appeals cases are that the time of penalty has passed rendering the appeal moot. And, in a few cases the appeal was dismissed by request of appellant. 34 of 87 cases were dismissed for one of the reasons cited above. This leaves 53 cases in which arguments for appeal were presented and rulings were made by the State Board of Education. Results of the 87 appeals cases can be seen in Table 3.1.
Results of Appeals Cases

Table 3.1
*Results of Appeals Cases to Ga. State Board of Education*

<table>
<thead>
<tr>
<th>Result of Appeal</th>
<th># of Cases</th>
<th>% of Total Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sustained</td>
<td>48</td>
<td>55.2%</td>
</tr>
<tr>
<td>Dismissed</td>
<td>34</td>
<td>39.1%</td>
</tr>
<tr>
<td>Reversed</td>
<td>3</td>
<td>3.4%</td>
</tr>
<tr>
<td>Remanded</td>
<td>2</td>
<td>2.3%</td>
</tr>
</tbody>
</table>

As shown in Table 3.1, 48 appealed cases (55.2%) resulted in a ruling of sustained in favor of the respective local boards of education. 34 cases (39.1%) were dismissed, which could certainly be interpreted as in favor of the local boards of education considering their initial ruling was upheld with the dismissal. Therefore, 82 of the 87 cases over a two year period (94.3%) resulted in a favorable ruling for the local boards of education.

3 cases were reversed by the State Board of Education with a ruling in favor of the appellant. 2 cases were remanded back to the respective local boards of education due to procedural errors on the local level. Hence, only 5 of the 87 appeals cases reviewed (5.7%) resulted in a favorable ruling for the appellants/students. Due to such a small number of cases ruled in favor of the appellants, each of the reversed and remanded cases will be analyzed in depth to determine rationale and reasoning for decisions.

Student Discipline Appeals Cases Reversed by Georgia State Bd. of Education

*S.H. v. Columbia County Board of Education* (Ga. SBOE 2012-57)

In this case a high school student admitted to consuming alcohol on a school bus while returning from a school-sponsored athletic event. The notice for a hearing given to the student provided the maximum discipline as long-term suspension. The student admitted the offense at the hearing where the hearing officer offered two options: 1) Student could be suspended for remainder of 2011-2012 school year (about 6 weeks) without the option of attending alternative
school, or 2) Student could receive long-term suspension for remainder of 2011-2012 school year and first semester of 2012-2013 school year with the ability to attend alternative school. He chose option 2. The decision of the hearing officer was adopted by the Local Board of Education.

The student chose to appeal the decision to the State Board on the grounds that the Local Board erred by suspending him beyond 2011-2012 school year. The notice of hearing stated the maximum punishment as long-term suspension. “Long-term suspension under Georgia law and the Local Board’s rules cannot exceed beyond the current school semester. See O.C.G.A. § 20-2-751(2)” (Ga. SBOE 2012-57). The hearing officer exceeded his authority by imposing a penalty in excess of what was stated in the notice of hearing. The option of attending alternative school was not relevant to the hearing officer’s decision. The State Board ruled the Local Board erred by extending the suspension beyond the current semester and they reversed the local ruling.

Other items of interest from this case include a claim by the appellant that his penalty was harsher than other students involved in this same incident who also admitted their actions. That was never addressed by the State Board. Also, it is important to note that the appeal ruling was made in August, 2012, which was five months after the incident and after the 2012 school year had begun. This impacted the student immediately as it allowed for immediate removal of suspension and the ability to reenroll and begin school right away. The timing of appeals will be discussed in later sections.
This case involves a student claiming that her principal duped her into signing a waiver accepting expulsion for the remainder of the school year, which amounted to more than a semester as the offense occurred in November. The student also claims she was not given sufficient time to prepare a defense.

The student was charged with bullying and physical abuse after throwing a book at another student while they were in an unattended classroom. The incident occurred on November 2, 2012. The student was charged on November 8, 2012 at 1:00 pm, and the disciplinary hearing was held at 2 pm on that same day. The student was offered a waiver at the start of the hearing and agreed to the terms, according to the Hearing Officer. The student appealed the severity of the punishment and lack of time to prepare defense to the Local Board who upheld the decision of the tribunal. The student appealed to the State Board of Education with the same grounds: The punishment was too harsh and there was insufficient time to prepare an adequate defense for the hearing.

The State Board of Education addressed both issues. As to the punishment being too severe, they referenced *B.K. v. Bartow County Board of Education* by stating, “the State Board of Education does not adjust the level or degree of discipline imposed by a local board of education unless there is a complete lack of support for the decision” (Ga. SBOE 1998-33). With no prior disciplinary offenses and no proof of abuse to the other student, the local Code of Conduct only allowed for two days of suspension.

As to the claim that the student was not given ample time to prepare a defense, the SBOE references the Official Code of Georgia in O.C.G.A. § 20-2-754(b)(1), which provides, in part: “All parties are afforded an opportunity for a hearing after reasonable notice served personally or
by mail” (20-2-754[b][1]). The SBOE found in this case that the student was not provided reasonable time to prepare a defense after being notified at 1 pm and starting the hearing at 2 pm. The student was advised in the notice they had the right to consult with an attorney, but had no time to do this. Accordingly, the Local Board decision was reversed.

Of note, this ruling occurred in April, 2013, more than half way through the second semester and five months after the original disciplinary hearing/waiver. Also, the fact that the classroom was unattended at the time of the original incident was never mentioned in the appeal except to say the school had offered no evidence of the original abuse.

Q.W. v. Henry County Board of Education (Ga. SBOE 2013-64)

This case involved a high school student who engaged in a fight at school on March 7, 2013. The student was suspended for the remainder of the school year (about 8 weeks) with the option to attend the Local Board’s alternative school. The student was charged with mutual combat. He claimed self-defense and testified that the other student was the aggressor and pursued him throughout the building trying to fight. Eventually the other student attacked him and he fought back to defend himself.

The hearing officer suspended him for the remainder of the school year as charged. The student appealed to Local Board, who upheld the hearing officer decision. The student then appealed to the State Board with same grounds, self-defense. Normally, this case would have been dismissed based on the matter being moot. The time of penalty has passed and no relief can be offered to the appellant. However, when this case was considered in August 2013, the State Board’s precedent of mootness was on appeal before the Georgia Court of Appeals (Case No. A13A1636). Because of the appeal of mootness, this case was not dismissed.
The Board noted that self-defense has been recognized where evidence was offered to support self-defense, as in *T.P. v. Henry County Bd. of Educ.* (Ga. SBOE 2005-25). There was a video in evidence showing the other student being the aggressor and the appellant having no chance to retreat. Therefore, the State Board found that the Local Board’s decision is not supported by the record and the Local Board’s decision is reversed. The key element here was the presence of the video. Without this evidence, proving self-defense becomes much more difficult for the appellant.

Student Discipline Cases Remanded by State Board of Education

*S.R.O. v. Savannah-Chatham County Board of Education* (Ga. SBOE 2012-79)

A seventh grade female student in the top 5% of her class with no prior disciplinary actions was found to be in possession of a pocket knife at school based on an anonymous phone call. One of the blades was longer than two inches and the student was subsequently charged with a designated felony act and permanently expelled from school with the option to attend alternative school. The student appealed and claimed she was improperly charged with the commission of a felony.

The State Board found that the requirements for charging this student with a crime were not met according to O.C.G.A. § 16-11-127.1 and O.C.G.A. § 15-11-63. These laws explain that for the student to be charged with a felony there had to be either prior delinquency or the weapon together with an assault. There was no evidence in the record of either of these provisions. Therefore, the requirements for charging with a felony did not exist. Since this was the primary consideration of the hearing officer, the basis for the decision does not exist.

The State Board questioned whether the punishment would have been so harsh considering the charge was not actually a felony. The State Board found that the student was
denied due process due to improper charge and that the hearing officer lacked proper evidence to support the decision. The case was remanded back to the Local Board to determine if permanent expulsion was the proper discipline.

*M.C. v. Peach County Board of Education* (Ga. SBOE 2013-69)

This case involved a male high school student who attacked his teacher after he was directed to the assistant principal for disrupting class. The student’s mother was notified by phone on April 17, 2013, that the student was being charged and a disciplinary hearing was set for April 23, 2013. Neither the parents nor the student attended the hearing. The student was found guilty and expelled for one full school year. The student appealed and claimed that he did not receive proper notice. The student’s mother claimed to only receive part of the charge letter on the day before the hearing. The student also claimed to have attention deficit disorder (ADD) and should have been receiving special education services.

The Local Board upheld the tribunal decision, but amended the punishment to allow the student to enter the alternative school halfway through the next school year and offered a resource program in the interim. In addition, the student claimed the teacher had mentally abused him and asked for an investigation into that matter. The student also claimed that the Local Board violated the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., because there was no vote in open session of the meeting. The Local Board claimed the parents knew exactly when and where the hearing was taking place and knew for over a week. The Local Board also claimed no mental abuse evidence existed and that they complied with the Open Meetings Act.

The State Board found that reasonable notice in writing did not exist considering the charge letter arrived the day before the hearing and it did not contain all vital information for the parents to properly prepare a defense. As to the claim of special education services, the State
Board claimed no jurisdiction and referenced *J.J. v. Fulton County Board of Education* (Ga. SBOE 2007-54). The ruling went on to say that since the student was not enrolled in special education services that the IDEA does not apply and his claim that he can’t be expelled is meritless. This avoidance of IDEA issues is a consistent theme in SBOE rulings. The State Board also found the Open Meetings claim to be meritless as O.C.G.A. § 20-2-757 states, “All proceedings and hearings conducted under this subpart shall be confidential and shall not be subject to the open meetings requirement of Code Section 50-14-1 or other open meetings laws” (Ga. SBOE 2013-69).

Based on the record, however, the State Board decided to remand the case back to the Local Board due to finding that the student’s parents did not receive reasonable notice of hearing, thereby supporting the claim that the appellant’s due process rights were violated. It was recommended that a new hearing take place with proper notice and opportunity to prepare a defense.
**Student Discipline Cases Most Commonly Appealed**

Table 3.2

<table>
<thead>
<tr>
<th>Disciplinary Charge</th>
<th># of Cases</th>
<th>% of Total Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fighting</td>
<td>16</td>
<td>18.4%</td>
</tr>
<tr>
<td>Drugs</td>
<td>14</td>
<td>16.1%</td>
</tr>
<tr>
<td>Sexual Misconduct</td>
<td>12</td>
<td>13.8%</td>
</tr>
<tr>
<td>Abuse of Employee</td>
<td>5</td>
<td>5.7%</td>
</tr>
<tr>
<td>Alcohol Possession/Consumption</td>
<td>5</td>
<td>5.7%</td>
</tr>
<tr>
<td>Disruptions</td>
<td>5</td>
<td>5.7%</td>
</tr>
<tr>
<td>No Stated Charge</td>
<td>5</td>
<td>5.7%</td>
</tr>
<tr>
<td>Threats/Bullying</td>
<td>5</td>
<td>5.7%</td>
</tr>
<tr>
<td>Weapons</td>
<td>5</td>
<td>5.7%</td>
</tr>
<tr>
<td>Gang Activity</td>
<td>4</td>
<td>4.6%</td>
</tr>
<tr>
<td>Repeated Offenses</td>
<td>2</td>
<td>2.3%</td>
</tr>
<tr>
<td>Theft</td>
<td>2</td>
<td>2.3%</td>
</tr>
<tr>
<td>Food Fight</td>
<td>2</td>
<td>2.3%</td>
</tr>
<tr>
<td>Arson</td>
<td>1</td>
<td>1.1%</td>
</tr>
<tr>
<td>Bomb Threat</td>
<td>1</td>
<td>1.1%</td>
</tr>
<tr>
<td>Improper Cell Phone Use</td>
<td>1</td>
<td>1.1%</td>
</tr>
<tr>
<td>Release from Juvenile Detention Center</td>
<td>1</td>
<td>1.1%</td>
</tr>
<tr>
<td>Skipping</td>
<td>1</td>
<td>1.1%</td>
</tr>
</tbody>
</table>

**Fighting**

Table 3.2 shows all 87 cases appealed to the Ga. State Board of Education during 2012-2013 arranged by the disciplinary charge (student behavior). The most commonly appealed student discipline cases from 2012-2013 were for students engaged in fighting with each other. There were 16 fighting cases out of 87 total appeals (18.4%). These cases involved fights taking place in a variety of locations considered part of school property including bus, lunchroom, hallway, restroom, athletic event/field, and classroom. Only one fighting case was reversed – the previously mentioned self-defense case of *Q.W. v. Henry County Board of Education* (Ga. SBOE 2013-64), which found that the appellant had no chance for escape from the aggressor. Two other cases, *T. H. v. Gwinnett County Board of Education* (Ga. SBOE 2012-66) and *A.S. v.*
Henry County Board of Education (GA. SBOE 2012-78), attempted to use self-defense as grounds for appeal, but were denied. They both lacked the compelling video evidence found in the reversed case.

Two of the fighting cases involved the alleged abuse of an employee/educator. T.L. v. Burke County Board of Education (Ga. SBOE 2012-63) and P.K. v. Henry County Board of Education (Ga. SBOE 2013-70) involved fights at school in which an intervening teacher was struck multiple times during the fray. The difference between the two cases is the presence of a video in the first case clearly showing the student striking the teacher 3 separate times while refusing to cease with the fighting. In the second case the educator actually testified on behalf of the student that the physical contact was not intentional by the student, but occurred as a result of the physical altercation with the other student. A determination has to be made in fighting cases where staff members are breaking up the fight to decide if the contact is a result of trying to strike the other student or if the contact is willful and malicious toward the staff member.

Obviously, stronger punishment follows intentional physical abuse of staff members.

Two of the appeals cases involving fighting were from the same incident between two middle school students. M.B. v. Henry County Board of Education (Ga. SBOE 2012-34) and A.T. v. Henry County Board of Education (Ga. SBOE 2012-35) appealed decisions by the Henry County Board of Education regarding incidents that took place on November 2 and 3, 2011. In the first case (2012-34), the student admitted at the discipline hearing to cursing, poking, pushing, and punching the other student. The hearing officer permanently expelled the student, but allowed her to attend the local alternative school. The Local Board affirmed the decision. The second case (2012-35) went similarly as the student admitted to fighting and using a belt during the fight on the second day, November 3, 2011. The hearing officer permanently expelled
this student as well, but without the option of attending the local alternative school. The Local Board affirmed the decision of the hearing officer, but amended the decision to allow the student to attend alternative school.

Both students appealed to the State Board, but no real grounds for appeal were clearly stated in the case review. There was no mention of prior discipline infractions on either student’s part, which means this was not considered by the State Board. There was no mention of evidence dispute or violation of due process involving notice or hearing. However, these two cases are clear examples of students who have admitted guilt in their respective cases, but are apparently appealing due to the punishment being too harsh. These cases involved permanent expulsion for middle school students with option of alternative school. This amounted to an alternative school sentence of approximately 5-7 years for a bus fight. The following statement appeared in the State Board decision summaries for both cases. This statement referencing prior rulings also appears in many other student discipline rulings.

The Local Board has the burden of proof when it charges a student with an infraction of its rules. Scott G. V. DeKalb County Bd. of Educ., Case No. 1988-26 (Ga. SBE, Sep. 1988). If the Local Board meets its burden, the State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., case No. 1976-11 (Ga. SBE, Sep. 1976). “The State Board of Education will not disturb the finding of the Local Board unless there is a complete lack of evidence.” F.W. v. DeKalb County Bd. of Educ., Case No. 1998-25 (Ga. SBE, Aug. 1998).

This statement made it clear that the State Board is not looking to overturn local cases when the Local Board has the initial burden of proof. By establishing a legal presumption in favor of local decisions, they have placed a large amount of faith and authority in the Local Board’s hands. In the cases of bus fighting and permanent expulsion and placement in alternative school, the
question of punishment being too harsh appears. Below is a statement from *B.K. v. Bartow County Board of Education* involving degree or level of punishment:

In *B.K. v. Bartow County Board of Education*, (Ga. SBOE 1998-33), the student was challenging the decision of the local tribunal and LBOE to a short-term expulsion due to drug use on campus. The student admitted during the discipline tribunal to attempted cocaine use at school so the appeal was not a dispute of guilt or innocence, but a claim that the punishment was too severe. The SBOE offered the following response, “A local board of education is charged with the responsibility of managing the operation of its schools, and, in matters of discipline, the State Board of Education cannot substitute its judgment for the judgment of the local board.” The ruling goes on to say that they don’t believe the LBOE made any errors in their judgment. This strong statement of support for the LBOE presents an uphill battle for students appealing LBOE student discipline decisions to the SBOE.

The standard of reversal based upon severity of punishment is set very high and rarely occurs in student discipline appeals cases. Another fighting case involves a similar claim by an appellant. In *D.A. v. Henry County* (Ga. SBOE 2012-60), the student appeals on the grounds of equal protection and that the punishment is too harsh.

This case involves a fight in P.E. class with two teacher witnesses who testified that the appellant knocked another student into the bleachers and caused a bump on his head. The student was found guilty at a tribunal and suspended for the remainder of the school year (about 8 weeks) and for the first semester of the 12-13 school year (18 weeks) with a placement in the alternative school. The student appealed to the State Board by claiming equal protection and punishment too harsh, but neither issue was raised on the local level. The ruling by the State Board, “The Student, however, did not raise either of these issues before the tribunal. If an issue is not raised before the tribunal, it cannot be raised for the first time before the State Board of Education. *Sharpley v. Hall Cnty. Bd. Of Educ.*, 251 Ga. 54, 303 S.E.2d 9 (1983)” (Ga. SBOE 2012-60). The ruling also referenced *B.K. v. Bartow Cnty Bd. of Educ.*, Case No. 1998-33 (Ga.
SBE, Sep. 10, 1998) regarding the State Board’s reluctance to reduce the degree of punishment in student discipline cases.

Many student fights involve a claim of self-defense with statements from students like, “he hit me first…I was just defending myself…my parents told me if someone hits you, you hit them back…I didn’t start the fight, but was protecting myself.” One particular case from May 9, 2012, addressed the self-defense provisions in the Official Code of Georgia in its ruling.

_A.S. v. Henry County Board of Education_ (Ga. SBOE 2012-78) involved a fight between two female students on a bus. The two students argued at school during the day of the bus fight and required intervention from the assistant principal who warned them against continuing conflict in the way of arguing or fighting. The students were permitted to ride the bus home together at the end of the day, but continued to argue on the bus. The driver intervened to stop the argument and attempted to continue the ride home when the fight began. It lasted approximately 20-30 seconds. Testimony from witnesses stated that both students were challenging the other one to strike first so they could be justified in fighting. Video showed that the appellant was struck first and responding by fighting, however in light of all testimony and evidence, the hearing officer found the student guilty and expelled her for a little more than a semester of school. She claimed her actions were in self-defense.

The State Board ruling in _A.S. v. Henry County_ (Ga. SBOE 2012-78) states, “O.C.G.A. § 16-3-21(a) provides that a person can use force against another person if there is a reasonable belief that force is necessary to defend himself or herself. O.C.G.A. § 16-3-21(b), however, provides that:

A person is not justified in using force … if he: (1) initially provokes the use of force against himself …; (2) is attempting to commit … a felony; or (3) was the aggressor or was engaged in combat by agreement…”
This defines the self-defense provision while finding the student’s claim of self-defense without merit by stating,

…testimony from which the tribunal could find that the Student provoked the fight or engaged in mutual combat, which would negate the Student’s claim of self-defense. Although the testimony of the student witnesses and the bus driver showed that the other student initiated the attack, both students were provoking each other. The State Board of Education, therefore, concludes that there was evidence to support the decision of the tribunal and Local Board of Education (A. S. v. Henry County Board of Education, 2012-78).

Also, this case involved a claim from the parents that they were not notified of their child being bullied, which is required under O.C.G.A. § 20-2-751.4(b)(3). This was in reference to the confrontation at school mediated by the assistant principal. While the SBOE refused to rule on this claim due to it not being introduced at tribunal and new claims not being considered on appeal, the issue brought up a notable fact that if the parents had known of the conflict during the day and had known they were riding the bus together, they may have made other arrangements to transport their daughter, thereby preventing the fight from occurring that day. This is all supposition and the conflict may not have constituted bullying as referenced in Official Code, but placing the two girls on the same bus after a prior conflict does bring up discipline management questions on the local level.

Another fight case, P.M. v. Bibb County Board of Education (Ga. SBOE 2013-39), was unique in that it involved two separate, but related incidents involving physical abuse and damage to property. One incident occurred on September 28, 2012, and another on December 18, 2012. The first involved a physical altercation in which she was the aggressor, the second resulted in the student being charged with damage to property after being found guilty of breaking another student’s glasses. She was sentenced to expulsion for the remainder of the
school year, and allowed to attend the local alternative school. The Local Board upheld the expulsion ruling and the student appealed to the State Board.

On appeal, the Local Board contended that the case should be dismissed due to a late filing of a brief by the appellant. While true, the State Board agreed to allow the belated filing, therefore overruling the motion to dismiss. The appellant claimed to have not received proper notice of charges or notification of the hearing, which is without merit according the record in evidence. She also claims the record from the Local Board was not properly certified, which also is without merit as the record has been properly submitted. There were several other new claims brought before the State Board, but none were brought up locally, so they are not to be heard on appeal (Hutcheson v. DeKalb County Board of Education (Ga. SBOE 1980-5). The Local Board’s decision is sustained.

In M.M. v. Gwinnett County (Ga. SBOE 2013-38), a sixth grade student was charged with fighting with another student and possession of a weapon. At the hearing the student, through his attorney, refused to testify but admitted to the charges. The hearing officer found him guilty and sentenced him to be expelled the remainder of the school year, and attend alternative school. The Local Board upheld the decision and the student appealed to the State Board with three issues: (1) The student contended the hearing officer did not issue a written decision, which he claimed violated O.C.G.A. 20-2-754(c); (2) He also contended the Local Board did not issue a written decision as required by same code; and (3) He contended that his due process rights were violated by not being allowed a thorough and sifting cross-examination of the student witness.

The State Board found that neither the hearing officer nor the Local Board erred with the handling of the written decision and that these decisions appearing on record at the hearing or at the Local Board are sufficient to comply with O.C.G.A. 20-2-754(c). As to the due process
contention, the State Board found this claim without merit as well because a review of the record determines that the appellant did have an opportunity to cross-examine the witness. “The hearing officer is within her right to rule on objections and properly limit the scope of the examination” (Ga. SBOE 2013-38). This made the point that while cross-examining witnesses in a hearing is permitted, there are limits and boundaries that are governed and ruled upon by the hearing officer. The Local Board decision was sustained in this case.

The case of *A.B. v. Henry County Board of Education* (Ga. SBOE 2013-50) involved a claim that the student and their parent were tricked into signing a waiver with a lesser punishment than was actually administered. The student also claims the punishment is too harsh, which has been well established as an issue the State Board chooses not to intervene on. But, the disagreement over the waiver is an interesting point. According to the record, the student was advised both by a charge letter and by the hearing officer that the maximum penalty could be expulsion. The record shows that before the waiver was executed the student was explained the maximum punishment again. The student chose to execute the waiver and admit guilt thereby resulting in the punishment of expulsion for the remainder of the school year (slightly less than a semester).

The confusing part to the case involved the waiver statement. Waivers typically involve an admission of guilt, which this case states, but also an acceptance of certain consequences that are typically stated very clearly on the waiver. In this case it stated that the student was aware of the range of punishments and advised of the maximum punishment, but it never stated that the specific punishment is listed on the waiver. Either the waiver was unclear or the case summary is unclear. Regardless, the State Board upheld the Local Board and hearing officer’s decision
due to the admission of guilt and the avoidance of lowering the degree or level of punishment in student discipline cases.

**Drugs**

Drug charges composed the second largest number of appeals cases with 14 of the 87 cases (16.1%). 4 of the drug cases were dismissed. 3 dismissals were based on abandonment of appeal meaning the appellants failed to file necessary briefs or request oral arguments. One of the dismissed cases, *J.C. v. Rockdale County Board of Education* (Ga. SBOE 2013-48), contained a due process claim among other noteworthy assertions.

The first issue on appeal was the claim that the punishment was contrary to the student handbook as the student claimed to receive a harsher penalty than specifically cited in the handbook. However, the handbook stated that a drug offense be referred to a student disciplinary tribunal which is permitted by O.C.G.A. § 20-2-755 to impose expulsion or suspension from school. The second issue on appeal was an attempt to get the admission thrown out because the student did not receive a *Miranda* warning while being questioned in the presence of a policeman. The State Board cited *V.F. v. Fulton County Board of Education* (Ga. SBOE 2003-24) as reason not to exclude evidence in an administrative proceeding because *Miranda* warning was not given before questioning. Thirdly, the State issued the following statement in *J.C. v. Rockdale County Board of Education* (Ga. SBOE 2013-48) regarding the due process rights violation claim:

The Student’s final argument is that he was denied due process because the Local Board did not conduct a hearing under the provisions of O.C.G.A. § 20-2-1160. There is no requirement for a local board of education to conduct a separate hearing and receive evidence after a tribunal has been appointed. O.C.G.A. § 20-2-752 provides for the appointment of disciplinary tribunals. O.C.G.A. § 20-2-754 provides that a “local board of education shall review the record and shall render a decision in writing. The decision shall be based solely on the record [created before the tribunal]…”
The case was dismissed by the State Board after determining all claims on appeal were without merit.

There were 10 sustained appeals involving drugs as the primary offense. Two of those cases’ grounds for appeal were cited as punishment too harsh, which has been discussed at length with the fighting cases. Several of the drug appeals did contain unique details and cited prior cases as a basis for the State Board’s ruling.

In *B.C. v. Gwinnett County Board of Education* (Ga. SBOE 2012-48), a female student was charged with selling drugs at school. The appellant claimed there was no credible evidence and that her due process rights were violated during the investigation and during the disciplinary hearing. As previously explained, the State Board has an established history of supporting the Local Board decision if there is any evidence to support the decision. Therefore, challenging evidence on appeal is typically not fruitful for the appellant. In this case the State Board reiterated that the tribunal is the “trier of fact and must decide which version to accept” in cases of conflicting evidence.

The due process claims in this case centered around several issues. First, the student claimed that the assistant principal’s participation in the tribunal amounted to a due process violation. However, this issue was not raised on the local level. The Board ruling stated, “The State Board of Education, as an appellate body, is not authorized to consider matters that have not been raised before the Local Board” (Ga. SBOE 2012-48). *Hutchenson* and *Sharpley* are cited again to support this stance as an appellate body not considering new evidence or claims.

The appellant also claimed she was denied the opportunity to review witness statements, but the State Board finds no evidence of this in the record. There was also a claim that the hearing officer inappropriately allowed certain items to be admitted as evidence, but this claim
was deemed without merit due to the appellant not objecting to this evidence during the tribunal hearing. In addition, there was due process claim involving a denial of questioning witnesses. However, the record shows that the hearing officer simply limited questions to the incident for which the student was charged. The State Board concluded that all claims were without merit and sustained the Local Board’s decision.

Two drug cases, *C.S. v. Habersham County Board of Education* (Ga. SBOE 2012-15) and *R.H. v. Newton County Board of Education* (Ga. SBOE 2012-77), involved appeals on grounds of primary evidence being student admission. In *C.S. v. Habersham*, the student questioned the evidence presented by claiming that the substance was not tested and confirmed as marijuana. She referenced *Neal v. Augusta-Richmond County Personnel Bd.*, 304 Ga. App. 115 (2010) in support of her position, but this is rejected because *Neal* was a drug test case and in this case, the student admitted to the Principal to be in possession of marijuana.

*R.H. v. Newton* involved a female student charged with marijuana possession. The primary evidence was a statement by the resource officer that the student had admitted to the officer she was in possession of marijuana and that she had ingested the marijuana to avoid being caught with it. The student was taken to the hospital where x-rays found no marijuana. Later, the student recanted the original admission and claimed at tribunal there was no evidence against her except for a coerced hearsay statement made to the resource officer. The hearing officer rejected this claim and found the student guilty. The student appealed to the State Board on the same grounds of lack of evidence and questionable evidence regarding the admission. The State Board ruling states,

Georgia’s law of evidence regarding admissions, O.C.G.A. § 24-3-31, provides that an admission is admissible as evidence. In the instant case, the Student admitted that she had marijuana at school. There is, therefore, some evidence to support the Local Board’s decision (Ga. SBOE 2012-77).
In both cases, the student admission was accepted as primary evidence even when accompanied by other contradictory evidence.

_**R.G. v. Tattnall County Board of Education**_ (Ga. SBOE 2012-19) was a drug appeal case based on two separate, but important claims on appeal. First, the appellant claimed the tribunal was improperly conducted because the principal, rather than the hearing officer, ran the hearing. The principal asked several questions without any objection from the appellant’s attorney. “Since there was no objection, any error in the principal’s conduct was waived and cannot form the basis for any error on appeal. See _e.g., Zipperer v. State_, 299 Ga. App. 792, 683 S.E.2d 865 (2009)”. In addition, the student failed to show that this error caused any harm. The claim was therefore considered without merit.

Secondly, the appellant claimed the Local Board’s decision was arbitrary and capricious because it increased the punishment assigned by the hearing officer. The ruling states, “A local board of education, however, can impose more severe punishment than recommended by a tribunal if the local board provides an explanation for the additional punishment”. See, _Chauncey Z. v. Cobb County Bd. of Educ._, Case No. 1992-42 (Ga. SBOE, Mar. 11, 1993). Local Board ruling was sustained by State Board.

Prescription drug offenses appear to have increased in the past few years as evidenced by appeals. In _C.P.R. v. Henry County Board of Education_ (Ga. SBOE 2012-61), the student has a legitimate reason for being in possession of prescription medication. The medication was Codeine, a narcotic pain reliever prescribed by the student’s oral surgeon reportedly in preparation for a procedure that afternoon. However, two Assistant Principals testified they had received information that the student was trying to sell the pills at school to other students, which
constitutes a felony. After a search of the student’s person, with permission, the pills were discovered in the student’s pocket.

The appellant clearly did not follow the school system’s protocol for bringing prescription pills to school, but the administrators claimed the student admitted to trying to sell the pills and they had gathered 3 statements from other students claiming that the appellant had tried to sell the Codeine pills to them. The students recanted their statements at the tribunal hearing, but the hearing officer found the student guilty and sentenced him to expulsion for remainder of the school year (less than 8 weeks) with the opportunity to attend local alternative school.

On appeal to State Board, the appellant claimed that the initial statements made by he and the three witnesses were coerced by administrators. Related to this matter, the witnesses recanted much of their written statements at the hearing. “The Student also asserts various violations of federal law regarding his Miranda rights, and the IEP process. Based upon a review of the record, this Board finds that the Student’s contentions are without merit” (Ga. SBOE 2013-61). The Board went on to explain that the credibility of the witnesses falls within the role of the hearing officer, not the State Board.

_E.J.R. v. Jones County Board of Education_ (Ga. SBOE 2013-67) involves a case where a Jones County High School student allegedly purchased a prescription pill at school for $4.00. The student reportedly admitted this to an Assistant Principal, who later testified at the hearing about the admission by the student to purchasing the pill in gym class. At the hearing, the mother of the student stated that she believed the “student knew what he did was wrong and that he made a bad decision” (Ga. SBOE 2013-67). The hearing officer suspended the student for
about 13 weeks with the option of attending the local alternative school. The Local Board upheld the decision of the hearing officer.

The student appealed and claimed that the pill was not tested, which meant the Local Board had not met its burden of proof on the charge of purchasing a prescription pill at school. The student cited *L.S. v. Carrollton City Board* (Ga. SBOE 2007-58), in which a student was found with a “green stuff” that was not tested as marijuana. However, the student did not raise this argument before the Local Board, and so it is not reviewable by the State Board. The Board also offered this explanation,

In *L.S.*, the record only showed that the student was in possession of some “green stuff” in her purse. The student in *L.S.* did not admit to purchasing a drug. In this case, the Student admitted to purchasing a prescription pill from another student at school. The Student’s mother stated that the Student knew what he did was wrong and that he had made a bad decision. Therefore, the decision of the Local Board is supported by the evidence (Ga. SBOE 2103-67).

The final drug case reviewed here is *W.D.W. v. Harris County Board of Education* (Ga. SBOE 2012-25), which involves a high school student smoking a synthetic drug on the school bus. At the hearing, the student admitted to smoking the synthetic drug on the bus and was found guilty by the hearing officer, who expelled the student for the remainder of the school year (about 30 weeks) with the option of attending the local alternative school. On appeal, the student claimed his due process rights were violated. However, a review of the record shows timely notice and a disciplinary hearing that satisfies all requirements. Therefore, due process appeal claims were without merit. Next, the student claimed to have been denied a manifestation determination hearing as required by IDEA due to the student’s IEP and Special Education status. The response by the State Board in this case is similar to other responses where Special Education, IDEA, or IEP are referenced,
The Student’s rights to a manifestation hearing are governed by the Individuals with Disabilities Act (‘‘IDEA’’), codified at 20 U.S.C. § 1400 et seq. This Board does not have jurisdiction over issues that arise under the IDEA. See O.C.G.A. § 20-2-1160(f); M.G. v. Gwinnett County Bd. of Educ., Case No. 2004-40 (Ga. SBE, July 2004). Therefore, to the extent the Student’s appeal raises issues governed by the IDEA, this Board is without jurisdiction.

The State Board went on to rule on the facts of the case without consideration of the IDEA claims and finds that there was sufficient evidence and a fair punishment assigned, therefore sustaining the Local Board decision.

**Sexual Misconduct**

There were 12 cases of 87 that involved sexual misconduct of some kind (13.8%). 10 of these cases were sustained by the State Board while 2 were dismissed due to abandonment and time of penalty passing. None of the sexual misconduct cases were reversed or remanded back to Local Boards.

In the case of *M.A. v. Gwinnet County Board of Education* (Ga. SBOE 2012-37), the student was charged with improperly touching another student and sexual harassment. At the disciplinary hearing, the hearing officer determined there was not enough evidence for sexual harassment charge, but did find the student guilty of improper touching. The student was expelled for remainder of school year (over a semester) with alternative school option. The student appealed with three claims: (1) Violation of Title VI of Civil Rights Act of 1964 due to lack of interpreter because native language of student’s parents was not English; (2) insufficient evidence; and (3) tribunal improperly relied upon opinion evidence.

As to the first claim, neither student nor attorney brought up this issue to the Local Board and is considered a new issue brought up on appeal, which is not considered by the State Board. Also, the State Board claims not to have jurisdiction for this claim by stating, “The State Board
of Education’s jurisdiction is limited to issues that pertain to the construction or administration of school law, which does not include Title VI. O.C.G.A. § 20-2-1160(a)” (Ga. SBOE 2012-37).

On the second claim of insufficient evidence, the student claimed the touching was an accident. The State Board found there was evidence and that is all that is needed to support Local Board decision. Thirdly, the student claimed that the Local Board decision relied too heavily on opinion evidence related to the Assistant Principal’s recommendation for expulsion for remainder of school year. The State Board finds this without merit also as there was evidence that supported the administrator’s recommendation and the Local Board’s decision, therefore the ruling was sustained.

The second improper touching case, A.W. v. DeKalb County Board of Education (Ga. SBOE 2012-42), involved a male student pulling a female student’s pants and underwear down in front of other students. A unique feature of this case involved a comment by the chairman of the tribunal after the hearing was closed. He recommended that the appellant apologize to the female student. The appellant’s mother agreed that her son should apologize as well. There was no objection from the appellant or their representation. In fact, there was agreement from the mother. When the case was appealed to the Local Board, there was still no objection to the chairman’s direction to apologize. The Local Board upheld the decision to expel until end of the school year with option of alternative school.

However, on appeal to the State Board, the student raised the issue of bias by the chairman at the tribunal. Because this is a new issue not raised locally, the State Board has established that it will not be considered on appeal. The State Board did go on to rule that the record shows no bias against the student and evidence existed to justify the charge and the sentence.
*M.F. v. Newton County Board of Education* (Ga. SBOE 2013-16) was a unique case as it involved inappropriate physical conduct between two female students with the presence of a controversial bus video of their behavior. The two students had a history of similar behavior on the bus and they had been warned to stay away from each other. At the hearing, a portion of the bus video was shown and it confirmed inappropriate physical contact between the two students. The tape was stopped before reaching a portion with an exposed breast of one of the students. The tape was stopped on recommendations from the District Attorney, who advised that showing the tape could constitute child pornography. The Local Board agreed to stop the tape. However, enough evidence existed to find the student guilty and she was expelled for the remainder of the semester with alternative school option and suspended from the bus for the remainder of the school year.

On appeal, the student claimed that the video should not have been considered because it was not submitted as evidence in full based on D.A. recommendation. The admission of the student and obvious existence of evidence was sufficient for Local Board ruling, according to State Board.

Off-campus activity is generally not punishable under a school system’s Code of Conduct unless it can be reasonably shown that the conduct caused or if there is a high probability that it might cause a disruption at school. *C.B. v. Marietta City Board of Education* (Ga. SBOE 2012-02) is an appeal case involving student behavior occurring off-campus. The appellant in this case was charged as an adult with rape, aggravated assault, and false imprisonment. A tribunal found the student guilty and expelled him for the remainder of the school year (about 8 weeks) with the option of attending the alternative school.
However, when the student appealed this ruling to the Local Board, his punishment was increased to permanent expulsion based on the severity of the charge. It is important to note that the “Local Board provided that the student could re-apply for admission to regular school if he was found innocent of the criminal charge” (Ga. SBOE 2012-02). The student then appealed to the State Board claiming the Local Board ruling was arbitrary and capricious because there was no evidence that his presence was disruptive. He also claimed that his due process rights were violated because the Local Board increased the degree of punishment without entering any reasons.

The State Board ruled in this case to support the Local Board’s decision to increase degree of punishment due to the Local Board’s rule stating, “conduct must affect the safety and welfare of the school, staff, students, and/or property at the school or that disrupts the discipline or educational environment of the school” (Ga. SBOE 2012-02). The State Board ruled that the Local Board was not arbitrary and capricious and offered an explanation of the increased punishment with the record showing “severity of charges warranted permanent expulsion”, and that the appellant’s claim of due process violation was without merit.

Sexual misconduct cases often involve potential criminal charges of indecent exposure and child molestation. One such case, *J.D.C. v. Polk County Board of Education* (Ga. SBOE 2012-58), involved both of these charges related to behavior on a school bus. As is the case for many discipline incidents occurring on a school bus, there was a video used as evidence in this case, and the video was the center of the controversy and the primary basis for the student appeal.

This unusual case began with an incident on a school bus in January 2012. The appellant’s mother actually reported the incident to school administrators as described her son as
a witness. Administrators reviewed the video and ironically charged her son with “conduct that contains the element of indecent exposure and engaging in conduct that contains the elements of sexual battery or child molestation” (Ga. SBOE 2012-58). Obviously, administrators determined the son’s behavior to be participatory and not just a witness to the other student’s behavior. The other student’s charges/punishment is not explained in the record and there is no appeal on record of that student’s case.

The disciplinary hearing in February began with an objection by the student’s attorney related to the bus video being entered as evidence. The objection was based on the fact that the defense attorney had no access to the video prior to the hearing. The disciplinary tribunal found the student guilty, nonetheless, and sentenced him to expulsion through the end of the 2012-13 school year (almost 1 ½ years) with the alternative school option. Tribunal decision was upheld by Local Board. The student claimed his due process rights were violated due to not having access to the video and this limiting his defense because he could not call witnesses to refute or explain behavior captured on video. Student also claimed that the charges were unconstitutionally vague, the punishment was too harsh, and the Local Board’s decision was not based solely on the record. There was some controversy regarding communications between the attorneys regarding the availability of the video before the hearing, but the State Board finds that since the appellant was present during the behavior, he had every opportunity to subpoena witnesses because he knew who was present on the bus without the use of a video. This claim was denied.

The presence of the video as evidence was appealed because the defense claimed no witnesses were offered as foundation for what the video depicted. However, State Board offers that O.C.G.A. § 24-4-48(c) does not require witness if reliability of video can be established.
Transportation director, in this case, testified to reliability so this claim was without merit, according to State Board. Once the video was allowed, the proper evidence existed for the Local Board’s decision and the State Board reiterated its hesitation to reduce the degree of punishment.

The final claim on appeal involved the unconstitutional and vague charges. The student claimed the charges of indecent exposure, child molestation, and sexual battery were not defined properly in the school’s policies. This lack of clarity hindered the ability to properly mount a defense, according to the appellant. However, the State Board ruled in favor of Local Board on this issue as well with the memorable statement, “The student code of conduct does not have to be so explicit in describing prohibited conduct that it becomes a pornographic handbook” (Ga. SBOE 2012-58). The State Board decided that none of the evidentiary claims or due process claims had merit and the final ruling was to sustain the Local Board’s decision.

*S.O. v. Gwinnett County Board of Education* (Ga. SBOE 2012-64) was a normal case involving inappropriate touching by a male student of a female student on her breast. The hearing officer found the student guilty and imposed a penalty of expulsion for one calendar year based on the student’s prior similar behavior with other female students. One of the claims on appeal was that the punishment was too harsh, but this was quickly addressed with same reasons reportedly earlier in other cases. However, the second claim in this case is worthy of more discussion. The appellant claimed that the Principal’s involvement with the appeal by representing the Local Board’s case constituted bias and that he was not provided an impartial hearing due to this fact. Although no legal basis or authority was offered to support this claim, it does bring up a reasonable point.

The Principal is an employee of the Local Board, so it stands to reason that the Local Board could struggle with impartiality between the student/appellant and their own
administrator/employee. While no legal basis may have been offered, it is essential under due process of law to consider impartiality when reviewing decisions of local tribunals and Local Boards of Education to be sure that decisions do not meet the arbitrary and capricious level of scrutiny established by the State Board of Education.

The final sexual misconduct case to be analyzed is *S.D. v. Gwinnett County Board of Education* (Ga. SBOE 2012-71). This case involved sexual harassment charges against a middle school male student involving inappropriate touching and comments made at school. Several issues on appeal are common ones including definition of offenses in policies. However, two claims warrant discussion. First, the appellant claimed that his rights were violated at the local hearing due to a witness being handed a note by their own parent. The appellant did not object when this occurred during the hearing and does not have the note to produce for the record, so the State Board considers this a new issue brought forth on appeal, which is generally not recognized by the State Board. Secondly, the appellant claimed that a witness that appeared on the Local Board’s list of witnesses did not actually appear and testify at the local hearing. The State Board explains, “The Student was provided notice of the hearing and the right to call witnesses. The Local Board is not required to produce all potential witnesses” (Ga. SBOE 2012-71).
Grounds for Appeal Most Commonly Cited

Figure 3.3 shows the most common grounds for appeals in student discipline cases from 2012-2013. The category Not Clearly Stated, which appears at the bottom of Table 3.3, includes the cases that were dismissed and never ruled upon by the State Board, so the information for many of these cases is incomplete.

Table 3.3

<table>
<thead>
<tr>
<th>Grounds for Appeal</th>
<th>% of Total Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insufficient or False Evidence</td>
<td>19.5%</td>
</tr>
<tr>
<td>Punishment Too Harsh</td>
<td>17.2%</td>
</tr>
<tr>
<td>Due Process (Hearing or Notice)</td>
<td>11.5%</td>
</tr>
<tr>
<td>Denied Charge</td>
<td>3.4%</td>
</tr>
<tr>
<td>IDEA, Disability, Physical Condition</td>
<td>3.4%</td>
</tr>
<tr>
<td>Self-Defense</td>
<td>3.4%</td>
</tr>
<tr>
<td>Administrator Bias</td>
<td>2.3%</td>
</tr>
<tr>
<td>Behavior Unintentional</td>
<td>1.1%</td>
</tr>
<tr>
<td>Not Clearly Stated</td>
<td>37.9%</td>
</tr>
</tbody>
</table>

Insufficient or False Evidence

The most common claim on appeal is based on evidence. Appellants claim that evidence in their respective cases is insufficient or false. As previously stated, the State Board commonly addresses evidentiary claims on appeal by citing Ransum v. Chattooga County Board of Education, (Ga. SBOE 1977-02) and Antone v. Greene County Board of Education (Ga. SBOE 1976-11).

The Ransum case and the “any evidence rule” cited therein is clearly a decided advantage for the LBOE in all types of cases. Appellants in student discipline cases, usually the students, have an uphill battle if their case on appeal is based on disputing statements or evidence already on record. The SBOE has established that evidence accepted earlier in the process at lower levels of the dispute is good enough for them. Ironically, in the Ransum case, the SBOE ruled in
favor of the appellant and reversed the LBOE decision to non-renew the teacher for cause. It is surprising that a case so frequently cited for the “all evidence rule” and commonly used in decisions to sustain or support LBOE rulings actually ended in a reversal for the appellant.

_Antone v. Greene County Board of Education_ (Ga. SBOE 1976-11) involves the acceptance of evidence and the support of the LBOE during appeal rulings by the SBOE. This case also involved not offering a teacher a contract due to incompetence and insubordination. In the _Antone_ decision, the SBOE states, “a decision by the local board of education will not be disturbed unless an abuse of its discretion is shown and where there is any evidence to support the decision below, it will not be overturned.”

Also, related to evidence in student discipline cases, there is _F. W. v. DeKalb County Board of Education_ (Ga. SBOE 1998-25). F. W. disputed specific evidence accepted on record during the tribunal on the local level in DeKalb County. The SBOE cited _Ransum_, but added the following statement, “The tribunal sits as the trier of fact and, if there is conflicting evidence, much decide which version to accept.” The SBOE also added to the _Antone_ language of not disturbing a LBOE decision unless abuse of discretion or the decision is so “arbitrary and capricious as to be illegal.” The implication for students/appellants is that disputing evidence already in record on a tribunal level is a losing proposition, unless it can be proven that the Local Board, local hearing officer, or tribunal acted on a lack of evidence, abused its discretion, or acted so arbitrarily and capriciously as to be illegal. This established legal premise presents a challenging level for appellants to overcome. None of the 17 cases in this study citing evidence as grounds for appeal were reversed or remanded.
Punishment Too Harsh

The second most common type of appeal is that the punishment is too harsh and a request for reduction in the degree of punishment is being requested. The State Board addresses this claim with a commonly cited case as well. In B.K. v. Bartow County Board of Education, (Ga. SBOE 1998-33), the student was challenging the decision of the local tribunal and LBOE to a short-term expulsion due to drug use on campus. The student admitted during the discipline tribunal to the charge so the appeal was not a dispute of guilt or innocence, but a claim that the punishment was too severe. The SBOE offered the following response, “A local board of education is charged with the responsibility of managing the operation of its schools, and, in matters of discipline, the State Board of Education cannot substitute its judgment for the judgment of the local board.” The ruling goes on to say that they don’t believe the LBOE made any errors in their judgment. This strong statement of support for the LBOE presents an uphill battle for students appealing LBOE student discipline decisions to the SBOE. 1 of the 15 cases citing this claim was remanded, none were reversed.

Due Process

Due process claims are the third most common grounds for appeal. The impact of Due Process requirements on local school administrators and their treatment of students in discipline cases has prompted most districts to put clear protocols in place regarding notice and hearing. This usually exists in the form of standard letters notifying parents or guardians of the offense against the Code of Conduct and prescriptive discipline hearings involving panels, hearing officers, or both which take great care in allowing students, parents, and/or legal representation to be heard by responding to the respective charges. However, there were still 10 appeals in two years claiming due process rights violations. Of the five cases reversed or remanded, three of the
cases were due process appeals in which school administrators were found to have improperly administered proper notice or hearing for students.

Chapter Summary

The analysis of this chapter was based on the three research questions previously stated. Due to the small number, all cases that were reversed or remanded have been specifically explained. There is value in analyzing these cases due to the State Board’s hesitancy to reverse or remand cases. Only 5 of 87 cases were reversed or remanded. All others should be seen as ending in favor of the Local Board of Education by being sustained or dismissed.

Appeals cases were analyzed on the basis of most common behaviors and most common grounds for appeal. It was evident that the State Board looks to support the Local Boards as much as possible and has no desire to set aside their rulings or use their judgment to replace the Local Board’s judgment. Students appealing discipline cases to the State Board stand little to no chance of gaining any relief from their situation based on the rulings in the past two years.
CHAPTER 4
SUMMARY, FINDINGS, AND CONCLUSIONS

The purpose of this study was to examine current student disciplinary practices. Because of the amount of time and resources currently devoted to student discipline by local school systems, it is an important topic worth of study. Student discipline and the maintenance of a safe and orderly environment are essential for student learning. In addition, recent acts of violence have all stakeholders concerned about keeping students and staff safe at school. However, a free and adequate public education is guaranteed to all Georgia citizens by the Georgia Constitution. This creates a dilemma for school leaders of maintaining a safe environment while also respecting the individual rights of each student. This inherent conflict is most pronounced in dealing with student discipline and the actions that administrators take to remove unruly, potentially unsafe students from the school setting.

The conflict facing school administrators is determining at what point a student’s actions have infringed on other students’ rights to that same free and adequate public education they are also guaranteed. When a student creates an unsafe environment by threatening the security of others and the general order of the school, administrators are empowered, and obligated, to remove the offending student from the regular school population through disciplinary actions such as In-School Suspension (ISS), Out-Of-School Suspension (OSS), change of placement to an alternative school setting, or expulsion for a specific period of time. In some cases expulsion can be permanent and
accompanied by criminal charges resulting in additional sanctions from the justice system.

The connection between schools and law enforcement has created additional concerns regarding the alleged criminalization of our youth. Just like citizens who commit certain criminal acts lose some of their individual rights, so do students who commit certain Code of Conduct offenses. Stader (2004) found:

School leaders have a legal obligation to keep school safe. They also have an ethical obligation to examine the consequences of their actions and, if necessary, make changes in policy and practice to not only keep schools safe but also to protect individual students from the capricious application of policy (p. 65).

The decisions made by administrators have a far reaching impact on the offending students as it often affects their future opportunities both in and out of school. Removal of students from the instructional setting must be a last resort (Brown & Beckett, 2006). Do school administrators have this same philosophy when considering suspension or expulsion of students? Especially those students under the compulsory attendance age of sixteen. What safeguards are put in place to protect the rights of students being punished for discipline infractions?

This study has produced the most current research on the topic of student discipline appeals to the Georgia State Board of Education. As Dayton noted, “The end product of legal research is like a snap-shot in time. There is no ‘end’ in legal research because the law is constantly changing” (Dayton, 2013, p. 10). This study is a snapshot of student discipline appeals cases filed with the Georgia State Board in the years 2012 and 2013. Some of the offenses date back to 2011, but were filed in 2012. These cases were appeals, which by definition involve issues that have already been ruled on by Local Boards of Education and appealed to the Georgia State Board by appellants, who are normally students and their
representatives including attorneys, parents, and/or guardians. The rulings of the State Board were dissected to answer these research questions:

1) What types of student discipline cases are most commonly appealed to the Georgia State Board of Education?

2) What legal grounds for appeal are most often cited by appellants?

3) How often are cases upheld?

Summary of Study

This study began with a review of the Georgia Constitution text, published research related to student discipline, historical information related to due process, prior State Board rulings considered landmark legal cases, and continued with a review of all 87 student discipline appeals cases ruled on by Local Boards of Education and then appealed to the Georgia State Board of Education in the years 2012 and 2013. These case reviews clearly indicate trends useful to all stakeholders regarding student discipline and how it is viewed and ruled upon by the State Board. Patterns emerge when examining the cases based on their results, the most common offenses, and most common grounds for appeals. These patterns are beneficial to students, local administrators, and Local Board members to better inform their daily practice on the local school level. A close examination of the reversed and remanded cases reveals clear legal land mines for administrators to avoid. The percentage of cases upheld is a cold reality to students that appeals typically do not end in their favor.

Findings

3 Most Common Types of Cases Appealed to State Board

- Fighting – of the 87 cases reviewed and analyzed, 16 involved students fighting at school or on a school bus (18.4%). Only 1 of these 16 cases was reversed. This reversal was
based on self-defense as grounds for appeal and contained a school video confirming the appellant’s behavior.

- **Drugs** – 14 of 87 cases (16.1%) involved students being in possession or under the influence of drugs on school property. None of these cases were reversed or remanded by the State Board.

- **Sexual Misconduct** – there were 12 cases of sexual misconduct (13.8%) ruled on in the past two years. None were reversed or remanded.

    **3 Most Common Grounds for Appeal**

- **Evidence** – the most common grounds for appeal is related to insufficient or false evidence. Of the 87 cases, 17 involved evidentiary appeals (19.5%) with all of these being sustained by the State Board. As noted before, the State Board cites several cases related to evidence: *Ransum v. Chattooga County Board of Education*, (Ga. SBOE 1977-02), *Antone v. Greene County Board of Education* (Ga. SBOE 1976-11), and *F. W. v. DeKalb County Board of Education* (Ga. SBOE 1998-25).

- **Punishment too harsh** – 15 of 87 cases (17.2%) were being appealed due to the penalty of the Local Board being too harsh. 1 of these cases was remanded back to the Local Board for further review. *B. K. v. Bartow County Board of Education*, (Ga. SBOE 1998-33) is most commonly cited to express the viewpoint of the State Board, which is that the Local Board’s ruling will not be interrupted without the appellant establishing that the punishment is arbitrary and capricious.

- **Due process** – there were 10 cases of 87 (11.5%) involving a claim of due process rights being violated. 2 of these were reversed and 1 was remanded, which means that 30% of the due process cases ended favorably for the students. This is surprising due to the
clearly established requirements for school administrators related to due process. In 1975 the Supreme Court ruled in *Goss v. Lopez* 419 U.S. 565 (1975) that students were entitled to due process, which meant they “must be given some kind of notice and afforded some kind of hearing” (495 U.S. 565). It is surprising that there still appears to be confusion or inefficiencies in this area.

**How often are cases upheld?**

- Of 87 appeals cases, 48 were sustained (55.2%), 34 cases were dismissed (39.1%), 3 cases were reversed (3.4%), and 2 cases were remanded (2.3%).
- 82 of 87 cases were either sustained or dismissed (94.3%). Cases were reversed or remanded only 5 of 87 times (5.7%). These findings are a strong message to Local Boards, local administrators, and students that appeals are very rarely successful on the State Board level.
- Only 3 cases of 87 were reversed indicating the State Board found reversible error only 3.4% of the time on student discipline appeals cases.

**Conclusions and Discussions**

The State of Georgia is a generally conservative state with its own residents serving on the State Board of Education. The State Board, like other governmental appointees, should generally be representative of the state’s population. Consequently, this yields a conservative group committed to the core values of typical Georgia citizens. This could be a factor when considering that drug appeals and sexual misconduct cases, which accounted for 26 cases in two years, were all sustained by the State Board.

As evident in the results of this study, appellants rarely win student discipline appeals to the State Board of education. It is incumbent on appellants to bring up all issues on the local
level as the State Board has repeatedly established that no new issues will be considered on appeal. Hence, employing an attorney well versed in school law makes sense for students and their parents if they are faced with a disciplinary hearing and plan to challenge the charges set forth against them. This would increase the chances of getting all appealable issues on the record during the hearing instead of later with the State Board appeal. Not having an attorney could explain why many State Board cases involve the attempt to introduce new claims on appeal. It is possible that attorneys are not used as frequently on the local level and appellants may not be able to successfully voice objections.

Another fact resulting from the case summaries is that the State Board does not reduce punishment assigned on the local level. They have clearly left this issue in the hands of the Local Boards of Education, who have shown tendencies to adjust punishment in both directions. Along these lines, it is common for appeals to go before the State Board as much as six months after the offense and often is after the time of penalty has passed.

The issue of mootness was addressed during the time frame of the study as the record shows cases after August 2013 were not dismissed for this reason with reference to a Georgia State Court of Appeals case addressing this subject. Because students’ records are forever changed with serious discipline rulings, it is certainly reasonable to expect the State Board to rule on these appeals even if the time of penalty has passed. It is logical to assume that the record actually can cause more damage in the future than the actual punishment.

Local administrators should certainly pay close attention to the common claim by appellants that the assigned punishment is too harsh. There were several cases discussed here that involved permanent expulsion or placement in alternative school for very young students. Any permanent expulsion consideration for middle school students or young teens should be
studied carefully by Local Boards. These students are typically adolescents transitioning through a difficult phase of their lives and to receive permanent punishments for behavior should be rare and based on extremely serious criminal offenses where it is deemed that the school is under grave danger from their mere presence.

With regards to evidence, the State Board has established the precedent of the “any evidence rule” meaning that questioning the strength of the evidence or offering conflicting evidence is usually not considered by the board. Questioning the trustworthiness of witnesses or the value of various pieces of physical evidence is not generally supported by the State Board. Local Boards are empowered with these judgments and should arrive at these judgments with care and precision.

The most successful grounds for appeals occur in the procedural due process category, which involves error related to notice or hearing. Therefore, this could be interpreted to mean that what school systems and administrators do is generally not as controversial as how they do it. Respecting the guidelines established in Goss is critical for any administrator charged with student discipline cases. Notice is the first step in any discipline case. Usually in severe cases this involves a charge letter explaining what the student has been accused of and the next steps regarding an upcoming hearing. This notice is crucial in establishing a reasonable timetable for the student and his representatives to prepare a defense, which would take place at a disciplinary hearing. Any shortcuts, errors, or omissions related to notice open the door for an appeal case based on due process rights violations. The second part of due process is the hearing or tribunal. The hearing officer is given much latitude in governing the way witnesses are questioned and evidence presented. Both parties must be given every opportunity to present and question
evidence as well as call and/or cross-examine witnesses. Any appearance of bias on the school or school system’s part is an avenue for appeal by students.

It would be easy for Local Boards and administrators to abuse the power they have been entrusted with related to student discipline. Hopefully, this is not common and local systems strive to treat all students, community members, and staff with the utmost respect and fairness. Along these lines, the State Board should not hesitate to intervene with Local Boards, as seen in this study, at the appearance of impropriety. It is important to note that many cases are likely reversed, remanded, or otherwise adjusted for fairness on the local level, which would preclude them being appealed to the State Board.

Improving or extending this study of student discipline could be done by examining the cases that were dismissed. The source used for this study had incomplete information on many of the dismissed and abandoned cases. It could prove useful to study whether the cases were abandoned due to a lack of merit in the issues of the cases or whether a lack of support for the appellant existed in the way of resources for legal representation or lack of knowledge of the appeals process. IDEA cases ruled on in Superior Court would be valuable to review related to special needs students and their treatment. Other areas include studying how tribunals or discipline hearings are conducted on the local level. There appear to be distinct differences in these proceedings causing a potentially unfair situation for students from different counties.
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