

AN ANALYSIS OF THE LAW CONCERNING DUE PROCESS, AND STUDENT
SUSPENSION AND EXPULSION IN GEORGIA PUBLIC SCHOOLS

by

ERIC ROBERT DAVIDSON

(Under the Direction of John Dayton)

ABSTRACT

The primary function of a public school is to educate children. This education requires some degree of order in the school. Historically, school administrators had virtually unlimited authority to deal with student disciplinary problems. This has changed over the past 60 years with the federal judiciary ruling on numerous cases affecting student disciplinary proceedings. This judicial intervention has resulted in students' being afforded a higher degree of the due process protections.

Research for this study focused on analyzing data from federal and state statutes, case law, U.S. Supreme Court and appellate court opinions, Georgia State Board of Education decisions, as well as legal commentary and historical documents. These data were used to track the historical development of the law impacting upon students' access to due process rights when being suspended or expelled from school.

Among the findings of this study are:

1. Due process rights expanded from Magna Carta (1215) to the Fifth and Fourteenth Amendments to the U.S. Constitution.
2. Important property and liberty rights are associated with public education. These rights may not be abridged without providing students' due process under the law (*Goss v. Lopez*, 1975).
3. The Fourteenth Amendment's protection of property and liberty rights requires that where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, the minimal requirements of the Due Process Clause must be satisfied. Suspension or expulsion from school has been found to affect a person's good name, reputation, honor, and integrity (*Goss v. Lopez*, 1975).
4. State agencies, including school systems, must recognize a student's basic due process rights including notice of charges, the right to a hearing, the right of appeal, the right to counsel, and privilege against self-incrimination (*In re Gault*, 1967).

INDEX WORDS: Due process, Student discipline, Student behavior, Student expulsion, Students suspension

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DEDICATION

This paper is dedicated to my wife Kristen, who was more responsible for the completion of this work than myself. God has worked through her in a miraculous way to make me a stronger and more productive person. Her love for the Lord shows in everything she does. Her stabilizing influence in my life and the lives of our children created a peaceful home for me to do this work in. She was completely unselfish in her willingness to stay at our parents for days at a time and in keeping our precious sons Luke and Zach downstairs and outside while I stayed sequestered in our room. She is truly an incredible person for whom I thank God for the miracle of having met, much less being granted the honor and privilege of calling her my wife and best friend for these past six years. I love you Kristen, thank you for everything that you are and for everything that you do for our family.

Love,

Eric

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CHAPTER 1

INTRODUCTION

Purpose of The Study

Notions of what should or should not be taught in schools change over time, but the need to maintain a disciplined learning environment in which this learning can take place does not. Student discipline has been and remains a major concern for educators. Public school administrators have a wide variety of disciplinary tools available for them to address the complex issues surrounding student discipline. The most severe of these options involves removing a student from the educational setting either temporarily, by suspension, or for up to a year or more, by expulsion. The suspension or expulsion of students from school can be of serious consequence to the students involved. Decisions regarding these types of removals have been the focus of a substantial amount of judicial and legislative activity over the years.

Educators face a unique challenge. The law demands, communities expect, and students deserve a vigorous effort to maintain a safe and orderly school environment. Due to the need for schools to maintain an orderly environment and students special status as children, the law justifies more control in a school than the society at large exercises over adults. Yet, in all functions relating to student discipline, the law demands that the rights of students as persons under federal and state constitutions be protected. Many of the

most difficult questions in education law concern the conflict between the individual rights of students and the corporate needs of the school (Imber & Van Geel, 2001).

Those who administer schools are responsible for the health, safety, and welfare of the students in their care. In view of this responsibility school administrator's need the authority to enforce the rules and regulations designed to meet these objectives. This power was legally established in *Burkitt v. School District No.1 of Multnomah County* (1952). There are no simple answers when it comes to school discipline, and there are specific legal restrictions on the types of disciplinary measures that can be taken in a school setting. These legal restrictions are largely the result of a shift in cultural attitude over the past 40 years.

Federal case law has made a significant and lasting impact on educational policy over the past 40 years (LaMorte, 1999). When it becomes necessary for a school to discipline a child, by definition this act must cause the child some discomfort through loss of freedom or privilege, physical discomfort, or some form of exclusion. However, since the 1960's, when the parents have objected to a punishment imposed by the school, they have often threatened or sought relief through the courts (Gordon, 1995). This judicial activity has resulted in additional legal restrictions being placed on administrators as they attempt to suspend or expel students from school.

By using the federal courts, advocates of student rights have been able to make significant progress toward securing the right to due process under the law for students. The ammunition used by those advocating students' rights, especially regarding due process, is provided in the Fifth and Fourteenth Amendments to the U.S. Constitution. The Fifth Amendment to the U.S. Constitution states that, "No person shall be deprived

of life, liberty, or property, without due process of law” (1791). The Fourteenth Amendment states that, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law” (1868). The Fourteenth Amendment effectively ensured that the rights set forth in the Fifth Amendment would also apply to the states.

Historically, public schools had broad authority to discipline students without considering due process. LaMorte (1999) stated that prior to the 1970s, courts usually upheld school authorities who demonstrated no more than that their actions were reasonable. Public school officials were perceived as enjoying parental prerogatives, and it was uncertain whether constitutional rights extended to students. A serious move toward affording students due process rights began in the 1960s. In *Dixon v. Alabama State Bd. of Education* (1961), the Supreme Court recognized a student’s right to due process when facing expulsion from school. Subsequently, the Court, in *Tinker v. Des Moines Independent Community School District* (1969), held that children both in and out of school are “persons” under the Constitution and do not shed their constitutional rights at the school house gate.

Pennock and Chapmen (1977) found that as more and more of the Bill of Rights has been incorporated into the Due Process Clause of the Fourteenth Amendment, the Court has turned its attention to the exploration, elucidation, and definition of ‘fundamental rights’ not expressly set forth in those amendments, or elsewhere in the Constitution, but are presumably included in the ‘liberty’ and ‘property’ terms of the Due Process Clause. As a result, by the early 1970s, most federal courts were applying the

Due Process Clause to all cases of exclusion from school, including student suspensions. The terms and requirements set forth in each case varied considerably from court to court. This created an unsettled area of law, especially concerning suspensions of short duration (Imber & Van Geel, 2001).

The Supreme Court of the United States, in *Goss v. Lopez* (1975), gave some clarity to questions involving appropriate procedural guidelines to be followed when considering the short-term suspension of a student from the educational setting. A general result was that students were afforded the right to be notified of an institution's intent to suspend or expel them and to have the opportunity to present a defense in an impartial setting. The precise procedures to be followed are case-specific. The amount of due process a student is entitled to is in direct proportion to the amount of property or liberty interest being taken from the student.

The importance of administrators understanding the law surrounding a student's rights to due process cannot be overstated. LaMorte (1999), on the ramifications of the *Goss* decision, stated that, "The Court found that students possess liberty and property interests in their education, and therefore, that constitutional principles of due process apply to school officials' treatment of students" (p. 89). Woodward (1990) found that,

Although administrators are not expected to be legal experts, it is imperative that they have a working knowledge of the rights of students in the school setting. The points of litigation concerning those rights are only unpredictable as far as the cause of action. For an administrator not to be cognizant of the current law is inexcusable. For the practicing administrator, acknowledgement of the due process rights of students, as well as compliance in safeguarding those rights, is essential. (p. 1)

Until teachers and administrators learn to appropriately apply the rules governing pupil discipline and control, unrest and litigation will continue. As Nolte (1980) stated,

“Managing students in today’s more liberal environment is a whole new ball game, and woe unto him who does not understand what is going on, and govern himself and his classroom accordingly” (p. 179). The consequences for not doing so can be severe with litigation targeting teachers and administrators personally. The Civil Rights Act of 1983 (42 U.S.C. § 1983) makes it possible for students to collect monetary damages from school officials who violate their clearly established constitutional statutory rights. The law specifically states that:

Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (42 U.S.C. § 1983, 1871)

The effectiveness of this statute as a tool for students seeking redress from perceived harm done by school officials was clearly established by the U.S. Supreme Court in *Wood v. Strickland* (1975). In this case the Court ruled that school board members were liable regardless of their ignorance of constitutional law pertaining to school discipline (*Wood v. Strickland*, 1975).

Though the process of suspending or expelling a student has become considerably more legally complex, administrators need not be impaired in their ability to remove “problem students” to maintain an orderly learning environment. However, it is imperative that they have an adequate understanding of students’ due process rights when they create and implement policies on student discipline. There is a distinct need for clarification regarding the issues and appropriate processes involved in suspending or

expelling a student from school. Administrators need to have the confidence to carry out their duties without fear of litigation.

Research Questions

1. What is the relevant history concerning students' constitutional rights to due process?
2. What is the current status of the law regarding student suspension and expulsion from school in Georgia?
3. What legal principles can be derived from this study that may serve as a guide for Georgia school officials when suspending or expelling students from school?

Procedures

This study analyzed federal and state statutes, regulations, case law, legal commentary, and historical documents dealing with school discipline, particularly as they relate to due process considerations in the suspension and expulsion of students from school. The following methods were used to conduct this research:

1. A review was made of law and educational journals, as well as historical documents related to the history of the concept of due process.
2. A systematic review was made of the Lexus/ Nexus, Findlaw, Thomas and EBSCO databases to locate all relevant cases and literature impacting due process, student rights, and student suspension and expulsion.
3. Relevant cases were cross-referenced using Shepard's Citations to determine the history and current status of the ruling in question.

4. An examination was made of Georgia statutes, and Board of Education decisions dealing with student suspension and expulsion. State Board decisions since 2000 were looked at in an effort to correlate with the state discipline reporting data which local systems began submitting in 2000. This research was conducted using Lexus/ Nexus online, Findlaw, the Georgia Department of Education website, and the annotated version of Georgia's education code.

Organization of The Study

Chapter One includes a statement of the purpose of the study, a list of research questions to be addressed, a statement of procedures followed to conduct the research, a statement of how the study is organized, and a statement detailing the limitations of the study. Chapter Two includes a review of the literature concerning due process rights of students in the public school setting. Included is a historical analysis of the literature and litigation surrounding the issue of due process and a review of the judicial development of due process rights for students from 1943 through 2003. Chapter Three provides a description of the current status of the law in Georgia concerning student suspension and expulsion, including a summary of relevant Georgia Code and Georgia State Board of Education cases. Chapter Four provides a summary of findings concerning the general due process rights to be considered when suspending or expelling students from school. Findings concerning the Georgia State Board of Education Appeals process are also addressed. Chapter Four ends with a section outlining the conclusions drawn based on the findings.

Limitations of The Study

This study was designed to provide accurate information concerning the development of due process rights for students and the implications of these rights on proceedings to suspend or expel students from school in Georgia. Only cases relevant to Georgia were considered. This study also does not address disciplining special education students.

CHAPTER 2

REVIEW OF THE LITERATURE

This chapter provides an overview of the development of due process as a legal concept and describes its eventual application to students' rights in the educational setting. Part one describes the historical development of students' access to due process rights. This includes a description of the evolution of due process from the Magna Carta to its eventual inclusion into two amendments to the United States Constitution. Modern scholars' views on the scope of due process protections and a detailed distinction between the procedural and substantive aspects of the due process protections afforded to United States citizens are also included. This section also provides an overview of the federal courts' involvement in securing due process rights for students in the public school setting. Part two includes a detailed chronological history of court cases impacting students' rights to due process protections from 1943-2003.

Part One: Historical Development Of Students' Access To Due Process Rights

Scholars agree that the federal and state due process clauses in the U.S. Constitution today, the Fifth and Fourteenth Amendments to the U.S. Constitution, are derived from the Magna Carta (1215). Chapter 39 of the Magna Carta provided that, "No free man shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by lawful judgment of

his peers and by the law of the land.” The end result of this was that people could not be arbitrarily separated from their freedom or property except by lawful means.

These principles were reaffirmed as the Magna Carta was repeatedly reissued in later years and confirmed by King John’s successors. A 1354 statute by Parliament first used the phrase “due process of law” in interpreting Chapter 39 of the Magna Carta. This statute stated that: “No man of what state or condition he be, shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death without he be brought to answer by due process of law” (Thompson, 1948, p. 86). Though the Magna Carta was in essence the result of a struggle over interests between the King and his barons, over time this particular clause transcended any such limitation of scope. Throughout the fourteenth century, parliamentary interpretation expanded the ideas set forth in Magna Carta far beyond the intention of any of its drafters (Thompson, 1948).

Sir Edward Coke played a vital role in the seventeenth century revival of Magna Carta as a means to check the Stuart monarchs. Thompson (1948) found that the understanding which the founders of the American constitutional system, and those who wrote the due process clauses, brought to the subject of protection from arbitrary separation of a person from his property or liberty, was gained from Coke’s work. In his “Second Institutes,” Coke proposed that the term “by law of the land” was equivalent to “due process of law.” He then defined due process of law as “by due process of the common law,” that is, “by the indictment or presentment of good and lawful men...or by writ original of the Common Law.”

The significance of both terms “due process” and “law of the land” was procedural to begin with. The term “law of the land” was the preferred expression in

colonial charters and declarations of rights, which gave way to the term “due process of law,” as per Coke’s work mentioned above. However, some state constitutions continued to employ both terms. Whichever phrase was used, the expression seems generally to have occurred in close association with descriptions of the precise safeguards to be granted to accused persons. As is true of the Fifth Amendment, the provision also suggests some limitations on substance because of its association with the guarantee of just compensation upon the taking of private property for public use.

William Blackstone, writing on the eve of the American Revolution, did much to expound on the “law of the land” provision. He discussed this language in terms of both procedure and substance. More particularly, Blackstone linked Chapter 39 with substantive protection of the rights of property owners. He stated:

The third absolute right, inherent in every Englishman, is that of property: which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or dimution, save only by the laws of the land. The original of private property is probably founded in nature, as will be more fully explained in the second book of the ensuing commentaries: but certainly the modifications under which we at present find it, the method of conserving it in the present owner, and of translating it from man to man, are entirely derived from society; and are some of those civil advantages, in exchange for which every individual has resigned a part of his natural liberty. The laws of England are therefore, in point of honor and justice, extremely watchful in ascertaining and protecting this right. Upon this principle the great charter has declared that no freeman shall be disseised, or divested, of his freehold, or of his liberties, or free customs, but by the judgment of his peers, or by the law of the land. (Blackstone, 1765)

Blackstone (1765) went on to clarify that either taking private property for public use without payment of compensation or taxation without consent would violate the “law of the land.”

The colonists in the seventeenth century looked to the Magna Carta as a protection of their liberties, and often enacted some version of Chapter 39 into their laws.

A 1639 Maryland Act declared that inhabitants “shall have all their rights and liberties according to the great Charter of England” (Howard, 1968). Likewise, the Laws and Liberties of Massachusetts (1648) stated that, “No man’s goods or estate shall be taken away from him unless it be by the virtue or equity of some express law of the Country.” Other colonies followed suit, adopting some variation of the “law of the land” clause as part of their fundamental law. Indeed, from time to time colonists relied on “law of the land” arguments in an attempt to restrain royal governors and local assemblies. By the start of the Revolutionary era, the colonists pressed the argument that the Magna Carta represented a statement of fundamental rights that even Parliament could not abridge (Riggs, 1990).

The concept that individuals have a right to “due process of the law” eventually found its way into the Bill of Rights in the United States Constitution. The Fifth Amendment to the U.S. constitution states that “No person shall be deprived of life, liberty, or property, without due process of law” (1791). The Fourteenth Amendment states that, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law” (1868). The Fourteenth Amendment effectively ensured that the rights set forth in the Fifth Amendment would also apply to the states.

Guarantees of due process are a fundamental principle of justice and democratic governance, and are necessary to any just resolution of disputes in public institutions (Dayton, 2001). Justice Frankfurter, dissenting in *Sollesbee v. Balkcom* (1950) stated,

It is now the settled doctrine of this Court that the Due Process Clause embodies a system of rights based on moral principles so deeply imbedded in the traditions

and feelings of our people as to be deemed fundamental to a civilized society as conceived by our whole history. Due process is that which comports with the deepest notions of what is fair and right and just. (pp. 460-461)

In describing due process, Ingram (1985) found that, “Although stated quite explicitly in both the Fifth and Fourteenth amendments as a fundamental guarantee, the concept of due process is difficult to define, and perhaps impossible to express within any limiting boundaries” (p. 2). The definition would be affected by the specifics of a given situation.

LaMorte (1999, p. 6) stated that the balance between an individual’s rights and the necessity to protect the larger society is addressed by courts when deprivation of due process is alleged. Courts must determine whether or not a regulation, policy, law, lower-court decision, or action on the part of someone who had a duty to perform was warranted in either limiting or condoning a person’s actions. The definition in each instance depends largely on a combination of the specific facts in a situation, the law governing the situation, the particular time in history in which judgment is being rendered, and the predilections of the individual judge rendering the decision.

Justice Frankfurter, in *Swezy v. New Hampshire* (1957), gave the following description of the scope of due process determinations:

To be sure, this is a conclusion based on a judicial judgment in balancing two contending principles, the right of the citizen to political privacy, as protected by the Fourteenth Amendment, and the right of the State to self-protection. And striking the balance implies the exercise of judgment. This is the inescapable judicial task in giving substantive content, legally enforced, to the Due Process Clause, and it is a task ultimately committed to this court. It must not be an exercise of whim or will. It must be an overriding judgment founded on something much deeper and more justifiable than personal preference. As far as it lies within human limitations, it must be an impersonal judgment. It must rest on fundamental presuppositions rooted in history to which widespread acceptance may be fairly attributed. Such a judgment must be arrived at in a spirit of humility

when it counters the judgment of the State's highest court. But, in the end, judgment cannot be escaped, the judgment of this court. (pp. 266-67)

Former Chief Justice Warren (1960) described due process as an elusive concept; its exact boundaries indefinable, and its content varied according to specific factual contexts. When governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that these agencies use the procedures which have traditionally been associated with the judicial process. On the other hand, when governmental action does not partake of adjudication, for example when a general fact-finding investigation is being conducted, it is not necessary that the full array of judicial procedures be used. Therefore, as a generalization, it can be said that due process embodies the differing rules of fair play, which through the years have become associated with differing types of proceedings.

In *Hannah v. Larch* (1960), the Court found that whether the Constitution requires that a particular right applies in a particular proceeding depends on a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding are all considerations which must be taken into account.

Within the broad array of rights associated with due process are requirements of notice and hearing, fundamental fairness, proportionality, and other limitations on the arbitrary, unfair, or corrupt use of governmental power. Due process mandates limit the abuse of governmental power by requiring an open and fair process of dispute resolution available to all persons on the same basis (Dayton, 2001).

Modern jurisprudence recognizes both procedural and substantive due process rights. Procedural due process concerns the process the government uses in actions that

may significantly impinge on life, liberty, or property rights, while substantive due process places substantive limitations on the use of government power (Dayton, 2001).

Procedural due process may be defined as the aspect of due process which relates to the requisite characteristics of the proceeding, looking toward a deprivation of life, liberty, or property. Procedural due process makes it necessary that one who is to be deprived of such a right must be given an opportunity to defend himself. The problem of the propriety of the deprivation, under the circumstances presented, must be resolved in a manner consistent with essential fairness. The idea of procedural due process is reflected in the statement that, it is a rule as old as the law that no one shall be personally bound until he has had his day in court. A defendant must be duly cited to appear and be afforded an opportunity to be heard. Judgment without such citation and opportunity lacks all the attributes of a judicial determination and would amount to judicial usurpation and oppression and can never be upheld where justice is fairly administered (American Jurisprudence, 1964).

Dayton (2001) noted that, in its most basic form, procedural due process guarantees adequate notice of governmental actions affecting life, liberty, or property, and the right to a fair hearing regarding these issues. To provide adequate notice of governmental actions, laws must be openly promulgated and generally comprehensible so that persons of ordinary intelligence can determine what is required or prohibited. There can be no secret regulations or ex post facto laws. Reflecting recognition of the importance of notice in due process and the injustice of ex post facto laws, the 1649 *Agreement of the Free People of England* proposed the removal of governmental power to “give judgment upon anyone’s person or estate, where no law hath been before

provided...because where there is no law, there is no transgression, for men or magistrates to take cognizance of” (An Agreement of the Free People of England art. XIV, 1649).

The U.S. Constitution codifies this prohibition, declaring that “No Bill of Attainder of ex post facto law shall be passed” (U.S. Constitution, article 1, §9, para.3, 1787).

Considering the procedural aspect of due process, there is no particular form of procedure stipulated in the U.S. Constitution. Rather, the procedure by which the citizenship rights are to be assured and civil wrongs corrected is left to individual states for regulation and control. These procedures, established by the states to regulate the operation of their courts, must be in accord with the basic provisions of the constitution as outlined in the Fifth and Fourteenth Amendments. They must also recognize the case law established by relevant courts (Ingram, 1985).

The Supreme Court, in *Ex Parte Wall* (1883), stated that in the phrase “due process of law,” due process is that which is suitable and proper to the nature of the case at hand and sanctioned by the established customs and usages of the courts. What is unfair in one situation may be fair in another. The Court in *Joint Anti-Fascist Refugee Commission v. McGrath* (1951) stated:

The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished, these are some of the considerations that must enter into the judicial judgment. (p. 644)

There are some general guidelines that can be seen as essential to ensuring procedural fairness. Dayton (2001) stated that when persons are brought before government officials to answer for violations of laws, the hearing process itself must be fundamentally fair. This would require adequate notice of charges, witnesses, and

evidence against the individual as well as an opportunity to be heard and to provide a rebuttal of charges, witnesses, and evidence. Further, government officials cannot compel confessions or otherwise misuse governmental power to deny fair procedures and trials. The right of trial by jury is an additional protection against the improper use of governmental power.

Substantive due process may be roughly defined as the constitutional guarantee that no person shall be deprived of his or her life, liberty, or property for arbitrary reasons. Such a deprivation is constitutionally supportable only if the conduct from which the deprivation flows is proscribed by reasonable legislation that is reasonably applied. It has been said that protection from arbitrary action is the essence of substantive due process, and similarly that, in substantive law, due process may be characterized as a standard of reasonableness (American Jurisprudence, 1964).

The Supreme Court addressed the issue of due process having larger implications than just those of procedure in *Murray's Lessee v. Hoboken Land and Improvement Co.* (1856) when it stated:

Standing by itself, the phrase 'due process' would seem to refer solely and simply to procedure, to process in court, and therefore to be so limited that 'due process of law' would be what the legislative branch enacted it to be. But that is not the interpretation which has been placed on the term. It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave Congress free to make any process 'due process of law' by its mere will. (p. 276)

Supreme Court Justice Harlan, dissenting in *Poe v. Ullman* (1965), referring to substantive due process, stated that:

One view of due process sought to limit the provision to a guarantee of procedural fairness. But, he continued, "Due process in the consistent view of this Court has ever been a broader concept....Were due process merely a procedural safeguard, it

would fail to reach those situations where the deprivation of life, liberty, or property was accomplished by legislation which by operating in the future could, given even the fairest possible procedure in application to individuals, nevertheless destroy the enjoyment of all three. (p. 540)

Unlike the Fourteenth Amendment, the Fifth Amendment contains no equal protection clause, and it provides no guarantee against discriminatory legislation by Congress (*Detroit Bank v. United States*, 1943). However, the Court has on occasion found that discrimination, if gross enough, is equivalent to confiscation and subject under the substantive due process provisions of the Fifth Amendment to challenge and annulment (*Steward Machine Co. v. Davis*, 1937). The theory that was to prevail seems first to have been put forward by Chief Justice Taft of the Supreme Court in *Truax v. Corrigan* (1921), when he observed that:

The Due Process and Equal Protection Clauses are ‘associated’ and it may be that they overlap, that a violation of one may involve at times the violation of the other, but the spheres of the protection they offer are not coterminous....Due process tends to secure equality of law in the sense that it makes a required minimum of protection for every one’s right of life, liberty, and property, which the congress or the legislature may not withhold. Our whole system of law is predicated on the general, fundamental principle of equality of application of the law. (pp. 312, 331)

Substantive due process was also treated in the *Bolling v. Sharpe* (1954) decision, a companion case to *Brown v. Board of Education* (1954). In this case the Supreme Court held that segregation of pupils in the public schools of the District of Columbia violated the substantive aspects of the Due Process Clause. The Court found the following:

The Fifth Amendment, which is applicable in the District of Columbia, does not contain an equal protection clause as does the Fourteenth Amendment which applies only to the states. But the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive. The “equal protection of the laws” is a more explicit safeguard of prohibited unfairness than “due process of the law,” and, therefore we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process. Although

the Court has not assumed to define “liberty” with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause. (*Bolling v. Sharpe*, 1954, pp. 299-300)

The Supreme Court, in *Bolling v. Sharpe* (1954), made the case that a student should be free to pursue an education, making education a liberty right under the Fifth and Fourteenth Amendments. As a result of this decision, governmental actions taken which would interfere with a student’s right to pursue an education violate that student’s substantive due process protections against arbitrary governmental actions which infringe upon one’s liberty.

Students in the public school setting were not afforded either procedural or substantive due process rights for nearly a century after the passage of the Fourteenth Amendment. Hogan (1974) found that the century between 1850 and 1950 constituted an era in which state courts generally considered education to be exclusively a state and local responsibility. Very few educational questions were referred to the United States Supreme Court, and a unique body of case law evolved which failed to recognize constitutional requirements or standards when dealing with students in the public education setting. Seavy (1957) pointed out that this attitude of the Court concerning school disciplinary procedures effectively denied a student the protection given to a pickpocket. LaMorte (1999) stated that prior to the 1970s, courts usually upheld school authorities who demonstrated no more than that their actions were reasonable. Public schools were perceived as enjoying parental prerogatives, and it was uncertain whether

constitutional rights extended to students. This resulted in public schools having broad authority to discipline students without considering due process.

During the 1940s the federal judiciary began to show some interest in educational matters. They found that certain policies and practices developed under state laws were not in compliance with United States constitutional requirements. However, students' acquisition of rights took time to develop and were not fully realized until the 1970s.

Pennock and Chapmen (1975) found that as more and more of the Bill of Rights has been incorporated in to the Due Process Clause of the Fourteenth Amendment, the Court has turned its attention to the exploration, elucidation, and definition of "fundamental rights" not expressly set forth in those amendments, or elsewhere in the Constitution, but presumably included in the "liberty" and "property" terms of the Due Process Clause. As a result of this, by the early 1970s, most federal courts were applying the Due Process Clause to all cases of exclusion from school, including student suspensions. These newfound liberty and property interests provided the basis for challenges based on substantive violations of students' due process rights. Courts looked to decisions such as *Tinker*, in which the Court forbade school administrators from removing students from school based on the implementation of arbitrary policies. Cases such as this secured substantive due process protection from laws or policies which would infringe on students' access to educational services, now seen as property and liberty interests. The terms and requirements set forth in each of the cases dealing with students being denied educational services varied considerably from court to court. This created an unsettled area of law, especially concerning suspensions of short duration (Imber & Van Geel 2001).

The unsettled areas that fell into the realm of procedural due process issues were partially cleared up by the Supreme Court of the United States in *Goss v. Lopez* (1975). This decision gave some clarity to questions involving appropriate procedural guidelines to be followed when considering the short-term suspension of a student from the educational setting. LaMorte (1999), on the ramifications of the *Goss* decision, stated, “The Court found that students possess liberty and property interests in their education, and therefore, that constitutional principles of due process apply to school officials’ treatment of students” (p. 89).

Goss v. Lopez (1975) involved a group of students in Columbus, Ohio, who were suspended from school for up to ten days without being afforded a hearing. School system policy required only that the parents be notified of the suspension within 24 hours. The students felt that this policy violated their due process rights as provided in the Fourteenth Amendment to the U.S. Constitution. They sought to have the public school officials involved enjoined from issuing future suspensions pursuant to the statute and to require them to remove references to the past suspensions from their records.

The Court’s decision was split, highlighting the uncertainty surrounding the issue of due process, especially in the educational arena. The majority opinion sided with the students. Defending the majority opinion, Justice White (1975) stated:

In holding as we do, we do not believe that we have imposed procedures on disciplinarians, which are inappropriate in a classroom setting. Instead we have imposed requirements, which are, if anything, less than a fair-minded school principal would impose upon himself in order to avoid unfair suspensions. (*Goss v. Lopez*, 1975, p. 583)

Presenting the dissenting opinion, Justice Powell (1975) stated:

No one can foresee the ultimate frontiers of the new “thicket” the Court now enters. Today’s ruling appears to sweep within the protected interest in education

a multitude of discretionary decisions in the educational process....If, as seems apparent, the Court will now require due process procedures whenever... routine school decisions are challenged, the impact upon public education will be serious. (Goss v. Lopez, 1975, pp. 565 & 597)

Cooper (1988) found that when asked why the Court chose *Goss* to decide the issue of procedural due process, the attorney for the appellees responded that, “it was difficult to avoid...the time was ripe for a ruling; conflicting decisions existed in virtually every circuit” (Flygare, 1985, p. 442). Lufler (1988) found that the *Goss* decision was followed by a sharp decline in suspension and expulsion decisions addressing procedural issues. Lufler stated that the decision seems best viewed as having settled previously unresolved issues about the procedural rights of students who are being suspended or expelled from school.

LaMorte (1999) stated that as a result of decisions like *Tinker v. Des Moines Independent School District* (1969) and *Goss v. Lopez* (1975), a period began during which students often were successful in challenging school policies and procedures and in which many school officials perceived an erosion of their authority. However, he also noted that in the 1980s a shift toward increasing the authority of public school officials began in the Supreme Court.

A review of decisions involving educational matters reveals that courts consider many factors when examining alleged deprivation of due process by school officials. Foremost among these factors is whether, overall, the school official’s judgment was educationally sound. Additionally, courts examine whether an official’s actions were guided primarily by administrative convenience or represented the spirit of a conformity-minded, arrogant majority when there should have been a willingness on the part of the

majority to accept a degree of non-disruptive deviance (LaMorte, 1999). Imber and Van Geel (2001) found that:

The basic principle of lawful student discipline is that schools can justify only as much rule-making, policing, adjudicating, and punishing as is necessary to promote their legitimate goals. Schools should utilize all lawful means to control student behavior when control is necessary to protect persons or property, promote learning, or prevent disruption of the educational process; however, gratuitous control of students is not justifiable. The law will support school officials when they act reasonably to promote safety and order, but care must be taken not to suppress or punish unpopular behavior when there is no legitimate reason to do so. (p. 67)

Part Two: A Chronological Review of Students' Rights To Due Process Protection 1943-2003

Between 1789 and 1850 both state and federal courts showed a reluctance for any involvement in educational matters (Hogan, 1974). Education was viewed as a state responsibility by the federal judiciary, and the state courts were hesitant to substitute their own judgment for that of educational administrators. The century between 1850 and 1950 constituted an era in which state courts generally considered education to be a local responsibility. Very few educational questions were referred to the United States Supreme Court. Case law failed to recognize constitutional requirements or standards to be observed when dealing with students in the public education setting. Seavy (1957) pointed out that this attitude of the Court concerning school disciplinary procedures effectively denied to a student the protection given to a pickpocket. It is at approximately this point, between the 1940s and 1950s, that the federal judiciary established their authority in the realm of education by pointing out that certain policies and practices developed under state laws were not in compliance with United States constitutional

requirements. There was an increased willingness of the federal courts to become involved in educational matters.

West Virginia State Board of Education v. Barnette (1943) was a Supreme Court case involving the expulsion of public school students after they refused to participate in a daily flag salute exercise mandated by the board of education. Consequently, the State held them liable to prosecution as delinquents and their parents liable to prosecution for noncompliance with the compulsory attendance law. Though parents of the students brought suit on grounds that participation would infringe on their first amendment rights to religious freedom, the Court expressly removed this aspect from the case when it said, “Nor does the issue as we see it turn on one’s possession of particular religious views or the sincerity with which they are held” (*West Virginia State Board of Education v. Barnette*, 1943, p. 634). This case overruled an earlier Supreme Court decision, *Minersville School District v. Gobitis* (1940), concerning mandatory saluting of the flag. This earlier decision was based on the right of the state to impose the flag salute on students over the right of individuals to immunity on religious grounds.

In *Barnette* (1943), the Court addressed the question felt by Reutter (1976) to “properly underlie the flag salute controversy” (p. 49). The Court asked “whether such a ceremony so touching matters of opinion and political attitude may be imposed on the individual by official authority under powers committed to any political organization under our constitution” (*West Virginia State Board of Education v. Barnette*, 1943, p. 636). Since the sole conflict was between authority and rights of the individual, the Court reasoned that first it must “find power to make the salute a legal duty” (Flygare, 1985, p. 442). It could not find such power. Thus, it held that public school officials could not

require students to salute and pledge allegiance to the flag at the risk of punishment and expulsion from school. Here the Court held that the Fourteenth Amendment protects the rights of students when it said, “The Fourteenth Amendment as now applied to the states, protects the citizen against the state, itself, and all of its creatures, Boards of Education not excepted” (*West Virginia State Board of Education v. Barnette*, 1943).

Brown v. Board of Education of Topeka (1954) was a landmark decision by the Supreme Court dealing with the right of citizens of the United States to an education. The decision specifically dealt with the right of minority students to have access to public schools on a desegregated basis. In many areas public schooling was entirely unavailable to minority students, and in those areas where it was available it was provided separately and at significantly lower quality than was available to white students. The Court found that this was both unfair and unacceptable, overturning their previous ruling in *Plessy v. Ferguson* (1896) which held that services provided to minorities may be provided separately but equally. The Court concluded that separate educational facilities are inherently unequal. The importance of the right to an education was clearly established in *Brown* when the Court stated:

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 in 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. (*Brown v. Board of Education*, 1954, p. 493)

The constitution of each state specifically provides for a system of education within the state. Due to the *Brown* decision, any attempt to interfere in that education can

be seen as a Fourteenth Amendment violation triggering the need to provide due process. Subsequent to the *Brown* decision, education could be viewed as a liberty and property interest as stated in the Fourteenth Amendment. *Brown* signaled a new philosophical approach to be followed by the federal judiciary in its dealing with the states on educational matters. Since the *Brown* decision, courts have increasingly scrutinized decisions once made solely by school administrators and boards of education. Educators and professionals in law now look to *Brown* not only with regard to racial segregation, but for any situation where unjustifiable inequities exist in our schools (Ingram, 1985).

Dixon v. Alabama State Board of Education (1961) was a case decided in the Fifth Circuit Court of Appeals involving college students protesting their expulsion from Alabama State College. The impact of this decision has been felt at all levels of academia. In this case the plaintiffs were expelled from college following their involvement in civil rights activities, including a sit-in, in Montgomery, Alabama. The college president, acting on a directive from the State Board of Education, ordered the expulsion. The students were afforded no opportunity to be heard prior to the expulsion. One important outcome of this case was the first definition of appropriate and acceptable due process procedures to be followed in suspension and expulsion of students. The court decision stated that:

The notice should contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the Board of Education. The nature of the hearing should vary depending upon the circumstances of the particular case. The case before us requires something more than an informal interview with an administrative authority of the College. By its nature, a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charged misconduct, easily colored by the point of view of the witnesses. In such circumstances, a hearing which gives the Board or the administrative authorities of the college an opportunity to hear both sides in considerable detail is best

suited to protect the rights of all involved. This is not to imply that a full-dress judicial hearing, with the right to cross-examine witnesses, is required. Such a hearing...might be detrimental to the college's educational atmosphere and impractical to carry out. Nevertheless, the rudiments of an adversary proceeding may be preserved without encroaching upon the interest of the college. In the instant case, the student should be given the names of the witnesses against him and an oral or written report of the facts to which each witness testifies. He should also be given the opportunity to present to the Board, or at least to an administrative official of the college, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses on his own behalf....If these rudimentary elements of fair play are followed in a case of misconduct of this particular type, we feel that the requirements of due process of law will have been fulfilled. (*Dixon v. Alabama v. State Board of Education*, 1961, pp. 158-159)

The *Dixon* decision laid the groundwork for establishing procedural safeguards for students facing removal from their educational setting. *Dixon* has served as a precedent for other cases which involve expulsion or long term suspension from school.

Burnside v. Byars (1966) was a case heard by the Fifth Circuit Court of Appeals which dealt with a matter of common social concern during the 1960s. Students at Booker T. Washington High School of Philadelphia, Mississippi protested a school regulation forbidding them to wear "freedom buttons" while at school. Such a regulation was alleged to violate the students' rights under the First and Fourteenth Amendments to the United States Constitution. Following several confrontational incidents and suspensions of students from school, conferences were held among parents, students and administrators. All concerned, except three parents, reached an understanding. These parents entered a civil rights action in the U.S. District Court of the Southern District of Mississippi for a preliminary injunction against school officials to enjoin them from enforcing the school regulation prohibiting the wearing of the buttons. The appellants in this case, parents of the school children, contended that the school regulation forbidding "freedom buttons" on school property was an unreasonable rule violating the children's

First and Fourteenth Amendment rights to freedom of speech. The appellees in the case argued that the school principal's action in suspending those students who violated the rule was reasonable and necessary to maintain proper discipline. The court concluded that there was no objection to reasonable school rules and expressed its reluctance to infringe on the school's authority. The parents appealed to the Fifth Circuit Court of Appeals.

The appeals court held that this high school regulation, prohibiting students from wearing buttons reflecting a political philosophy and causing no disruption of the regular school program, was arbitrary and unreasonable. It further ruled that such a regulation was an unnecessary infringement on the students' constitutional rights and that the district court's refusal to grant the preliminary injunction was an abuse of judicial discretion. The lower court's decision was reversed and remanded for action consistent with the findings of the court of appeal. The court of appeals cited two other cases as a basis for their rulings for the students. In *Thornhill v. State of Alabama* (1947, p. 101), the Supreme Court found that the right to communicate a matter of vital public concern is embraced in the First Amendment right to freedom of speech and therefore is clearly protected against infringement by state officials. The Court stated that the Fourteenth Amendment protects the First Amendment rights of school children against unreasonable rules and regulations imposed by school authorities. Citing *West Virginia State Board of Education v. Barnette* (1952, p. 637), the Fifth Circuit Court found that, "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures, boards of education not excepted." The court did acknowledge that the guarantees of the First Amendment may be abridged by state officials if their protection of legitimate state interests necessitates an overriding of individual interests. This very

point explains why the Fifth Circuit Court of Appeals court made a ruling in favor of the school officials on a case of identical nature, heard on the same day that *Burnside v. Byars* was decided. In *Blackwell v. Issaquena County Board of Education* (1966), students also brought a civil rights action against school officials who had imposed a rule against students wearing “freedom buttons.” The district court in *Blackwell* had ruled the same in *Burnside*, but the Fifth Circuit Appeals Court in *Blackwell* found that the students wearing the buttons to school had caused an unusual degree of disruption in the school program. The administrators were able to successfully show that the rule violation contributed to student behavior problems, infringed on the rights of others and undermined authority. Based on these facts, the appeals court upheld the ruling of the district court in the *Blackwell* case.

The *Burnside* case provided the groundwork for future landmark decisions, including the Supreme Court ruling *Tinker v. Des Moines* (1969), by finding the following:

We must also emphasize that school officials cannot ignore expressions of feelings with which they do not wish to contend. They cannot infringe on their students’ rights to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution, where the exercise of such rights in the school buildings and classrooms do not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school. (*Burnside v. Byars*, 1969, p. 749)

Koenig and Ober (1975) stated that, “*Burnside v. Byars* emphasized that school officials could not make rules or regulations that infringed on a student’s right to free expression unless there was an absolute certainty that such expression would be disruptive to the school atmosphere” (p. 145).

In re Gault (1967) was a landmark Supreme Court case dealing with the procedural due process rights of children. Although it does not relate directly to an incident which occurred in a public school setting, the implications of the case for school officials are considerable. In fact, *Gault* has been cited on many occasions by courts in cases which do relate directly to school settings (Ingram, p. 78).

This case involved a 15-year-old boy who was arrested, along with a friend, by the sheriff of Gila County, Arizona. At the time of his arrest, Gerald Gault was subject to a six-month probation order which was imposed as a result of his involvement with another boy who had stolen a wallet from a lady's purse. When arrested on June 8, 1964, Gault and his friend had been verbally accused by a neighbor of making an obscene telephone call. When the police arrested Gerald Gault, both his mother and father were at work, and since no one else was at home, no other steps were taken immediately to notify the parents of the arrest. Gerald was placed temporarily in the children's detention home. When the mother returned home from work and found Gerald gone, she sent Gerald's older brother to find him. The older brother learned from neighbors that Gerald had been arrested earlier in the day. The older brother and Mrs. Gault went to the children's detention home where they were first advised by Probation Officer Flagg of the specific charges against Gerald. They were also advised that a hearing had been scheduled in juvenile court for the following day at 3:00 p.m. Although Officer Flagg filed a petition with the juvenile court on June 9, 1964, it was not served on the Gaults, and no member of the family saw a copy of the petition until the habeas corpus hearing on August 17, 1964. During the hearing on June 9, Gerald, his older brother, his mother, and Probation Officers Flagg and Henderson met with the juvenile court judge in his chambers.

Gerald's father was not present, nor was Mrs. Cook, the lady who had made the initial complaint about the obscene telephone call. No one was sworn to give testimony at this hearing and no recording, transcript, memorandum or other record of the substance of the proceedings was prepared. The juvenile judge took the statements made during the hearing under consideration, and Gerald was taken back to the detention home. Two days later Gerald was released from the detention home and driven home to his parents.

There was no explanation in the record as to why Gerald had been kept in the detention home, or for why he was released. On the day of Gerald's release, Mrs. Gault received a note on a plain piece of paper, signed by Officer Flagg, advising her that further hearings on Gerald's delinquency would be held on Monday, June 15, 1964. Present for the June 15 hearing were Gerald, his father and mother, the other boy involved in the incident and his father, and Officers Flagg and Henderson. Although Mrs. Gault had requested that Mrs. Cook be present, she was not there, and Judge McGhee did not require her presence. There was conflicting testimony as to what had been said at the earlier hearing. Mr. and Mrs. Gault stated that Gerald had said he only dialed the number but that the other boy had actually made the lewd comments. The referral report filed by the probation officers at the June 15 hearing listed the charges as "Lewd Phone Calls."

As a result of the hearing, Judge McGhee placed Gerald in the state industrial school as a juvenile delinquent until he reached his twenty-first birthday unless released earlier through due process of law. Since Arizona law does not allow for appeal of juvenile cases, a petition for a writ of habeas corpus was filed with the Supreme Court of Arizona, which referred the case to the superior court for hearing. After hearing cross-examination testimony by Judge McGhee, the superior court dismissed the writ, and the

appellants applied to the Arizona Supreme Court for review. The state high court upheld the superior court's dismissal of the writ. The Gault's subsequently appealed to the U.S. Supreme Court and urged that the Juvenile Code of Arizona be held invalid on its face or as it applied in their case since, contrary to the Due Process Clause of the Fourteenth Amendment, their son had been taken from the custody of his parents and placed in a state institution in accordance with proceedings in which the juvenile court used virtually unlimited discretion and in which the following basic rights were denied: (1) notice of the charges, (2) right to counsel, (3) right to confrontation and cross-examination, (4) privilege against self-incrimination, (5) right to a transcript of the proceedings, and (6) right to appellate review (In re Gault, 1967, p. 1435).

The U.S. Supreme Court reversed the judgment of the Arizona Supreme Court and the case was remanded for further consideration and proceedings, which would not be inconsistent with their findings. The Court stated that:

Failure to observe the fundamental requirements of due process has resulted in the instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescription of remedy. Due process of law is the primary and indispensable foundation of individual freedom. It is the basic essential term in social compact which defines the right of individuals and delimits the powers which the state may exercise. (In re Gault, 1967, pp. 19-21)

In his dissenting opinion, Justice Stewart made the point that excellent juvenile court systems can be found in all 50 states. His contention was that these juvenile courts, along with family courts, were not designed to operate on an adversarial basis, but rather have the purpose of correction of a condition, whereas criminal court proceedings have the purpose of conviction and punishment for a criminal act. Therefore, Justice Stewart believed that juvenile courts and family courts should not be required to follow every

constitutional requirement in providing due process rights that are required in criminal proceedings.

The implications of *Gault* for school officials are clear. In any proceedings in which the rights of the students, including the property right to an education, are subject to restriction or denial, school officials must exercise care that administrative proceedings do acknowledge minimal due process rights.

The Court also addressed the issue of the right of children to be represented by counsel in any legal proceeding which may result in restrictions on their freedom. The Court stated:

We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect to proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child has the right to be represented by counsel retained by them, or if they are unable to afford counsel, the counsel will be appointed to represent the child. (In re Gault, 1967, p. 41)

The United States Supreme Court effectively established its philosophical position on the question of children's rights in stating that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone" (In re Gault, 1967, p. 13).

In *Stevenson v. Wheeler County Board of Education* (1969), the U.S. District court of the Southern District of Georgia considered a petition from three students to enjoin the school system from enforcing a regulation that a male student be clean-shaven. The plaintiffs' contention was that no evidence was shown to indicate that mustaches and beards grown by high school students had created any problems in the school system. Three students had been suspended for refusing to comply with the regulation. At the time of the court hearing, the students had been on suspension from school for one month. The complaint charged that the expulsion had deprived the plaintiffs of their

Fourteenth Amendment liberty rights. Although no violation of First Amendment rights was claimed, it was asserted that the constitutionally protected right to express one's individuality was involved. Although ethnic factors were also mentioned in the complaint, the court could find no racial implications in the process used by the school authorities in adopting the "clean-shaven" policy. The finding of the court was that the responsibility of school officials to maintain order in the schools was a sufficiently overriding factor to offset the claimed violation of constitutional rights. The court stated that:

Among the things a student is supposed to learn at school...is a sense of discipline. Of course, rules cannot be made by authorities for the sake of making them, but they should possess considerable leeway in promulgating regulations for the proper conduct of students. Courts should uphold them where there is any rational basis for the questioned rule....Those who run public schools should be the judges in such matters, not the courts. The quicker judges get out of the business of running schools, the better. (*Stevenson v. Wheeler County Board of Education*, 1969, pp. 12-13)

The injunctive relief asked for by the plaintiffs in this case was denied.

Sullivan v. Houston Independent School District (1969) dealt with the issue of publication and distribution of student newspapers on school campuses. This case was brought into the United States District Court in the southern district of Texas, seeking an injunction to reinstate two high school students who had been placed on a long-term suspension for the remainder of the 1968-69 school year. The two students, Dan Sullivan and Michael Fischer, had been placed on suspension because of their involvement in publishing and distributing a newspaper entitled "Pflashlyte" which was critical of school officials. The complaint asked for the reinstatement of the suspended students, as well as an injunction against enforcement of the Houston Independent School District regulations governing student publications.

Sullivan and Fischer were both seniors at Sharpstown Junior/Senior High School, a school in its first year of operation. Both boys were good academic students and had no previous record of serious disciplinary problems. Evidence in the court record indicated that they were typical high school students of good moral character. One of the reasons given by the students for producing the newspaper was the lack of any written school rules or regulations governing student behavior. There was confusion among students as to what was appropriate behavior. This concern led to a meeting of students and some teachers in a nearby park after school. Speeches were made by certain students who used the occasion to voice their grievances about school policies. The meeting was interrupted by some Sharpstown High School athletic coaches who intimidated several students and accused the group of Fascist and Communist activities. Subsequent to the meeting, the plaintiff and other students were subjected to verbal abuse at school on a number of occasions. Mike Fischer was informed by his gym coach that because of the lawsuit which had been initiated, he would receive a failing grade if the instructor could get away with it. As a result of these and other incidents of apparent harassment, the students decided to print the newspaper as a vehicle to express their dissatisfactions and their proposed solutions. They sought help from a friend who had graduated from a local high school the year before and was presently a freshman at the University of Houston. The friend got the newspaper published through a university-approved organization called Students for a Democratic Society. All the students' efforts in researching, preparing, and printing the newspaper took place after school hours and not during any school course or activity. The plaintiffs asked all other students assisting with the distribution of the

newspaper not to carry them into the school building. Those receiving the papers were asked not to let the papers be seen in school.

When an investigation into the matter identified the plaintiffs as the ones responsible for the newspaper, the principal telephoned one student's mother to inform her that her son was being expelled. There had been no previous notice to the parents that he was in trouble. The other student's mother was required to come to the school for a conference. In this session, the mother was advised that her son was being expelled. The sole purpose of the conference was to explain the punishment. While both boys had been called to the principal's office before the parents were notified, neither was advised at that time that disciplinary action would be taken or why their newspaper was in violation of school policy. Dan Fischer and his mother asked the principal if the boys could stay in school if they promised to discontinue the newspaper, but he stated that the incident was too serious and no alternative consequence would be acceptable.

The court found that the procedure followed by the principal clearly failed to meet the minimum standards of procedural due process. There was no question in the opinion of the court that the only reason for the suspension action was the students' involvement with the newspaper. The court found that when severe discipline such as expulsion is contemplated, public school students must be given a fair hearing and notice of the charges in advance. Three temporary injunctions were issued as a result of this finding. First, the school officials were enjoined from refusing to permit the two suspended students to attend classes at Sharpstown High School and enjoy the same rights and privileges as afforded other students. Second, the school officials were enjoined from refusing to permit the plaintiff students to make up any academic work missed during the

time of their suspension. Third, the court enjoined the school officials from suspending or otherwise disciplining the two plaintiffs solely on the basis of their publishing and distributing written materials away from school premises.

Although the complaint in this case argued denial of certain procedural due process rights, it was also evident from the findings that the methods used by the school administrator in suspending the students were unfair and arbitrary. The court spoke on the point that such actions were unreasonable, hence, also a violation of substantive due process rights. The court stipulated three provisions which the school administration must make available to the accused student. First, “Formal written notice of the charges and of the evidence against him must be provided to the student and his parents or guardian.” Second, there must be a “formal hearing affording both sides ample opportunity to present their cases by way of witnesses or other evidence.” And third, that sanctions may be imposed “only on the basis of substantial evidence” (*Sullivan v. Houston Independent School District*, 1969, p. 1328).

Tinker v. Des Moines Independent Community School District (1969), a decision by the Supreme Court, has been recognized as a landmark case regarding student rights in public educational institutions. “The circumstances of the case make it especially appropriate as an example of a substantive due process rights decision” (Ingram, p. 104). The facts of this case involve John F. Tinker, an eleventh grader, and other students, who brought the case into district court in the Southern District of Iowa from a Des Moines high school. The action was brought against the school district, board of directors, certain administrative officials, and teachers to recover nominal damages and to obtain an injunction against enforcement of a school regulation, established by school principals,

which prohibited students from wearing black armbands at school in protest of the United States' involvement in the Viet Nam War. The case was heard in district court, and the complaint dismissed. On appeal to the Eighth Circuit Court of Appeals the case was heard en banc, and the lower court's decision was affirmed. The U.S. Supreme Court granted certiorari and reversed the lower court's decision by holding that the regulation prohibiting the wearing of protest armbands at school was a violation of the students' right to express an opinion as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

The circumstances which led to this court case began in December, 1965, when a group of adults and students in Des Moines, Iowa, met in the home of one of the plaintiffs to plan a procedure for publicizing their objection to the United States' involvement in the Viet Nam War. They decided to wear black armbands during the Christmas and New Year holiday season and to fast on certain days. School administrators in the Des Moines Public School System heard of the planned demonstrations and adopted a policy which forbade the wearing of black armbands as a protest symbol by students at school. The policy stated that any student wearing such an armband at school would be asked to remove it, and if the student failed to comply with the policy, a suspension would be imposed until the child returned without the armband. The plaintiffs were aware of the regulation prior to the time they were charged with violation of school policy. Mary Beth Tinker and Christopher Eckhardt wore armbands to school on December 16, 1965, and John Tinker wore his the next day. All three were sent home on suspension status until they were willing to return without the armbands. None

of the students returned to school until after the period of planned demonstration had ended on January 1, 1966.

Parents of the suspended students filed the complaint in district court under 42 U.S.C. § 1983, which provides for liability if a person operating under the color of the state violates another person's civil rights. The complaint asked for an injunction restraining the school system officials from applying disciplinary action against the protesting students and also asked for nominal damages. The district court dismissed the case while upholding the constitutionality of the action taken by the school authorities, who claimed that the policy was reasonable in order to prevent disruption in school discipline. The court made reference to the previous case of *Burnside*, heard in the Fifth Circuit, which held that the wearing of symbols like the armband cannot be prohibited unless it "materially and substantially interferes with the requirements of appropriate discipline in the operation of the school" (*Burnside v. Byars*, 1966, p. 749). However, the district court did not adhere to the precedent of *Burnside* in rendering its decision. On appeal to the Eighth Circuit Court of Appeals, the case was considered en banc, and the court was equally divided. The district court's decision was affirmed without opinion.

The U.S. Supreme Court granted certiorari in 1968 and reversed the lower court's findings on a 7-2 decision. The U.S. Supreme Court noted the discrepancy between the district court's decision and its recognition of the precedent decision that the wearing of an armband as a method of expressing certain views is the type of symbolic act that falls within the Free Speech Clause of the First Amendment. An important point made in the U.S. Supreme Court decision was that First Amendment rights are available to teachers and students in the school environment. The Court stated that, "neither students nor

teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (*Tinker v. Des Moines*, 1969, p. 736).

The problem in *Tinker*, as it relates to substantive due process, is evident in the nature of the actions of the plaintiffs as they participated in demonstrations and the subsequent disciplinary measures applied by the school administrators. The students' actions did not involve aggressive, overtly disruptive behavior or even group demonstrations. The U.S. Supreme Court viewed the students' actions as direct, primary First Amendment rights closely related to "pure speech." The actions of school officials in suspending students wearing armbands was viewed as arbitrary in the absence of any serious problems or disruptions of the educational process. The fear of such problems or disruptions was cited as the basis for adopting the policy which prohibited the wearing of armbands as a symbol of protest. The U.S. Supreme Court held that for a state or any of its agencies to justify prohibition of a certain expression of opinion, it must show that its reasons for such prohibition are based on something more concrete than a fear that discomfort or unpleasantness may result from the expression of an unpopular view. Disciplinary consequences which infringe on such basic and fundamental constitutional rights can be seen as infringing on students' substantive due process rights. The Court considered *Tinker* and concluded that the students' due process rights had been violated. They reversed the decision of the lower court but expressed no opinion as to the form or amount of relief which should be granted. The case was remanded to the lower courts for further consideration on the matter of relief which would be consistent with the Court's finding.

In his dissenting opinion, Justice Hugo Black expressed concern that the majority's decision seemed to signal a possible change of direction for the Court back to the McReynolds Due Process Concept. This concept evolved in the 1920s and was based on the practice of the U.S. Supreme Court to use its own judgment in determining whether a state or agency regulation was reasonable or not. Justice Black felt it ill-advised for the U.S. Supreme Court to use its own opinion of reasonableness to strike down laws which were contrary or incompatible with the justices' views of what was "unreasonable," "arbitrary," "irrational," or "opposed to fundamental decency." He further expressed his position that students do not have a constitutional right to use any part of a school campus as a forum to expound on political or other views. His opinion was that students were in school in the capacity of learner and not as teacher. The state should have the right to establish rules for operation of its schools and the courts should not annul these rules on the basis of disputable considerations of their wisdom or necessity (*Tinker v. Des Moines*, 1969).

Nolte (1974) considered the results of the *Tinker* case to be the most important decision made by the courts during the decade of the 1960s. He found that:

The rule sentiments of *Tinker* are found liberally sprinkled throughout many court decisions. Surely no greater watershed case can be imagined in the field of school law than can *Tinker*, which completely transformed students from objects of public direction to persons in their own right. (p. 50)

The school authorities' actions in the incidents which led to the *Tinker* decision had been upheld as constitutional by the federal district court on the basis that such action was a reasonable attempt to prevent disruptive behavior in the schools. The U.S. Supreme Court's response to such reasoning was stated as follows:

Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any words spoken, in class, in the lunchroom, or on the campus may start an argument or cause a disturbance, but our constitution says we must take the risk...and our history says that it is this sort of hazardous freedom, this kind of openness, that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disruptive society. (*Tinker v. Des Moines Independent Community School District*, 1969, pp. 508-509)

The impact of the *Tinker* decision affected more than the right of individual expression possessed by students in public schools. The Court further expanded on the issue of fundamental rights of students guaranteed by the United States Constitution. On this point the Court stated:

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our constitution. They are possessed of fundamental rights which the state must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as close-circuit recipients of only that which the State chooses to communicate. (*Tinker v. Des Moines Independent Community School District*, 1969, p. 511)

In analyzing *Tinker v. Des Moines* (1969), Schimmel and Fisher (1975, p.16) found that the Supreme Court handed down an historic decision that challenged many of the educational policies of the past. In *Tinker*, the Court bypassed the "reasonableness test" and ruled that students do not shed their constitutional rights at the schoolhouse gate. No other recent case has been so influential in advancing the rights of public school students.

Davis v. Ann Arbor Public Schools (1970) was a case heard by the U.S. District Court for the Eastern District of Michigan which upheld the right of administrators to exercise a reasonable amount of control over the students in their building. It involved a high school sophomore who found himself at odds with his school's administrators due to

excessive absences. After his mother was notified by letter of the seriousness of the truancy problem, Mike Davis was suspended from school for one day on October 16, 1969. A conference was scheduled between Mike, his mother, and the sophomore class principal, Mr. Stipe. The purpose of the conference was to outline the conditions under which Mike would be readmitted to school. Following assurances that Mike would attend classes regularly and conform to school rules, the suspension was terminated. The court noted from the testimony given that parental conferences concerning Mike's problems, either face-to face or by telephone, had been frequent in number. On December 2, 1969, Mr. Stipe again wrote a letter to Mike's mother, this time advising her of several incidences of fires being started at the school. Although no charge or accusation was made against Mike, it was pointed out that on at least two occasions Mike had been present when a fire had been set in the boy's restroom. In making an investigation of the fires, no one was willing to admit involvement, yet none of the witnesses would testify that Mike did not start the fires. Mrs. Davis was advised that if another incident occurred with Mike present, it would be considered more than coincidence, and he would be implicated. Other incidences did occur, and Mike was suspended from school.

Suit was brought in the district court claiming that procedural due process rights were denied in the manner in which the suspension was affected. During the process, Mrs. Davis was notified that she had the opportunity for a hearing before the school board. She did attend the board meeting where the principal's recommendation for suspension was upheld. The plaintiff in this case claimed that his procedural due process rights were violated in at least two ways. He argued that when the suspension was announced, he had not received written notification of the charges and that the hearing

before the board did not afford him “dialogue” or an opportunity to be heard concerning the charges. When the court considered the charges, no support could be offered to the plaintiff’s contention that written charges were not presented. The court found that the very action of the plaintiff’s mother, in seeking the hearing before the board of education, was clear indication that she was fully aware of the nature of the charges. Although a letter of notification of charges was not sent to the student’s mother, the court concluded, “It is beyond question that the plaintiff had full knowledge of the manifold reasons for his suspension” (Davis v. Ann Arbor Public Schools, 1970, p. 1227). Concerning the plaintiff’s claim that he had no opportunity to present his side of the issue before the board of education, the court pointed out that he apparently misconceived the law. Citing *Dixon v. Alabama State Board of Education* (1961), the court stated that proceedings that may be required in a civil or criminal trial would not apply in a student-school relationship. Such a requirement would have serious negative consequences and would impose unreasonable administrative burdens on the schools. The court further concluded that placing the same due process requirements on schools as are required in civil and criminal cases would be disruptive of the very functions the schools are established to accomplish, such as teaching and learning in an orderly setting. *Dixon v. Alabama* (1961) was also cited as the basis for the court’s view that the procedures required in any hearing would be dependent on the particular circumstances of any given case. In its concluding remarks, the court found that the student was fully informed as to the charges against him and that the hearing provided him was reasonable under the circumstances. The school officials were found by the court to have had acted properly and within the

bounds of constitutional limitations, so the motion for the injunction and other relief sought in the suit was dismissed.

Cook v. Edwards (1972), a decision by the U.S. District Court of New Hampshire, is cited by Woodard (1990) as a leading case for establishing that excessive student punishments can be set aside on the grounds of due process of law. In this case a fifteen-year-old high school student came to school intoxicated. There was no evidence that she created any disturbance, and it was clear that this was her first offense. The principal suspended the student indefinitely until some discovered psychological problem between the student and her parents could be remedied. The court reinstated the student holding that:

It is fundamentally unfair to keep a student out of school indefinitely because of difficulties between the student and her parents, unless those difficulties manifest themselves in a real threat to school discipline...the punishment of indefinite expulsion raises a serious question as to substantive due process. (*Cook v. Edwards*, 1972, p. 311)

Linwood v. Board of Education, City of Peoria (1972) was a decision by the Seventh Circuit Court of Appeals, which involved a suit brought by Dewayne Linwood seeking a class action ruling which would provide injunctive relief as to application of the state statute which permitted expulsion of students from public schools. The district court ruled that Linwood's action failed to qualify under Rule 23 of the Federal Rules of Civil Procedure as a valid class action. The court granted the defendant board's motion for summary judgment and dismissed the case. Linwood's appeal asked for reversal of the district court decision, claiming error in the district court's view that Section 10-22.6 of the Illinois School Code was constitutionally applied in his case. A suit was brought against the board of education as a result of its decision to support the recommendation of

the high school principal that Linwood be expelled for “gross disobedience or misconduct.” The suit also contended that the student’s right of due process was violated when he was suspended for seven days without being provided a formal hearing. The appellant further contended that Section 10-22.6 of the Illinois School Code, which grants school officials immunity from legal action for such suspensions and expulsions, violated certain sections of the Illinois Constitution. Counsel for Linwood urged the court of appeals to consider the language used in Section 10-22.6 of the State School Code to be vague and indefinite. They argued that the term “gross disobedience or misconduct” failed to meet the requirement of notice of specific charges as provided for in the Due Process Clause. Citing *Soglin v. Kaufman* (1967), the appellant pointed to a decision of the appeals court that stated, “We only hold that expulsion and prolonged suspension may not be imposed on students by a university simply on the basis of allegations of ‘misconduct’ without reference to any preexisting rule which supplies an adequate guide” (*Soglin v. Kauffman*, 1967, p. 168).

Soglin was a case decided by the Seventh Circuit Court of Appeals which involved university students being expelled on a vague charge of “misconduct”. The university argued that its inherent power to discipline its students could be exercised without being required to hold to preexisting specific rules of conduct. An important statement by the court in that case was that “power alone does not supply the standards needed to determine its application to types of behavior or specific instances of misconduct” (*Soglin v. Kauffman*, 1967, p. 167).

Appellants pointed to Judge Cumming’s comments made in dissent to the U.S. District Court for the Eastern District of Illinois *Whitfield v. Simpson* (1969) ruling:

Gross disobedience or misconduct is, of itself, insufficient to supply a standard for the expulsion of a high school student....Plaintiff's expulsion might have been sustainable had the School Board given content to "gross disobedience or misconduct" through reasonably narrow rules or regulations. Chapter 122, Section 10-20.5, Illinois Revised Statutes vested the Board with the power to adopt and enforce such rules. Construed as a standard for the School Board's exercise of that rule-making authority, gross disobedience or misconduct might well be constitutional. (*Whitfield v. Simpson*, 1969, p. 898)

Essentially, the *Linwood* (1972) appeal was based on the contention that the student was entitled to the full spectrum of due process rights as would be accorded in a criminal trial or a juvenile court delinquency proceeding. The appeals court pointed out, however, that the type of administrative hearing at issue in the case need not take the form of a judicial trial. The judge recognized that school codes of conduct did not need to meet the same rigorous standards as required of criminal statutes. He qualified the scope of its findings in *Soglin* by stating, "We only hold that expulsion and prolonged suspension may not be imposed on students by a university simply on the basis of allegations of "misconduct" without reference to any preexisting rule which supplies an adequate guide" (*Soglin v. Kaufman*, 1967, p. 168).

Legal matters arising in the public education setting are not seen as parallel to similar cases involving parties outside the realm of public education. However, as seen in many of the above decisions, the federal courts had begun to require some due process for students being suspended and expelled from public schools. Indeed, Imber and Van Geel (2001) found that:

By the early 1970s, most, but not all, federal courts were applying the Due Process Clause to all cases of exclusion from school, although the terms of the requirements varied considerably from court to court. The law was particularly unsettled with regard to suspensions of short duration. (p. 81)

Goss v. Lopez (1975), a Supreme Court decision, did much to clarify these matters dealing with exclusions from school, especially those of a short term. *Goss* was the case which most clearly established the principle that students in public schools have property and liberty interests in their education, which qualify for protection under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. The case developed during a period of widespread student unrest in the Columbus, Ohio public school system in February and March of 1971, when six students at Marion-Franklin High School were suspended. Rudolph Sutton, Tyrone Washington, Susan Cooper, Deborah Fox, Clarence Byars, and Bruce Harris were each suspended for ten days due to disruptive or disobedient conduct committed in the presence of the school administrator who ordered the suspension. Tyrone Washington was among a group of students demonstrating in the school auditorium while a class was being conducted there. He was ordered by the school principal to leave, refused to do so, and was suspended. Rudolph Sutton, in the presence of the principal, physically attacked a police officer who was attempting to remove Tyrone Washington from the auditorium. He was immediately suspended. The other four Marion-Franklin students were suspended for similar conduct. None was given a hearing to determine the operative facts underlying the suspension, but each, together with his or her parents, was offered the opportunity to attend a conference, subsequent to the effective date of the suspension, to discuss the student's future. Two named plaintiffs, Dwight Lopez and Betty Crome, were students at the Central High School and McGuffey Junior High School, respectively. The former was suspended in connection with a disturbance in the lunchroom which involved some physical damage to school property. Lopez testified that at least 75 other students were suspended from his

school on the same day. He also testified that he was not a party to the destructive conduct but was instead an innocent bystander. Because no one from the school testified with regard to this incident, there is no evidence in the record indicating the official basis for concluding otherwise. Lopez never had a hearing. Betty Crome was present at a demonstration at a high school other than the one she was attending. She was arrested together with others, taken to the police station, and released without being formally charged. Before she went to school on the following day, she was notified that she had been suspended for a ten-day period. Because no one from the school testified with respect to this incident, the record does not disclose how the McGuffey Junior High School principal reached the decision to suspend Crome, nor does it disclose upon what information the decision was based. It is clear from the record that a hearing was never held.

Ohio law, Rev. Code Ann. § 3313.64 (1972), provides for free education to all children between the ages of six and twenty-one. Section 3313.66 of the Code empowers the principal of an Ohio public school to suspend a pupil for misconduct for up to ten days, or to expel him. In either case, he must notify the student's parents within 24 hours and state the reasons for his action. A pupil who is expelled, or his parents, may appeal the decision to the Board of Education and subsequently be permitted to be heard at the board meeting. The board may reinstate the pupil following the hearing. No similar procedure is provided in §3313.66 or any other provision of state law for a suspended student. Aside from a regulation tracking the statute, at the time of the imposition of the suspensions in this case, the Columbus Public School System had not issued any written procedure applicable to suspensions. The record does not reflect that any of the individual

high schools involved in this case had issued any guidelines related to student suspensions from school. Each, however, had formally or informally described the conduct for which suspension could be imposed (LaMorte, 1999). The suspensions were carried out in accordance with Ohio law, but the students argued that their due process rights had been violated by the school's action. The administrators involved argued that the Due Process Clause would only come into effect when the State subjected a student to an extreme loss. They contended that a ten-day suspension would not be a severe enough loss to trigger Fourteenth Amendment due process procedures. The Court disagreed and stated that though a short term suspension is a milder deprivation than expulsion, it is not *de minimis* (of minimal consequence) and may not be imposed in complete disregard of the Due Process Clause. The Court stated:

A short suspension is, of course, a far milder deprivation than expulsion, but education is perhaps the most important function of state and local governments, and the total exclusion from the educational process for more than a trivial period, and certainly if the suspension is for ten days, is a serious event in the life of the suspended child. Neither the property interest in educational benefits temporarily denied nor the liberty interest in reputation, which is also implicated, is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary. (*Goss v. Lopez*, 1975, p. 575)

Because the Fourteenth Amendment requires due process only in cases where a state seeks to deprive an individual of life, liberty, or property, the first issue that the Court had to face was whether attendance at school is a property right. The Court on this point stated:

Although Ohio may not be constitutionally obligated to establish and maintain a public school system, it has nevertheless done so and has required its children to attend. The authority possessed by the State to prescribe and enforce standards of conduct in its schools, although concededly very broad, must be exercised consistently with constitutional safeguards. Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which

may not be taken away for misconduct without adherence to the minimum procedures required by that Clause. (*Goss v. Lopez*, 1975, p. 574)

Imber and Van Geel (1999) note that in making this ruling, the Supreme Court was not saying that school attendance is a constitutional right. In fact, the Court specifically ruled in *San Antonio v. Rodriguez* (1973) that there is no constitutional right to education. The point being made in *Goss* is that if a state decides to make education available to the public, via legislation or the state constitution, it must then afford minimal due process rights to those who are to be stripped of these constitutional or statutory rights.

Ingram (1985), on this property interest issue, stated that the Court noted that interests of citizens protected by the Constitution are usually not established by that document, but rather, are created and defined by some independent source such as state statutes or regulations which entitle citizens to certain benefits, in this case the right to public education as provided in Ohio's code. This point was made in another case decided by the U.S. Supreme Court in *Board of Education v. Roth* (1972, p. 577) approximately one year earlier.

The Court equated the students' right to an education to the right of a state employee to continued employment in the absence of any sufficient cause for dismissal. Similarly, students would be entitled to an education in the same sense that welfare recipients are entitled to benefits so long as they continue to meet the specified requirements of eligibility. In neither case can a citizen be deprived of the right without basic due process procedures being provided. To further emphasize their position on the matter, the Court cited from the *Tinker* decision that "students do not shed their

constitutional rights at the schoolhouse gate” (Tinker v. Des Moines School District, 1969, p. 506).

A second Fourteenth Amendment issue raised was that of students’ liberty interest in maintaining a good reputation. On this point the Court stated:

Where a person’s good name, reputation, honor, or integrity is at stake because of what the government is doing to him, the minimal requirements of the Due Process Clause must be satisfied. School authorities here suspended appellees from school for periods of up to ten days based on charges of misconduct. If sustained and recorded, those charges could seriously damage the students’ standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment. It is apparent that the claimed right of the State to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the constitution. (Goss v. Lopez, 1975, p. 575)

Having established the relevance of the Due Process Clause to punitive exclusion of students from school, the Court next faced the task of developing a framework that would work in the school context. The Court stated that:

Once it is determined that due process applies, the question remains what process is due. We turn to that question fully realizing, as our cases regularly do, that the interpretation and application of the Due Process Clause are intensely practical matters and that the very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation....Judicial interposition in the operation of the public school system of the nation raises problems requiring care and restraint....By and large, public education in our nation is committed to the control of state and local authorities. There are certain bench marks to guide us, however. *Mullane v. Central Hanover Trust Co.* (1950, p.306), a case often invoked by later opinions, said that many controversies have raged about the cryptic and abstract words of the Due Process Clause, but there can be no doubt that at a minimum they require that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case. The fundamental requisite of due process of law is the opportunity to be heard, a right that has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to... contest. At the very minimum, therefore, students facing suspension and consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing. Parties whose rights are to be affected are entitled to be heard, and in order that they may enjoy that right they must first be notified. It also appears from these cases that the timing and content

of the notice and the nature of the hearing will depend on appropriate accommodation of the competing interests involved. The student's interest is to avoid unfair or mistaken exclusion from the educational process, with all of its unfortunate consequences. The Due Process Clause will not shield him from suspensions properly applied, but it deserves both his interest and the interest of the state if his suspension is in fact unwarranted. The concern would be mostly academic if the disciplinary process were a totally accurate, unerring process, never mistaken and never unfair. Unfortunately, that is not the case, and no one suggests that it is. Disciplinarians, although proceeding in utmost good faith, frequently act on the reports and advice of others, and the controlling facts and the nature of the conduct under challenge are often disputed. The risk of error is not all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process. (*Goss v. Lopez*, 1975, pp. 577-580)

On this point the Court found that:

The difficulty is that our schools are vast and complex. Some modicum of discipline and order is essential if the educational function is to be performed. Events calling for discipline are frequent occurrences and sometimes require immediate, effective action. Suspension is considered not only to be a necessary tool to maintain order but a valuable educational device. The prospect of imposing elaborate hearing requirements in every suspension case is viewed with great concern, and many school authorities may well prefer the untrammelled power to act unilaterally, unhampered by rules about notice and hearing. But it would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his dereliction and to let him tell his side of the story, in order to make sure that an injustice is not done....We do not believe that school authorities must be totally free from notice and hearing requirements if their schools are to operate with acceptable efficiency. Students facing temporary suspensions have interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of ten days or less, that the student be given oral or written notice of the charges against him, and if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. The Clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school. (*Goss v. Lopez*, 1975, pp. 580-581)

The Court further stated that:

There need be no delay between the time "notice" is given and the time of the hearing. In the great majority of cases, the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred. We hold only that, in being given an opportunity to explain his version of the facts at this discussion, the student first be told what he is accused of doing and what the basis

of the accusation is. Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable....We have imposed requirements which are, if anything, less than a fair-minded school principal would impose upon himself in order to avoid unfair suspensions....We stop short of construing the Due Process Clause to require, country wide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident. (*Goss v. Lopez*, 1975, pp. 581-584)

According to LaMorte (1999, p. 115), in dealing with suspensions of ten days or less, the Court (1) permitted immediate removal of a student whose conduct disrupts the academic atmosphere of the school, endangers fellow students, teachers or school officials, or damages property, (2) required notice of suspension proceedings to be sent to the student's parents within 24 hours of the decision to conduct them, (3) required a hearing to be held, with the student present, within 72 hours of his removal, and (4) required that statements in support of the charge be produced, that the student and others be permitted to make statements in defense of mitigation, and that the school need not permit attendance by counsel.

This ruling was far from a unanimous one, with the final vote being 5-4. Justice Powell, representing the minority in his dissent, clearly outlined the ramifications of the decision and gave a detailed account of why he believed the decision was based on flawed logic and inevitably served to add unnecessary burdens on both the federal judiciary and local school administrators. He stated:

The Court today invalidates an Ohio statute that permits student suspensions from school without a hearing "for not more than ten days." The decision unnecessarily opens avenues for judicial intervention in the operation of our public schools that may affect adversely the quality of education. The Court holds for the first time that the federal courts, rather than educational officials and state legislatures, have the authority to determine the rules applicable to routine classroom discipline of

children and teenagers in the public schools. It justifies this unprecedented intrusion into the process of elementary and secondary education by identifying a new constitutional right, the right of a student not to be suspended for as much as a single day without notice and a due process hearing either before or promptly following the suspension.

The Court's decision rests on the premise that, under Ohio law, education is a property interest protected by the Fourteenth Amendment's Due Process Clause and therefore that any suspension requires notice and a hearing. In my view, a student's interest in education is not infringed by a suspension within the limited period prescribed by Ohio law. Moreover, to the extent that there may be some arguable infringement, it is too speculative, transitory, and insubstantial to justify imposition of a constitutional rule. (*Goss v. Lopez*, 1975, p. 585)

Justice Powell agreed with the argument put forward by the appellants that the Due Process Clause only becomes relevant when there is a severe detriment or grievous loss, and that a suspension of ten days or less does not qualify.

Justice Powell also stated that:

One of the more disturbing aspects of today's decision is its indiscriminate reliance upon the judiciary, and the adversary process, as the means of resolving many of the most routine problems arising in the classroom. The Ohio statute, providing as it does for due notice both to parents and the Board, is compatible with the teacher-pupil relationship and the informal resolution of mistaken disciplinary action. We have relied for generations upon the experience, good faith and dedication of those who staff our public schools, and the nonadversary means of airing grievances that always have been available to pupils and their parents. One would have thought before today's opinion that this informal method of resolving differences was more compatible with the interests of all concerned than resort to any constitutionalized procedure, however blandly it may be defined by the Court. (*Goss v. Lopez*, 1975, p. 595)

Powell further stated:

Not so long ago, state deprivations of the most significant forms of state largesse were not thought to require due process protection on the grounds that the deprivation resulted only in the loss of a state-provided "benefit." In recent years the Court, wisely in my [Justice Powell's] view, has rejected the "wooden distinction between 'rights' and 'privileges,' " and looked instead to the significance of the state-created or state-enforced right and to the substantiality of the alleged deprivation. Today's opinion appears to abandon this reasonable approach by holding in effect that the government infringement of any interest to which a person is entitled, no matter what the interest or how inconsequential the infringement, requires constitutional protection. As it is difficult to think of any

less consequential infringement than suspension of a junior high school student for a single day, it is equally difficult to perceive any principled limit to the new reach of procedural due process. (*Goss v. Lopez*, 1975, p. 599)

Ingram (1985) determined that this dissent makes two major points worthy of mention. First, the decision unnecessarily opens avenues for judicial intervention in the operation of our public schools that may adversely affect the quality of education. Second, the Court justified its unprecedented intrusion into the process of elementary and secondary education by identifying a new constitutional right, the right of a student not to be suspended without notice and a due process hearing either before or promptly following the suspension. Ingram noted the possibility that with the vote having been 5-4, any small change in the make-up of the Court could have a huge impact on the future status of students' entitlement to due process rights.

Van Geel found that four main questions remained to be answered after the *Goss* decision. These included:

1. Is a right to procedural due process triggered every time school officials take an action that disadvantages a student?
2. What constitutes a sufficient emergency to warrant excluding a student first and providing a hearing afterwards?
3. As to suspensions of more than ten days, what are the elements of more formal procedure to which a student has a right?
4. If a district departs from its own voluntarily adopted set of procedures, is that a constitutional violation?

Rossow (1999) cited four additional questions left open for interpretation after the *Goss* decision. These included:

1. When can a school official know that what was given meets this “some” kind of standard mentioned in *Goss*?
2. How informal can the hearing be?
3. Do school officials need to provide procedural due process for students removed from bus service or extracurricular activities?
4. What process is due a student who is given in-school suspension?

Wood v. Strickland (1975) was a landmark Supreme Court case which held that, under certain circumstances, school board members could be held liable for damages under 42 U.S.C. § 1983. The case was initially brought into district court by Peggy Strickland and Virginia Crain, two students who had been expelled from Mena High School of Mena, Arkansas, for violation of a school regulation prohibiting the use or possession of intoxicating beverages on school grounds or at school activities. During questioning by the principal, the students admitted to “spiking” the punch served at a meeting in the home economics department for students and parents. The principal suspended them from school for a maximum two-week period, subject to the decision of the school board. In a subsequent meeting, which excluded the students and their parents, the school board suspended the students for the remainder of the school term, a period of approximately three months.

The parents obtained legal counsel, and the school board reaffirmed its earlier action at another meeting which included the students’ attorney. The students brought suit to void the suspension and to seek damages from individual board members. The suit was brought against school officials under 42 U.S.C. § 1983, claiming that the expulsion violated their rights to due process. They sought damages and injunctive and declaratory

relief. One of the bases for the students' claim concerned the statutory definition of intoxicating beverages. Under Arkansas law, an intoxicating beverage was defined as one which had alcohol contents exceeding five percent by weight. The school board contended that their own regulation was not intended to be linked to the definition in state statutes or to any technical definition of intoxication. The intent of the school regulation was to prevent the use or possession of a beverage containing any alcohol at school.

The case was first heard in federal district court, which ruled in favor of the school board. The United States Court of Appeals for the Eighth Circuit reversed the decision of the district court, and, on a motion of certiorari, the United States Supreme Court ruled on the case. The Supreme Court found that the students' rights had been violated. After considering common law tradition and public policy as it related to members of a school board serving in a good-faith immunity status, the Court issued an important statement concerning the liability of school board members when the constitutional rights of students are violated. The Court concluded:

Therefore in the specific context of school discipline, we hold that a school board member is not immune from liability for damages...if he knew or should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the students affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student. (Wood v. Strickland, 1975, p. 322)

Justice Powell, in his dissent, contended that the ruling would:

Impose personal liability on a school official who acted sincerely and in the utmost good faith, but who was found, after the fact, to have acted in ignorance...of settled, indisputable law. Or, as the Court also puts it, the school official must be held to a standard of conduct based not only on good faith "but also on knowledge of the basic, unquestioned constitutional rights of his charges." Moreover, ignorance of the law is explicitly equated with "actual malice." This harsh standard, requiring knowledge of what is characterized as "settled, indisputable law," leaves little substance to the doctrine of qualified immunity. The Court's decision appears to rest on an unwarranted assumption as to what lay

school officials know or can know about the law and constitutional rights. These officials will now act at the peril of some judge or jury subsequently finding that a good faith belief as to the applicable law was mistaken and hence actionable.

There are some 20,000 school boards, each with five or more members, and thousands of school superintendents and school principals. Most of the school board members are popularly elected, drawn from the citizenry at large, and possess no unique competency in divining the law. Few cities and counties provide any compensation for service on school boards, and often it is difficult to persuade qualified persons to assume the burdens of this important function in our society. Moreover, even if counsel's advice constitutes a defense, it may safely be assumed that few school boards and school officials have ready access to counsel or indeed have deemed it necessary to consult counsel on the countless decisions that necessarily must be made in the operation of our public schools. In view of today's decision significantly enhancing the possibility of personal liability, one must wonder whether qualified persons will continue in the desired numbers to volunteer for service in public education. (*Wood v. Strickland*, 1975, pp. 308-313)

Ingram (1985) found that as a consequence of *Wood*, school board members can no longer claim ignorance of the law nor immunity based on good faith service. They must know the constitutional provisions for student rights and be prepared to face personal financial loss if they violate those rights. Lichtman (1975) stated that "school officials are answerable for money damages when they violate the rights of children in certain circumstances" (p. 592). Ingram (1985) found that, "Such realization should provide the necessary stimulus for all school officials to exercise care in dealing with disciplinary situations in which the constitutional rights of students are subject to violations" (p. 65).

Gonzales v. Mceuen (1977) was a case decided by the U.S. District Court for the Central District of California dealing with the issue of impartiality on the part of those participating in the hearing of students to be expelled from school. This case was brought by eleven high school students claiming a violation of their rights according to the Civil Rights Act, 42 U.S.C. § 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. The plaintiffs' strongest and most serious

challenge was to the impartiality of the Board. They contended that they were denied their right to an impartial hearing before an independent fact-finder. The basis for this claim is, first, overfamiliarity of the Board with the case; second, the multiple role played by defendants' counsel; and third, the involvement of the Superintendent of the District, Mr. McEuen, with the Board of Trustees during the hearings. The court stated that there was no doubt that a student charged with misconduct has a right to an impartial tribunal. The doubt comes into play as to what an impartial tribunal is. Bias is presumed to exist in situations where the adjudicator has an interest in the outcome of the case, or where he has been the target of personal attack or criticism from the person before him. The decisionmaker may also have had prior involvement in the case which would prevent a fair proceeding. The question before the court was not whether the Board was actually biased, but whether, under the circumstances, there existed probability that the decisionmaker would be tempted to decide the issues with partiality to one party or the other.

There were several facts surrounding this case which would potentially lead one to believe that the hearing was not conducted in an impartial manner. First, it was alleged that the Board had access to the disciplinary records of the plaintiffs twenty to thirty days before the expulsion hearings. It is also alleged that members of the Board met with school officials before the hearings. The court rejected plaintiff's claims that these two occurrences were enough to impune the fairness of the board members at a later hearing date. The court found that a limited combination of investigatory and adjudicatory functions in an administrative body is not necessarily unfair. There must be actual malice or an obvious personal interest in the outcome for the proceeding to come into question.

The issue which presented the greatest threat to impartiality in this proceeding was that the counsel for the plaintiffs were also advisors for the Board. The Board members in this case were the defendants and were potentially subject to personal liability. This clearly gave them a motive for bias. The counsel/advisors claimed that their advisement to the Board was prior to the proceedings, and they explicitly denied advising the Board during the proceedings themselves. The court noted that the Board had no legal expertise and that the transcripts of the proceeding clearly evidenced the difficulty of counsel's dual roles. The court found that the confidential relationship between the attorneys for the District and the members of the Board, reinforced by the advisory role played by the attorneys for the Board, created an unacceptable risk of bias. Since the Board members were subject to personal liability in this situation, the court found that bias could be presumed to exist.

Plaintiffs also contended that Mr. McEuen, the superintendant, was present during much of the proceedings and even acted as secretary of the Board at one point. Mr. McEuen clearly had an interest since he was the one who upheld the disciplinary sanctions against the students which led to the appeal to the board. Mr. McEuen and the Board contended that he did no more than serve cookies and coffee to the Board members and did in no way participate in the deliberations. The court rejected this and concluded that the process utilized by the Board was fundamentally unfair. They emphasized the need to be sure not only that the proceedings are fair, but that they appear to be fair as well.

Carey v. Phipus (1978) was a Supreme Court case which claimed denial of procedural and substantive due process rights. The circumstances of the case involved a

student, Jarius Piphus, being suspended from school by the principal for possession and use of marijuana on campus. The suspension action was effected without affording the student a hearing, statement of charges, opportunity to present his views on the issue, or any other provisions of procedural due process. The case was brought into district court in Illinois under 42 U.S.C. § 1983, seeking damages by the student for his suspension from school without being afforded appropriate procedural due process. There was no denial of the charge of using marijuana on school property. The district court found in favor of the student but failed to award damages. The plaintiffs appealed and the U.S. Court of Appeals for the Seventh Circuit held that the student was entitled to substantial nonpunitive damages, even if his suspension was justified, and even if he did not prove that any other actual injury was caused by the denial of procedural due process.

The U.S. Supreme Court granted certiorari and subsequently reversed the decisions of the lower courts. The U.S. Supreme Court found that the student was entitled to nominal damages since neither party denied that due process rights had been violated. The case was remanded to the district court with instructions to determine if the suspension was justified; and even if it was, the student would be entitled to receive nominal damages, not to exceed one dollar, from the school principal. Ingram (1985) found that, “The aspect of the case impacting on substantive due process rights was the manner in which the suspension was assigned. In the absence of any provision for opportunity to be heard on the charges, the action became arbitrary and unsubstantiated by statements of proof” (p. 111).

Darby v. Schoo (1982), a case decided by the U.S. District Court for the Western District of Michigan, provided an example of the importance of clearly written policy

language as well as accurately followed procedures in applying the policies. In this case two students brought suit when their temporary suspension turned into an expulsion without the required procedural due process required by the school's policy. The students were indefinitely suspended pending completion of an investigation to determine their punishment for vandalizing the school during the weekend of January 10 and 11, 1981, and Monday, January 12, when plaintiff Falkenstern was arrested at his home while in the act of burning stolen school attendance records. The second student was apprehended on January 13. On January 14, following an informal hearing, the principal suspended the two students.

The suit, brought by the students and their parents, claimed that according to the school board's policy on suspensions and expulsions, only the school board could suspend students. The school policy, which appeared to be in accord with *Goss v. Lopez* (1975), was determined by the court to have a semantical flaw in that it did not define the length of a "temporary" suspension. To answer the question of how long a "temporary" suspension may last, as well as what due process rights may attach, the court looked at the *Goss* decision and the facts of the case at hand. Determining that the *Goss* requirement of notice and hearing for suspensions of ten days or less had been fully complied with when the principal met with the students on January 14, the court then turned its attention to the question of the length of the punishment and the facts surrounding the school board's decision. Because the principal's letter to the parents on January 15 had stated that, "the pupils are being placed on indefinite suspension pending completion of an investigation," and his letter of January 19 had indicated the students would be terminated as students at Forest Hills Central High School as of January 19,

1981, the suit claimed the students were never suspended, but rather were expelled. The court agreed with this analysis in as much as the word “indefinite,” in and of itself, was not conclusive since it was clear that the suspension would last only until the official investigation the school officials was completed. Further, the court found that in the January 15 letter, the principal had stated that he would be prepared to discuss his recommendations to the superintendent concerning the matter. The court found that at this point a crucial distinction was manifested in the way the students were disciplined. To compound the problem of semantics, the principal’s statement in the letter to the parents on January 19, stating that the students would be terminated as students at Forest Hills Central High School, was explained by the school as only a recommendation to deny academic credit for the students’ first semester work. The court rejected this because it was clear that on January 19, Fitzpatrick intended that Darby and Falkenstern not return to Forest Hills Central High School for the remainder of the school year.

Upon examination of section 2 (b) of the Forest Hills School Suspension/Expulsion Policy, the court held:

That section contemplates that a student suspended will eventually be returned to his or her regular classroom schedule. Defendants’ exclusionary recommendation did not envision such an occurrence until, at the very earliest, the beginning of the next school year, thereby indication that the ‘suspension’ which was previously imposed was to last for an entire semester and the following summer. (Darby v. Schoo, 1982, p. 302)

Because the notice of the charges to the parents had not included an end date for the suspension and the subsequent letter and efforts of the principal and superintendent to procure alternative educational opportunities had resulted in the suspension becoming “without question an expulsion,” the court held that the school administrators had violated their own policy, which reserved the right of expulsion to the board of education.

Also, the court concluded that the actions had violated the intent of *Goss* in that procedural due process for expulsions required more process than had been provided in this case.

As to the necessary due process procedures required by *Goss* under the circumstances of the case, the court scrutinized the school board policy on suspensions and expulsions and held:

The Forest Hills School Board, in view of *Goss*, has promulgated more formalized hearing requirements for expulsions than for temporary suspensions....Among the requirements enumerated are: (1) a student and his parents must be informed in writing of the alleged violation of the suspension/expulsion policy and of the fact that expulsion is the discipline to be imposed....No written notice was provided in this case. (*Darby v. Schoo*, 1982, p. 305)

Therefore, upon the decision that the students would not return to the high school, the defendants should have limited the period of suspension and/or taken steps to request a board hearing to determine the punishment and/or end the suspension and request such a hearing. Since neither was done, the court concluded that the students' due process rights were violated.

Boynton v. Casey (1982) was a case heard in the U.S. District Court in Maine dealing with several issues relating to the application of procedural due process rights. In this case, a student and his parents brought a civil rights suit against school officials claiming that his due process rights had been denied in connection with action of suspension from school for using marijuana on school premises. The suit claimed that the complainant's procedural due process rights were violated in the following five ways:

1. The student did not receive Miranda warning prior to being questioned by school officials.

2. The student nor his parents were notified of a right to have parents present during questioning.
3. Proceedings which resulted in the student being suspended from school failed to meet due process requirements.
4. School officials would not reduce the penalty imposed on the student in recognition of his participation in a drug abuse program.
5. Placing the student on a probation status when he was re-admitted to school deprived him of a property interest.

Four counts related to the above points were included in the suit entered by the plaintiff. The court considered each count individually at length and provided a summary of all allegations. Count one claimed that the plaintiff, Daniel Boynton, while a student at Mattanawcook Academy, was questioned at length on December 11, 1979, concerning his use of marijuana on campus. The questioning was conducted by the principal and vice-principal. While being questioned for more than an hour, Boynton was not permitted to leave the room and was not advised of his right not to answer questions or of his right to have his parents present during the questioning session. Boynton admitted using marijuana at school and was suspended by the principal immediately following the session. Count one further alleged that the actions of the school administrators were intended to deprive Boynton of due process rights guaranteed under the Fourteenth Amendment to the Constitution of the United States. *Goss v. Lopez* (1975) was cited as the basis of the claim that procedural due process rights had been denied. The court found that the facts presented in the case contradicted the allegations of the plaintiff. He was given prior notice of charges and had ample opportunity to be heard during the

questioning session. The court concluded that the thrust of the claim by the plaintiff that procedural due process rights had been denied was based on the view that the questioning session in a restrictive setting constituted a custodial interrogation which was not preceded by a Miranda warning. The plaintiff's claim to a prior warning of the right to remain silent was based on *Caldwell v. Cannady* (1972), a ruling by the U.S. District Court for the Northern District of Texas. However, the court pointed out that in the *Caldwell v. Cannady* case, a student had refused to testify before a school board concerning the selling of drugs at school, and such refusal to testify could not be treated as an admission of guilt. Neither the plaintiff nor the court could find any authority which would extend the Miranda rule to interrogations conducted by school officials in the process of enforcing school rules.

Count two of the plaintiff's charges alleged that in the first meeting of the defendant with the school committee, which was to consider the expulsion of Boynton, the parents were present with their son and informed the school committee that he had participated in a substance abuse program prior to the suspension. After the meeting, the school committee voted to expel Boynton without stating a specific reason for the expulsion. Two weeks later the school committee met again with the plaintiffs and voted to reaffirm the expulsion without stating a specific reason. The count alleged that the committee meetings violated the constitutional rights of the plaintiff. The court's response to count two implied an interpretation that the plaintiff was claiming a violation of substantive due process rights. Although the plaintiff did not specify the constitutional right involved, the implication was that the decision for expulsion was too severe in view of the fact that Boynton had been attending the substance abuse meetings. The plaintiffs

seemed to suggest that the information they presented to the school committee should serve as conclusive evidence that Boynton had fully repented and would entitle him to immediate re-admission to school. The court did not agree with that conclusion.

Count three claimed that the actions of the school committee were arbitrary, improper, and an abuse of the authority vested in the committee by state law. The court was unsure whether count three was a further specification of the substantive due process violation as contained in count two or if it was intended as a violation of state law. In any case, the court found no evidence that the action of the school committee was arbitrary.

Finally, count four alleged that Boynton's procedural due process rights were violated when he was placed on probation status after being readmitted to school without advance notice or opportunity to be heard. The allegation seemed to imply that Boynton was deprived of a property right as a result of the decision imposing probation. The court recognized that education is a property right protected by the Due Process Clause of the Fourteenth Amendment as indicated in *Goss v. Lopez* (1975). However, the court also pointed out that the property interest does not apply to every facet of the educational program and that the probation imposed in this instance was clearly an alleviation of the more severe sanctions of suspension and expulsion previously imposed. In its concluding statement on this case, the district court stated a strong disapproval of such uninformed pleadings. It pointed out that the complaint in the case contained few specific factual allegations and was only marginally worthy of judicial consideration.

McClain v. Lafayette City Board of Education (1982) was a Fifth Circuit Court of Appeals case that highlighted the need for school administrators to be certain that the procedures followed in the issuing of disciplinary suspensions are fundamentally sound

from a legal point of view. This case outlined the need to make a distinction between short term suspensions of ten days or less, as outlined in *Goss v. Lopez* (1975), and longer term removals that would require additional due process provisions be afforded the students.

The case involved a student who received a long-term suspension for the remainder of the school year for having a switchblade knife in his possession at school. The rule forbidding possession of such a knife was clearly stated in the school handbook and was read aloud to all students during an assembly. At the time, under the state law of Mississippi, possession of a switchblade knife was a misdemeanor, and punishment for the first conviction was a fine, imprisonment in the county jail, or both (Mississippi Code § 97-37-1). The student involved in this case, Michael McClain, carried the knife with him to school on September 23, 1980. One of his teachers saw the knife and took him to the principal's office. When questioned about the incident, Michael admitted that he had the knife and also stated that he knew it was a violation of school rules. The excuse offered by Michael was that he had found the knife, forgot that he had it in his pocket, and brought it to school without realizing he had it. Michael was sent back to class and told by the principal later the same day to bring his mother with him to school the following day. The next day the student and his mother met with the principal and were informed that Michael would be placed on indefinite suspension for possession of the knife. The principal gave the mother a letter stating the action taken and indicating that she could attend a meeting of the Lafayette County School Board on September 30, 1980, to request Michael's readmission to classes. The student and his mother attended the school board meeting where the principal and the teacher who made the initial report

related their account of the incident which led to the suspension. Taped recordings of statements taken from other students who knew about Michael having the knife were played at the meeting. Michael and Mrs. McClain were given the opportunity to question anyone present and to offer any explanation of any facts or circumstances which might impact on the board's decision regarding Michael's readmission to classes. The board considered the testimony given, reviewed the provisions of the school rules as contained in the handbook, and voted to change Michael's indefinite suspension to a suspension for the rest of the year. Mrs. McClain was notified of the decision immediately after the board meeting.

Mrs. McClain filed suit seeking injunctive relief against the board's action. The suit was heard in district court, which initially held an evidentiary hearing. A finding of facts was filed and the request for injunctive relief was denied. In appealing the case, Mrs. McClain contended that Michael's due process rights were violated when he was first suspended for an indefinite period without a hearing. Their contention was that the suspension announced by the principal was, in fact, a long-term suspension and that the meeting of September 24 in the principal's office was not an adequate hearing. The district judge, however, had already noted that the indefinite suspension lasted for six days and that this would amount to a temporary suspension according to (*Goss v. Lopez*, 1975). Plaintiffs further contended that even if the principal's suspension was considered a short-term suspension, Michael's procedural due process rights were violated during the school board meeting. They claimed that he was not adequately advised of the type of hearing and the charges, the names of his accusers and a summary of their expected testimonies, the right to be represented by counsel, or the right to confront and cross-

examine the witnesses. In an effort to establish a legitimate claim that the student's due process rights had been violated, counsel for the McClains cited *Goss* in stating:

The state is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by the Clause. (*Goss v. Lopez*, 1975, p. 574)

They further argued that the U.S. Supreme Court had cautioned that, "Suspensions or expulsions for the remainder of the school year, or permanently, may require more formal procedures" (*Goss v. Lopez*, 1975, p. 584). The evidence indicated that the requirements established by *Goss* had been met. Michael admitted having the knife when he was first taken to the principal. At no time, even during the hearing in district court, did Michael deny the charges. His only defense was that he said he had forgotten that he had the knife with him at school.

The decision point in this case was that the student had given up an opportunity to present his side of the issue, including a denial of the charges, by admitting the offense up front. He and his mother had opportunity to hear the charges and to respond. There was never a time when anyone doubted that Michael was guilty of bringing the knife to school. The appeals court could find nothing fundamentally wrong, unfair, or legally prejudicial in the proceedings, and thus affirmed the decision of the district court in denying injunctive relief to the plaintiff.

McClain v. Lafayette (1982) provided an example for school administrators of how a relatively open and shut case has the potential to become a complicated legal problem for a school system. It highlights the necessity for school administrators to be certain that the procedures followed in making disciplinary suspensions are

fundamentally sound from a legal point of view. Many of the fine points of constitutional law are open to a wide range of interpretations (Ingram, 1985).

Bahr v. Jenkins (1982), a case heard by the U.S. District Court for the Eastern District of Kentucky, involved the suspension of a student for refusing to be searched. This case highlights the need for plaintiffs to seek remedy through school system and state channels. It also makes clear that school administrators can expect to be supported by the federal judiciary if they have adequate policies justly applied. The facts found in this case involved an incident which occurred on May 4, 1982, in which the plaintiff, Sheila Bahr, took a box of small firecrackers, called “party poppers” to school. She gave several of these firecrackers to her friends. At least three of these devices were ignited in a classroom. Some of the students, not including the plaintiff, were sent to the administrative office where it was determined that Miss Bahr had supplied the “poppers.” When Miss Bahr was called to the office, she denied any involvement with the firecrackers and refused to comply with an order to submit her purse for a search. The school principal, Mr. James Jenkins, informed the student that she would be suspended from school for five days for refusing to allow her purse to be searched. She was further advised that if she submitted to the search the disciplinary consequences would be less severe, even firecrackers were found. The principal called the student’s mother and informed her of the problem. The mother supported her daughter’s refusal to submit the purse for search. The student-plaintiff was suspended for five days on the basis of refusing to allow her purse to be searched. A condition of the suspension was that the plaintiff would not be permitted to make up schoolwork missed during the five days of suspension. After being officially notified of the suspension, the plaintiff did surrender to

the principal one firecracker and an empty box, which had contained the firecrackers. Furthermore, she admitted that these had been in her purse.

The student filed suit in the Eastern District of Kentucky. An unusual feature of the case was the judge's decision to render a verbal opinion. Since the student had been placed on a short-term suspension, a delayed decision could have made the issue moot if it came after the period of suspension had ended. The decision of Judge Bertelsman held that the order for a search of the student's purse was not warrantless, as claimed, but fully justified to determine if the plaintiff was the one responsible for bringing the firecrackers into the school. The school authorities were acting on a basis of reasonable suspicion as other students had implicated the plaintiff. The judge further held that the five-day suspension was appropriate because it had a direct and rational relationship to the severity of the offense. Judge Bertelsman presented his personal opinion that a case such as the one before him should never have come into federal court, but rather should have been resolved through a cooperative effort between parents, students, and the school officials. He insisted that the proper way to view the issues in cases involving the federal judiciary with state-created agencies was by using common sense. He pointed out that, although students do not lose their citizenship rights while attending school, neither should they assume that the United States Constitution gives them the right to show disregard and disrespect to the rules and regulations of the school, or to the teachers and administrators who are paid to carry out the educational program.

One of the primary points made by the judge in his decision was the essential need for a well-defined system of discipline in all institutions, especially in schools.

Citing the U.S. District Court for the Eastern District of Kentucky decision in *Petrey v.*

Flaughner (1981), which quoted Hebrews 12:5-11, Judge Bartelsman stated:

What son is there whom his father does not discipline? If you are left without discipline in which all have participated, then you are illegitimate children and not sons....For the moment all discipline seems painful rather than pleasant; later it yields the peaceful fruit of righteousness to those who have been trained by it. (Petrey v. Flaughner, 1981, p. 1091)

The order of the court was that the claim of the plaintiff was unfounded and was dismissed with prejudice. The defendants were assigned to recover the costs from the plaintiffs.

Rose v. Nashua Bd.. of Education (1982) was a First Circuit U.S. Court of Appeals case addressing the suspension of students from riding the school bus. Students had committed acts of vandalism while riding the bus. Since the driver's attention was directed toward the road, the students responsible could not be identified. After several hearings, the Board of Education adopted a policy for continued acts of vandalism. No procedural safeguards were outlined. Several routes were suspended for five days, which amounted to a short term suspension for students. Parents brought suit claiming the innocence of their children. They asserted that the board policy which allowed for mass punishment was a violation of the Fourteenth Amendment. The parents argued that since New Hampshire law provided bus transportation, the students had a constitutional right to it. According to Rossow (1999), the court rejected the arguments based on the following:

1. The court saw no property or liberty interest at stake in being denied bus transportation.
2. The minimums required by *Goss* were meant for deprivation of educational opportunity. The issue did not go beyond the inconvenience for parents having to provide rides for five days. (p. 37)

Lamb v. Panhandle Community Unit School District No.2 (1987) was a case reaching the Seventh Circuit Court of Appeals as a result of the dismissal of a civil rights suit brought by Michael Lamb against the Panhandle Community School District No. 2. The allegations contained in the complaint were straightforward. Michael Lamb was a senior in high school. At the end of the school year, on a senior class outing, Lamb admitted that he had been drinking from a cup containing whiskey. The principal suspended Lamb for the remaining three days of the school year. Consequently, Lamb missed his final exams and was unable to graduate because he did not receive passing grades in three classes. A second student, Robert Pennock, also admitted to drinking alcohol on the school outing. He too was suspended for three days, and was not permitted to take his final exams. The principal, however, did permit both students to take the “Flag and Declaration of Independence” test, which was required to graduate from high school. Both Lamb and Pennock passed the test. Unlike Lamb, Pennock was able to graduate because he was also passing all of his classes. On June 9, 1986, about two weeks after the suspension, the school board held a hearing to consider Lamb’s suspension. At the hearing, Lamb and his parents were represented by counsel, and permitted to present their case. The board rejected Lamb’s appeal, and upheld his suspension. Lamb then filed a five-count complaint in district court alleging various constitutional violations surrounding the suspension proceedings. Three of these are relevant to due process proceedings and will be treated here.

Count one alleged that because Lamb was unable to graduate as a result of his suspension, it actually amounted to an expulsion and thus required that additional process be afforded. The court noted, however, that Lamb had not returned to school and instead

was studying for a general education diploma. The court found that the informal discussion that took place during Lamb's meeting with the principal satisfied the due process requirements. Since Pennock received the same punishment and was able to graduate it stands to reason that Lamb could have graduated also. Therefore, the decision by the board was not tantamount to expulsion.

Count two of Lamb's complaint alleged a due process violation stemming from the denial of access to school services without a minimal oral hearing as required by *Goss v. Lopez* (1975). In his complaint, Lamb acknowledged that the principal and the board had complied with the informal notice and hearing requirements contemplated by *Goss*. The principal and Lamb informally discussed the incident shortly after it occurred. At that time, the principal asked Lamb to admit that he had been drinking. Lamb then admitted that the cup contained alcohol. Lamb therefore knew what infraction of the school's rules he was accused of committing, and the basis for the accusation. Furthermore, Lamb was given an opportunity to present his version of the facts. Because Lamb was put on notice and given a hearing before he was suspended from school, the defendants complied with the guidelines set forth in *Goss v. Lopez* (1975).

Count three of the complaint alleged constitutional defects in the June 9 board hearing because the Board's attorneys, the principal, and the superintendent performed dual roles in the hearing process, and neither Lamb nor his attorney were permitted to participate in the Board's closed-session deliberations. The Board's attorney served as prosecutor in the hearing, and also advised the board during its closed session deliberations. Moreover, the principal and superintendent, both of whom testified against Lamb, went into the Board's closed-session deliberations from which Lamb and his

counsel were excluded. The district court held that under these circumstances, no constitutional violations existed. However, Lamb did not allege any actual bias, only that he and his counsel had no idea what was transpiring in the closed door session. The court noted that the requirement is that the student have an opportunity to present his or her case to the Board, not that they be present during the Board's deliberations. Any other arrangement would render meaningless closed-session deliberations. The court found in favor of the Board on this count.

The court concluded by stating:

The consequence of Michael Lamb's suspension, his failure to graduate, may have been harsh, although his academic performance might have precluded his graduation in any event. We agree with the district court that "a different disposition...might have been worked out because of the timing." "Nonetheless, it is not the role of the federal courts to set aside the decisions of school administrators which the court may view as lacking basis in wisdom or compassion" (Wood v. Strickland, 1975, p. 1003). Therefore, we conclude that the district court was correct in dismissing the complaint because it failed to state a claim. (Lamb v. Panhandle Community Unit School District No. 2, 1987, p. 11)

Smith v. Karen Severn and North Boone Community School District 200 (1997)

was a Seventh Circuit Court of Appeals case that upheld the notion that administrators who adhere to their school system discipline policies can expect to be supported by the courts. It also highlighted the frustration felt by some federal courts at having to play a role in matters deemed to be within the jurisdictions of school systems and state agencies.

Brandon Smith was a senior at North Boone High School in Boone County, Illinois. In 1994 he and some friends wished to participate in the school's annual lip sync contest. Due to Brandon's behavior at the 1993 lip sync contest, during which he acted lewdly, there was an advance sign up for the 1994 contest. Brandon and some of his classmates arranged for another group to sign up to do a performance of the musical

“Grease.” When this performance began, Brandon and his friends would come out disguised by face make-up, body paint, and torn clothing, chasing the other group from the stage. At this point they would start their own performance. The plan was carried out and immediately after taking the stage, Brandon and his friends began their lip sync rendition of “Angel of Death,” originally performed by the group “Slayer.” In the performance, Brandon and his group made a mock attack on a woman and her child. After the woman was knocked to the ground, Brandon produced a chain saw, which he lifted to his groin area in simulation of an erect penis. He then approached the woman and child and pretended to mutilate the woman with the chain saw while his friends joined in beating her with their guitars. Teachers tried to stop the performance by drawing the curtains, but Brandon just came around the curtain. He then produced a live boa constrictor and pretended he was going to throw the snake into the assembly audience of students, parents, and faculty. Prior to Brandon’s interference, Barb Fedderson, the faculty member responsible for the lip sync contest, had warned Brandon not to do anything that he would regret.

The assembly took place on Friday, October 14. North Boone school principal Karen Severn contacted Brandon’s mother, Cheryl Smith, on Monday, October 17, to set up a meeting for Tuesday, October 18. During this meeting, a videotape of the performance was viewed and Brandon and Mrs. Smith were given the opportunity to ask questions and to discuss their version of the incident. At the conclusion of the meeting, Severn informed the Smiths that Brandon would be issued a three-day suspension for insubordinate conduct. He had failed to sign up to perform or to heed Mrs. Fedderson’s warning. Beyond the verbal notice of suspension and articulation of the basis for the action, Severn

did not, at that time, give Mrs. Smith or Brandon any written notice that Brandon was being suspended or that Brandon could appeal his suspension. Following the October 18 meeting, Severn sent Mrs. Smith a notice of suspension. The notice stated that Brandon would be suspended on October 18, 19, and 20. The reasons listed were (1) disorderly conduct, (2) weapons possession (the chainsaw), (3) insubordination, and (4) gang activity (specified as a display of gang symbols). The notice had a heading titled “Hearing Concerning This Suspension.” Beneath this heading, the notice stated that a parent could request review of any suspension before the board of education by contacting Severn. Mrs. Smith responded that she would indeed appeal to the Board based on the fact that the proper procedure was not followed according to the due process and appeal process outlined in the school system disciplinary code.

The Board subsequently upheld Severn and Mrs. Smith launched a court appeal, which eventually landed in the U.S. Court of Appeals for the Seventh Circuit. The issue impacting on due process was whether a genuine issue of material fact existed as to whether Severn actually told Smith and her son Brandon during their October 18, 1994 meeting that one reason for Brandon’s suspension was for his insubordinate conduct at the lip sync contest. In both her school board hearing testimony and her affidavit supporting the motion for summary judgment, Severn stated that she:

1. Disqualified and verbally reprimanded Brandon one year earlier for his performance at the 1993 lip sync contest due to conduct that was, “beyond the bounds of good taste.”

2. Brought Mrs. Fedderson to the October 18 meeting to reiterate the fact that Brandon was told not to do anything he would regret just moments prior to taking the stage.
3. Played the videotape of Brandon's lip sync performance.
4. Told Brandon that he was going to be suspended due to his conduct at the lip sync contest.

Smith denied being informed that Brandon was being suspended for anything at the original meeting with Severn. This contradiction, according to Smith, amounted to a genuine issue of material fact.

The court found that whether or not Severn actually used the words "insubordinate conduct" in her explanation of her decision to suspend Brandon, it would not be enough to change the outcome. This is because, taken as a whole, Severn had amply communicated to Smith that Brandon's suspension was based on insubordination.

On the due process implications, the court stated the following:

In the halcyon days of the 1970's the case of *Goss v. Lopez*, 419 U.S. 565, 42 L. Ed. 2d 725, 95 S. Ct. 729 (1975), provided the landmark decision governing procedural due process claims in the context of high school suspensions. In *Goss*, the Court held that students have both property and liberty interests in attending state established and state-maintained school systems. *See id.* at 573-76. Furthermore, the Court took great pains to determine the minimal process due a student who is suspended for ten days or less. As has been acknowledged in other due process contexts, the Court recognized that a deprivation of life, liberty or property requires, at the very least, prior notice and an opportunity to be heard in a manner appropriate to the nature of the case. *See id.* at 579 (citing *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 313, 94 L. Ed. 865, 70 S. Ct. 652 (1950)). [**24] Specifically, in the case of a possible suspension of 10 days or less, due process requires that the "student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." (*Goss v. Lopez* 419 U.S. at 581).

As for the timing of the notice, no delay is necessary between the time notice is given and the time of the discussion with the student. *Goss*, 419 U.S. at

582. In being given an opportunity to explain his side of the facts at the discussion, the student must "first be told what he is accused of doing and what the basis of his accusation is." Furthermore, because these discussions often occur immediately after the student's misconduct, "it follows that as a general rule notice and hearing should precede removal of the student from school." The Court also noted however, that there are some situations (*i.e.* those posing continuing danger to persons or property) where prior notice and hearing cannot be insisted upon.

At the October 18 meeting, Severn notified Mrs. Smith and Brandon that Brandon was being suspended for his insubordinate conduct. His name was not on the lip sync sign-up list, Fedderson had warned Brandon not to participate in the lip sync if he intended to violate school rules. Additionally, Severn played the videotape of Brandon's lip sync performance and then told Mrs. Smith and Brandon that he was being suspended for his actions. Finally, Severn then asked for, and received, Mrs. Smith's and Brandon's version of the incident.

The notice and hearing procedures undertaken by Severn comported with the due process requirements set forth in *Goss*. The disciplinary code, a copy of which Smith possessed and which had been discussed with all students at the start of the school year, defines insubordination as "refusal to obey a school rule, regulation, or reasonable request of a teacher or school official." Based on this definition, of which Brandon had been apprised via the disciplinary code, combined with Fedderson's statement to Brandon "don't do anything you'll regret" and Severn's playing of the videotape, we believe that both Mrs. Smith and Brandon had notice of what Brandon had done and what violation of the disciplinary code had resulted. Furthermore, Brandon was given a pre-suspension hearing in which Mrs. Smith and Brandon were allowed to give their version of the event. As *Goss* indicates, this is all procedural due process requires in the school disciplinary context where, as here, the discipline involved is a suspension of 10 days or less.

This suspension procedure was not negated or undermined by Severn's subsequent written notice that included additional charges and reasons for suspension. Due process is satisfied as long as Mrs. Smith and Brandon were given pre-suspension notice of a proper charge and the conduct that supported that charge. The fact that Severn later identified additional charges under the disciplinary code is of no consequence because she had previously identified at least one proper charge (insubordination) upon which Brandon's suspension was invoked. Nor does it matter that these additional charges were considered by the school board in upholding Brandon's suspension. Due process does not require review by a school board. It only requires the initial pre-suspension notice, which we have already determined that Severn provided. The completely gratuitous review by the school board neither is required by due process nor gives rise to any due process rights. Even if it did, due process was complied with as Mrs. Smith and Brandon received prior written notice of the additional charges and a hearing on those charges, including participation by their attorney. (*Smith v. Karen Severn and North Boone Community School District* 200, 1997, pp. 23-27)

Given the facts presented in this case, the court found it to be inconceivable that a claim could be made that Brandon was not afforded his constitutional right of due process. He was put on notice of his conduct that was deemed to be improper, was presented with the evidence against him, and had an opportunity to tell his side of the story. The court found that the requirements of *Goss* had been complied with. According to the court, there could have been no confusion that Brandon's deliberately outrageous conduct prompted the school to take disciplinary action. The argument that Brandon was not on notice as to what he had done to violate school policy was found to be plainly frivolous. Moreover, he had so distinguished himself by his conduct that there could be no rational argument that he was denied his equal protection rights. The court proceeded to state that the litigation at hand, based on the wholly unremarkable disciplinary action of a modest suspension which was preceded by entirely appropriate constitutional safeguards, had required the extensive work of a magistrate judge, a district judge, and three court of appeals judges. This was in addition to the labors of the lawyers involved. The court found that something had gone badly wrong when the scarce judicial resources of the federal courts were brought to bear on a case which had so little merit as this one. "This is the type of case that trivializes the work of the courts and the Constitution we seek to interpret. Moreover, these cases divert judicial energy from litigants who have serious and valid claims" (Smith v. Karen Severn and North Boone Community School District 200, 1997, p. 30).

McGuinness v. City of Beavercreek (1999) was a Sixth Circuit Court of Appeals ruling which involved a student, Scott McGuinness, being suspended from school for ten days and having criminal charges brought against him. He was accused of possessing and

selling illegal knives on school grounds. Susan McGuinness, Scott's mother, brought suit claiming that Scott's Fourteenth Amendment rights to due process had been violated and that the defendants' conduct caused Scott and herself to suffer extreme emotional distress. Their claim was that it was a malicious prosecution claim. The defendants included representatives of the school system and of the police department. On March 18, 1998, the district court ruled for the defendants. This decision was appealed and the appeals court found that there was probable cause to support the prosecution and that Scott was clearly guilty of several of the charges brought against him. Scott's claim that his procedural due process rights had been violated was rejected on the grounds that he was afforded adequate notice and an opportunity to be heard before his suspension from school. The plaintiffs argued that the defendants had violated substantive due process by sharing student information with the police without their consent. The court found that this cooperation with the police investigation was "not so shocking that it rose to the level of a substantive due process violation" (McGuinness v. City of Beavercreek, 1999, p. 5).

West v. Derby Unified School District No. 260 (2000) was a Tenth Circuit Court of Appeals decision which involved a seventh grade student, T.W., being suspended by Derby Middle School's assistant principal, Brad Keirns, for three days during the 1997-98 academic year after T.W. drew a Confederate flag on a piece of paper during math class. Drawing of Confederate flags was clearly against school policy as was explained to T.W. in the school's discipline policy. T.W.'s father filed suit under 42 U.S.C. §1983, alleging that the school district's policy violated his son's Fourteenth Amendment right to due process, among other complaints. The district court found that T.W. had received the process due him because, before deciding to suspend T.W., the assistant principal

informed T.W. of the basis for the charge against him and gave him an opportunity to present his side of events, which T.W. did in writing. On a point potentially impacting on substantive due process the court rejected T.W.'s claim that the district's policy was overbroad. The court stated that the district's policy was not unconstitutionally overbroad as applied by school administrators, because the policy permits the administrator to consider whether the student's conduct was willful, whether the student displayed the symbol in some manner, and whether the conduct had the effect of creating ill will. Additionally, the district did not interpret the policy to prohibit the use or possession of such symbols for legitimate educational purposes.

As to a claim by T.W. that the policy was void for vagueness, the court held that the policy provided T.W. fair warning of his prohibited conduct. The appellate court first addressed T.W.'s claim that by denying him any meaningful opportunity to contest whether he actually harassed or intimidated any student or intended to do so, the school district denied T.W. his right to due process as guaranteed by the Fourteenth Amendment. They stated that it was not in dispute whether students faced with the possibility of suspension from public school are entitled to due process. The Supreme Court put that issue to rest in *Goss v. Lopez* (1975). The question was, what process is due to a student faced with the possibility of a three-day suspension from school. *Goss* resolved that issue as well. As to public school suspensions of ten days or less the *Goss* opinion stated:

Due process requires that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. . . . There need be no delay between the time "notice" is given and the time of the hearing. In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred. We hold only that, in being given an opportunity to explain his version of the facts at the discussion, the

student first be told what he is accused of doing and what the basis of the accusation is. (*Goss v. Lopez*, 1975, pp. 581-582)

The assistant principal met this standard when he gave T.W. notice of the charges against him and an opportunity to present his side of events before deciding to suspend him. The assistant principal determined that T.W. had willfully violated the school district's harassment and intimidation policy, which T.W. knew prohibited his drawing of the Confederate flag as per his signature of the school discipline policy which explicitly stated such. T.W. instead argued that he failed to receive any "meaningful" hearing on the matter because the assistant principal never found that T.W. intended to harass or intimidate anyone by drawing the Confederate flag. On this point the court found:

T.W.'s argument is meritless. *Goss* sets forth the requirements of a "meaningful" hearing, which is exactly what T.W. received, in connection with school suspensions of ten day or less. T.W. in effect asks us to impose an intent element upon the school district's policy similar to that of a criminal statute. Yet public school districts are not courts of law and their disciplinary policies and procedures do not equate with penal codes. To impose in "countless" disciplinary suspensions a requirement that the suspect student possess a mens rea akin to criminal intent might well require trial-like procedures and proof which could "overwhelm administrative facilities in many places and by diverting resources, cost more than it would save in educational effectiveness." (*Goss v. Lopez*, 1975, p.583)

This is not to say that educators should ignore a student's intentions in addressing disciplinary matters. But "maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship" (*New Jersey v. T. L. O.*, 469 U.S. 325, 340, 83 L. Ed. 2d 720, 105 S. Ct. 733, 1985). In this case, the district court found that after T.W. received notice and an opportunity to be heard, the assistant principal suspended him for "knowingly and intentionally" violating a school district policy which plainly prohibited drawing the Confederate flag-a policy with which T.W. was well familiar. That finding is not clearly erroneous, but rather is supported by the overwhelming weight of the evidence. We conclude that T.W. received all the process due him under the Fourteenth Amendment. (*West v. Derby Unified School District No. 260*, 2000, p. 14)

Wayne v. Shadowden (2001), a Sixth Circuit Court of Appeals decision, dealt with the issue of due process as related to in-school-suspension programs. Nick Wayne, a

student at Benton Middle School, had exhibited troublesome behavior starting on April 14, 1995, when he chastised a cafeteria worker because he deemed his spaghetti to be unacceptably cold and lumpy. This resulted in a public confrontation between Nick and the principal of the school, Mr. Powell. Nick's behavior during this confrontation was characterized by Powell as "disruptive, inattentive, disrespectful, sarcastic, and insubordinate." That incident, coupled with reports from Nick's teachers chronicling a pattern of classroom misbehavior, and preying on weaker students by verbal taunts and physical assaults, earned him a ten-day stint in Benton's "In-School-Suspension Classroom Program" (ISSC Program). According to the Board, this program was implemented to meet the unique supervisory and disciplinary requirements of the rising number of behaviorally deviant pupils in their building. According to the court, this program did not represent formal "suspension" as the student was still at school and doing academic work provided by the school throughout the duration of the student's placement in the ISSC program. A certified teacher supervised the program and the student's actual teachers were in regular contact with this teacher. It was only a suspension in the sense that the student was removed from his ordinary classes.

According to Board policy, a finding by the principal that a student had breached an official written school policy could trigger an assignment to the ISSC program. There was no limit stated on the amount of days that could be assigned, but as a matter of regular policy and practice, any student's assignment to the ISSC program for more than 20 days was reviewed by the District's superintendent. Nick was placed in the ISSC program for a second time in 1995 for writing an obscene note to a female classmate. This placement was for three days and was not contested by his parents as the earlier ten-

day-suspension had not been. Their only complaint was related to their concern that Nick had failed a literature course as a result of the placements. However, there was concrete evidence that Nick would have failed the course in any event. In addition, Nick's father argued that his son's behavior was simply acceptable adolescent behavior and that the use of profanity and hurtful language to fellow female classmates was protected by the First Amendment. He continued to assert that the principal held a personal grudge against his son. On January 24 and January 25, 1996, Nick wrote a second and third note to the same female student. These notes were far more graphic and extreme in their attempt to describe a sexual assault to be perpetrated on the girl by Nick. The girl brought these to the attention of the counselor, who in turn took them to the principal. Upon investigation, Principal Powell was able to factually establish that a student named Lance Warmath had physically written the notes and that Nick had delivered them. It became obvious during the course of the investigation that Lance had actually written the letters at the behest of Nick. However, Principal Powell chose only to punish Nick based on the fact that Nick had delivered the notes with full knowledge of the hurtful contents contained within. The court found that Nick had calculated to evade responsibility and punishment for his literary acts by creating technical defenses in the event that he was accused of harassing the female student, namely, that the first of his January 1996 notes referenced him in the third person, and was not inscribed in his handwriting, thus deflecting suspicion of authorship of both notes away from himself. However, the deceptive ploy failed in its larger purpose, because the principal punished Nick only for the mischief to which he had confessed, namely the delivery to the female student of the two obscene notes. Prior to determining a punishment for Nick, Powell, by phone, personally invited Nick's father to

meet with him at the school to discuss the incidents. Mr. Wayne's argument matched that of his son in that the handwriting was not Nick's, thus he was not responsible. Powell advised Mr. Wayne that Nick would be disciplined for the delivery of the notes in the form of a ten-day-suspension from school.

On January 30, 1996, Principal Powell met with the superintendent of schools, Mr. Shadowen, to discuss Nick's future at Benton Middle School. It was decided that upon the February 13, 1996 expiration of Nick's ten-day-suspension, he would be assigned to the ISSC program until the close of the school term in late May 1996. However, Nick would be afforded a "fresh start" at the beginning of the next school year. Mr. Wayne then requested a meeting with Shadowen, Powell, and School Board Chairman, Keith Travis, for February 7, 1996. Mr. Waynes did not appear at this meeting. On February 7, 1996, Shadowen sent the Waynes a letter outlining the course of punishment. Nick Wayne was enrolled at a nearby parochial school at the end of the ten-day- suspension. On January 7, 1997, the Waynes initiated civil rights litigation under 42 U.S.C. § 1983 against Powell and Shadowen, as well as each individual member of the school board. They did not argue for Nick's reenrollment in the school, only for monetary damages. The Waynes' complaint alleged that the defendants, as state actors, had deprived Nick of his equal protection and due process rights safeguarded by the Fourteenth Amendment to the United States Constitution.

In any action under section 1983, the plaintiff must prove that 1) he or she has been deprived of a right secured by the United States constitution of laws, 2) that the defendants who allegedly caused that deprivation acted under color of state law and 3) that the deprivation occurred without due process of law. (O'Brien v. City of Grand Rapids, 1994, pp. 990, 995)

The court found that, “Assuming, without deciding, that “official capacity” claims could have been asserted against the defendants, summary dismissal of those claims, if asserted, would have been appropriate, because, as illustrated herein, the defendants had committed no constitutional tort against Nick which could be attributed to their employer” (Wayne v. Shadowden, 2001, p. 24).

On the plaintiffs’ claim that Nick’s due process rights were violated, the court found that their argument was flawed. Nick did have a property right to “a proper and adequate education” according to Kentucky law, and a liberty interest in his reputation and good name. These rights could not be abridged by the defendants without adherence to state-formulated procedures. “Also, those official procedures were required to satisfy the minimum judicially-fashioned federal due process standard of notice and an opportunity to be heard prior to an official deprivation of a state-created property or liberty interest” (Wayne v. Shadowden, 2001, p. 35). The court found that Kentucky law explicitly made provision for school boards to formulate codes of acceptable behavior and discipline. These codes were to be enforceable by local school principals and carry consequences proportional to the offense. One of the offenses which is punishable under Kentucky law is “willful disobedience or defiance of the authority of the teachers or administrators, use of profanity or vulgarity, abuse of other students, the threat of force or violence, or other incorrigible bad conduct on school property (Kentucky Rev. Stat. Ann. §158.150(1)(a)). The code makes provisions for due process to be followed in situations where a student is to be suspended from school. These include oral or written notice of the charges, an explanation of the evidence of the charges, and an opportunity for the student to present his own version of the facts related to the charges. The court found that

Principal Powell adhered to all of the above in his handling of Nick's disciplinary situations. There was no dispute from the plaintiffs that Nick violated district rules by delivering the notes and admitted doing so. Principal Powell had conducted interviews with the alleged female victim, the perpetrator, his accomplice, and other students reported to have knowledge of the incident. The court found that, "At that point, Powell had conducted all of the predicate investigation which constitutional due process required prior to suspending Nick for ten days" (Wayne v. Shadowden, 2001, p. 39). Had Nick denied the charges, it would have been necessary to afford him an informal opportunity to tell his side of the story (Goss v. Lopez, 1975, pp. 580-582).

Even if Powell had based his suspension decision upon a conclusion that Nick had in fact composed the two lewd January, 1996 letters to the female student, Nick nonetheless still had received all the "process" to which he would have been "due." Powell had duly investigated the charge by interviewing the accuser, Nick's alleged accomplice (Lance), and Nick himself. Powell confronted Nick with the accusers' accusations and Lance's account, and gave Nick an opportunity to tell his side of the story. Lance's claim that he had merely transcribed Nick's dictation to create the first of the January, 1996 letters, was highly credible, given Nick's known authorship of the subsequent letters and offensive writing to the same girl during the previous semester. Conversely, Nick's claims that he had no part in the drafting of the profane January, 1996 notes, and had read only a part of the second note, were not believable. Nevertheless, Powell conducted further investigation by interviewing additional student witnesses, who generally corroborated that, although Lance had penned one or both of the tormenting sex fantasies, Nick had composed the harassing literature. Powell determined that each of

Nick's two January, 1996 offenses warranted five days' suspension from the school, totaling ten days of out-of-school suspension. The Waynes protested that Powell denied Nick due process by failing to arrange a formal hearing before the board prior to his suspension. However, a hearing before the Board is required under Kentucky law only in cases of expulsion (Kentucky Rev. Stat. Ann. §158.150(2)). Because a ten-day suspension is not a permanent expulsion from the public school system, Nick had no right, under either Kentucky law or the Fourteenth Amendment's Due Process Clause, to a formal hearing before the Board prior to his ten-day-suspension. The Waynes contended that Nick's extended assignment to the ISSC program, following his ten-day-suspension, was a "constructive expulsion" from the common school system, which should have been preceded by such a formal hearing before the Board. The court rejected this because he would still be receiving the basic fundamentals of a "proper and adequate education" while in the ISSC program.

Thus, the court found that:

Accordingly, when all record evidence is construed most favorably for the plaintiffs, they have failed to muster any sustainable constitutional attack against the defendants' implicated actions and decisions. Rather, the defendants respected all of Nick's equal protection and due process rights in imposing entirely appropriate, and indeed relatively benign, discipline for his admitted transgressions. Because, after construing all record evidence in the light most favorable to the plaintiffs, the defendants have impinged none of the boy's asserted constitutionally protected interests, summary judgment for defendants Shadowen and Powell is **AFFIRMED**. (Wayne v. Shadowden, 2001, p. 46)

This section has given treatment to the representative cases seen to have been instrumental in the development of procedural and substantive due process rights for students in public schools. The specifics of each case discussed here will serve as the basis for a summary of findings section to be presented in Chapter Four. This summary of

findings will serve as a set of guidelines that school administrators may look to for guidance when considering suspension or expulsion of students from public schools.

CHAPTER 3

GEORGIA PUBLIC SCHOOL DISCIPLINE POLICY

Part One: Relevant Georgia Statutes

The state of Georgia provides some specific guidelines for its local school systems as to how discipline of students in public schools is to be carried out. Georgia law dictates that:

No later than July 1, 2000, each local board of education shall adopt policies designed to improve the student learning environment by improving student behavior and discipline. These policies shall provide for the development of age-appropriate student codes of conduct containing standards of behavior, a student support process, a progressive discipline process, and a parental involvement process. The State Board of Education shall establish minimum standards for such local board policies. The Department of Education shall make available for utilization by each local board of education model student codes of conduct, a model student support process, a model progressive discipline process, and a model parental involvement process. (Georgia Code § 20-2-735 (a))

Therefore, each local board of education, with the help of the State Board of Education, has established expectations of student behavior within that district. These expectations, in the form of student codes of conduct, are to be distributed to each student upon enrollment (Georgia Code § 20-2-736 (a)). At a minimum, these codes of conduct are to include provisions that address the following conduct of students during school hours and at school-related functions, in a manner that is appropriate to the age of the student:

1. Verbal assault of teachers, administrators, and other school personnel.
2. Physical assault or battery of teachers, administrators, and other school personnel.

3. Disrespectful conduct toward teachers, administrators, and other school personnel.
4. Verbal assault of other students.
5. Physical assault or battery of other students.
6. Disrespectful conduct toward other students.
7. Verbal assault of, physical assault or battery of, and disrespectful conduct toward persons attending school-related functions. (Georgia Code § 20-2-751.5 (a)(1))

Georgia Code § 20-2-751.5 (a)(2) states that the State Board of Education should review copies of local boards' discipline policies to be sure that, at a minimum, the above seven issues are addressed. However, the State Board's authority to enforce any change in a local board's policy is stripped in Georgia Code § 20-2-751.5 (b) where the code states that, "Nothing in this subsection shall be construed as authorizing or requiring the State Board to review or approve the substance of the student codes of conduct." In effect, local boards' of education could choose to develop a set of policies which do not address all of the seven essentials set forth by the State Board. It is also possible that a local board could develop a set of policies which address the seven essentials set forth in the code and proceed to add additional policies of its own, or to elaborate on the seven given by the state. This creates the potential for discrepancies when the local system sends its discipline data to the state in August as outlined below in the section on reporting.

Local boards of education are responsible for providing appropriate disciplinary consequences for students who violate student codes of conduct (Georgia § 20-2-736 (b)). Local boards of education may establish by policy, rule, or regulation disciplinary hearing officers, panels, or tribunals of school officials to impose suspension or expulsion. If such hearing officers, panels, or tribunals are established, such rules and regulations must include provision for granting a right of appeal to the full local board

when the punishment imposed by hearing officers, panels, or tribunals is long-term suspension or expulsion (Georgia Code § 20-2-752). Georgia Code defines expulsion as the removal of a student beyond the current school term, long-term suspension as the removal of a student for more than ten school days but not beyond the current school term, and short-term suspension as a removal of less than ten days (Georgia Code § 20-2-751).

Georgia Code § 20-2-754(b) states that these disciplinary officers, panels, or tribunals of school officials must ensure that:

1. All parties are given an opportunity for a hearing after reasonable notice served personally or by mail. This notice is to be given to all parties and to the parent or guardian of the student or students involved and should include a statement of the time, place, and nature of the hearing; a short and plain statement of the matters at hand; and a statement explaining the right of all parties to present evidence and to be represented by legal counsel.
2. All parties are able to present and respond to evidence and to examine and cross-examine witnesses on all issues unresolved.
3. A verbatim electronic or written record of the hearing shall be made and shall be available to all parties.

Georgia code also provides that, “any decision made by a panel, tribunal, or disciplinary officer may be appealed to the local board of education by filing a written notice of appeal within 20 days from the date the decision is rendered. Any disciplinary action imposed by these officers, panels, or tribunals may be suspended by the school superintendent pending the outcome of the appeal” (Georgia Code § 20-2-754(c)). The

local board of education must come to a decision within ten days of receiving notice of the appeal. The local board's decision is to be based solely on the record (Georgia Code § 20-2-754(d)).

Georgia Code provides for one more level of administrative recourse beyond the local board of education's decision. This recourse comes in the form of an appeal to the State Board of Education. This process is outlined as follows:

(b) Any party aggrieved by a decision of the local board rendered on a contested issue after a hearing shall have the right to appeal therefrom to the State Board of Education. The appeal shall be in writing and shall distinctly set forth the question in dispute, the decision of the local board, and a concise statement of the reasons why the decision is complained of; and the party taking the appeal shall also file with the appeal a transcript of testimony certified as true and correct by the local school superintendent. The appeal shall be filed with the superintendent within 30 days of the decision of the local board, and within ten days thereafter it shall be the duty of the superintendent to transmit a copy of the appeal together with the transcript of evidence and proceedings, the decision of the local board, and other matters in the file relating to the appeal to the State Board. The State Board shall adopt regulations governing the procedure for hearings before the local board and proceedings before it. (c) Where an appeal is taken to the State Board, the State Board shall notify the parties in writing of its decision within 25 days after hearing thereon and of their right to appeal the decision to the superior court of the county wherein the local board of education is located and shall clearly describe the procedure and requirements for such an appeal which are provided in this subsection and in subsection (d) of this Code section. Any party aggrieved thereby may appeal to the superior court of the county wherein the local board of education is situated. Such appeal shall be filed in writing within 30 days after the decision of the State Board. Within ten days after filing of such appeal, it shall be the duty of the State School Superintendent to transmit to the superior court a copy of the record and transcript sent up from the local board as well as the decision and any order of the State Board, certified as true and correct. (Georgia Code § 20-2-1160 (b)(c))

Therefore, the final level of recourse would involve a request of certiorari from a superior court. On this point Georgia code states that:

Neither the State Board nor the superior court shall consider any question in matters before the local board nor consider the matter de novo, and the review by the State Board or the superior court shall be confined to the record. In the

superior court, the appeal shall be determined by the judge sitting without a jury. (Georgia Code § 20-2-1160 (e))

According to the Georgia Supreme Court in *Deriso v. Cooper* (1980), an appeal to the superior court may take place following the county board decision where it is necessary to prevent irreparable injury. Aside from this, the courts will not interfere until and unless the administrative remedy through the county and state appeals processes has been exhausted (*Bacon v. Brewer*, 1990, p. 383). Neither the State Board of Education nor the superior court is authorized to consider matters which were not raised before the local board (*Sharpley v. Hall County Board of Education*, 1983, p. 9).

According to the Georgia Court of Appeals in *Ransum v. Chattooga County Bd. of Education* (1978), the standard for review by the State Board of Education as well as a superior court is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion, or the decision is so arbitrary and capricious as to be illegal. In *David L. v. Dekalb County* (1996), the State Board of Education stated that it is the duty of the hearing tribunal to determine the veracity of the witnesses and the State Board would not question such determination if there is any evidence to support the decision.

Georgia Code § 20-2-740 ensures that the Georgia Legislature stay informed about the quantity and type of disciplinary measures that are utilized by local boards of education during the course of a year. This section of code stipulates that each local board of education should file a report with the Department of Education by August first of each year regarding disciplinary and placement actions taken during the prior school year. The report is to classify the types of actions taken into the following categories:

1. Actions in which a student was assigned to in-school suspension.

2. Actions in which a student was suspended for a period of ten days or less.
3. Actions in which a student was suspended for a period of more than ten days but not beyond the current school quarter or semester.
4. Actions in which a student was expelled beyond the current school quarter or semester but not permanently expelled.
5. Actions in which a student was permanently expelled.
6. Actions in which a student was placed in an alternative educational setting.
7. Actions in which a student was suspended from riding the bus.
8. Actions in which corporal punishment was administered.
9. Actions in which a student was removed from class pursuant to subsection (b) of Georgia Code § 20-2-738, which deals with student removal from the classroom by a teacher.

Georgia Code § 20-2-740 (b) states that for each category of disciplinary or placement action listed in one through nine above, the local board shall provide the following information:

1. The age and grade level of such students.
2. The student's race and gender.
3. The number of students subject to the type of disciplinary action who were eligible for free or reduced price lunches under federal guidelines.
4. For incidents involving student removal from the classroom by a teacher, as per number nine above, the local board shall provide information regarding the decisions of placement review committees and the disciplinary and placement decisions made by principals or their designees.

The data required by this Code section shall be reported separately for each school within the local school system. The Department of Education is to conduct a study for each school year based on the statistical data filed by local boards (Georgia § 20-2-740 (b)(c)) .

The incidents of student discipline reported during the 2000-2001 school year were reported in the Georgia Department of Education Student Record Data Collection System Discipline Action Summary as follows:

Discipline Action	Gender		Race/ Ethnicity						Free/ Reduced Lunch		Total Students	Total Instances
	Male	Female	Asian	Black	Hispanic	Indian	Multiracial	White	Eligible	Not Eligible		
Grades K-12												
Corporal Punishment	18,016	5,049	31	13,255	429	8	159	9,183	16,990	6,075	23,065	26,161
In- School Suspension	103,793	52,302	1,113	82,881	4,740	180	1,537	65,644	82,571	73,524	156,095	188,352
Out-of School Suspension -10 days or less	77,214	34,172	692	73,370	2,887	126	1,182	33,129	66,229	45,157	111,386	139,949
Out-of School Suspension - > 10 days	2,531	970	30	2,360	111	4	39	957	2,084	1,417	3,501	3,768
Expulsion - Not Permanently	724	299	10	695	25	2	16	275	451	572	1,023	1,050
Expulsion - Permanently	178	51	4	118	5	1	3	98	99	130	229	237
Suspended from Riding Bus	28,514	11,634	109	21,168	898	31	423	17,519	26,614	13,534	40,148	42,423
Assigned to an Alternative Ed School	2,562	866	24	1,597	81	6	21	1,699	1,529	1,899	3,428	3,590
Removed from class at Teacher's Request	261	106	0	237	5	0	7	118	228	139	367	378
Juvenile or Court System Referral	814	281	4	492	25	0	5	569	630	465	1,095	1,154
Other Discipline Action	30,406	12,037	128	22,100	1,023	38	339	18,815	25,047	17,396	42,443	50,791
Total Disciplinary Actions (All Grades)	265,013	117,767	2,145	218,273	10,229	396	3,731	148,006	222,472	160,308		457,853

(Georgia Department of Education Student Record Data Collection System Discipline Action Summary, 2001, p. 1).

Of these 457,853 instances, only 18 cases made it through the administrative process outlined above as appeals to the State Board of Education. Of these 18, the decisions made by the local boards of education were sustained ten times and reversed twice, with five of the complaints being dismissed. A summary of some of the more pertinent of these decisions, as well as some useful decisions made during the 1999-2000 school year, is provided below to provide a sense of what types of local board decisions the State Board of Education considers worthy of sustaining and which types of actions on the part of local systems result in their decisions being reversed.

Part Two: Decisions Since 2000 Sustained By The Georgia Board of Education

In *L.W. v. Gwinnett County Board of Education* (2000) a student, L.W., was accused of driving three other students to a bus stop on October 26, 1999. Those three students then proceeded to beat another student. A disciplinary tribunal expelled L.W. from school until the end of the 1999-2000 school year with the option of attending an alternative school and returning to regular school on April 17, 2000, if he completed 70 hours of community service. Upon appeal to the Local Board of Education, the tribunal's decision was upheld but the punishment changed to allow L.W. to return to school on January 4, 2000 if he completed the community service by January 1, 2000. The student completed the community service and was enrolled back in regular school when he appealed to the State Board of Education. The first two of the five points of appeal brought before the State Board by L.W. are treated here.

His first point was that copies of statements made by the others in the car were provided to him in a redacted form. The school claimed that provisions of the Family

Educational Right and Privacy Act of 1974 (FERPA) prohibited the release of some of the information requested. L.W. claimed that the statements were not covered by FERPA, and they contained evidence that would have aided him in preparing his defense. The statements were not subpoenaed for the tribunal hearing, were not introduced in evidence, and therefore, were not found by the State Board to have been a part of the record. The State Board found that:

Even if the statements contained exculpatory information and were not covered by FERPA, the Local Board was not under any obligation to make the statements available to the student. The statements were not used in presenting a case against the student and there is no disclosure requirement in civil matters in the absence of discovery. Even in the absence of discovery, the student had an opportunity to examine and cross-examine the students who made the statements and thus extract any exculpatory evidence that existed. Thus the State Board of Education concludes that the Local Board did not deny the student due process in withholding the complete statements of the other students in the absence of a subpoena. (L.W. v. Gwinnett County Board of Education, 2000, p. 2)

The second point raised by L.W. was that he was denied his rights under the Fifth Amendment to the Constitution of the United States because a statement was coerced from him and then used against him. L.W. claimed that he was led to believe that his statement was to be used solely against the other students. The State Board could find no indication that the student's statement was coerced and stated:

A student disciplinary tribunal hearing is a civil administrative proceeding. The Fifth Amendment right to avoid self-incrimination is applicable only in criminal proceedings. Since the tribunal hearing was a civil matter, the student does not have a valid claim that he was denied any Fifth Amendment rights. (L.W. v. Gwinnett County Board of Education, 2000, p. 2)

R.C. v. Thomas County Board of Education (2000) was a case that dealt with placement of students in alternative schools. On December 10, 1999, an assistant principal discovered that a student, R.C., was in possession of a bag of marijuana. The Local Board subsequently found the student guilty of this and assigned him to an

alternative school for the remainder of the 1999-2000 school year. On appeal to the State Board of Education, R.C. claimed that his assignment to an alternative school amounted to an expulsion. The student claimed that the Local Board unconstitutionally deprived him of a public education by expelling him, and that expulsion was disproportionate to the offense committed. The State Board found that while assignment to an alternative school is a form of punishment, it does not constitute an expulsion from school. Instead, it is a reassignment to another school setting to remove a disruptive student from the general student population. The State Board found that Georgia Code § 20-2-768(c) provided, “It is the policy of this state that it is preferable to reassign disruptive students to isolated and individually oriented in-school suspension programs or alternative educational settings rather than to suspend or expel such students from school.” In this case, the student was assigned to an alternative educational setting rather than being expelled. The State Board stated that the Local Board had not deprived the student of a public education, and that reassignment to an alternative school was not a disproportionate punishment for the offense of possessing drugs at school.

C.J. v. Heard County Board of Education (2000) dealt with the rules of evidence in administrative versus criminal proceedings. Here a student’s principal charged that the student, C.J., broke into the high school and broke some windows and other glass. At the hearing before a student disciplinary tribunal, an alleged accomplice admitted to giving a statement to the police that implicated C.J., but the alleged accomplice denied both the statement and that he or the student were involved in the break-in. Instead, the alleged accomplice testified that he signed the statement under duress after the police officer threatened to send him to prison if he did not sign. A policeman gave his opinion that he

thought the student was involved in the incident. The Local Board claimed that the statement given to the police by the alleged accomplice was sufficient evidence to sustain the tribunal's decision that C.J. was involved in the break-in and vandalism. Georgia Code § 24-4-8 and the Supreme Court of Georgia in *Bacon v. State* (1996) speak to the fact that in criminal law, the uncorroborated confession of an accomplice cannot be used as evidence against a person charged with a crime. However, the State Board found that the rules of evidence of criminal proceedings are not as strictly followed in administrative proceedings and that the student had not provided any citations to cases that would prohibit the tribunal from basing its finding on the statement of an accomplice. The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal (*Ransum v. Chattooga County Board of Education*, 1978; *Antone v. Greene County Board of Education*, 1976; *Roderick J. v. Hart County Board of Education*, 1991). The State Board concluded that there was some evidence to sustain the tribunal's decision in this case and upheld its decision.

M.H. v. Gwinnett County Board of Education (2000) was a case which addressed the jurisdiction of local school officials in dealing with off-campus behavior of students. On March 3, 2000, a student, M.H., along with two other students, attacked a fourth student while he was on the way home from school. M.H. initially kicked the other student in the head. He also picked up the branch of a tree that was lying on the ground and hit the other student in the leg. M.H. was charged by the school system with battery and use of a weapon. At a hearing before a student disciplinary tribunal, there was

testimony about the fight by M.H., the victim, and the other participants. In addition, the tribunal received the statements of two other students present. M.H. pleaded guilty to the charges, and the tribunal decided to expel him from regular school until January 1, 2001, with the option of attending alternative school. The Local Board upheld the tribunal's decision when M.H. appealed. He then filed an appeal with the State Board of Education. As a part of his appeal M.H. cited the State Board's decision in *Ron C. v. Gwinnett County Board of Education* (1994) to make his case that the Local Board did not have jurisdiction to consider the case because the incident occurred off school property and after M.H. went to another student's house and deposited some of his school materials. In *Ron C.*, the State Board of Education held that a local board did not have jurisdiction over a student after the student arrived home. The Local Board, however, cited the superior court decision in *Gwinnett County Board of Education v. Ron C.* (1994), which reversed this State Board of Education decision. The superior court decision established that the school system did indeed have jurisdiction. The superior court reasoned that Georgia Code § 20-2-753(a)(2) did not provide for any geographic limits on a school board's jurisdiction and that the local board's policies provided that students were subject to discipline if they violated any state or federal laws. *Ron C.*, however, was found by the State Board to be inapplicable to this situation because it involved students who had arrived at home. In this case, although the student dropped some school materials at another student's house, neither he nor the victim had arrived at home. Since both M.H. and the victim had not arrived at home, the State Board of Education concluded that the Local Board still had jurisdiction over both students.

M.L.D. v. Walker County Board of Education (2001) involved a 13-year-old eighth grader, M.L.D., in Walker County admitting that she had violated a Local Board Policy forbidding student possession or use of any narcotic drug or counterfeit substance. She was expelled by the Local Board and appealed citing the decision as too harsh.

When the State Board of Education reviews a decision made by a local board of education to determine whether it is too harsh, the State Board of Education will not disturb the local board's decision if the decision is within the local board's discretion and there is some evidence to support the decision. In the instant case, the Local Board has the authority to permanently expel the student because she violated its policy against drugs. (*M.L.D. v. Walker County Board of Education*, 2001, p. 1)

V.L.F. v. Bibb County Board of Education (2001) dealt with a student, V.L.F., who stole \$250 that had been collected by a student club and stored in a classroom. The student gave \$120 to another student who had distracted the teacher while the student took the money. At the hearing before a student disciplinary hearing officer, the student who received the \$120 testified about what the student had done. Additionally, another student, who observed the theft, testified. V.L.F. claimed that he was denied due process because hearsay testimony by an assistant principal was allowed. This point was found by the State Board to be irrelevant because there was direct evidence, in the form of the testimony by his accomplice and an eyewitness, that the student took the money. The State Board found that since the decision did not rest solely on hearsay evidence, there was evidence to support the hearing officer's decision, therefore the student was not denied due process.

V.L.F. also claimed that he was denied due process because he was unable to cross-examine the principal about the punishment imposed on his accomplice. The State

Board found that the punishment imposed on another student was not relevant to a determination in the case against the student.

He also claimed that he was denied due process on the basis that the hearing officer was biased since he asked questions, ruled against his cross examination, misstated the law, and denied his motion for a directed verdict. However, according to the State Board, none of the student's allegations established that the hearing officer was biased. It was found that the duty of the hearing officer was to assist in the conduct of the hearing, which, from time to time, may require questioning of witnesses when testimony is unclear. The hearing officer was found to have correctly stated that hearsay testimony was allowable and did not, as charged by the student, place any burden of proof on the student. The State Board also found that the hearing officer did not improperly prevent the student from cross-examining the principal about the discipline imposed on his accomplice. The hearing officer's refusal to grant a directed verdict was found by the State Board to be within the hearing officer's discretion and not to have proven any bias. The State Board of Education concluded that there was no evidence that the hearing officer was biased.

The student also claimed that an even split on the part of the Local Board on whether to uphold the hearing officer's decision should have resulted in a verdict for the student. However, the Local Board was acting as an appellate body in reviewing the hearing officer's decision. Accordingly, a majority vote of the Local Board was necessary to reverse the hearing officer's decision, not to sustain it. According to the State Board of Education if a local board of education evenly splits on an appeal, the status quo remains (V.L.F. v. Bibb County Board of Education, 2001).

K.D. v. Dekalb County Board of Education (2001) dealt with a male eighth-grade student, K.D., who was expelled for having inappropriate sexual contact with two different female students in unrelated incidents. Both female students testified at a tribunal hearing, and the student was found guilty of sexual harassment. He was subsequently expelled for the remainder of the 2000-2001 school year. The student claimed that the tribunal should not have believed the testimony of the two girls who were confronted by the student because there was no other proof that either of the incidents took place. The State Board stated that it is the duty of the hearing tribunal to determine the veracity of the witnesses and the State Board of Education will not go behind such determination if there is any evidence to support the decision. The testimony of the two girls was found to be credible because they did not know one another and both incidents occurred on the same day. The student had an opportunity to cross-examine each of the witnesses to establish any inconsistencies. The State Board of Education concluded that the student's claim that the tribunal should not have believed the two female students was found to be without merit. Concerning the student's complaint that the punishment was too harsh, the State Board stated that "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" (*K.D. v. Dekalb County Board of Education*, 2001, p. 1). Therefore, the State Board of Education concluded that the student's claim that the punishment was too harsh was without merit.

C.E.G. v. Columbia County Board of Education (2001) involved a random drug search at the student's high school. During the search the student, C.E.G., was named as a

user of marijuana by some of the students found to have drugs in their vehicles. Based on this information, the police searched the student's vehicle and found a hunting knife in the vehicle's console. The student's father had allegedly placed the hunting knife in the console the previous Saturday while on a hunting trip. C.E.G.'s appeal to the State Board claimed that the school system violated its policy regarding vehicle searches because there was no reasonable suspicion that he had drugs in his vehicle. The school system's policy provided, in part: "When there is reasonable suspicion, a student's automobile parked on school property may be searched by school officials" (High School Code of Conduct, General Policies, para.3 (Columbia County Schools)). The student claimed that the statement of another student that he had previously smoked marijuana did not provide reasonable suspicion that he had any drugs on November 16, 2000. It has been held that a tip from an informant of unknown reliability is generally insufficient to create a reasonable suspicion of criminal activity, but that the tip may provide the basis for a reasonable suspicion if the tip provides details that the police can corroborate by observation (*Fox v. State of Ga.*, 2000). In this case, however, according to the State Board of Education, the student negated any argument of unreasonable search by giving permission to search his car. The student also claimed that since the school recommended long-term suspension, the hearing officer did not have the authority to expel him beyond the end of the semester. However, since the Local Board's policies provide for expulsion, the hearing officer was found by the State Board to have acted within his authority, regardless of what the school officials recommended.

P.A. v. Henry County Board of Education (2001) dealt with a student accused of participating in the beating of another student in the boys' bathroom on December 14,

2000. After being found guilty, he was suspended by a disciplinary hearing officer until the end of the 2000-2001 school year with the opportunity of attending an alternative school during his suspension. On appeal, the Local Board upheld the hearing officer's decision. The student then appealed to the State Board of Education complaining that the evidence was contradictory and that he did not participate in actually beating the victim.

The State Board stated:

The standard for review is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal....It is the duty of the hearing tribunal to determine the veracity of the witnesses and the State Board of Education will not go behind such determination if there is any evidence to support the decision. (P.A. v. Henry County board of Education, 2001, p. 1)

In this case there was testimony from two witnesses that the student participated in beating the victim. The State Board found that it was the duty of the hearing officer to decide whether to accept such testimony, or to believe the student's testimony that he did not participate in the beating.

The student also complained that the hearing was improperly conducted because a witness was allowed to testify after the hearing was closed. The student did not raise any objections at the hearing. It was found that if an issue is not raised at the initial hearing, it cannot be raised for the first time when an appeal is made (Hutchenson v. Dekalb County Board of Education, 1980). "The State Board of Education, as an appellate body, is not authorized to consider matters that have not been raised before the Local Board" (Sharpley v. Hall County Board of Education, 1983).

B.D. v. Henry County Board of Education (2001) dealt with a student, B.D., who was accused of grasping a female student's breasts while they were in class on November

28, 2000. A disciplinary hearing officer found the student guilty of physically abusing another student and expelled him until the end of the 2000-2001 school year. The student appealed to the Local Board and argued that the hearing officer was biased. On January 29, 2001, the Local Board remanded the case for another hearing officer to consider. The student appealed the Local Board's decision to remand his case to the State Board of Education, claiming that the Local Board exceeded its authority and was subjecting him to double jeopardy. The student claimed that the Local Board did not have the authority to remand the case for another hearing. The State Board found that Georgia Code § 20-2-754(d) provided for review of a disciplinary hearing officer's decision by the Local Board of Education. It further provided that the Local Board might take any action it determined appropriate, and that any decision of the Board should be final. The Local Board argued that since it could take any action it determined to be appropriate, it had the authority to remand for consideration by a different hearing officer when the student complained about the first hearing officer. The State Board of Education concluded that the Local Board had the authority to order a remand on the student's claim of bias on the part of the hearing officer.

The student also claimed that the Local Board's decision to remand the case subjected him to double jeopardy. Hearings before local boards of education, however, are civil proceedings and not criminal. Consequently, the State Board found that the concept of double jeopardy was inapplicable since jeopardy relates only to loss of life or limb (*Brown v. Ohio*, 1977).

C.S. v. Gwinnett County Board of Education (2001) dealt with a student, C.S., who on January 9, 2001, along with some friends, brought a smoke bomb and lighter to

school and proceeded to light the bomb. The smoke bomb filled the halls of the school with smoke that irritated the eyes of the student population and caused fire alarms to ring throughout the school. C.S. eventually admitted his involvement after initially denying any role. He was suspended until May 24, 2001, with the opportunity to attend alternative school. The student appealed to the Local Board, which upheld the tribunal's decision. The student then appealed to the State Board of Education.

On appeal to the State Board of Education, the student claimed that there was a gross abuse of discretion because the punishment he received was different than the punishment received by some of the other students involved in the incident. The State Board found that:

Notwithstanding the fact that there is no evidence in the record of any disparaging treatment, there are numerous reasons for the tribunal to dispense different punishment measures when students are jointly involved in an incident. Past disciplinary measures, degree of involvement, cooperation, opportunity to avert or avoid, premeditation, and mitigating circumstances are some factors that a tribunal might consider in arriving at different punishments when students seem to be similarly situated. In the instant case the student was charged with and pleaded guilty to providing false information, a charge that was not made against some of the other students. We cannot determine whether this alone was the reason for the tribunal's decision, but the decision was within the tribunal's authority. (C.S. v. Gwinnett County Board of Education, 2001, p. 2)

The State Board of Education concluded that the tribunal did not abuse its discretion in suspending the student until the end of the term.

M.D. v. Gwinnett County Board of Education (2001) was a companion case to *C.S. v. Gwinnett County Board of Education*. M.D. was also involved in the smoke bomb incident. He made the additional claim that the Local Board failed to consider his appeal because it did not issue a written decision with findings of fact and conclusions of law. A Local Board of Education, however, is not required to provide written findings of fact

and conclusions of law (*Jones v. Montgomery County Board of Education*, 1982). The State Board stated that if there was any evidence contained in the record, then the Local Board's decision would be upheld on appeal unless there had been a gross abuse of discretion or other error (*Ransum v. Chattooga County Board of Education*, 1978).

N.L. v. Brooks County Board of Education (2001) involved a seven-year-old second grader who was permanently expelled from school for bringing a loaded gun to school. The student claimed that the Local Board's decision improperly denied him his constitutional right to a public education. However, the State Board, found that the courts have held that permanent expulsion does not deny a student of any constitutional right to a public education. "The Georgia Constitution has delegated the administration and management of local school districts to county and area boards of education" (Georgia Constitution of 1983, Art. VIII, Sec. 5 para. 1.). In Georgia Code § 20-2-754(c), the legislature has provided that in such matters, the local board may take any action it determines appropriate. It has been consistently held that the courts will not interfere with a local board's administration of its schools unless the board's actions are contrary to law or it appears that the board has grossly abused its discretion (*Bedingfield v. Parkerson*, 1956). "Given that the constitutional right to a free public education may be limited by statute and our determination that the applicable statute does not prohibit permanent expulsion, we hold that the Board's action was not contrary to law" (*N.L. v. Brooks county Board of Education*, 2001, p. 2).

Part Three: Decisions Since 2000 Reversed By The Georgia Board of Education

J.B. v. Berrien County Board of Education (2000) was a case overturned on the basis that the evidence did not support the charge. Here a student, J.B., stated to another student that he wanted to stab someone. When asked whom he wanted to stab, he responded by naming his mother and the principal. The second student reported this to the principal, and J.B. was consequently charged with making verbal threats. During the hearing before the student disciplinary tribunal, the principal testified that she did not believe that the student actually meant any harm and that she felt compelled to charge J.B. because of violent incidents which had recently taken place in other schools. The State Board found that the evidence presented did not show that the student had any intent of doing harm. The State Board found that J.B. had never expressed any intent to do any harm, nor had he ever said that he was going to stab someone. He stated that he felt that he wanted to harm someone, which the State Board found to be statement of feeling, not intent. The State Board found that the expression of a feeling does not constitute a threat. As stated in *M.D. v. Gwinnett County Board of Education* (2001) above, if there is any evidence to support the local board's decision, the State Board will do so. In this case, the State Board of Education concluded that there was no evidence to sustain the Local Board's decision, and it was reversed.

C.W. v. Dekalb County Board of Education (2000) involved a student, C.W., who claimed that her due process rights were violated during a disciplinary tribunal proceeding. C.W. was a twelfth grader who was riding in her boyfriend's car after school. C.W. was attempting to talk her boyfriend into dropping her off by the school track for track practice so that she would not be late. The boyfriend instead drove her to a location

over one mile away from the school and got out of the car. At this point, C.W. slid into the driver's seat and drove to the school track. Upon exiting the vehicle, an alarm went off which she could not stop. She solicited the help of an assistant principal who, during the process of stopping the alarm, found a handgun and a hatchet in the car. C.W. claimed that she did not know that the gun and hatchet were in the car and that she was denied due process because the tribunal hearing officer ruled that intent was not a necessary element of proof by the Local Board. During the hearing C.W. attempted to establish that she was unaware that the gun was in the car, but the hearing officer ruled that her intent was immaterial and cut off any further questioning regarding the student's ability to see the gun. On appeal, the Local Board did not argue whether C.W. was denied due process, because the element of intent was removed from the tribunal's consideration. Instead, the Local Board argued that the tribunal could find that the student was aware of the gun and hatchet because of her relationship with the car owner, the fact that the gun was evident enough for the resource officer to see, and because C.W.'s sweater was covering the hatchet. However, since the hearing officer removed the questions of knowledge and intent from consideration, the tribunal did not have an opportunity to make a decision about C.W.'s knowledge. The State Board found that if the tribunal had considered the student's intent, it could have decided that the student was unaware of the gun and hatchet. The owner of the car testified that C.W. had been upset that he had the gun and had made him promise to dispose of it. He stated that the reason that he refused to drop her off at track practice was that he did not want to drive onto school grounds with the weapon. This, along with the fact that C.W. went to the assistant principal and asked for help, led the State Board to conclude that there was a possible

lack of knowledge on C.W.'s part about the weapons. This lack of knowledge was unable to be considered because of the hearing officer's ruling that no arguments could be made about C.W.'s intent. The State Board of Education ruled that the hearing officer's ruling denied C.W. due process because:

1. It changed the Local Board's burden of proof.
2. It prevented C.W. from conducting a full cross-examination of the witnesses.

While there was evidence from which the tribunal could have found that the student had knowledge of the gun and hatchet, the hearing officer's ruling nullified such evidence by removing it from the tribunal's consideration, which then prevented the Local Board from meeting the burden of proof (*C.W. v. Dekalb County Board of Education*, 2000).

A.J. v. Wilkes County Board of Education (2000) was a case overturned by the State Board based on a lack of evidence to support the charges. Here an eighth-grade student, A.J., was charged with constant and willful disruption of the school campus and classroom after he was charged with "bullying," for allegedly kicking another student in the back during an assembly. At the hearing before a student disciplinary tribunal, the only evidence provided was the hearsay testimony of A.J.'s principal. According to the State Board there was no evidence that A.J. willfully kicked the other student. The student who was supposed to have been kicked did not file a complaint and did not appear as a witness. The State Board, citing *McGahee v. Yamaha Motor Mfg. Corp.* (1994), found that "While hearsay evidence can be admitted in an administrative proceeding, it is without any probative value and cannot support an administrative decision without some other evidence" (*A.J. v. Wilkes County Board of Education*, 2000, p. 1). The State Board found that there was no competent evidence to support the

bullying charge, and that the bullying charge served as the catalyst for the charges of constant and willful disruption. The tribunal was not found to have had any evidence to support its decision that the student was guilty of constant and willful disruption.

B.J.D. v. Walker County Board of Education (2000) dealt with a local board of education changing the punishment of a disciplinary tribunal to be more severe. Here the student, B.J.D., appealed a decision by the Walker County Board of Education to suspend him from regular school and assign him to an alternative school for one semester. The Local Board's decision followed the school's appeal from a student disciplinary tribunal's decision to place the student on probation during middle school, with a referral to a student support team for assistance with behavior and organizational skills. This finding came after the tribunal had found him guilty of taking a prescribed medication given to him by another student at school. B.J.D. claimed that the school system improperly informed him about the principal's appeal to the Local Board, allowing him insufficient time to respond. He also complained that the punishment was too harsh and that the punishment was substantially different from the punishment the other student involved had received. The State Board, citing *Chauncey Z. v. Cobb County Board of Education* (1993), stated that a local board of education cannot impose a more severe punishment in the absence of an explanation for the harsher punishment. In this case the Local Board did not provide any reason why it imposed a harsher penalty on the student than the tribunal imposed. Citing *Georgia Real Estate Commission et al. v. Hooks* (1977), the State Board found that imposing a harsher penalty without stating any reason results in a denial of due process.

J.P. v. Houston County Board of Education (2000) is a second case emphasizing the importance of being certain that the evidence supports the charge. Here a student, J.P., wrote a “gangsta rap” poem while in class. The poem contained profanity and made reference to shooting someone. J.P.’s teacher took possession of the poem and proceeded to claim that the lyrics were directed at her. The student was charged with making a terroristic threat. These charges were upheld by a disciplinary tribunal and subsequently by the Local Board. J.P. was then expelled for the remainder of the school year with the option of attending an alternative school. On appeal, the State Board of Education stated:

There was no evidence that the J.P. made a threat against that teacher. A threat requires some overt action or statement by one person that is directed against another person and caused the other person to feel apprehensive. The student was writing a poem, a frequent activity of the student and some of his friends, that was not directed to anyone and did not contain any names. The student was not in the process of distributing the poem to anyone. The teacher may have felt threatened upon reading the poem, but her feelings resulted from her action of taking up the paper rather than any action by the student. Although the poem may be considered offensive by some, similar language and poems are regularly broadcast on the radio. (*J.P. v. Houston county Board of Education*, 2000, p. 1)

The evidence was found by the State Board not to have corroborated the particular charge brought by the teacher and the Local Board’s decision to uphold her charge was overturned.

S.F. v. Gwinnett County Board of Education (2000) involved a male student, S.F., calling a female student, S.A., an obscene name and posting a list of teachers on what he called a “hit list” on an on-line chat room on March 21, 2000. A third student, who was a party to both comments, reported these two pieces of information to school officials the next day. The principal suspended the student and charged him with violation of the following school system policies:

1. Rule 4, abuse, threats, intimidation, assault or battery on a school employee.

2. Rule 5, abuse, threats, intimidation, assault or battery by a student on another student or to any other person not employed by the school.
3. Rule 11, other conduct which is subversive to good order.
4. Violation of state and federal law.

A hearing was held before a student disciplinary tribunal on April 11, 2000. The State Board found that during the hearing, the school system presented only hearsay evidence in the form of statements taken from S.A. and the two students who operated the web site. S.F. testified on his own behalf and related the information set forth above. The tribunal found him guilty of all charges and expelled him until January 3, 2001. When the student appealed to the Local Board, the Local Board upheld the tribunal's decision except for the finding that the student violated rule 11. On appeal, the State Board found that there was no evidence that the student made an oral or written gesture or contact of a threatening or provoking nature to a school employee. The State Board found that there was no evidence that any school employee had seen any of the internet postings. Therefore, the State Board found that there was no evidence to substantiate a charge of violation of Rule Four. The State Board found that the Local Board's claim that the student posted disrespectful language about the female student was without merit because there was no evidence that the female student ever saw the posting. They also could not find any evidence that the posting was directed toward this particular female student or that any student saw the "hit list." The State Board ruled that no evidence supported the claim that the student violated Rule Five. On the charge that the student violated state and federal law the State Board found that the Local Board had failed to present any evidence to substantiate such charges, nor had the Local Board specified any state or federal laws

that may have been violated. Therefore, this charge was found to have been invalid. The student also claimed that the Local Board did not have jurisdiction over his actions, which took place in his home after school. On this point, the State Board stated that after a student arrives home and comes under the control of his or her parents, the school's authority ceases to exist.

E.K. v. Gwinnett County Board of Education (2000) dealt with a student admitting to a charge that had not been properly explained to him. In January or February 2000, an eighth-grade student, E.K., stated jokingly to his friends that he wanted to bring a gun to school and shoot all of the black students. This was said while walking behind a group of black students in the hallway of the school. A female student overheard this comment and one similar to it made some time later about Hispanic students. Six weeks later, the conversations were reported to the school administration. E.K. admitted making the comments but contended that they were made privately and as a joke. A disciplinary tribunal found E.K. guilty of a Rule Five violation and expelled him for one year with the option of attending an alternative school. Rule Five of the Gwinnett County Student Conduct Behavior Code addressed the making of intimidating threats and of conduct subversive to good order. On appeal the Local Board upheld the tribunal's decision but ruled that the student could return to school after the first semester of the 2000-2001 school year if he attended an anger management class. The student's appeal to the State Board of Education contended that the evidence did not support the charges and that the punishment was too harsh. The State Board, in determining whether the Local Board had properly enforced its own policies, found that Rule Five of Gwinnett County's Student Conduct Behavior Code required (1) an oral or written remark (2) directed toward

another student (3) that threatens the safety of that student or (3a) has the likelihood of provoking a fight. The State Board found no evidence that the student directed his statements to the students he was talking about and that the comments were not directed to the female student who overheard the conversation. No evidence was found which would indicate any likelihood of a fight starting, and indeed nothing had happened for two or three months before the parents reported the conversation to the school officials. The State Board found that even though the remarks were reprehensible, two of the three elements required by Rule Five were missing. The Local Board contended that there was evidence in the form of an admission by E.K. that he had violated Rule Five. E.K. argued that he did not understand what was required under each of the Rules. The State Board found that transcripts of the tribunal proceeding showed that the prosecutor did not explain that Rule Five required the remark to be directed to another student who would be threatened by the remark. The transcript also was found not to have shown that the remark had the likelihood of provoking a fight. The State Board found that the student's admission to an improperly stated rule cannot be deemed to establish that he violated the rule.

K.P. v. Savannah-Chatham County Board of Education (2001) addressed a situation in which the prosecutor failed to state the specific charges being brought against a student during the disciplinary tribunal hearing. Here a student, K.P., admitted saying to a friend, S.G., that it would be funny to light a fire in a school trash can. S.G. later proceeded to light a fire in a bathroom trash can. During the investigation S.G. admitted setting the fire, but stated that K.P. was involved because she had suggested that S.G. start a fire and had given her some napkins to light on fire. K.P. admitted saying that it

would be funny to light a fire, but denied giving S.G. any napkins or having any participation whatsoever in the lighting of the fire. At the disciplinary tribunal hearing, both K.P. and S.G. reiterated the above statements given during the investigation. The Local Board's attorney then proceeded to question K.P.'s principal about all the previous incidents in which the student had been involved to establish that the student could not be considered trustworthy. K.P. did not object to the introduction of this evidence. K.P. was subsequently expelled from school with the option of attending an alternative school. On appeal, the State Board of Education found the record of the hearing to be devoid of any charges made against the student. The Local Board's attorney asserted in his opening statement that the student was an accessory to starting the fire, but no charges were introduced or made a part of the record. The student claimed that she did not know whether she was expelled because she said something about how funny it would be to start a fire, or whether she was expelled because of her prior record. The State Board, citing *Damon P. v. Cobb County Board of Education* (1993), found that before a student could be disciplined for more than ten days, the student had to be informed about the charges in a manner that would permit the student to present a meaningful defense.

B.G. v. Pike County Board of Education (2001) dealt with a local board of education considering testimony solicited from witnesses who were not made available to the defendant. The student, B.G., was charged with violating the Local Board policy on possessing or using controlled substances. On August 30, 2000, another student brought a pen to school that was filled with a white, powdery substance. This second student put some of the substance on a card and told B.G. that it was sugar. B.G. proceeded to sniff the substance at which point the second student informed him that it was Ritalin, a

controlled substance. B.G. was charged with violating the Local Board's policy and a hearing was held before the Local Board. At the conclusion of this hearing the Local Board voted to conduct the hearings against the other students before it made a decision in B.G.'s case. B.G. was unable to participate in the hearings involving the other students and did not have an opportunity to cross-examine any of the witnesses who appeared in the other hearings. At the conclusion of the other hearings, the Local Board found B.G. guilty of violating the system's controlled substance policy, suspended him from school for the remainder of the semester, and placed him on probation for the rest of the school year. B.G.'s appeal to the State Board of Education claimed that he was denied due process because he was unable to participate in and cross examine the witnesses that appeared in the hearings of the other students, which permitted the Local Board to consider evidence that was not presented at his hearing. The Local Board argued that the record did not contain any evidence that it considered any evidence from outside B.G.'s hearing. The State Board found that the Local Board's argument proved the student's complaint that he did not have access to the evidence that was presented to the Local Board, and, therefore, obviously could not have had any evidence of impropriety to present. The Local Board's argument was found to have betrayed the fact that if additional evidence from the other hearings was not going to be considered, there was no reason for the Local Board to delay rendering a decision once it completed B.G.'s hearing. The State Board found that the student's due process rights were violated when the Local Board conducted the hearing of the other students before making a decision regarding his case.

P.R.M. v. Banks County Board of Education (2001) was a case in which the State Board found that the Local Board had not established that the student had violated its policy, nor that the student was aware that his actions constituted a violation of the policy. On August 25, 2000, the student, P.R.M., a ninth grader, was in a science lab class, where he was talking with a friend. During the conversation, P.R.M. said that he was going to kill every one at his graduation. Several students overheard this comment and reported it to the school's administration. P.R.M. was subsequently charged with assault. On appeal, P.R.M. claimed that there was no evidence that he assaulted anyone or otherwise violated the Local Board's policy because his statement was not directed at any identifiable person, was about a futuristic event that might not occur, and was meant as a joke. In addition, he argued that the Local Board's policy was too broad because it could be applied to the shouts of, "Kill them!" at a ballgame. The State Board, citing *Owens v. Burke county Board of Education* (1978), stated that the Local Board had the burden of establishing that the student violated its policy. The Local Board claimed that its policy did not require immediacy, an identifiable person, or an apprehension of fear. The State Board disagreed, stating that although the Local Board argued that it does not have to follow the requirements of the criminal code, inherent in the concept of assault is the direction of a threat at someone who perceives an immediate danger. For example, the State Board cited that the definition of simple assault in Georgia Code § 16-5-20 requires an overt action and the reasonable apprehension by someone of immediately receiving a violent injury. Citing *Damon P. v. Cobb County Board of Education*, (1993) the State Board found that before a student is charged with violating a policy, the student has to be

aware that his or her actions will constitute a violation of the policy. The State Board of Education stated:

School systems throughout the country have been rightly concerned about student safety because of the number of shootings that have occurred in the schools. While it is necessary to take any shooting threat seriously, a school system cannot arbitrarily disregard the due process rights of its students because of a climate of fear. In the instant case, there was no evidence that the student took any action or that there was a reasonable apprehension by someone of immediately receiving a violent injury. The student's comment concerned action to be taken more than two years in the future, which means that several events would have to occur before the statement could possibly constitute a present threat. The student would have to graduate, the listener would also have to graduate from the same school, the student would have to be in a position to carry out the threat, and the student would have to remain immature in his thoughts. The statement, therefore, could not constitute a present threat or assault. Although the student's comment is a cause for concern, the State Board of Education concludes that the student's remark did not constitute an assault and could not, therefore, constitute a violation of the Local Board's policy. (P.R.M. v. Banks County Board of Education, 2001, p. 2)

CHAPTER 4

FINDINGS AND CONCLUSIONS

Part One: General Due Process Findings

This study found that concerning students' rights to general due process protections:

1. In the absence of a statute giving a school system a legal basis for implementing a rule, violation of that rule cannot result in the suspension or expulsion of a student from school (*West Virginia State Board of Education v. Barnette*, 1943).
2. Students are entitled to Fourteenth Amendment protections from the State and all of its emissaries, including boards of education (*West Virginia State Board of Education v. Barnette*, 1943).
3. Public school professional personnel are vested with a limited degree of the duty, responsibility and limitations of the state's police powers (*Burkitt v. School District #1 of Multnomah County*, 1952).
4. Education is an important property and liberty right which has critical implications upon the ability of a student to have a productive life. Such rights may not be abridged without providing the student's due process under the law (*Brown v. Board of Education of Topeka*, 1954; *Goss v. Lopez*, 1975).
5. If a state elects to provide an educational system, it must be equally available to all residents of the state (*Brown v. Board of Education of Topeka*, 1954).

6. Due process is an elusive concept which must be defined in terms of many extenuating circumstances of a given situation rather than by constitutional provisions alone (Hanna v. Larch, 1960).
7. The scope of due process rights due in any given situation depends on the nature of the proceedings involved and the rights that may be affected by those proceedings. Due process requirements are diminished in a school-student relationship in comparison to a criminal proceeding (Dixon v. Alabama State Board of Education, 1961).
8. Notice requirements, as set forth by the Fourteenth Amendments Due Process Clause, should contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the Board of Education (Dixon v. Alabama State Board of Education, 1961).
9. The nature of the hearing should vary depending on the circumstances of the particular case, though the opportunity to hear both sides in considerable detail is best suited to protect the rights of all involved. The student should be given the names of the witnesses against him and an oral or written report of the facts to which each witness testifies. He should also be given the opportunity to present to the board, or at least to an administrative official, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses on his own behalf (Dixon v. Alabama State Board of Education, 1961).
10. Students' rights may be abridged only in the process of protecting legitimate state interests (Burnside v. Byars, 1966).

11. Establishing statutes for the operation of school systems is a state responsibility.
Rules and regulations of individual schools must have their basis in state statutes (Burnside v. Byars, 1966).
12. State agencies, including school systems, must recognize a student's basic due process rights including notice of charges, the right to a hearing, the right of appeal, the right to counsel, and privilege against self-incrimination (In re Gault, 1967).
13. Expulsion and prolonged suspension may not be imposed on students simply on the basis of vague and non-specific charges of misconduct without reference to any preexisting rule which supplies an adequate guide (Soglin v. Kauffman, 1967).
14. Students' constitutional rights are not abandoned when they enter a school (Tinker v. Des Moines, 1969).
15. For the State or any of its agencies to prohibit a behavior, it must first establish that that behavior would cause a substantial disturbance to the learning environment. Rules cannot be enacted simply to prevent students from expressing unpopular opinions (Tinker v. Des Moines, 1969).
16. While students have a property right to an education, they also have corresponding responsibilities to be in compliance with the rules and regulations of the institution (Tinker v. Des Moines, 1969).
17. Methods used by school officials to discipline students, which are found to be unfair and arbitrary, are considered to be violations of students' substantive due process rights. School officials must allow for the following when undertaking the long term removal of a student from school. First, formal written notice of the

charges and of the evidence against him must be provided to the student and his parents or guardian. Second, there must be a formal hearing affording both sides ample opportunity to present their cases by way of witnesses or other evidence. And third, that sanctions may be imposed only on the basis of substantial evidence (*Sullivan v. Houston Independent School District*, 1969).

18. Schools and school systems should be certain that all disciplinary policies are stated in written form, are based on state statutes, and that they do not violate constitutional guarantees (*Sullivan v. Houston Independent School District*, 1969).
19. Students should be made aware of disciplinary policies by some effective means such as a student handbook or posted notice (*Sullivan v. Houston Independent School District*, 1969).
20. Students and their parents or guardians should be provided with a written statement of charges in disciplinary actions resulting in suspension or expulsion (*Davis v. Ann Arbor Public Schools*, 1970).
21. Refusal by a student to testify in a disciplinary hearing may not be treated as an admission of guilt (*Caldwell v. Cannady*, 1972).
22. Punishments must be proportional to the offense committed to avoid a violation of students' substantive due process rights (*Cook v. Edwards*, 1972).
23. School administrators should be specific as to the basis for disciplinary action. They should avoid using vague statements of rule violations and be certain that the reason stated for disciplinary action is specifically provided for in the school

system's behavior code (*Linwood v. Board of Education of City of Peoria, School District No. 150*, 1972).

24. Although states are not required by the United States Constitution to provide public education services, if they choose to do so and make attendance mandatory, this education then becomes a property right under the Fourteenth Amendment which cannot be abridged without due process of the law (*Goss v. Lopez*, 1975).
25. The Fourteenth Amendment's protection of liberty rights requires that any time a person's good name, reputation, honor, or integrity is jeopardized because of what the government is doing to him, the minimal requirements of the Due Process Clause must be satisfied. Suspension or expulsion from school has been found to affect a person's good name, reputation, honor, and integrity (*Goss v. Lopez*, 1975).
26. Suspensions from school for any length of time require some minimum due process rights be afforded to the student affected. As has been acknowledged in other due process contexts, the Court recognized that a deprivation of life, liberty or property requires, at the very least, prior notice and an opportunity to be heard in a manner appropriate to the nature of the case. Specifically, in the case of a possible suspension of ten days or less, due process requires that the student be given oral or written notice of the charges against him, and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. No delay is necessary between the time notice is given and the time of the discussion with the student (hearing). In being given an opportunity to

explain his side of the facts at the discussion, the student must first be told what he is accused of doing and what the basis of his accusation is. Furthermore, because these discussions often take place immediately after the student's misconduct, notice and hearing should precede removal of the student from school. However, the Court also noted that there are some situations (*i.e.* those posing continuing danger to persons or property) where prior notice and hearing do not have to be given before removing a student from school. In these cases the notice and hearing should be given as soon as practically possible, preferably within 24 hours (*Goss v. Lopez*, 1975).

27. In the context of school discipline, a school board member is not immune from liability for damages if he knew or should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student (*Wood v. Strickland*, 1975).
28. A limited combination of investigatory and adjudicatory functions in an administrative body such as a disciplinary tribunal is not necessarily unfair. There must be actual malice or an obvious personal interest in the outcome for the proceeding to come into question (*Gonzales v. Mceuen*, 1977).
29. Administrative disciplinary proceedings need not only be fair, but they should appear to be fair as well (*Gonzales v. Mceuen*, 1977).
30. Disciplinary decisions that are found by the courts to be arbitrary, unreasonable, or inconsistent with the degree of severity of the wrong committed may result in

personal liability on the part of school systems or officials (Carey v. Phipps, 1978).

31. Disciplinary suspension or expulsion of students will not be supported by the federal courts unless the student is afforded at least minimum due process considerations (McClain v. Lafayette County Board of Education, 1982).
32. A student gives up certain procedural due process rights when he admits to the offense early in an investigation. For example, the right to be advised of the type of hearing and the charges, the names of his accusers and a summary of their expected testimonies, the right to be represented by council, or the right to confront and cross-examine the witnesses (McClain v. Lafayette City Board of Education, 1982).
33. School administrators should not make final decisions relating to suspension or expulsion of students if that responsibility is reserved by policy to the board of education (Darby v. School, 1982).
34. If a short-term suspension is subsequently changed to a long-term suspension or to expulsion, administrators must be certain that any additional due process rights requirements are fully met (Darby v. School, 1982).
35. School systems will not be upheld by the courts if they do not carefully follow their own guidelines for disciplining students. They should have adequate policies justly applied (Darby v. School, 1982; Bahr v. Jenkins, 1982).
36. While students do not lose their citizenship rights while attending school, neither should they assume that the United States Constitution gives them the right to show disregard and disrespect to the rules and regulations of the school or to the

teachers and administrators who are paid to carry out the educational program (Bahr v. Jenkins, 1982).

37. The Miranda rules which apply in criminal interrogations requiring officials to inform an offender of his right to remain silent and to an attorney, do not apply in interrogations conducted by school officials in the process of enforcing school rules (Boynton v. Casey, 1982).
38. Students' property interest in education as set forth in *Brown* and *Goss* do not apply to every facet of the educational program (ex. busses, extracurricular activities) (Boynton v. Casey, 1982).
39. The minimum due process requirements required by *Goss v. Lopez* (1975) were meant for deprivation of educational opportunity, thus students have no property or liberty interest at stake in being denied bus transportation (Rose v. Nashua Bd. of Education, 1982).
40. Federal courts prefer that the administrative processes provided for by a state's relevant education code be the avenue through which complainants seek remedy. If the school system has shown that it attempted to provide for some kind of notice and hearing, as per *Goss*, the courts will uphold the decision of the local system (Smith v. Karen Severn and North Boone Community School District 200, 1997).
41. Public school systems are not courts of law, and their disciplinary policies and procedures do not equate with penal codes. Thus, school disciplinary proceedings do not require that "criminal intent" type provisions be afforded to students (West v. Derby Unified School District No. 260, 2000).

42. Maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures (West v. Derby Unified School District No. 260, 2000).
43. A student's placement in an in-school-suspension program does not equal an expulsion from school (Wayne v. Shadowden, 2001).
44. In any action under section 1983 of the United States Code, the plaintiff must prove that 1) he or she has been deprived of a right secured by the United States constitution of laws, 2) the defendants who allegedly caused that deprivation acted under color of state law and 3) the deprivation occurred without due process of law (Wayne v. Shadowden, 2001).

Part Two: Georgia State Board of Education Appeals Process Findings

This study found the following concerning appeals to the State Board of Education:

1. The State Board of Education only has jurisdiction to hear appeals in situations where the local board sits as a tribunal in reference to the construction or administration of school law. The State Board of Education, as an appellate body, is not authorized to consider matters that have not been raised before the local board (Boney v. County Board of Education of Telfair County, 1947; Sharpley v. Hall County Board of Education, 1983; P.A. v. Henry County Board of Education, 2001).
2. The standard for review by the State Board of Education is that if there is any evidence to support the local board's decision, the local board's decision will

stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal (*Ransum v. Chattooga County Board of Education*, 1978; *C.J. v. Heard County Board of Education*, 2000; *P.A. v. Henry County Board of Education*, 2001).

3. The State Board of Education does not make factual findings or reweigh the evidence. The State Board will not disturb the local board's decision if the decision is within the local board's discretion and there is some evidence to support the decision (*Ransum v. Chattooga County Board of Education*, 1978; *L.W. v. Gwinnett County Board of Education*, 2000; *M.L.D. v. Walker County Board of Education*, 2001; *V.L.F. v. Bibb County Board of Education*, 2001; *K.D. v. Dekalb County Board of Education*, 2001).
4. If an issue is not raised at the initial hearing, it cannot be raised for the first time when an appeal is made (*Hutcheson v. Dekalb County Board of Education*, 1980; *P.A. v. Henry County Board of Education*, 2001; *C.S. v. Gwinnett County Board of Education*, 2001).
5. Local boards of education may take any action they deem appropriate on tribunal appeals, including remanding back to a tribunal (*B.D. v. Henry County Board of Education*, 2001). Georgia Code § 20-2-754(d) provides that the local board "may take any action it determines appropriate, and any decision of the board shall be final."
6. Disciplinary panels or tribunals are not bound by any recommendations that might be made by the school official bringing the charges (*C.E.G. v. Columbia County Board of Education*, 2001).

7. Rules of evidence are more relaxed for administrative proceedings. For example, whereas in criminal law the uncorroborated confession of an accomplice cannot be used as evidence against the person charged with a crime, these types of confessions would be admissible in an administrative proceeding (C.J. v. Heard County Board of Education, 2000; V.L.F. v. Bibb County Board of Education, 2001).
8. In the absence of discovery, there is no disclosure requirement in tribunal hearings because they are civil administrative proceedings, not criminal (L.W. v. Gwinnett County Board of Education, 2000).
9. Students have no claim to Fifth Amendment rights against self-incrimination or otherwise, since disciplinary tribunal hearings are civil administrative proceedings (L.W. v. Gwinnett County Board of Education, 2000).
10. Assignment to an alternative school does not constitute an expulsion from school (R.C. v. Thomas County Board of Education, 2000).
11. Co-offenders may be given different consequences for the same offense (V.L.F. v. Bibb County Board of Education, 2001; C.S. v. Gwinnett County Board of Education, 2001).
12. A hearing officer may question witnesses when testimony is unclear (V.L.F. v. Bibb County Board of Education, 2001).
13. Hearsay evidence is admissible, but cannot be the sole basis for determination of guilt (McGahee v. Yamaha Motor Mfg. Corp., 1994; C.J. v. Heard County Board of Education, 2000; A.J. v. Wilkes County Board of Education, 2000; V.L.F. v. Bibb County Board of Education, 2001).

14. In the event of an even split by a local board of education on an appeal from a tribunal decision, the tribunal's decision stands (*V.L.F. v. Bibb County Board of Education*, 2001).
15. Defendants cannot make double jeopardy claims in civil administrative cases (*Brown v. Ohio*, 1977; *B.D. v. Henry County Board of Education*, 2001).
16. Local Boards are not required to provide written findings of fact and conclusions of law (*Jones v. Montgomery County Board of Education*, 1982; *M.D. v. Gwinnett County Board of Education*, 2001).
17. Permanent expulsion does not deny a student of any right to a public education under Georgia law (*N.L. v. Brooks County Board of Education*, 2001).
18. Charges brought against a student must match the offense committed by the student (*J.B. v. Barrien County Board of Education*, 2000).
19. A student must be aware that his actions could have been interpreted as a violation of local board policy before they can be prosecuted for a violation of that policy (*P.R.M. v. Banks County Board of Education*, 2001).
20. All statements made by school officials during tribunal hearings are made part of the record that is sent to the State Board in the event of an appeal. These statements have the potential to undermine the prosecuting schools case (*J.B. v. Barrien County Board of Education*, 2000).
21. Hearing officers must allow students to argue about intent. Intent is a relevant piece of a civil administrative proceeding and is a necessary element of proof (*C.W. v. Dekalb county board of Education*, 2000).

22. Students must be allowed to cross-examine witnesses during the course of a disciplinary tribunal hearing (L.W. v. Gwinnett County Board of Education, 2000; K.D. v. Dekalb County Board of Education, 2001; B.D. v. Pike County Board of Education, 2001).
23. A Local Board cannot impose a harsher sentence on appeal than the one imposed by the tribunal without an explanation for why they did so (Georgia Real Estate Commission et al. v. Hooks, 1977; Chauncey Z. v. Cobb County Board of Education, 1993; B.J.D. v. Walker County Board of Education, 2000).
24. The evidence presented by the local system must substantiate the particular charge being brought. Local systems should choose a charge that can be substantiated based on the available evidence (J.B. v. Barrien County Board of Education, 2000; J.P. v. Houston County Board of Education, 2000; S.F. v. Gwinnett County Board of Education, 2000).
25. The defendant must be made aware of the specific charges being brought against him or her prior to a hearing and before an admission to the charge is admissible (E.K. v. Gwinnett County Board of Education, 2000; K.P. v. Savannah-Chatham County Board of Education, 2001).
26. It is the Local Board's responsibility to establish that a student violated a rule (S.F. v. Gwinnett County Board of Education, 2000; P.R.M. v. Banks County Board of Education, 2001).

Part Three: Conclusions

Based on these findings it can be concluded that:

1. States are not constitutionally required to provide public educational services, but if they choose to do so the services must be equally available to all residents of the state. This choice by the State also effectively makes education a property and liberty right of every student in that state under the Fourteenth Amendment (Brown v. Board of Education of Topeka, 1954; Goss v. Lopez, 1975).
2. School officials derive their authority to enforce discipline in the schools from the State (Burkitt v. School District # 1 of Multnomah County, 1952; Georgia Code § 20-2-735).
3. Establishing statutes for the operation of school systems is a state responsibility. Rules and regulations of individual schools must have their basis in state statutes and must not violate constitutional guarantees (Burnside v. Byars, 1966; Sullivan v. Houston Independent School District, 1969).
4. For the State or any of its agencies to prohibit a behavior, it must first establish that that behavior would cause a substantial disturbance to the learning environment. Rules cannot be enacted simply to prevent students from expressing unpopular opinions (Tinker v. Des Moines, 1969). Students should be made aware of disciplinary policies by some effective means such as a student handbook or posted notice at the beginning of each school year (Sullivan v. Houston Independent School District, 1969).
5. Education is an important property and liberty right which has critical implications on the ability of a student to have a productive life. Such rights may

not be abridged unless a legitimate state interest is at stake. If these rights are abridged, students must be provided due process under the law (*Brown v. Board of Education of Topeka*, 1954; *Burnside v. Byars*, 1966; *Goss v. Lopez*, 1975).

6. Students are entitled to Fourteenth Amendment protections from the State and all of its emissaries, including boards of education. Students' constitutional rights are not abandoned when they enter a school (*West Virginia State Board of Education v. Barnette*, 1943; *Tinker v. Des Moines*, 1969).
7. State agencies, including school systems, must recognize students' basic due process rights including notice of charges, the right to a hearing, the right of appeal, the right to counsel, and privilege against self-incrimination (*In re Gault*, 1967).
8. Methods used by school officials to discipline students, which are found to be unfair and arbitrary, are considered to be violations of students' substantive due process rights (*Soglin v. Kauffman*, 1967). School administrators must be specific as to the basis for disciplinary actions taken. They should avoid using vague statements of rule violations and be certain that the reason stated for disciplinary action is specifically provided for in the school system's behavior code.

Punishments must be proportional to the offense committed to avoid a violation of students' substantive due process rights. School systems will not be upheld by the courts if they do not carefully follow their own guidelines for disciplining students. They should have adequate policies justly applied (*Sullivan v. Houston Independent School District*, 1969; *Linwood v. Board of Education of City of*

Peoria, School District No. 150, 1972; Cook v. Edwards, 1972; Darby v. School, 1982; Bahr v. Jenkins, 1982).

9. Students and their parents or guardians should be provided with a written statement of charges in disciplinary actions resulting in suspension or expulsion (Davis v. Ann Arbor Public Schools, 1970).
10. The Fourteenth Amendment's protection of liberty rights requires that where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, the minimal requirements of the Due Process Clause must be satisfied. Suspension or expulsion from school has been found to affect a person's good name, reputation, honor, and integrity. In the case of a suspension of ten days or less, due process requires that the student be given oral or written notice of the charges against him, and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. As for the timing of the notice, no delay is necessary between the time notice is given and the time of the discussion with the student. In being given an opportunity to explain his side of the facts at the discussion, the student must first be told what he is accused of doing and what the basis of his accusation is. Notice requirements, as set forth by the Fourteenth Amendment's Due Process Clause, should contain a statement of the specific charges and grounds which, if proven, would justify suspension under the regulations of the Board of Education. The nature of the hearing should vary depending on the circumstances of the particular case, though the opportunity to hear both sides in considerable detail is best suited to protect the rights of all involved. The student should be given the names of the

witnesses against him and an oral or written report of the facts to which each witness testifies. He should also be given the opportunity to present to the board, or at least to an administrative official, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses on his own behalf. However, there are some situations (*i.e.* those posing continuing danger to persons or property) where prior notice and hearing do not have to be given before removing a student from school. In these cases the notice and hearing should be given as soon as practically possible, preferably within 24 hours. Suspension or expulsion of students will not be supported by the federal courts unless the student is afforded at least minimum due process considerations (*Dixon v. Alabama v. State Board of Education*, 1961; *Goss v. Lopez*, 1975; *McClain v. Lafayette County Board of Education*, 1982).

11. Disciplinary decisions that are found by the courts to be arbitrary, unreasonable, or inconsistent with the degree of severity of the wrong committed may result in personal liability on the part of school systems or officials (*Carey v. Piphus*, 1978).
12. Federal courts prefer that the administrative processes provided for by a state's relevant education code be the avenue through which complainants seek remedy. If the school system has shown that it attempted to provide for some kind of notice and hearing, as per *Goss*, the courts will uphold the decision of the local system (*Smith v. Karen Severn and North Boone Community School District* 200, 1997).

13. Students' property interest in education do not apply to every facet of the educational program (ex. busses, extracurricular activities) (*Boynton v. Casey*, 1982). The minimum due process requirements required by *Goss* were meant for deprivation of educational opportunity, thus students have no property or liberty interest at stake in being denied bus transportation (*Rose v. Nashua Board of Education*, 1982).
14. The Georgia State Board of Education serves as the final appellate body in the Georgia educational system's administrative process. The State Board will uphold a local board of education's decision if the decision is within the local board's discretion, is not so arbitrary and capricious as to be illegal, and there is any evidence to substantiate it (*Boney v. County Board of Education of Telfair County*, 1947; *Ransum v. Chattooga County Board of Education*, 1978; *Sharpley v. Hall County Board of Education*, 1983; *C.J. v. Heard County Board of Education*, 2000; *P.A. v. Henry County Board of Education*, 2001).
15. The State Board does not make factual findings or reweigh the evidence. Its decision is based solely on the record developed during the school-system- level disciplinary hearing. Issues not raised at the initial hearing cannot be raised for the first time on appeal to the State Board (*Hutcheson v. Dekalb County Board of Education*, 1980; *L.W. v. Gwinnett County Board of Education*, 2000; *M.L.D. v. Walker County Board of Education*, 2001; *V.L.F. v. Bibb County Board of Education*, 2001; *K.D. v. Dekalb County Board of Education*, 2001; *P.A. v. Henry County Board of Education*, 2001; *C.S. v. Gwinnett County Board of Education*, 2001).

16. Because appeals to the State Board are administrative and not criminal proceedings; (1) rules of evidence are more relaxed, (2) students have no claim to Fifth Amendment rights against self-incrimination or otherwise, (3) hearsay evidence is admissible, but may not be the sole determiner of guilt, (4) students cannot make double jeopardy claims, and (5) local boards of education are not required to provide written findings of fact and conclusions of law (*Brown v. Ohio*, 1977; *Jones v. Montgomery County Board of Education*, 1982; *McGahee v. Yamaha Motor Mfg. Corp.*, 1994; *C.J. v. Heard County Board of Education*, 2000; *L.W. v. Gwinnett County Board of Education*, 2000; *A.J. v. Wilkes County Board of Education*, 2000; *V.L.F. v. Bibb County Board of Education*, 2001; *B.D. v. Henry County Board of Education*, 2001; *M.D. v. Gwinnett County Board of Education*, 2001).

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