MANAGING THE CHRONICALLY DISRUPTIVE REGULAR EDUCATION STUDENT IN GEORGIA:

A LEGAL PERSPECTIVE

by

SAMUEL MICHAEL DUNCAN

(Under the Direction of John Dayton)

ABSTRACT

This study examines two Georgia statutes that address the chronically disruptive regular education students, the Georgia Chronic Disciplinary Problem Student Act and the Teacher Removal Act. The study reveals that the statutes contain ambiguous language that hinders the identification of chronically disruptive students. The process of identifying chronically disruptive students may invoke special education issues. Additionally, the Georgia Chronically Disciplinary Problem Student Act and the Teacher Removal Act fail to provide for meaningful parental involvement, which is required under the A Plus Education Reform Act. To remedy these weaknesses, Georgia’s statute Student Support Team process is offered as a solution to strengthen the implementation of Georgia’s chronic disciplinary problem student statutes.

INDEX WORDS: Discipline, disruptive students, school law, Out-of school suspension, alternative school, corporal punishment, Student Support, Team, Georgia Chronic Disciplinary Problem Student Act, Teacher Removal Act
MANAGING THE CHRONICALLY DISRUPTIVE REGULAR EDUCATION STUDENT IN GEORGIA:
A LEGAL PERSPECTIVE

By

SAMUEL MICHAEL DUNCAN
B.S., Georgia Southern University, 1992
M.Ed., The University of Georgia, 1998

A Dissertation Submitted to the Graduate Faculty of The University of Georgia in Partial Fulfillment of the Requirements for the Degree

DOCTOR OF EDUCATION

ATHENS, GEORGIA
2003
MANAGING THE CHRONICALLY DISRUPTIVE REGULAR EDUCATION STUDENT IN GEORGIA:
A LEGAL PERSPECTIVE

by

SAMUEL MICHAEL DUNCAN

Major Professor: John Dayton
Committee: Sally Zepeda
Kenneth Tanner

Electronic Version Approved:
Maureen Grasso
Dean of the Graduate School
The University of Georgia
December 2003
DEDICATION

This study is dedicated to my best friend and son, Alec. I love you.
ACKNOWLEDGEMENTS

I would like to express my sincere gratitude to my major professor John Dayton for his support and kindness. This study would not have been possible without the love and support of Melanie Phillips and Louise Childs. Thank you for pushing me. I owe a very special thank you to Susan Ryan for the hours of proofreading and suggestions. Lastly, I would like to tell my father that his example of hard work, dedication, and sacrifice instilled in me the strength to complete this project.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ACKNOWLEDGEMENTS</th>
<th>vi</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIST OF FIGURES</td>
<td>viii</td>
</tr>
</tbody>
</table>

## CHAPTER

1 INTRODUCTION .................................................................1
   - Overview of the Study ............................................................1
   - Research Questions ................................................................4
   - Procedures ............................................................................4
   - Limitations of the Study ..........................................................5

2 REVIEW OF THE RELATED LITERATURE ..................................7
   - The Authority to Sanction Student Behavior ............................7
   - School Discipline Measures ....................................................21
   - Long Term Suspensions and Expulsions ....................................27
   - Alternative Schools ...............................................................39
   - Short Term Suspensions ..........................................................43
   - In-School Suspension .............................................................55
   - Corporal Punishment ...............................................................58

3 GEORGIA’S CHRONIC DISCIPLINE LAWS .............................73
   - Chronic Disciplinary Problem Student Act ..............................73
   - Teacher Removal Act .............................................................81
4 CONCLUSION .................................................................................................................................89

Findings .............................................................................................................................................89

Practice Suggestions for School Administrators ...........................................................................90

The Student Support Team and Chronic Discipline .................................................................92

REFERENCES ........................................................................................................................................96
## LIST OF FIGURES

<table>
<thead>
<tr>
<th>Figure</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Figure 1</td>
<td>Teacher Removal Process: O.C.G.A §20-2-738</td>
<td>83</td>
</tr>
<tr>
<td>Figure 2</td>
<td>SST Flow Chart</td>
<td>93</td>
</tr>
</tbody>
</table>
CHAPTER 1
INTRODUCTION

Overview of the Study

For over three decades, discipline has been cited as one of the biggest problems facing public education (Rose & Gallup, 2001). Yet little has been done to address the increasingly disruptive nature of America’s school children. States seeking a solution to declining achievement scores and soaring student drop out rates have turned to a variety of school improvement initiatives such as high stakes testing, vouchers, and more stringent teacher certification programs, instead of analyzing disruptive student behavior. Disruptive student behavior can take a toll on the educational process, especially in terms of academic achievement and teacher retention (Barton, Coley, & Wenglinski, 1998; Thomas & Kiley, 1994).

While parents and educators have decried the disruptive conditions present in many of our nation’s schools, research addressing the impact of chronically disruptive students has all but been ignored. It was not until 1998 that Burton, Coley, and Wenglinski analyzed the National Longitudinal Survey of 1988 and found that the frequency of disruptive behavior is negatively related to academic achievement in all four subject areas studied – mathematics, science, reading, social studies.

Wang, Haertel, and Walberg (1993) set out to identify and estimate the influence of educational, psychological, and social factors on learning. Their study identified classroom management as the most influential variable affecting student learning, thus establishing the importance of the
classroom environment in increasing student achievement. Furthermore, Barton, Coley, and Wenglinski’s 1998 study found that:

The consequences of student disorder are not merely more disorder; disorder erodes the learning environment for all students as indicated by other student achievement gains. This finding suggests that discipline policy dealing with the chronically disruptive students is not a side issue distracting educators from more academic goals; rather a sound disciplinary policy is a prerequisite for a sound academic policy. (Barton, Coley, & Wenglinsky, 1998)

Dealing with the chronically disruptive student places a heavy burden on the classroom teacher resulting in a high rate of attrition among new teachers. Thomas and Kiley (1994) state that one out of seven (15 percent) new teachers leave teaching after their first year and more than fifty percent have left within six years. Controlling the class is the major concern of new teachers (Echternecht, 1981; McDonald & Elisas 1983; Thomas & Kiley, 1994). Consequently, student behavior is one of the most cited factors contributing to teacher attrition (Marlow, 1996). This finding not only affects the neophyte teacher, but also the veteran as well. Hock (1988) found student discipline to be the second most cited cause of perceived teacher burnout. A critical look at the laws pertaining to the chronically disruptive student is needed in response to the current teacher shortage and Barton, Coley, and Wenglinsk’s (1998) findings, which indicate an increase in student tardiness, absenteeism, class cutting, drug use, drug sales on school grounds, and verbal abuse of teachers. An important point to note is that administrative support mitigates the negative feelings teachers have toward disruptive students (Karge, 1993). A solid understanding of the legal landscape will assist school administrators in supporting teaching and learning.
To answer the growing concern over disruptive student conduct, the Georgia Legislature in 1992, passed the Georgia Chronic Disciplinary Problem Student Act (O.C.G.A § 20-2-764). This law enables school administrators to identify students who exhibit a pattern of disruptive behavior. Once identified, the student, teacher, and parents meet to construct a behavior intervention plan. The parents are also invited to visit the school and observe their student in the classroom. The behavior plan, usually developed through the student support team process, includes specific interventions for the school to implement and stringent guidelines for the student to follow. Failure by the student to abide by the conditions set forth in the behavior plan typically results in suspension or placement in an alternative educational setting such as an alternative school.

Roy Barnes, Georgia Governor (1998-2002) initiated as part of a comprehensive reform bill the Teacher Removal Act of 1998 (O.C.G.A § 20-2-738). The purpose of the Teacher Removal Act was to empower classroom teachers to identify and remove students who frequently and substantially disrupt the learning environment. The teacher is granted the authority to remove the student from class until a hearing is held by a placement review committee to determine an appropriate setting for the student. This process works in conjunction with any discipline imposed by the school administrators.

To truly embrace meaningful school improvement, school administrators in Georgia must be knowledgeable of current Georgia laws as well as applicable federal laws to deal effectively with Georgia’s chronically disruptive student and to facilitate an environment conducive to learning and working. A working knowledge of the law as it relates to the chronically disruptive regular education student in Georgia is essential for school level administrators.
Research Questions

This study investigated the following research questions:

1. What is the current status of the law as it relates to the discipline of chronically disruptive regular education students in Georgia?

2. Based on an analysis of current Georgia law and applicable Federal laws, what guidelines can be provided to public school administrators for dealing effectively with the chronically disruptive regular education student?

Procedures

Research for this study focused on analyzing relevant Georgia and Federal law in order to understand and explain the legal parameters surrounding the various discipline measures available to school administrators. This study reveals the current status of the law regarding discipline for the chronically disruptive regular education student in Georgia. Primary data for this study was derived from Georgia statutes, Georgia Department of regulations guidelines as well as applicable state and federal court. Relevant statutes, regulations, and cases were identified from law and education journals on school discipline, from relevant citations within court opinions, and through a search of “Lexis-Nexis,” “Findlaw,” and “Eric” databases. Additional information was gathered through research of the Georgia Department of Education website.

Chapter two is divided into two sections. Section one describes the authority invested in school administrators to maintain an orderly learning environment. Included are Supreme Court as well as Fifth and Eleventh Circuit decisions that outline the development of school administrator’s authority to sanction inappropriate behavior. Data presented in section one are
arranged chronologically to depict the changing landscape of school authority in relation to school discipline.

Section two describes the various discipline measures available to school administrators and accurately outlines the procedures to legally administer the various discipline measures, including Georgia statutes, Georgia Board of Education guidelines, and applicable federal and state case law. Each case used in this analysis was selected to offer insight into the special circumstances surrounding application of expulsion, short-term suspension, alternative school placement, in-school suspension, and corporal punishment and were arranged to reflect the possible deprivation of educational opportunity.

Chapter three provides an analysis and discussion of the current status of the law as it relates to the chronically disruptive regular education student. In particular, an analysis of the Georgia Chronic Disciplinary Problem Student Act (1992) and the Teacher Removal Act (1999) is provided. Chapter four provides a summary of the legal requirements necessary to manage the chronically disruptive regular education student, along with some policy suggestions for school level administrators.

Limitations of the Study

This study is designed to provide information concerning discipline measures used to sanction the chronically disruptive regular education student in Georgia’s public schools. The findings are limited to published documents concerning school discipline laws. This study is not intended to provide legal advice.

This study focuses on Georgia law, although other state cases and federal cases outside of Georgia are included to provide further clarification. This study also focuses directly on the regular education student. Students provide educational services through The Individuals with
Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act (1973) is not included.
CHAPTER 2

REVIEW OF THE RELATED LITERATURE

The Authority to Sanction Student Behavior

Typical conversations in the faculty work room reveal that one of the single most important issues affecting American schools is the lack of discipline (Barton, Coley and Wenglinski, 1998). School districts throughout our country have developed elaborate policies and procedures to guide the behavior of school children, and day after day school administrators levy out punishments to a seemingly endless conveyor belt of defiant students. As a result, new and promising teachers, shocked by the general lack of self control exhibited by their pupils, are leaving the profession.

Controlling student behavior is not new to American schools, but it has become an increasingly difficult task over the past century. As the move to compulsory education began to take hold in the early part of the 1900s, education became a property interest, guided by the principles of due process outlined in the Fourteenth Amendment. The Fourteenth Amendment states in part that:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (United States Constitution)
This brought the Constitution squarely to the schoolhouse door. Student behavior is inextricably tied to First Amendment issues. The First Amendment states that:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridge the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. (United States Constitution)

Although students do not “shed their constitutional rights at the school house gates” (Tinker v. Des Moines, 1968), school officials have been afforded a wide latitude of discretion in formulating regulations pertaining to the discipline of school children (Burnside v. Byars, 1966). Neither the schools nor the courts can predict each and every type of behavior qualifying for protection or sanctions in the schoolhouse, thus the courts have attempted to assist school administrators in identifying behaviors that warrant sanctions and those behaviors that are constitutionally protected.

In 1870, a Massachusetts high school student was expelled from school for “whispering, laughing, acts of playfulness and rudeness to other pupils, inattention to study, and conduct tending to cause confusion and distract the attention of other scholars from their studies and recitations” (Hodgkins v. Inhabitants of Rockport, 1870, p. 475). The Court pondered the school committee’s authority to expel the student. Relying on a Massachusetts statute giving the regulation and discipline of the schools to the school committee, the court ruled that:

They are required by law to visit the school frequently… and they are thus in a situation to judge, better than any other tribunal, what effect such misconduct has upon the usefulness of the school and welfare of the other scholars, and if they
exercise this power in good faith, their decision is not subject to revision by the court. (Hodgkins v. Inhabitants of Rockport, 1870, p. 475)

In 1892, a student was expelled from the Cambridge Massachusetts Public Schools “because he was too weak-minded to derive profit from instruction” (Watson v. City of Cambridge, 1892, p. 561). Additionally the student exhibited antisocial behavior such as pinching and making uncouth noises.

The question before the Supreme Court of Massachusetts was whether “the school committee acting in good faith in the management of the schools, upon matters of fact directly affecting the good order and discipline of the schools, is final so far as it relates to the rights of pupils to enjoy privileges of the school, or is subject to revision by a court” (Watson v. City of Cambridge, 1892, p. 562). The court ruled that as long as school officials acted in good faith and within their jurisdiction, they were free from outside interference, including judicial review of their actions. The Supreme Court of Massachusetts goes on to state that “a jury composed of men with no special fitness to decide educational questions should not be permitted to say their answer is wrong” (Watson v. City of Cambridge, 1892, p.563).

In 1915, Waugh v. Board of Trustees of the University of Mississippi was heard before the Supreme Court of the United States. In this case, the State of Mississippi passed a statute prohibiting Greek Letter fraternities and other societies in state run institutions of higher education. Students belonging to the organizations were not eligible for graduation, rewards or recognitions. The suit alleged the regulations of fraternities and other societies violated the Fourteenth Amendment. The Court ruled that:

It is to be remembered that the University was established by the State and is under the control of the State, and the enactment of the statute may have been
induced by the opinion that membership in the prohibited societies divided the
attention of the students and distracted from that singleness of purpose which the
State desired to exist in its public educational institutions. It is not for use to
entertain conjectures in opposition to the views of the State and annul its
regulations upon disputable considerations of their wisdom or necessity. (Waugh
v. Board of Trustees of the University of Mississippi, 1915, p. 596)

_Hodgkins_ (1870), _Watson_ (1892), and _Waugh_ (1915) demonstrate the reluctance of the courts to
intervene in school issues, instead relying on the political process and locally elected official
such as boards of education and school committees to determine the reasonableness of school
discipline issues. Possibly more significant is the lack of case law in other states pertaining to
student discipline. The unquestionable control over the administration of public school came
under attack in _Meyer v. Nebraska_ (1923) and _West Virginia State Board of Education v.
Barnette_ (1943) as the Supreme Court clearly announces its intention to bring the Constitution to
school.

In 1923, the Supreme Court heard _Meyer v. Nebraska_. The case involved the
constitutionality of a Nebraska statute that restricted a teacher from instructing his pupils in a
language other than English before the student passed the eighth grade. A teacher at a Nebraska
parochial school instructed a ten-year old in German and was found guilty of a misdemeanor and
subjected to a fine. The teacher appealed the decision, stating that the Nebraska statute violated
the fourteenth amendment. The Court in _Meyer_ offered its interpretation of the fourteenth
amendment when it stated:

> Without doubt, it denotes not merely freedom from bodily restraint of life, to
> acquire useful knowledge, to marry, establish a home and bring up children, to
worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness of free men. (Meyer v. Nebraska, 1923, p. 399)

Furthermore, the Court asserted that: "The established doctrine is that this liberty may not be interfered with, under guise of protecting the public interest, by legislative action which is arbitrary or with reasonable relation to some purpose with the competency of the State to effect" (Meyer v. Nebraska, 1923, p. 399). The Court reasoned that the State was entrusted with the power to maintain the reasonable regulations in the administration of the public school system, but this power is limited in instances where the State acts are "arbitrary and without reasonable relation to any end within the competency of the State" (Meyer v. Nebraska, 1923, p. 402).

*West Virginia State Board of Education v. Barnette* was heard before the Supreme Court of the United States in 1943. The case dealt with the requirement by the West Virginia State Board of Education for students to salute the flag of the United States while reciting the Pledge of Allegiance. Failure to comply with the requirement resulted in expulsion, and a student would not be readmitted until he conformed to the pledge requirements. If the student refused to comply and return to school, he would be labeled a delinquent, and his parents would face prosecution. Suit was filed by a group of Jehovah’s Witnesses who refused to salute the flag on the basis that it violated their right to religious freedom.

The decision in *West Virginia State Board of Education v. Barnette* (1943) clearly articulates that students have constitutional protections at school 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 (p.1185).” The court further departs from the long held view
that issues involving school discipline were best left for local officials by declaring that “our
duty to apply the Bill of Rights to assertions of official authority does not depend upon our
marked competence in the field where the invasion of rights occur” (West Virginia State Board
of Education v. Barnette, 1943, p. 1186). This statement reverses the notion that the discretion
of school officials in matters of student behavior and discipline is beyond the reach of judicial
review, even if they act in good faith.

The West Virginia statute compelling students to stand, salute the flag, and recite the flag was
struck down as a violation of the student’s First Amendment right to freedom of religion. The
school’s authority to punish students for non-conforming behaviors would now be held under the
light of the Constitution, gone were the unquestioned judgment of school officials in matters of
school discipline.

It was not until the late 1960s when three cases Burnside v. Byars (1966), Blackwell v. Issaguena
(1966), and Ferrell v. Dallas Independent School District (1968) were heard before the Fifth
Circuit Court of Appeals that conditions began to be articulated for school administrators to limit
disruptive behaviors based upon constitutional requirements. Fifth Circuit decisions are relevant
because Georgia was in the Fifth Circuit until 1982.

In Burnside v. Byars (1966), the Fifth Circuit Court of Appeals heard a case involving a group of
students in a Mississippi high school who in 1964 wore buttons advocating black voter
registration. The students were warned that wearing the buttons would result in suspension. The
next day thirty students wore the buttons and were given the option to remove them or be placed
on suspension for one week. Many chose the suspension and filed suit, arguing that the
prohibition violated the student’s First and Fourteenth Amendment rights freedom speech.
The Supreme Court had long asserted that constitutional guarantees are not absolute and may be subject to limitations when a compelling government interest is demonstrated. Acknowledging the compelling state interest in public education as exemplified through the establishment of compulsory education laws, the Court suggests that rules and regulations aimed at promoting an orderly program of classroom learning is not only necessary but also required (Burnside v. Byars, 1966). Formulating rules and regulations for student behavior is, according to this decision, a reasonable function of local school officials. A reasonable exercise of this authority is one “which measurably contributes to the maintenance of order and decorum within the educational system” (Burnside v. Byars, 1966, p. 748).

The Fifth Circuit Court of Appeals found the prohibition of freedom buttons to be unreasonable and a violation of the students First and Fourteenth Amendments rights, because “the presence of ‘freedom buttons’ did not hamper the school in carrying on its regular schedule of activities” or “inherently distract students and break down the regimentation of the classroom” (Burnside v. Byars, 1966, p. 748). In conclusion, the Burnside decision recognized the authority of school officials to establish and enforce rules, which deter behaviors that “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school” (Burnside v. Byars, 1966, p. 749).

In a case remarkably similar to the Burnside case, thirty students arrived at a Mississippi high school wearing buttons promoting black voter registration. Many of the students wearing the buttons failed to attend class but instead remained in the hallways talking. The principal told the students that they had to remove their buttons and stop interrupting school. The next day over 150 students came to school with the buttons and began pinning them on students voluntarily and involuntarily. “This activity created a state of confusion, disrupted class instruction, and resulted
in a general breakdown of orderly discipline” (Blackwell v. Issaquena County Board of Education, 1966, p. 751). This prompted the principal to call an assembly and explain that the buttons were forbidden in order to maintain an orderly environment. Students returning to school with the buttons would be suspended. The following day students returned to school wearing the buttons, and the principal sent them home. While leaving, the students encouraged others to leave, walked into classes during instruction, and forcibly pinned buttons on students. The question on appeal to the Fifth Circuit was:

Whether the school regulation forbidding the wearing of the buttons is a reasonable rule necessary for the maintenance of school discipline or an unreasonable rule which infringes on students right to freedom of speech guaranteed by the First Amendment of the United States Constitution. (Blackwell v. Issaquena County Board of Education, 1966, p. 752)

The similarity in circumstances with the Burnside case did not escape the Court’s reasoning. The Fifth Circuit Court of Appeals returned to the Burnside decision, stating that a reasonable regulation is one which is “essential in maintaining order and discipline on school property” and “which measurably contributes to the maintenance of order and decorum within the educational system” (Blackwell v. Issaquena County Board of Education, 1966, p. 753). The evidence clearly demonstrated that the “students conducted themselves in a disorderly manner, disrupted classroom procedures, interfered with the proper decorum and discipline at the school and disrupted other students who did not wish to participate in the wearing of the buttons” (Blackwell v. Issaquena County Board of Education, 1966, p. 753). The Court went on to provide further clarification by declaring that school officials were well within their authority to prohibit discourteous behavior, behavior intended to disrupt instruction, and behavior that
interferes with the rights of other students (Blackwell v. Issaquena County Board of Education, 1966).

According to the *Blackwell* decision, school officials are charged with maintaining an environment conducive to learning. The wearing of the buttons created an environment whereby the mission of the school could not be accomplished, thus the action of school officials to prohibit the student’s freedom of speech and expression was reasonable.

Next the Fifth Circuit heard a similar case involving the prohibition of student behavior, which has yet to cause a disruption to the school routine. In *Ferrell v. Dallas Independent School District* (1968), a group of boys were refused admission to school based on the length of their hair. Once again, the Court was faced with determining the authority of school officials to limit student freedoms in order to maintain an orderly learning environment.

During the district court proceedings, the school and the appellants brought forth testimony and witnesses to demonstrate the degree of disruption created by boys wearing long hair. The principal testified “that the length and style of the boy’s hair would cause commotion, trouble, distraction, and disturbance in the school” (*Ferrell v. Dallas Independent School District*, 1968, p. 699). He supported his claim by detailing several incidents of harassment suffered by students with long hair at school, including occasions where other long-haired boys had their hair forcibly cut by other students, fights, obscene language directed at the boys, and general ostracism. The appellants countered by stating that the long hair was in vogue and popular among teenagers and would not create a disturbance of the school routine. The district court concluded that the school authorities had acted within their jurisdiction in prohibiting the student from wearing long hair to school because the principal had demonstrated that the long hair was likely to create a disturbance based on past circumstances.
On appeal to the Fifth Court, the court agreed. The Texas Constitution, Article 7, § 1, stated that:

A general diffusion of knowledge being essential to the preservation of the liberties and rights of people, it shall be the duty of the legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Consequently, the authority to adopt rules and regulations for appropriate administration of the Texas Public School System was given to local authorities; and since the principal had demonstrated that the boys hair “had indeed created some problems during school hours,” the rule was not “arbitrary, unreasonable, or an abuse of discretion” (Ferrell v. Dallas Independent School District, 1968, p. 702).

Although the court recognized the length of ones hair as a form of expression protected by the Fourteenth Amendment, they were quick to state that “the constitutional right to free exercise of speech, press, assembly, and religion may be infringed by the state if there are compelling reasons to do so” (Ferrell v. Dallas Independent School District, 1968). The opinion concludes by giving school official broad discretion in the Fifth Circuit by saying “that which so interferes or hinders the state in providing the best education possible for its people, must be eliminated or circumscribed as needed. This is true even when that which is condemned is the exercise of a constitutionally protected right” (Ferrell v. Dallas Independent School District, 1968).

The Ferrell case deals with the issue of prohibiting a behavior that has yet to cause a disruption. The testimony by the school described past situations with long hair and used that experience to forecast that the length of this boy’s hair would cause a disruption. The Fifth Circuit was generous in the power given to school officials to forecast a possible disruption. Interestingly, in
the same year that the *Ferrell* decision was issued by the Fifth Circuit, the Supreme Court in *Tinker v. Des Moines* (1965) addressed the issue of limiting constitutionally protected expression based on a forecast of disruption.

In *Tinker v. Des Moines* (1965), three student students, two high schools and one middle school student, wore black armbands to school protesting the United States involvement in Vietnam. Several days earlier, school officials adopted a policy saying that students wearing black armbands would be asked to take them off or be suspended until they came to school without the armbands. The three students arrived at school with the armbands and were suspended. The petitioners filed suit in the District Court and sought an injunction to stop the school officials from disciplining the students. The District Court dismissed the complaint, held that the school official’s action was “reasonable in order to prevent disturbance of school discipline” (*Tinker v. Des Moines Independent Community School District*, 1968, p. 505). The decision was appealed to the Fifth Circuit that affirmed the District Court’s decision. Subsequently, the Supreme Court granted certiorari.

The issue before the Supreme Court was the authority of school officials to prohibit the constitutional rights of students in the name of school discipline. The Court said, “It can hardly be argued that either students or teachers shed their constitutional rights of freedom of speech or expression at the school house gate” (*Tinker v. Des Moines Independent Community School District*, 1968, p. 506). The armbands were a “silent, passive expression of opinion unaccompanied by any disorder or disturbance” (*Tinker v. Des Moines Independent Community School District*, 1968, p. 508); it did not infringe on the rights of other students, disrupt classes or result in violence. The Courted stated that:
The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of the petitioners. There is here no evidence whatever of petitioner’s interference, actual or nascent, with the school’s work or of collision with the right’s of other students to secure and to e let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the school or the rights of other students. (Tinker v. Des Moines Independent Community School District, 1968, p. 508)

Fear or apprehension of disruption, according to the Tinker decision, is not enough for school officials to prohibit students freedom of expression. Furthermore, any act outside the favor of the majority may give rise to a disturbance, but this prediction is not enough to prohibit a student’s freedom of expression. The Court proclaimed that “undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression” (Tinker v. Des Moines Independent Community School District, 1968, p. 508). The Court reasoned that:

In order for the State in the person of the school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. (Tinker v. Des Moines Independent Community School District, 1968, p. 508)

In order to prohibit student expression, school officials must show that conduct would substantially interfere with the requirements of appropriate discipline in the operation of the school as set forth in Burnside v. Byars (1966):
Certainly, where there is no finding and no showing that engaging in the forbidden conduct would ‘materially and substantially interfere with the requirements of appropriate discipline in the operation of the school’, the prohibition cannot be sustained. (Tinker v. Des Moines Independent Community School District, 1968, p. 509)

The burden to prove the imminent disruption falls to school officials. The Court observed that:

Conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts class work or involves substantial disorder or invasions of the rights of others is, of course not protected by the constitutional guarantee of freedom of speech. (Tinker v. Des Moines Independent Community School District, 1968, p. 513)

In conclusion, the prohibition of specific student behavior must reasonably lead school officials to forecast substantial disruption of, or material interference with, school activities. The Tinker decision, built from the Fifth Circuit’s Burnside, Blackwell, and Ferrell case, still stands today as the test used by school officials to identify disruptive behaviors warranting discipline. The dissenting opinion in Tinker was offered by Justice Black. In his dissent, he questioned the lack of disruption that actually occurred during the armband demonstration:

I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw they would, that is, took the student’s minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam War. (Tinker v. Des Moines Independent Community School District, 1968, p. 518)
Moreover, Justice Black, in dissent, stated:

And I repeat that if the time has come when pupils of state supported schools, kindergartens, grammar schools, or high schools, can defy and flout orders of school officials to keep their minds on their own school work, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary. (Tinker v. Des Moines Independent Community School District, 1968, p. 518)

According to the dissenting opinion in *Tinker*, it is a mistake to believe that limits on free speech do not exist. One must look at the purpose of the institution. Justice Black argued that students are sent to school to learn, and that schools are not established by the state to offer a platform for the youth of our country to express their political views (Tinker v. Des Moines Independent Community School District, 1968). The majority decision undermines the authority of the local school authorities to establish and maintain school discipline, which “is an integral and important part of training our children to be good citizens—to be better citizens” (Tinker v. Des Moines Independent Community School District, 1968, p. 525).

A second dissenting opinion was delivered by Justice Harlan. He stated that “school officials should be accorded the widest authority in maintaining school discipline and good order in their institutions” (Tinker v. Des Moines Independent Community School District, 1968, p.526). He furthered argued that:

To translate that proposition in to a workable constitutional rule, I would, in cases like this, cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns—for example, a desire to prohibit expression of an unpopular view, while permitting
the expression of the dominant opinion. (Tinker v. Des Moines Independent Community School District, 1968, p. 526)

Justice Harlan concluded that nothing in the facts of this case can be construed to question the motives of the school officials to arbitrarily suppress an unwelcome opinion, thus the school administrators rule should be upheld.

School Discipline Measures

The field of school discipline is a veritable land mine of conflict. The legitimate rights of the disruptive student are evaluated against the need to promote order to protect the rights of those who wish to learn in an environment free from disruption. While legitimate rights must be respected, inappropriate behavior must be confronted and discipline administered. In striking this balance, school administrators deal daily in a growing and increasingly complex legal environment. This section deals with the legal parameters that govern and guide school discipline measures.

The most serious conflict that arises in the area of school discipline is the issue of exclusion from the educational process. Article VIII, Section I, Paragraph I of the Georgia Constitution establishes a free system of public education by stating that “the provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia. Public education for the citizens prior to the college or post-secondary level shall be free and shall be provided for by taxation.” The O.C.G.A. § 20-2-6901 establishes compulsory school attendance:

Every parent, guardian, or other person residing within this state having control or charge of any child or children between their sixth and sixteenth birthdays shall enroll and send such child or children to a public school, a private school, or a
home study program that meets the requirements for a public school, a private school, or a home study program; and each child shall be responsible for enrolling in and attending a public school, private school or a home study program under such penalty for non-compliance with this subsection as is provided in chapter 11 of title 15.

The establishment of a compulsory educational system run by the State of Georgia made public education an entitlement to all of the State’s children and set the stage for increased constitutional protections.

The decision in *Brown v. Board of Education* (1956), while destroying the doctrine of separate but equal and integrating American schools and firmly planted in the hearts and minds of American citizens that education was the primary vehicle in which citizens of the United States could become upwardly mobile. The Court stated that:

> 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 recognitions of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in our 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 is helping him 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*, 1956, p. 493)
Some 21 years later, in *Goss v. Lopez* (1975), the Supreme Court embraced further the notion that the institution of public education was such a vital component of the nation that its protection should fall under the auspices of the U.S. Constitution. The Goss Court established public education as a property interest protected by the Fourteenth Amendment, noting that “protected interest in property are normally not created by the Federal Constitution; rather, they are created and their dimensions are defined by an independent source such as state statutes or rules entitling the citizen to certain benefits” (*Goss v. Lopez*, 1975). The Fourteenth Amendment of the Constitution states in part that no state shall deprive any person of life liberty, or property, without due process of law. Exclusion from the educational process triggers the fourteenth amendment protection, because education is a property interest and a liberty issue. “The due process clause forbids arbitrary deprivations of liberty: 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 clause must be satisfied” (*Goss v. Lopez*, 1975). Due process issues litter the school discipline landscape.

Due process of law requires both, procedural due process and substantive due process. Procedural due process as defined by the Goss court states that: “The due process clause required at a minimum that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the cause” (*Goss v. Lopez*, 1975). On the other hand substantive due process is rooted in the concept of fundamental fairness. In school discipline cases, substantive due process consists of two basic principles: one, that the punishment is proportionate with the infraction, and, two, the punishment is fundamentally fair.

Procedural due process issues in Georgia have been addressed by the General Assembly through the approval of a law requiring local boards of education to develop and distribute
student codes of conduct which detail in appropriate behavior and consequences for such behavior, O.C.G.A § 20-2-735 states:

(a) 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.

(b) Student standards of behavior developed pursuant to this subpart shall be designed to create the expectation that students will behave themselves in such a way so as to facilitate a learning environment for themselves and other students, respect each other and school district employees, obey student behavior policies adopted by the local board of education, and obey student behavior rules established by individual schools.

(c) Student support processes developed pursuant to this subpart shall be designed to create the expectation that the process of disciplining students will include due consideration, as appropriate in light of the severity of the behavioral problem, of student support services that may help the student address
behavioral problems and that may be available through the school, the school system, other public entities, or community organizations.

(d) Progressive discipline process developed pursuant to this subpart shall be designed to create the expectation that the degree of discipline will be in proportion to the severity of the behavior leading to the discipline, that the previous discipline history of the student being disciplined and other relevant factors will be taken into account, and that all due process procedures required by federal and state law be followed.

(e) Parental involvement process developed pursuant to this subpart shall be designed to create the expectation that parents and guardians, teachers, and school administrators will work together to improve and enhance student behavior and academic performance and will communicate freely their concerns about and actions in response to student behavior that detracts from the learning environment.

(f) It is the policy of this state that it is preferable to reassign disruptive students to alternative educational settings rather than to suspend or expel such students from school.

Several state cases from across the country have dealt with the issue of vagueness or lack of specifying in notifying students of behavior expectations. *Wiemerslage v. Maine Township High School District 207* (1994) and *Palmer v. Merluzzi* (1989) both decreed that school districts should be clearer in spelling out disciplinary regulations to avoid vagueness challenges, and in *Martinez v. School District No. 60* (1992) and *Wilson v. South Central Local School District* (1995), and the courts cautioned against
disciplining students for rules and regulations of which they had no knowledge. In addition O.C.G.A. § 20-2-735 which requires a code of conduct from each school district, also requires that each code contain language to address specific behaviors. Codes of conduct established by local boards are required to outline provisions for specific behaviors. O.C.G.A § 20-2-751.5 states:

(a) Each student code of conduct shall contain 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; and
7. Verbal assault of, physical assault or battery of, and disrespectful conduct toward any person attending school related functions.

At the conclusion of each school year, each local board of education is required by O.C.G.A § 20-2-740 to submit a report to the Georgia State Department of Education for the purpose of tracking discipline trends. The law requires that:

(a) Each local board of education shall file an annual report, by August 1 of each year, with the Department of Education regarding disciplinary and placement
actions taken during the prior school year. Such report shall classify the types of actions 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; and
(9) Actions in which a student was removed from class pursuant to subsection (b) of Code Section 20-2-738 (O.C.G.A § 20-2-740).

The codes sections previously outlined afford each local board of education some protection against substantial due process claim so long as the approved codes of conduct and dispositions are administered in a fair and equitable manner. Substantive due process claims, which hinge on a sense of fairness, will succeed only when “no rational relationship between the punishment and the offense” exists (Rosa v. Connelly, 1989).

**Long Term Suspensions and Expulsions**

Expulsions and long term suspensions are available to school administrators and local boards of education to deal with the most severe and chronically disruptive student. In Georgia, an
expulsion refers to the denial of educational opportunity of a public school student “beyond the current school quarter or semester” (O.C.G.A § 20-2-751). Long term suspension means the suspension of a student from a public school for more than ten days but not beyond the current school quarter or semester” (O.C.G.A § 20-2-751). In D.B. v. Clark County Board of Education (1996), the Georgia Court of Appeals ruled that permanent expulsion does not violate Georgia’s compulsory school attendance statute and is permissible under state law. The Court in Goss v. Lopez (1975) decision established public education as a property interest protected by the Fourteenth Amendment due process procedures, and in doing so set forth a distinction between short-term suspensions and long term suspensions/expulsions. Deprivation of educational opportunity for greater than 10 days, according to Goss, amounted to a serious deprivation of a student’s property interest in education. Consequently, long-term suspensions or expulsions may require a formal process, but the decision failed to detail the exact nature of the formal process, thus states were left to interpret just how quasi judicial the proceeding would need to be required to deflect a due process complaint. Since the 1975 Goss decision, Mathews v. Elderidge (1976), established a test to determine the amount of process due under varying circumstances. The Mathews decision listed the factors to be considered: the private interest affected by government action; the risk of erroneous deprivation of interest caused by procedures, and the benefit of additional or alternate procedures and, the government’s interest, including the burden of additional or alternate procedures. “The courts three-part balancing formula requires greater procedural rights as the severity of the deprivation increases” (McMasters, 1990, p. 748).

In determining the private interest at stake in an expulsion, the courts, according to McMasters (1990) must look beyond the instructional deprivation, but also consider the loss in
terms of moral development, social training, and other non-pedagogical functions such as providing nutritional needs, immunization and health education. Conversely, the government interest considers the additional burden more elaborate process would place on the system, such as the cost of additional training, the possible additional resources for school district counsel, the time lost by school administrators on instructional duties (McMasters, 1990). “After balancing the student’s private interest and the school’s public interest to determine whether due process requires extensive trial-type procedures most courts have been hesitant to grant trial-type procedures (McMasters, 1990, p. 757). Although the courts have been reluctant to mandate quasi-judicial procedures, states, including Georgia, have legislative the procedures required in expulsion cases.

The Public School Disciplinary Tribunal Act (O.C.G.A § 20-2-750) was devised to assist local boards of education in implementing the formal requirements necessary for a long-term suspension or expulsion. The Disciplinary Tribunal Act states:

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 the following:

(1) Provisions governing the manner of selecting the hearing officers or members of the panels or tribunals and the number of members thereof;

(2) Provisions governing procedures to be followed by such hearing officers, panel, or tribunals in fact-finding, hearings, and reporting recommendations to the local board;
(3) Provisions granting a right to appeal to the local board when the punishment imposed by hearing officer, panels, or tribunals is long term suspension or expulsion; and

(4) Provisions whereby the local school superintendent may suspend enforcement of the suspension or expulsion ordered by the hearing officers, panels, or tribunals pending the outcome of any appeal to the local board.”

(O.C.G.A § 20-2-750)

Georgia law sets forth procedures to be followed by disciplinary officers, panels, or tribunals. Formal due process procedures begin with notice. The O.C.G.A § 20-2-754 section (b), subsection (1) states:

All parties are afforded an opportunity for a hearing after reasonable notice served personally or by mail. This notice shall be given to all parties and to the parent or guardian of the student or students involved and shall include a statement of time, place, and nature of the hearing; a short and plain statement of the matters asserted; and a statement as present and to be represented by legal counsel.

Appeals of disciplinary hearing decisions are most commonly asserted on issue that the notice provided by the school system was inadequate or improper. O’Neal (1997), in the Disciplinary Tribunal Handbook, establishes a more detailed protocol than is detailed in the code. She recommends the following components should accompany the notice for a formal due process hearing:

(a) A description of the acts of the student and the rule allegedly violated. In the event the rule is a written policy of the school or board of education, a copy of the policy shall be provided.
(b) As a rule, the names of any witnesses expected to be called at the hearing and a brief, concise summary of the evidence expected to be used in support of the charges. However if the listing of a student’s name could result in the student being threatened or harmed, it is permissible to exclude the student’s name from the list of witnesses.

(c) The maximum penalty which may be administered for the alleged misconduct.

(d) A tentative time and place for the hearing.

(e) A copy of the hearing procedures.

(f) A statement that the student has a right to a hearing which may be waived if the student and his/her parents agree by furnishing to the principal or superintendent a signed waiver. If no notification or waiver is received, the hearing scheduled will be observed.

(g) A statement that the student is entitled to be represented by counsel and to compulsory process upon request, as well as the right to present evidence and cross examine witnesses.

(h) A statement that either or both parents/guardians or the student’s legal counsel have the right to obtain a copy of any document related to the proceedings.

(O’Neal, 1997, p. 17)

Legal challenges asserting inadequate notice abound. However, the decisions in most federal circuits have relied on whether or not the school district acted in good faith to provide notice of the hearing so that the student had the opportunity to mount a defense. The courts have been unwilling to use judicial decisions to formulate policy or process in matters of notice.

“Where school authorities can show that the student was constructively notified by the totality of
the disciplinary circumstances, procedural due process can be satisfied” (Rossow & Parkinson, 1999, p. 7).

In 1990, an Illinois high school student was expelled for gross misconduct, which included assault on a student, threatening comments toward a faculty member, and profanity. The student was suspended for four days and recommended for expulsion. Two days after the suspension began, the student’s father met with the principal where he was served notice through a letter of the pending expulsion hearing. During this meeting, the principal reviewed with the father the behavior violations giving rise to the expulsion hearing. The parents were again notified of the date and time of the expulsion hearing three days before the proceedings.

The student filed suit in state court alleging that the notice was neither timely nor specific. The Court ruled the two days notice was sufficient time to prepare a defense and that the student as well as his parents was well aware of the misconduct leading to the hearing (Stratton v. Weona Community Unit District No. 1, 1990). Furthermore, the Stratton v. Weona Community Unit District No.1 (1990) decision noted that useless formality is not required to meet the standards of due process.

On the other hand, due process can be violated if the hearing is not held within a reasonable time. A junior high student in California was suspended from school for five days after engaging in a heated argument with a classmate. He was later found to be in possession of a knife. The school district notified the parents that the student was recommended to an expulsion hearing. From the initial date of suspension to the notice of expulsion, forty days passed. The California court ruled that one aspect of the procedural protections of due process is the opportunity to be heard within a reasonably prompt period of time. Forty days was not timely or prompt and violated the student’s due process rights (Garcia v. Los Angles, 1981).
In some cases, the content of the notice is grounds for appeal, as occurred in *Rosa v. Connelly* (1989). A student was suspended for bringing a loaded gun to school in order to sell it. He was suspended for ten days pending an expulsion hearing. The student was twice granted a postponement of the expulsion hearing, resulting in a three-month delay in the hearing. The student remained absent during the request for continuance. At the hearing, the student was expelled for one-hundred eighty days, the maximum allowed under Connecticut state law. The student asked for the time spent out of school awaiting the hearing to be credited toward the expulsion. The School Board denied this request. The student filed suit alleging a violation of due process because the school had failed to notify the parents that the Board would not credit the time served pending the hearing. This resulted in deprivation of his education opportunities for more than the maximum one-hundred eighty days. The court concluded that “The notice requirement of due process does not require that school administrators provide a detailed listing of all possible courses of action for which discipline might be imposed or of all possible penalties” (*Rosa v. Connelly*, 1989, p. 438). Citing *Mullane v. Central Hanover Bank & Trust Co.* (1950), the Rosa court said, “Notice must be ‘reasonably calculated under all circumstances, to apprise interested parties of the pungency of the action and afford them an opportunity to present their objections’ ” (*Rosa v. Connelly*, 1989, p. 439).

In a Georgia case, *D.B. v. Clark County Board of Education* (1996), a 12 year old was expelled permanently from school after stabbing another student during a fight. She appealed the decision alleging that she did not receive notice that the incident could lead to permanent expulsion. Both the Georgia State Board of Education and the Supreme Court upheld the expulsion. According to O.C.G.A § 20-2-735, all local boards are required to issue codes of conduct that outline inappropriate behavior and possible dispositions. The court reasoned, “the Georgia General
Assembly recognized that local boards’ properly may limit access to education in response to disciplinary infractions” (D.B. v. Clark County Board of Education 220, 1996, p. 439). The Disciplinary Tribunal Act, O.C.G.A § 20-2-751, “provides that local boards’ of education may establish tribunals with the authority to impose both suspensions and expulsions as disciplinary measures; it set forth certain procedures that must be followed” (D.B. v. Clark County Board of Education, 1996, p. 439). The Disciplinary Tribunal Act, “O.C.G.A § 20-2-751 clearly set no time limit for the permissible duration of expulsion.” (D.B. v. Clark County Board of Education, 1996, p. 440) Thus, the complaint, founded on an incorrect anticipation of the dispositions is without merit.

Once notice has been served and the hearing begins, both parties are “afforded the opportunity to present and respond to evidence and to examine and cross examine witnesses on all issues unresolved” (O.C.G.A § 20-2-754). Georgia Board of Education Rule 160-1-3-.04 states in part that the “local board of education shall sign and issue subpoenas,” and that “all witness shall testify under oath and shall be subject to cross-examination.” The Georgia Department of Education Rule 160-1-3-.04 is interesting in light that local boards’ of education do not possess subpoena power in the truest sense of the word. Witnesses cannot be compelled under penalty of law to appear before a disciplinary tribunal. In fact, the student whose action brought about the tribunal cannot be compelled to attend his own disciplinary hearing. As early as the turn of the century, some state courts recognized the rights of the student to present and cross examine witnesses as part of a disciplinary hearing. In 1906, a student was suspended indefinitely for publishing an article criticizing the school and the principal’s leadership. The tribunal refused to allow the student’s witnesses to testify, citing the risk that the testimony “in contradiction of the principal, would tend to weaken his authority, impair his
influence, and bring discredit upon the school itself” (Morrison v. City of Lawrence, 1904, p. 462). Instead the disciplinary panel allowed students to issue written statements in lieu of live testimony, but all the students refused to offer statements in protest of the prohibition against testifying.

When the Supreme Court of Massachusetts heard the case, it concluded, “The hearing afforded may be of no value if relevant evidence, when offered, is refused admission or those who otherwise would testify in behalf of the excluded pupil are prevented from doing so by the action of the committee” (Morrison v. City of Lawrence, 1904, p. 459).

Another tricky component of a disciplinary hearing, especially when the student is represented by counsel, is evidence. Strict rules of evidence do not apply in student discipline cases. For example, hearsay evidence is permissible. In School Board v. H.E.W. (1976), the Court considered the applicability of hearsay evidence in administrative hearings. They concluded that hearsay may rise to the level of substantial evidence when the hearsay evidence is unchallenged and those providing the hearsay evidence have no interest in the outcome and direct evidence is unavailable. Universal Camera Corp. v. NLRB (1950) defined substantial evidence as the presence of relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

In one instance, the student was not privy to all the evidence against him. This case surrounded the suspension and subsequent expulsion hearing of a high school student accused of distributing marijuana on campus. The incident was reported by fellow students. At the disciplinary hearing information pertaining to the statements given to the principal was disclosed. However, the superintendent told the hearing panel during its deliberations that the student’s counselor revealed that the student admitted to possessing and distributing marijuana on campus during a
counseling session. The Sixth Circuit Court of Appeals found that the introduction of evidence not presented during the open hearing was in violation of procedural due process (Newsome v. Batavia, 1988). Failure to introduce evidence in an attempt deny the student the “opportunity to rebut the evidence” amounts “to a clear deprivation of his procedural due process of law” (Newsome v. Batavia, 1988, p. 927).

The Newsome case brought before the court another interesting issue – the requirement of an impartial tier of facts, which is considered to be a cornerstone of the formal due process procedure. In Newsome, the superintendent sat in on the hearing panel’s deliberations. The student alleged that the participation of a school official in the official closed deliberations of the hearing panel “biased the school board and deprived him of his right to an impartial decision maker” (Newsome v. Batavia, 1988, p. 927). The Court disagreed. “A student faced with expulsion has the right to a pre-expulsion hearing before an impartial tier of fact; he does not have the right to a full blown administrative appellate process” (Newsome v. Batavia, 1988, p. 927). Using the language from Brewer v. Austin Independent School District (1985), the Newsome court states that it would be permissible for the school administrator to conduct the investigation, present the evidence, and cast a binding vote on expulsion.

Georgia law precludes this argument establishing a tribunal or hearing officer who is an unbiased judge of the fact. O’Neal (1996) advises the superintendent to appoint a tribunal of school district employees who are not assigned to the student’s school to reach a decision on the case. This procedure enables the student to appeal a tribunal decision to the local board of education before seeking a judicial remedy. The appeals process is outlined in O.C.G.A § 20-2-754 subsection C which states:
Any decision by such officer, panel, or tribunal 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 such officer, panel, or tribunal may be suspended by the school superintendent pending the outcome of the appeal.

The local board of education is bound by Georgia Department of Education rule 160-1-3-.04 subsection (3) (a) 6, which guided the local board to issue a ruling on the appeal in writing within fifteen days of its decision. The rule goes also requires the local board to advise the student of his right to appeal the decision to the State Board of Education. This process is outlined in Georgia Department of Education rule 160-1-3-.04:

(4) APPEALS TO THE STATE BOARD OF EDUCATION.

(a) After a hearing by the LBOE when held in accordance with state law and/or state board policies, regulations or rules, any party aggrieved by a decision of the LBOE rendered on an issue respecting the administration or construction of school law may appeal to the state board by filing the appeal in writing with the local school superintendent. The appeal shall set forth:

1. The question in dispute;

2. The decision of the local board; and

3. A concise statement of the reasons why the decision is being appealed.

(b) The party making the appeal shall file with the appeal the complete record including a transcript of testimony certified as true and correct by the local school superintendent or a request that the superintendent transcribe and
prepare such transcript. The party making the appeal shall assume the
costs of such preparation.

(c) When any party is unable to pay the cost of a transcript of the hearing
because of indigence, the party shall be relieved from paying the cost if
said party provides to the local school superintendent an affidavit to that
effect….

(b) The appeal to the State Board of Education shall be filed with the local
school superintendent within thirty days of the decision in question.

(c) Transmission to the State School Superintendent. The local superintendent
shall within 10 days after the filing of the appeal, transmit to the state
school superintendent a copy of the appeal, together with the transcript of
evidence and proceeding, the decision of the local board and other matters
in the file relating to the appeal. All material should be certified as true
and correct. The appeal may be amended and a transcript filed any time
prior to transmission to the state board.

Long term suspension or expulsion as a means of discipline has become reserved for only the
most egregious acts of disruption or violence, such as statutes calling for mandatory expulsion
called zero tolerance statues. The O.C.G.A 20-2-751.1 states that a student shall be expelled for
at least one calendar year for carrying a weapon to school. This zero tolerance provision is
mitigated to a larger degree by O.C.G.A § 20-1-154.1. It reads in part, “it is a policy of this state
that it is preferable to reassign disruptive students to an alternative education program rather than
suspending or expelling such students from school.” The State of Georgia and local boards of
educations are fully capable of withholding a student’s state constitutional right to a free public education, but the state prefers not to do so.

**Alternative Schools**

The use of alternative schools has become increasingly popular as school districts react to growing public pressure to deal with disruptive students. Wren (1995) suggest that alternative schools provide an effective alternative for the “conduct-disoriented” student. Removing the most disruptive students can have a tremendous affect, according to Wren (1995) such as increasing instructional time, reducing student and teacher fear levels, and building a positive school climate. Court imposed guidelines or tests for alternative school placement are not detailed in the case law. The courts have allowed the states to determine the due process in alternative school placement. Wren (1995) suggests that students assigned to an alternative educational setting may not be afforded due process because they are not excluded from the educational process.

*Nevares v. San Marcos* (1997) analyzes the amount of due process necessary for alternative school placement. In 1997, a tenth grade student in Texas was assigned to an alternative school after he was accused of aggravated assault. Following local school guidelines the student was assigned to an alternative education program (*Nevares v. San Marcos*, 1997). The parents filed suit to stop the alternative school placement alleging a denial of due process. The Court ruled that the student was not being denied an education. “The *Nevares* court, in concluding that no hearing is constitutionally required when a student is transferred to an alternative school, avoided any balancing analysis by holding that such a transfer simply was not a deprivation” (Knight, 2001, p. 780). Despite this recent decision in the Fifth Circuit, the State of Georgia continues to have written legislation to guide the process for alternative school
placement that affords the student a full due process hearing as outlined in the Disciplinary Tribunal Act.

In light of Georgia’s statutory proclamation that it would rather place students in an alternative educational setting than resort to expulsion or long term suspension, an overview of Georgia law and Georgia Department of Education guidelines are in order. The O.C.G.A § 20-2-154.1 establishes alternative educational programs for students in need of a non-traditional setting. It reads in part:

(a) It is the policy of this state that the alternative education program shall provide a learning environment that includes the objectives of the quality core curriculum and that the instruction in an alternative education shall enable students to return to a general or career education program as quickly as possible. Course credit shall be earned in an alternative education program in the same manner as in other education programs. It is the policy of this state that it is preferable to reassign disruptive students to an alternative education program rather than suspending or expelling such students from school.

(b) Alternative education programs are intended to meet the education needs of a student who is suspended from his or her regular classroom and also of a student who is eligible to remain in his or her regular classroom but is more likely to succeed in a nontraditional setting such as that provided in an alternative program.

(c) As part of the process of assigning a student to an alternative educational program for academic or nondisciplinary reasons, the school shall assess,
through policies and procedures promulgated by the local board of education, the needs of the student and consider options for addressing those needs.

(d) Each local school system shall provide an alternative education program that:

(1) Is provided in a setting other than a student’s regular classroom;

(2) Is located on or off of a regular school campus and may include in-school suspension that provides continued progress on regular classroom assignments;

(3) Provides for disruptive students who are assigned to the alternative education program to be separated from non-disruptive students who are assigned to the program;

(4) Focuses on English language arts, mathematics, science, social studies, and self-discipline;

(5) Provides for students’ educational and behavioral needs; and

(6) Provides supervision and counseling.

(a) An alternative education program may provide for a student’s transfer to a different campus, a school-community guidance center, or a community-based alternative school.

(b) A local school system may provide an alternative education program jointly with one or more other systems.
(c) Each local school system shall cooperate with government agencies and community organizations that provide services in the school district to students placed in an alternative education program.

The purpose of Georgia’s alternative education programs is “to provide disruptive students and adjudicated youth with an educational program separate from the regular classroom in order to support the policy of this state that it is preferable to reassign disruptive students to an alternative education program than suspending or expelling them” (Georgia Department of Education, 2003). Secondly, the purpose is to serve those students who need a different structure to succeed academically or socially. Typically, this student would be one who failed to show improvement despite a sustained student support process. Program goals include separating disruptive from non-disruptive students; providing a program to meet the needs of the individual; academic preparation in the Georgia Quality Core Curriculum; instruction aimed to remediate the student back to the traditional setting (Georgia Department of Education Rule 160-4-8.12).

Placement in an alternative educational program, such as an alternative school, must be done through a formal hearing procedure. Alternative Education Program guidelines state: “Students assigned for disciplinary reasons must have the benefit of due process, as appropriate, such as the process provided by the school discipline tribunal.”

Alternative school placement may become an increasingly integral component of a school district’s plan as students challenge the constitutionality of expulsions and suspensions. Georgia’s constitution claims that the states primary obligation is to provide an adequate education for its citizens. The fundamental right of education at the state level may impose “a strict scrutiny equal protection analysis” (Reed, 1996, p. 614). Under a strict scrutiny analysis, the state would be required to show that depriving expelled or suspended students from the
educational process is narrowly constructed to serve a compelling governmental interest (Reed, 1996). The compelling government interest in maintaining a safe and disruptive free learning environment can be achieved while affording the expelled or suspended student his fundamental right to an education, according to Reed (1996). Reed (1996) concluded that under a strict scrutiny analysis expulsion or suspension without educational opportunity is not narrowly tailored to meet a compelling government interest and is unconstitutional.

**Short Term Suspensions**

Short term suspensions are perhaps the most utilized form of discipline in American schools. Suspension of ten days or less is considered short-term and requires only minimal due process procedures. The Supreme Court’s 1975 *Goss v. Lopez* decision stands as one of the most important school discipline cases because it clearly delineated the constitution protections required in short-term suspension cases. Before *Goss* (1975) reached the Supreme Court, several cases laid the foundation for the landmark decision.

The Fifth Circuit Court of Appeals heard *Dixon v. Alabama State Board of Education* in 1961. This case involved the expulsion of several black students for misconduct from a tax-supported college. The misconduct surrounded the organization of sit-in at a local diner and separate marches through the town. In response to the protests, the students were expelled from the college without any due process hearing. The question before the Court was whether the interest in education from a tax supported state institution was protected by the due process requirements of the Fourteenth Amendment. The Court concluded that the interest in education deserved due process protection: “Without sufficient education the plaintiffs would not be able to earn an adequate livelihood, to enjoy life to the fullest, or to fulfill as completely as possible the duties and responsibilities of good citizens” (*Dixon v. Alabama State Board of Education*, 1961, p. 43).
Furthermore, the Dixon Court stated that the students had the right to “notice and some opportunity for hearing” (Dixon v. Alabama State Board of Education, 1961, p. 158). The notice should include a description of the charges and the circumstances to justify the disciplinary action. (Dixon v. Alabama State Board of Education, 1961) In Dixon the court stated that: “The nature of the hearing should vary depending upon the circumstances of the particular case” (Dixon v. Alabama State Board of Education, 1961, p. 159). The decision in Dixon fell short of requiring a full judicial-type hearing with cross-examination. The opportunity to “know the names of the witnesses against him and an oral report on the facts to which each testifies” may be appropriate depending on the case (Dixon v. Alabama State Board of Education, 1961, p. 159).

The decision in Goss (1975) was heavily influenced by two Supreme Court decisions: Fuentes v. Shevin (1971) and Board of Regents v. Roth (1972). The issue in Fuentes was not educational in nature, but deals explicitly with the amount of due process necessary before the state may deprive any person of property. The facts of this case deal with statutes in Florida and Pennsylvania that allow state agents to seize a person’s possessions by claiming a right to the property and posting a security bond. The statutes do not require any notice or hearing to the owner before the property is seized. The question before the Court was whether the statutes violated the Fourteenth Amendment. The Court answered in the affirmative and elaborated extensively on due process requirements.

The Court ruled that: “The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making” (Fuentes v. Shevin, 1971, p. 81). The purpose of this requirement is to protect citizens from “unfair or mistaken deprivations of property” (Fuentes v. Shevin, 1971, p. 81). Furthermore, the Court pronounced that the right to
notice and a hearing must he held at such a time to prevent the arbitrary deprivation of property (Fuentes v. Shevin, 1971). According to the decision, the amount of process due depended on the weight of the interests involved (Fuentes v. Shevin, 1971). More formal hearing procedures is required as the severity of the deprivation increases.

Another case that strongly influenced the *Goss* (1975) decision was *Board of Regents v. Roth* (1972). The circumstances in *Board of Regents* surrounded the non-renewal of a first year professor at a state university. The complainant argued that he was not afforded notice or a hearing before the decision was made not to rehire him. The assistant profession also contended that the non-renewal was the result of criticism he made against the administration during the year. The Court ruled that the professor was not entitled to due process protection because the non-renewal did not implicate a liberty interest (Board of Regents v. Roth, 1972). He was free to seek further employment. Furthermore, the Court stated that the contract was for only one year without the explicit expectation for additional contract extensions.

The decision offered clarification on when and how due process requirements must be evaluated. The Court stated that the right to due process requirements depended on the nature of the interest, and the form of the due process hearing was determined by the weight of the interest involved (Board of Regents v. Roth, 1972). That is, a person is entitled to some sort of due process if they are being deprived of liberty or property that they are legitimately entitled to possess. And, if they have such a legitimate interest, then the form of the hearing is based on extent of the deprivation that could occur. The Court stated:

To have a property interest in a benefit, a person must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He
must, instead have a legitimate claim of entitlement to it. (Board of Regents v. Roth, 1972 p. 576)

The decisions in *Fuentes* (1971) and *Board of Regents* (1972) were instrumental as the Supreme Court formulated the due process requirements for short term suspensions.

In 1974, several students were suspended from an Ohio high school after the students were observed demonstrating during class, vandalizing the building and refusing to leave campus. The students were suspended for ten days per an Ohio statute that authorized school administrator to suspend or expel students for misbehavior as long as the parents were notified of the actions relating to the discipline.

The students alleged violation of procedural due process, and the Court agreed. The Ohio court, like Georgia, provided for a free public education for all students between the ages of five and twenty-one for thirty-two weeks a year. The existence of this statute, concluded the Court, established a property interest to all Ohio Public School students. Consequently, constitutional safeguards in the form of the Fourteenth Amendment are applicable. The *Goss* decision reasoned that:

> The authority possessed by the state to prescribe and enforce standards of conduct in its school 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 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)
While using Wisconsin v. Constantinea (1971) as a guide, the Goss decision reflected that the due process clause protects citizens against arbitrary deprivations of liberty pursued by the government in which “a person’s good name, reputation, honor, or integrity” may be harmed (Goss v. Lopez, 1975, p. 574). Suspension of any kind, according to Goss v. Lopez (1975), may have an unforeseen impact on the student in terms of missed academic opportunities, the student’s standing with fellow classmates and faculty, and post-secondary options and employment. In light of the potential impact of school suspensions, the Court concluded that “it is apparent that the claimed right of the state to determine unilaterally and without process whether the misconduct has occurred immediately collides with the requirements of the constitution” (Goss v. Lopez, 1975, p. 575).

The due process clause becomes pertinent when the state subjects a student to “severe detriment or grievous loss” (Goss v. Lopez, 1975, p. 575). It is not the “weight of the deprivation, but the nature of the interest” which invokes due process protection (Goss v. Lopez, 1975, p. 576). Accordingly, the Supreme Court ruled that exclusion from the educational process for any length of time is not a minimal deprivation of a student’s interest in education. In Goss the Court stated that:

   The total exclusion from the educational process for more than a trivial period, and certainly if the suspension is for 10 days, is a serious event in the life of a 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. 576)
Students deprived of educational benefit for any length of time are due some kind of due process. The *Goss* decision, then, addressed the amount of due process necessary to students facing suspension from public school. Determining that constitutional protections are available in school suspension cases was clearly laid out before the Court, but the *Goss* court was faced with the difficult task of specifying the extent of the process due to students facing suspension. They concluded that “at the very minimum, therefore, students facing suspension and the consequent interference with protected property interest must be given some kind of notice and afforded some kind of hearing” (*Goss v. Lopez*, 1975, p. 579). The vagueness of this verbiage seemed to leave the question unresolved, but the Court buffered that statement by insisting that “the prospect of imposing elaborate hearing requirements in every suspension case is viewed with great concern” (*Goss v. Lopez*, 1975, p. 580). Although the Court reasoned that schools were not “totally free from notice and hearing,” some situations need only “oral notice or written notice of the charges against him, and if he denies the charges, an explanation of evidence the authorities have and an opportunity to present his side of the story” (*Goss v. Lopez*, 1975, p. 581). Further clarification was offered as the decision declared that no delay between the time of notice is given and the time of the hearing is required and the exchange between the disciplinarian and the student may be informal – a simple give-and-take of information and explanation. Finally, the decision placed clear limitations on the formality of the short-term suspension procedures.

The *Goss* decision stopped short of requiring a formal hearing for short-term suspensions, where the student would be afforded the “opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or call his own witnesses to verify his version of the incident” (*Goss v. Lopez*, 1975, p. 582). *Goss* cautioned against over formalizing the process
and requiring formal hearing procedures saying that it would make the process “too costly a regular disciplinary tool” and possibly “destroy its effectiveness as part of the teaching process” (Goss v. Lopez, 1975, p. 582). The Goss Court cited that formal procedures could be used in some of the more difficult cases if the more formal options of providing for witnesses cross-examination and counsel would reduce the chance of an erroneous decision.

The dissenting opinion in Goss openly questioned the prudence of allowing the federal courts to substitute for education and state legislators in the application of routine school discipline.

According to the dissenting opinion in Goss, students possess a property interest in education, but this interest is not without conditions (Goss v. Lopez, 1975). Like many states including Georgia, the right to a free public education is established under Ohio statute, but “the right is encompassed in the entire package of statutory provisions governing education in Ohio – which the power to suspend is one” (Goss v. Lopez, 1975, p. 587). By giving a student the right to education without qualifying conditions forces school administrators to needlessly apply due process procedure to every routine discipline infraction that occurs (Goss v. Lopez, 1975).

The second argument addressed forth by the dissenting justices questioned the nature of the deprivation that occurs in a short term suspension. They argued that due process is required when “the state subjects a student to a severe detriment or grievous loss” (Goss v. Lopez, 1975, p. 588). The dissenters stated that short term suspension “allows no serious or significant infringement of education,” because the “limited duration will rarely affect a pupil’s opportunity to learn or his scholastic performance” (Goss v. Lopez, 1975, p. 589). Furthermore, the dissent dismissed the assertion that a short-term suspension negatively affected a student’s liberty as a result of his damaged reputation. Relying on the case of Board of Regents v. Roth (1972), the analogy was made that a non-tenured teacher did not receive sufficient damage to his reputation
after failing to be re-hired, thus a student suspended from school surely would not receive a blow so detrimental to his reputation to warrant due process protections (Goss v. Lopez, 1975). The dissenting opinion added that the due process requirement presented by the majority opinion does not offer significantly more protection. The Ohio statute required parental notification within 24 hours, whereas the majority opinion required only oral or written notice to the student. The parental notification requirement, argued the dissenting opinion, offered more protection against arbitrary actions (Goss v. Lopez, 1975). It did not escape the analysis of dissent that the local control of the school afforded the student and parent an opportunity for redress (Goss v. Lopez, 1975).

In conclusion, the dissenting opinion in Goss argued that many daily decisions by school administrators affect a student’s education (grading, promotion, retention, course selection) without due process (Goss v. Lopez, 1975). Consequently, the dissenting opinion challenged the majority’s suggestion that governmental infringement of any interest, regardless of the nature of the interest, may be entitled to constitutional protection by stating that: “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. 590).

A profusion of case law can be cited in the area of short term suspension as state and federal courts offer clarification to the Goss decision. In one case of the State of New York Board of Education v. Commissioner of Education (1997, p. 483), a high school senior was suspended for five days for preparing and distributing a newspaper that advocated destruction of school property and insubordination. The student filed suit in federal court alleging that the notice was insufficient because it failed to state that the incident occurred on school grounds.
The Court noted that the “notice identified the time, date, and place of the appellant’s hearing, as well as his right to be represented by counsel, to present evidence, and to confront and cross examine witnesses” (State of New York Board of Education v. Commissioner of Education, 1997, p. 483), which is far more due process than envisioned by Goss. Furthermore, the student was given an account of the misconduct that brought forth the disciplinary action. The issue as to whether the notice was inadequate because the charges failed to specify that the misconduct occurred on school grounds did not have merit. The court concluded that “due process does not require such specificity” (State of New York Board of Education v. Commissioner of Education, 1997). The notice was proper in that it gave the student the opportunity to know the accusations and mount a defense.

The Seventh Circuit Court of Appeals reviewed a case where the notice given on a short-term suspension had additional charges that were not disclosed at the initial discipline conference. In this case an Illinois high school student was suspended for insubordination after participating in a lip sync contest without the school’s permission. The performance was laden with violent and sexually explicit gestures.

The principal contacted the parents two days after the incident to set up a conference. During the conference the video tape of the performance was reviewed by the student and his parents. The student and his parents were allowed to ask questions after the video tape and to offer their version of the events. Official notice of the suspension was given the day after the conference. The notice cited charges and informed the student that he could request a review of the suspension by the superintendent of schools.

The student filed suit arguing that at the initial discipline conference he was not informed that the additional charges of weapons (the student used a chainsaw in his performance) was included in
the initial suspension. They ruled that as long as a proper charge, supported by fact, was conveyed to the student prior to suspension, no due process violation occurred (Smith v. Severn, 1997).

* C.B. v. Driscoll (1996) grappled with whether or not the informal give and take between the student and the disciplinarian needed to occur prior to the suspension and if the suspension hearing needed to be conducted in person. The student was suspended from school for nine days after participating in a fight. Once inside the principal’s office the student became violent and abusive. She was taken into custody by police. The principal called the mother and student later that day to discuss the incident. The student alleged that the phone call did not substitute for a hearing and thus she was not given her full due process rights.

The court ruled that the student posed a danger and her removal prior to a hearing was prudent. “The dictates of Goss are clear and extremely limited: Briefly stated, once school administrators tell a student what they heard or saw and ask why they hear or saw it and allow a brief response, a student has received all the process the Fourteenth Amendment demands” (C.B. v. Driscoll, 1996). The phone call satisfied the requirement of the due process clause. Relying on *Sweet v. Childs* (1975), the Court noted that as long as the hearing was conducted in such a manner that the decision could be modified or reviewed, adequate due process was provided (C.B. v. Driscoll, 1996).

A Georgia case, *Gambel v. Ware County Board of Education* (2002), addressed the issue of delayed notice. A student was suspended for making sexual gestures on a school bus. The parents were notified seven days after the incident. Parents were then allowed to come in and plead their case. Although the school reduced the charge from sexual harassment to sexual gestures, the parents asserted the delay in notification hampered their ability to gather evidence,
such as the bus video tape. The court disagreed saying “clearly schools need not formally gather, preserve, and present evidence” (Gambel v. Ware County Board of Education, 2002, p. 823, 842). The Court further noted that the delay in notice was “cured by the opportunities school officials gave the student to question and challenge the misconduct allegations” (Gambel v. Ware County Board of Education, 2002, p. 827, 844). Failure to notify the parent in a timely manner, in this case, does not lead to a conclusion that the administrators acted in a willful or malicious way to deny the student his right to due process.

Similarly in Wayne County Board of Education v. Tyre (1991), a student was disciplined two days after the incident. While on a weekend marching band competition, a band member purposefully stepped on a bug splattering the insect on the band director’s clothing. The student then refused to clean it up. The following Monday the student was interviewed and suspended for three days. The student was made aware of the charges and was given the opportunity to answer the charge; the delay in the hearing did not violate the student’s due process rights.

Many discipline cases become confrontational when parents allege that the student was not treated fairly because the administration deciding on the discipline was not a neutral participant. This is often the case because the administrator witnessed the incident first hand. In Zehner v. Central Berkshire Regional School (1996), a student received several days suspension for impeding the way of a school bus, being under the influence of alcohol at a school event, and threatening school personnel. The parents of the student filed suit alleging due process violations because the assistant principal served as witness and trier of fact. The Court concluded that merely witnessing the incident did not preclude that the hearing was unfair (Zehner V. Central Berkshire Regional School, 1996).
The *Zehner* case also dealt with the quality of the hearing and whether an incorrect decision by the administrator could pass due process muster. The *Zehner* decision ruled that the opportunity for notice and rebuttal set forth in *Goss* were provided and that an incorrect conclusion did not signal a procedural due process claim (*Zehner v. Central Berkshire Regional School*, 1996). Routinely school administrators are confronted by students and parents who think that each discipline should be offered a full hearing with all of its judicial trappings. *Goss* (1975) clearly indicated that a simple informal give-and-take of information was all that was necessary to meet minimum due process requirements for short term suspensions.

In *Coplin v. Conejo Valley* (1995), the Court dealt specifically with issues such as witnesses and counsel. The particulars of this case involve a student who was suspended for sexually harassing a large number of female students. Suit was filed alleging due process violation on grounds that the student was not afforded the opportunity to know the identity of his accusers; appraise of his rights to remain silent or right to secure counsel.

In deciding the level of procedural due process, the court used the Supreme Court test from *Mathews v. Eldridge* (1976). The *Eldridge* test cited three relevant issues to determine the level of process due: one, “the private interest that will be affected by government action;” two, “the risk of erroneous deprivation of such interest through the procedures used, and the probable value, of any additional or substitute procedural safeguards;” and three, “the government’s interest including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail” (*Mathews v. Eldridge*, 1976, p. 335).

The risk of an erroneous deprivation as a result of not knowing the accusers was highly unlikely, the *Coplin* Court explained. Furthermore, the Court ruled that “the victims have an interest in
not being identified and subject to re-experiencing the harassment” (Coplin v. Conejo Valley, 1995, p. 1383). Many discipline issues would not be settled if students knew they would be required to identify themselves to the accused. Additionally, Coplin points out that “Goss made no mention that he or she had the right to remain silent” or possessed a right to an attorney in the case of short term suspension.

Judicial trappings such as rules of evidence, access to witnesses, and representation by an attorney are not required for short term suspension cases. Simply, a conversation between the administrator and the student that informs the student of the reasons for the meeting and an opportunity to explain his version of the facts is all the due process afforded students facing short term suspension.

**In-School Suspension**

In-school suspension, as an alternative to suspension, has become one of the most widely utilized discipline measures in Georgia’s public schools. In-school suspension is a compromise sanction meant to remove a troublesome student from the classroom while largely preserving the student’s discipline record (Troyan, 2003, p. 1642). In-school suspension programs are considered an alternative educational program and share the same mission and goals as an alternative school. Georgia Department of Education Rule 50-4-8.12 states that the in-school suspension program is “a type of alternative education program that provides for continued progress or regular classroom assignments for students who have been removed from the regular classroom for disciplinary reasons.” The in-school suspension program consists of an isolated classroom whereby students are removed from the general population to complete class work. According to Georgia Department of Education Alternative Education Program Guidelines (2003), “this type of program provides for short term behavioral intervention in response to
student misbehavior in the traditional school program.” The program offers an alternative to suspension or expulsion in a controlled environment supervised by a certified teacher, or in some cases a paraprofessional under the direction of the student’s certified teachers. Assignment to in-school suspension is typically for a short duration, less than ten days. This type of alternative program is most widely used at the secondary level when low level interventions such as counseling and detentions have proved ineffective in deterring inappropriate behavior. Additionally, the in-school suspension teacher is funded by the State of Georgia and is included in a school’s teacher allotment.

Challenges to in-school suspension placement have been rare. Courts throughout the nation conclude that placement in an in-school suspension program does not deprive a student of his right to a free and adequate public education, in so far as the student has the opportunity to make progress on academic goals under the guidance of a qualified instructor.

Courts have generally concluded that students placed in in-school suspension do not possess the same procedural process rights as students facing other forms of discipline such as short term suspension. In Wise v. Pea Ridge School District (1987), the Court concluded that the student did not have due process rights in cases of in-school suspension. The student was assigned in-school suspension as a result of excessive tardiness, but was not given a notice or a hearing. In Hayes v. Unified School District (1989), a student was placed in in-school suspension for five days without any procedural due process. The issue that triggers procedural due process is one of missed educational opportunity, according to the Hayes decision. The student was given class assignments and afforded the opportunity to continue his education uninterrupted, thus no property or liberty deprivation occurred and no procedural due process was necessary.
The decision in *Cole v. Newton Special Municipal Separate School District* (1987) emphasized the importance of academic progress. In this case the student was placed in in-school suspension for a period of several months. The Court in *Cole* said: “The Court is of the opinion that physical presence of a student at school is not conclusive as to whether school officials are excused from according a hearing in connection with imposing in-school isolation characterized by exclusion from the classroom” (*Cole v. Newton Special Separate School District*, 1987, p. 751). The decision went on to say that the primary issue is whether the student is “deprived of instruction or the opportunity to learn” (*Cole v. Newton Special Municipal Separate School District*, 1987, p. 752). A student placed in an in-school suspension program must be given school work that is comparable to his regular education classmates.

In a Kentucky case, *Wayne v. Shadowen* (2001), the student alleged that an in-school suspension placement for four months violated the Equal Protection Clause, which simply requires public institutions to treat similarly situated people in a similar manner and denied the student the right to proper and adequate education. The opinion in *Wayne v. Shadowen* (2001) stated that the students prior discipline history ensured that he was not similarly situated to the typical student at the school and could be treated differently because of his propensity to violate school rules. Like Georgia law, Kentucky law provides for a proper and adequate education. In-school suspension does not violate the law because a student does not have a right to the “best possible education, nor to instruction administered under ideal conditions” (*Wayne v. Shadowen*, 2001, p. 285). The Court identified that students have different needs “and education which is proper and adequate for one student may not be proper and adequate for another” (*Wayne v. Shadowen*, 2001, p. 286). As evidence, the *Wayne* decision cited the abundance of substantially different
programs such as schools for the arts, magnet schools, and diploma tracks for college or vocationally oriented students.

In-school suspension programs are not governed by the rights of the same procedural due process requirements that guide long-term and short-term suspension. However, most administrators find that the minimum procedural due process requirements in Goss serve to insulate them from charges of unfairness and maintain the lines of communication while fostering a sense of equity in school suspension cases.

One issue associated with in-school suspension that has not been addressed by the courts is the due process and equal protection rights of the student who is repeatedly assigned in-school suspension. Troyan (2003) suggests that students assigned to long term in-school suspension or repeated short term assignments suffer a substantial deprivation to their property interest in education. This situation occurs because teachers often do not provide assignments, the assignments that are given do not allow the student to make adequate progress toward curriculum goals and the students cannot complete the assignments without assistance (Troyan, 2003). “The problem is that the minimum that the law requires in equal protection and due process does not provide what these student’s need: actual instruction” (Troyan, 2003, p. 1664).

**Corporal Punishment**

While the administration of in-school suspension is relatively unburdened by legal requirements, corporal punishment may be the most regulated discipline in Georgia outside of expulsions. Many school districts across Georgia have abandoned the practice all together, although Georgia law sanctions its use. Georgia code section § 20-2-730 provides for corporal punishment in Georgia schools. It states: “All area and independent boards of education shall be authorized to determine and adopt policies and regulations relating to the use of corporal punishment by school
principals and teachers employed by such boards.” The Georgia General Assembly, also, stipulated five requirements placed upon the use of corporal punishment:

1. The corporal punishment shall not be excessive or unduly severe;

2. Corporal punishment shall never be used as a first line of punishment for misbehavior unless the pupil was informed beforehand that specific misbehavior could occasion its use; provided, however, that corporal punishment may be employed as a first line of punishment for those acts of misconduct which are so antisocial or disruptive in nature as to shock the conscience;

3. Corporal punishment must be administered in the presence of a principal or assistant principal, or the designee of the principal or assistant principal, employed by the board of education authorizing such punishment, and the other principal or assistant principal, or the designee of the principal or assistant principal must be informed beforehand and in the presence of the pupil of the reason for the punishment.

4. The principal or teacher who administered corporal punishment must provide the child’s parent, upon request, a written explanation of the reasons for the punishment and the name of the principal or assistant principal, or designee of the principal or assistant principal, who was present; provided, however, that such an explanation shall not be used as evidence in any subsequent civil action brought as a result of the corporal punishment; and

5. Corporal punishment shall not be administered to a child whose parents or legal guardian has upon the day of enrollment of the pupil filed with the
In 1975, a corporal punishment case involving alleged Fourteenth Amendment and Eighth Amendment violations was heard before a North Carolina Federal District Court in *Baker v. Owen* (1975). The suit alleged that the administration of corporal punishment violated the parent’s right to determine disciplinary methods for their child, citing the Fourteenth Amendment to procedural due process and the Eighth Amendment protection against cruel and unusual punishment (*Baker v. Owen*, 1975). The case involved a sixth-grade student who was given two licks from a paddle after refusing to obey the teacher’s command to throw the kickballs only during playtime. The punishment was delivered in the presence of a teacher witness and classmates, even though the parent had notified the school principal and teachers not to paddle her son.

The decision in *Baker* states that “fourteenth amendment concept of liberty embraces the rights of a parent to determine and choose between means of discipline of children, but few constitutional rights are absolute” (*Baker v. Owen*, 1975, p. 296). The plaintiffs argued that the right of the parent to dictate the discipline their child receives in the public schools is outweighed by the state’s interest in maintaining order and discipline (*Baker*, 1975). The Court in *Baker* maintained that the parent’s wishes cannot be used to restrict school officials in carrying out the legitimate and essential state interest in maintaining school discipline.

According to the *Baker* decision, the use of corporal punishment implicates a liberty interest protected by the Fourteenth Amendment, but is not a violation of the Eighth Amendment. The Court stated that minimum due process procedures would include the following: 1) student
would receive notice of the behavior infractions which could lead to corporal punishment and
corporal punishment could never be used as the first discipline option; 2) the school must
administer the punishment in the presence of a second school official who must be made aware
of the course of action in the presence of the student; and 3) the school official must provide the
reasons for the punishment and the name of the witness, if requested by the parent (Baker v.
Owen, 1975). The Court concluded that minimum due process procedures were necessary to
protect students against arbitrary infliction of corporal punishment.

The United States Supreme Court heard *Ingraham v. Wright* in 1977. Today, it still
stands as the definitive legal decision on the constitutionality of corporal punishment in public
schools. The legal question posed in *Ingraham* (1977) was whether corporal punishment
constituted a violation of the Eighth Amendment right to be free of cruel and unusual
punishment and whether the use of corporal punishment implicated a constitutionally protected
liberty interest. The case involved two Florida junior high school students; one student received
twenty blows, resulting in severe bruising that left him unable to attend school for eleven days.
The second student was struck with the paddle on his arm, depriving him of the full use of the
arm for one week.

The Supreme Court decision in *Ingraham* relied heavily on the nation’s history of using
corporal punishment in schools and the exclusive use of the Eighth Amendment for punishment
associated with crimes. The *Ingraham* Court concluded that the “Eighth Amendment does not
apply to the paddling of children as a means of maintaining discipline in public schools”
(Ingraham v. Wright, 1977, p. 664). The “openness of the public schools and its supervision by
the community afford significant safeguards against the hands of abuse from which the Eighth
Amendment protects the prisoner” (Ingrahm v. Wright 1977, p. 670). Additionally, the
inappropriate use of corporal punishment, outside the use “reasonably necessary for the proper education and discipline of the child” (Ingraham v. Wright, 1977, p. 670), may subject the school official to criminal and civil liability.

Next, the Ingraham decision addressed the issue of the Fourteenth Amendment protection associated with corporal punishment; that is, the amount of process due if a liberty interest is implicated. The Court held that “corporal punishment in public schools implicates a constitutionally protected liberty interest, but we hold that the traditional common-law remedies are fully adequate to afford due process” (Ingraham v. Wright 1977, p. 673). Notice and a prior hearing are not required in cases of corporal punishment. Civil and criminal liability as outlined in common law are adequate enough to protect children from the abuses of excessive corporal punishment. Additional procedural safeguards “would significantly burden the use of corporal punishment as a disciplinary measure” and may cause public schools “to abandon corporal punishment rather than incur the burdens of complying with procedural requirements” (Ingraham v. Wright, 1977, p. 681). The Ingraham Court’s assertion that civil and criminal liability, as outlined in common law, afford students adequate protection against excessive corporal punishment may be challenged as many states pass criminal and civil liability statutes for teachers and administrators administering corporal punishment.

Georgia law establishes statutory safeguards under O.C.G.A § 20-2-732 and protects teachers and administrators form criminal or civil liability if those safeguards are followed. It states that:

No principal or teacher who shall administer corporal punishment to a pupil or pupils under his care and supervision in conformity with policies and regulations of the area, county, or independent board of education employing him and in
accordance also with this subpart shall be held accountable or liable in any
criminal or civil action based upon the administering of corporal punishment
where the corporal punishment is administered in good faith and is not unduly
severe. (O.C.G.A § 20-2-732)

Four Justices joined the dissenting opinion in *Ingraham v. Wright.* The dissent was based
on the belief that Eighth Amendment protection can apply to school discipline cases and that
school children are entitled to a hearing before corporal punishment is administered. The
dissenting opinion could find no rationale to explain why a person held in state custody for the
commission of a terrible act against society could be protected from the inflictions of physical
pain, but school children who only breach a school rule could not be protected. (Ingraham v.
Wright, 1977) The Eighth Amendment does not contain the word criminal in its language. It is
this distinction that the dissenting opinion offers as “strong evidence that the amendment was
designed to prohibit all inhuman or barbaric punishments, no matter what the nature of the
offense for which the punishment was impaired” (Ingraham v. Wright, 1977, p. 685). According
to the dissenting opinion, the issue is not about the criminality of the behavior, but whether the
state action was meant to punish the student to achieve retribution, rehabilitation, or deterrence
The dissenting opinion then took aim at the majority’s assertion that the open nature of the public
school system afforded school children protection against abusive practices and that post-
punishment remedies offer enough protection for school children. The dissenters stated that “it
cannot be reasonably suggested that just because cruel and unusual punishments may occur less
frequently under public scrutiny, they will not occur at all” (Ingraham v. Wright, 1977, p. 690).
The dissenting opinion argued that the openness of the institution has never been a part of the
Eighth Amendment analysis, nor has the availability of state remedies ever factored into the extension of the Eighth Amendment protection (Ingraham v. Wright, 1977). The fact that a student may have a state remedy for excessive corporal punishment does not mean that the act itself is not cruel or unusual punishment (Ingraham v. Wright, 1977).

The decision of *Goss v. Lopez* (1975) is analogous to the *Ingraham* case. The *Goss* (1975) decision imposed an internal hearing between the student and the disciplinarian before a short term suspension could be enacted. According to the dissenting Justices in *Ingraham*, the *Goss* requirement would offer the student protection against a well intentioned but misguided school disciplinarian because under the laws of many states the student possesses no post-punishment remedy if the disciplinarian acted in good faith (Ingraham v. Wright, 1977). Furthermore, the dissent explained that “the infliction of physical pain is final and irreparable; it cannot be undone in a subsequent proceeding” (Ingraham v. Wright, 1977 p. 694). Consequently, the informal give and take, as outlined in *Goss*, would offer greater protection than an action to recover damages for excessive corporal punishment (Ingraham v. Wright, 1977). In conclusion, the dissenting opinion stated that a student’s interest in avoiding wrongful corporal punishment is no less compelling and no less burdensome than the risk of a wrongful suspension (Ingraham v. Wright, 1977).

As mentioned earlier, many districts have given up on corporal punishment because many parents find it intolerable that someone outside the family would spank their child. The idea of hands-off discipline has confused many as to what exactly constitutes excessive corporal punishment. Case law dealing with corporal punishment is plentiful. The primary legal issues surrounding corporal punishment after *Ingraham* surround the appropriateness and the severity of the punishment.
Ingraham left open the question of whether corporal punishment may give rise to substantive due process claims. The Fourth Circuit Court of Appeal in *Hall v. Tawney* (1979) concluded that in some instances corporal punishment may implicate substantive due process claims given even if a state remedy is available. In *Hall v. Tawney* (1979), a seventy-grade student was struck repeatedly about the lower back and buttocks with a homemade rubber paddle. During the paddling the student was shoved against a desk and had her arm twisted while being struck with the paddle. The issue of substantive due process rests on the assertion that people, including children, have “the right to be free of state intrusion into realms of personal privacy and bodily security through means so brutal, so demeaning, and harmful as literally to shock the conscience of the court” (*Hall v. Tawney*, 1979, p. 613). An analysis of substantive due process rights in the administration of corporal punishment must include: 1) the nature of the injury caused by the paddling; 2) the amount of force used in relation to the amount needed; 3) the presence of malice or sadism that results in brutal and inhumane abuse of power that is shocking to the conscience (*Hall v. Tawney*, 1979). The *Hall* Court remanded the case for further proceedings using the guidelines set forth in the decision.

The test developed in *Hall* was adopted by the Sixth Circuit in *Webb v. McCollough* (1987). In this case, a student was suspected of violating school rules and policies on an out-of-state field trip. The student was allegedly in possession of alcohol and had a young male in her room. After finding the contraband in an adjoining room, the principal told the girl to pack up because she was going to be flown home. Instead, the student locked herself in the bathroom and refused to come out. The principal pushed the door in causing the girl to be thrown to the floor. Upon entering the bathroom, the principal jerked the girl off the floor, pushed her into the wall, and slapped her. Using the *Hall* test, the Court concluded that the record did not demonstrate that the
action by the principal was disciplinary in nature; instead the record indicates the blows were made in anger (Webb v. McCollough, 1987). The administrator’s need to strike the student was “so minimal or non-existent that the alleged blows were a brutal and inhumane abuse” of the principal’s official power (Webb v. McCollough, 1987, p. 1159). The substantive due process claim was remanded to the district court for further proceedings.

The Tenth Circuit Court of Appeals adopted and evaluated the *Hall* (1979) test in *Garcia v. Miera* (1987). In this case, an elementary school child was held upside down by her ankles and beaten on the thighs with a paddle. The paddle split causing it to grip and tear the girl’s skin. The spanking was severe enough to cause blood to ooze through the child’s clothing. During a second incident, the student was paddled with such severity that an examining physician noted the bruises could not have been caused by a routine spanking (Garcia v. Miera, 1987). A nurse who examined the child stated that if the bruises would have been the result of a spanking at home, she would have called the authorities (Garcia v. Miera, 1987).

In applying the *Hall* (1979) test, the Tenth Circuit Court of Appeals rejected the qualifications of malice or sadism saying malice or sadism was presumed if the defendant used excessive force or the force was disproportionate to the level that it could be considered brutal or inhumane and literally shocking to the conscience (Garcia v. Miera, 1987). The *Garcia* Court reasoned that three categories of corporal punishment exist: 1) Punishments that do not exceed the traditional common law standard of reasonableness and are not actionable; 2) punishments that exceed the common law standard without adequate state remedies violate procedural due process rights; 3) punishments that are so grossly excessive as to be shocking to the conscience violate substantive due process rights, without regard to the adequacy of state remedies (Garcia v. Miera, 1987). The Court concluded by noting that “the threshold for recovery on a constitutional tort for
excessive corporal punishment is high,” but the evidence in this case is sufficient enough to warrant a substantive due process claim (Garcia v. Miera, 1987, p. 658).

The Third Circuit Court of Appeals examined the issue of substantive due process and corporal punishment in \textit{Metzger v. Osbeck} (1988). The case involved a physical education teacher and wrestling coach, who admonished a student for using foul language by grasping him about the neck and shoulder area. The student lost consciousness and fell to the floor. The student sustained a broken nose and broken teeth resulting in hospitalization.

The \textit{Metzger} Court adopted the \textit{Hall} test but also rejected the elements of malice or sadism stating that a court should be reluctant to consider states of mind, especially in this case where the teacher’s position as a physical education teacher and wrestling coach made him aware of the possible consequences of his actions (Metzger v. Osbeck, 1988). Instead of malice and sadism as an element of the substantive due process test for excessive corporal punishment, the Third Circuit Court chose to use the standard of “intentional conduct, gross negligence, or reckless indifference of an established state procedure” (Metzger v. Osbeck, 1988, p. 521). The Court concluded that the teacher’s actions “exceeded the degree of force needed” and “showed no legitimate disciplinary purposes” (Metzger v. Osbeck, 1988, p. 521). The case was remanded to the lower court for further proceedings on the substantive due process claim.

In 1988, the Eighth Circuit Court of Appeals reviewed \textit{Wise v. Pea Ridge School District} (1988), which involved another case of excessive corporal punishment and a substantive due process claim. A group of boys disregarded the teacher’s instructions to stop playing “dodge ball.” After class, the teacher administered two licks with a wooden paddle to the buttocks of each boy in the presence of a witness. As a result of the paddling, one of the boys developed bruises on his buttocks. Although the Court agreed that circumstances may arise in the process of corporal
punishment that “may violate a student’s liberty interest in his personal security and substantive
due process right,” the facts of this case do not rise to such a level (Wise v. Pea Ridge School

The Eighth Circuit Court formulated its own test for a substantive due process claim for
corporal punishment. The Wise test considered the following elements: 1) the need for corporal
punishment; 2) the relationship between the need and the amount of punishment administered; 3)
the nature of the injury; and 4) whether the punishment was administered in a good faith effort to
maintain discipline or maliciously and sadistically for the purpose of causing harm (Wise, 1988).
The Wise test considers essentially the same elements as the Hall test. The Court reasoned that
the teacher’s actions were “not unreasonable in light of the circumstances” (Wise v. Pea Ridge
The conduct must be shocking to the conscience and amount to a severe invasion of the student’s
granted summary judgment for the teacher concluding that the teacher’s actions did not meet the
criteria necessary for a substantive due process claim.

A case out of the Fifth Circuit Court of Appeals, Woodard v. Los Fresnos Independent School
District (1984), appeared to indicate that the Fifth Circuit was ready to declare that corporal
punishment could implicate substantive due process considerations. In Woodard v. Los Fresnos
Independent School District (1984), a high school student was given the choice between corporal
punishment, a lengthy bus suspension, or a short suspension from school. The student requested
corporal punishment although the parents explicitly requested suspension from school. The
parent’s filed suit arguing a deprivation of substantive due process occurred when the assistant
principal allowed the student to choose the punishment instead of following the parent’s wishes.
The plaintiffs argued that this action amounted to “arbitrary and capricious conduct, hence a denial of substantive rights” (Woodard v. Los Fresnos Independent School District, 1984, p. 1246). The Court in Woodard ruled this agreement to be a semantic guise to cloak a procedural technicality as egregious conduct (Woodard v. Los Fresnos Independent School District, 1984). A deprivation of substantive due process rights can occur when corporal punishment is arbitrary, capricious, or wholly unrelated to the legitimate state goal of maintaining an atmosphere conducive to learning (Woodard v. Los Fresnos Independent School District, 1984). The Court concluded that the three swats administered to the student were “neither arbitrary nor capricious state action nor inhumane and shocking abuse of official power” (Woodard v. Lost Fresnos Independent School District, 1984, p. 1246).

In Cunningham v. Beavers (1988), the Fifth Circuit Court of Appeals departed from the Third, Fourth, Sixth, and Eighth Circuits failing to rule that a substantive due process claim may occur as a result of corporal punishment. This case involved two kindergarten students who were paddled for “snickering in the hall” (Cunningham v. Beavers, 1988, p. 270). The students were bruised on the buttocks and missed six days of school. The Court reasoned that, much like the Ingraham (1977) case, the state’s common law provided relief in the event that the school’s actions were found to be inappropriate or disproportionate to the offense, thus negating a substantive due process claim (Cunningham v. Beavers, 1988).

Two years later, the Fifth Circuit reaffirmed the Cunningham rule in Fee v. Herndon (1990). The Fee case involved the use of corporal punishment of an emotionally disturbed special education student. The parents contended that the student spent six months in a psychiatric ward as a result of the corporal punishment. The question before the Court was “whether the federal constitution independently shields public school students from excessive
discipline, irrespective of state law safeguards” (Fee v. Woodard, 1990, p. 804). Relying on the decision in Woodard, the Court stated that substantive due process considerations avail themselves when the corporal punishment is arbitrary, capricious, or wholly unrelated to furthering the state interest in public school discipline, but reasonable application of corporal punishment with post-punishment civil or criminal remedies does not run contrary to the Fourteenth Amendment (Fee v. Woodard, 1990). However, the Cunningham rule as applied in the Fifth Circuit, is only useful in situations where the state provides for reasonable corporal punishment and post-punishment relief is available because arbitrary state action cannot exist when laws governing the implementation of corporal punishment exist (Fee v. Woodard, 1990).

In Mathis v. Berrien County (1989), a fifth grader in Georgia misbehaved and received bruises after four licks with a wooden paddle. The parent filed suit alleging that the punishment was so excessive as to make it unlawful. The Court ruled that the mere evidence of pain and bruising to a child’s buttocks subsequent to corporal punishment administered in good faith does not violate the intent of O.C.G.A § 20-2-731. Several years earlier, a Georgia Court ruled that it is to be anticipated that corporal punishment will produce pain and potential bruising (Maddox v. Boutwell, 1985).

In another Georgia case, Daniels v. Gordon (1998), the Court stated that “not all physical contact instigated by an educator amounts to corporal punishment” (p. 813). In this case, a student misbehaved and refused to follow the teacher’s instructions, even refused to look at her. The teacher grasped the student with both hands about the cheek and face area and turned his face to her. The parents filed suit alleging misapplication of the corporal punishment law. Citing a Florida case Williams v. Cotton (1977), the Daniels Court said that the teacher’s duty to keep good order in the classroom empowers the teacher to use reasonable physical force:
“Without such reasonably implied power, the requirement to keep good order would be meaningless” (Williams v. Cotton, 1977, p. 1041).

Although teachers and administrators in many districts are given the authority to use corporal punishment, sound judgment should be used. A Georgia case, *Crews v. McQueen* (1989), cautioned educators in the use of corporal punishment. In *Crews*, the student would not remain still, so the child was required to stand with his hand on the desk. After the first lick with the paddle, the student dropped to his knees. The administrator grabbed him up by the arm, which was positioned behind his back, causing a spiral fracture of the arm.

The administrator cited sovereign immunity, stating that his actions were within the official duties and without willfulness, malice, or corruption as outlined in *Hennessy v. Web* (1980), which constructed the general principals of sovereign immunity. The Court stated that sovereign immunity did not apply because the statute authorizing corporal punishment O.C.G.A. § 20-2-732, outlines whether punishment is excessive or unduly severe given the student’s indiscretion. The Court went on to say that even though corporal punishment is within an administrator’s scope of authority, it may not be viewed as a sound decision, thus the constraints as outlined O.C.G.A § 20-2-732 govern the case, not sovereign immunity. Even though the punishment was within the scope of authority, it still may have been outside the administrator’s sound discretion (*Crews v. McQueen*, 1989). That is, just because administrators can, does not mean you that they should. Careful analysis of the circumstances and the administration of corporal punishment must be made to avoid legal repercussions.

In some instances the administration of corporal punishment may be so excessive that the administrator is vulnerable to civil and criminal liability. In the case of *Neal v. Fulton County Board of Education*, (2000), the Georgia Court established a test to determine whether the
amount of force used in the administration of corporal punishment was excessive. The case involved an incident that occurred after school in the football locker room. A student placed a metal weight collar in a gym bag and hit a second student in the head with the weight. The coach, in response to the incident, retrieved the metal weight collar and proceeded to strike the student who initiated the fight in the face, crushing his eye socket.

First, the Court was faced with the task of determining if the circumstance surrounding this case amounted to corporal punishment. They determined it did because the teacher’s conduct was spurred by the student’s actions on school grounds and was intended as a disciplinary measure.

Second, the Court had to develop a set of criteria to determine if the corporal punishment was excessive. The Court looked to the “totality of the circumstances” (Neal v. Fulton County Board of Education, 2000, p. 1076). In particular, The Neal Court identified the following criteria for excessive corporal punishment: 1) “the need for the application of corporal punishment;” 2) “the relationship between the need and amount of punishment administered”; and, 3) “the extent of the injury inflicted” (Neal v. Fulton County Board of Education, 2000, p. 1075). The actions by the teacher were “an obviously excessive amount of force that represented a reasonably foreseeable risk of serious bodily injury” (Neal v. Fulton County Board of Education, 2000, p. 1075) implicating a substantive due process claim. Statutory guidelines and requirements assist school administrators to stay within the legal parameters in administering corporal punishment; most choose, however, to avoid the legal land mines of corporal punishment in lieu of a more socially acceptable discipline, such as in-school suspension.
CHAPTER 3

GEORGIA’S CHRONIC DISCIPLINE LAWS

This section analyzes the two Georgia statutes that address the chronically disruptive regular education student: the Georgia Chronic Disciplinary Problem Student Act and the Teacher Removal Act. The statutes are analyzed in light of existing Georgia law, specifically the A Plus Education Reform Act of 2000, and federal law, including the Rehabilitation Act of 1973 and the Individual with Disabilities Education Act of 1997.

Chronic Disciplinary Problem Student Act

In 1995, The Georgia General Assembly passed the Chronic Disciplinary Problem Student Act, O.C.G.A. § 20-2-765. The Chronic Disciplinary Problem Student Act identifies “a student who exhibits a pattern of behavioral characteristics which interfere with the learning process of students around him or her and which are likely to reoccur” (O.C.G.A. § 20-2-764).

In accordance with O.C.G.A. § 20-2-765, once a teacher or administrator identifies a student who exhibits a disruptive pattern of behavior, the administrator is required to notify the parent or guardian. The Georgia Chronic Disciplinary Problem Student Act states in part that:

Any time a teacher or principal identifies a student as a chronic disciplinary problem student, the principal shall notify by telephone call and by either certified mail or statutory overnight delivery with return receipt requested or first-class mail the student’s parent or guardian of the disciplinary problem, invite such parent or guardian to observe the student in a classroom situation, and request at least one parent or guardian to attend a conference with the principal or teacher or both to devise a disciplinary and behavioral correction plan.
The contents of the notification include a description of the disciplinary problem with an invitation to the parent or guardian to visit the school and observe the student in class. The notification requests a conference between the parent or guardian, the principal, and/or the teacher to devise a behavioral correction plan. The Georgia Chronic Disciplinary Problem Student Act provides that the school must conduct a post-suspension conference as part of the behavior plan with the parent or guardian each time a student is suspended. The behavioral disciplinary correction plan is revised at the conference. The Act states that: “Failure of the parent or guardian to attend shall not preclude the student from being readmitted to school” (O.C.G.A § 20-3-766). The student can not be prohibited from returning to school if the parent or guardian fails to attend the post-discipline conference. The conference may include additional resource personnel such as the school counselor. “The principal shall ensure that a notation of the conference is placed in the student’s permanent file” (O.C.G.A § 20-3-766).

The Georgia Chronic Disciplinary Problem Student Act identifies students who demonstrate a pattern of behavior that is disruptive to the student and his or her classmates; however, the statute fails to give clarification as to what constitutes a pattern of behavior. This is problematic as different thresholds are adopted from district to district or even from school to school, spurring claims of inequity and discrimination.

In addition to the ambiguity in identifying chronically disruptive students, the language of the Chronic Disciplinary Problem Student Act may, by definition, obligate the school to assess the student’s need for special education services and entitle the student to procedural safeguards that essentially stop the discipline process until an evaluation of the student’s need for special services can be completed. The definition of a chronic discipline problem student is a student who demonstrates a pattern of behavior that is disruptive and reoccurring. This language fulfills
the criteria for identifying a student who may be in need of special services through Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act of 1997 (IDEA).

Commonly referred as Section 504, this federal anti-discrimination legislation states that:

No otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (29 U.S.C 16 § 504)

The Act is not specific to education, but guarantees equal opportunities to all persons with qualifying disabilities, including students. The Rehabilitation Act of 1973 considers a person to have a disability if the person:

1. has a physical or mental impairment which substantially limits one or more of such person's major life activities;
2. has a record of such an impairment; or
3. is regarded as having such an impairment (29 U.S.C 16 § 705)

For the purposes of identification, learning is considered one of life’s major activities. Additionally, the coverage includes mental or psychological disorders, such as Attention Deficit Disorder. Students with disabilities identified in the Rehabilitation Act of 1973 have the right to reasonable accommodations so they may enjoy the same opportunities as non-disabled students.

Students identified as a chronic discipline problem meet the identification criteria for a person with disability under Section 504 of the Rehabilitation Act of 1974. A record of impairment is constructed by school personnel as they document behaviors deemed inappropriate
to the school setting and develop a behavioral correction plan for the student. This 
documentation satisfies the identification criteria under Section 504 of the Rehabilitation Act of 
1973 by establishing a record of impairment and documenting that school personnel regard the 
students as having an emotional or psychological impairment that limits his or her ability to 
learn. At this point, the school is required to evaluate the student to determine his or her 
eligibility or Section 504 services. If the student qualifies under Section 504, the school must 
develop a plan which includes reasonable accommodations for the student.

The identification of chronically disruptive regular education student takes on more serious 
dimensions in light of the Individuals with Disabilities Act of 1997 (IDEA). The IDEA’s 
purpose is to ensure that all students with disabilities receive a free appropriate education with 
the necessary services to meet their individual needs. A student is eligible for special education 
services if the student is determined to have a disability outlined in Section 615 of the IDEA, 
which includes emotional disturbance.

The IDEA regulations define emotional disturbance as follows:

(i) The term means a condition exhibiting one or more of the following 
characteristics over a long period of time and to a marked degree that 
adversely affects a child’s educational performance.

(a) An inability to learn that cannot be explained by intellectual, sensory, 
or health factors.

(b) An inability to build or maintain satisfactory interpersonal 
relationships with peers and teachers.

(c) Inappropriate types of behavior or feelings under normal 
circumstances.
(d) A general pervasive mood of unhappiness or depression.

(e) A tendency to develop physical symptoms or fears associated with personal or school problems. (Dayton, 2002, p. 3)

The identification of a student under the Chronic Disciplinary Problem Student Act may qualify the student for evaluation and services through the IDEA. The IDEA, 20 U.S.C § 1415, extends procedural safeguards to students not yet eligible for special education services. It states that:

A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in paragraph (1) may assert any of the protections provided for in this part, if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. (20 U.S.C § 1415)

To be eligible for procedural safeguards under IDEA, the school must possess knowledge that the student may have a qualifying disability under the act. The IDEA, 20 U.S.C § 1415, describes the basis for this knowledge when it states that:

A local educational agency shall be deemed to have knowledge that a child is a child with a disability if –

(1) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;
(2) the behavior or performance of the child demonstrates the need for such services;
(3) the parent of the child has requested an evaluation of the child pursuant to section 614; or
(4) the teacher of the child or other personnel of the local educational agency has expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel in the agency. (20 U.S.C § 1415)

The broad set of identification criteria set forth in the IDEA may include students identified in the Georgia Chronic Disciplinary Problem Student Act. By definition, a student labeled a chronic disciplinary problem student has demonstrated a pattern of reoccurring behavior that is inappropriate for the learning environment, indicating the need for intervention. Additionally, the school has expressed concern over the child’s behavior through his or her designation as a chronic disciplinary problem student. These actions by the school establish that the student may benefit from special services, thus an evaluation to determine his or her eligibility for special services must be conducted.

The strength of the Georgia Chronic Disciplinary Problem Student Act is the procedure to include parents and guardians. The parent participation component of the Georgia Chronic Disciplinary Problem Student Act works in concert with O.C.G.A. § 20-2-738, which requires local school districts to work alongside parents and guardians in an effort to respond to inappropriate student behavior. Parental involvement is encouraged through the Chronic Disciplinary Problem Act at each step of the process once a student is identified as a chronic discipline problem. The parent or guardian visitation request is a critical step in allowing the
parent or guardian into the process. It also affords the parent or guardian the opportunity to assist in developing an understanding of the problem and the impact inappropriate behavior can have on the learning environment. The parent or guardian’s participation becomes instrumental as they assist the administrators and teachers to devise a behavioral correction plan. Once in place, the behavioral correction plan becomes the responsibility of the school, the student, and the parent. If the behavior correction plan fails to curb the student’s inappropriate behavior, progressively severe discipline is administered, which may include out-of-school suspension. The parent or guardian participates in a conference with the administration to re-evaluate the behavior correction plan subsequent to each discipline action. Parents or guardians are notified and encouraged to be active participants in each step of the chronic discipline problem student process.

Although the parental component is a strength of the Chronic Disciplinary Problem Student Act, it is also a weakness because the Act fails to require parental participation. The Act states that: “Failure of the parent or guardian to attend shall not preclude the student from being readmitted to school” (O.C.G.A. § 20-2-766). Furthermore, the statute fails to outline the consequences that would befall the student after the behavior plan is revised and the disruptive behavior continues. A clearly articulated end to the chronic disciplinary problem student process is missing.

The application of the Chronic Disciplinary Problem Student Act raises several concerns about the adherence to federal special education law and existing Georgia statutes. If chronic discipline problem students in Georgia are eligible for IDEA safeguards, the act of pursuing alternative school placement for these students, which is the common practice, may be in violation of federal law unless the need for special education services has been ruled out. The
IDEA protects students from discipline which may alter the student’s placement. A change in placement occurs when the student is taken out of his or her current educational placement for more than ten consecutive days or the student is subject to a series of short term suspensions that amount to a change in placement due to their number and proximity to one another. A change of placement is prohibited by Section 615 of the IDEA in what is commonly referred to as the “Stay Put” provision, which stops further action against the student until such time an evaluation can be conducted. The “Stay Put” provision outlined in 20 U.S.C § 1415 states that:

Except as provided in subsection (k) (7), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

If the student qualifies for special education services under IDEA, the student can not be disciplined for action which is a manifestation of his or her disability. This measure does not, however, prohibit the school administrators from disciplining the student as long as the discipline does not constitute a change in placement. Section 615 of the IDEA outlines the authority of school personnel. It states:

School personnel under this section may order a change in placement of a child with a disability to an appropriate interim alternative educational setting, another setting, or suspension for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities. (20 U.S.C § 1415)
Discipline options may include in-school suspension and out-of-school suspension for not more than ten days, so long as there is not a pattern of removal.

While the Chronic Disciplinary Problem Student Act is reactionary, the A Plus Education Reform Act of 2000 demands that schools be proactive in dealing with troublesome student behavior. In 2000, the Georgia General Assembly passed the A Plus Education Reform Act. This Act required local boards of education to develop an age-appropriate, progressive behavior code and a student support process for all students. These requirements are pro-active measures to deal with chronic disciplinary problem students. Notice is provided to the student so they fully understand the consequences of his or her behavior. It also requires that a support process be developed to work with students who may have difficulty following the behavior guidelines. The Chronic Disciplinary Problem Student Act contradicts the intent of the A Plus Education Reform Act because it is reactive and fails to deal with inappropriate behavior before it rises to a chronic level. Before a student reaches a chronic level of discipline, intervention and strategies should be developed. In the Chronic Disciplinary Problem Student Act, the behavior correction plan is developed at the end of the process after the student has hampered the learning opportunity of his or her classmates and received a series of administrative discipline consequences such as in-school suspension and short-term suspension. The statute does not provide any guidance to school administrators if the behavior correction plan fails. The next step could result in traditional school level discipline such as short-term suspension or a referral to an alternative school through a disciplinary tribunal or disciplinary hearing.

Teacher Removal Act

The Teacher Removal Act (O.C.G.A. § 20-2-738) was passed as part of the A Plus Education Reform Act of 2000. It empowers the classroom teacher to remove a student from his or her
class pending a set of review procedures and administrative discipline options. The steps of the Teacher Removal Act are shown in Figure 1 (Student Support Team Manual, Clayton County Public Schools, 1998).

Students may be removed from the class once their behavior is deemed to “repeatedly or substantially interfere with the teacher’s ability to communicate with the students in the class, or with the ability of the student’s classmates to learn” (O.C.G.A. § 20-2-738). The student’s behavior must be in violation of the student code of conduct or “pose an immediate threat to the safety of the student’s classmates or the teacher” (O.C.G.A. § 20-2-738).

Upon removal from the class, the teacher files a report with the principal describing the student’s behavior. The report is filed by the end of the day or at the beginning of the next school day. The report is required to be no longer than one page. The Act states that:

> The principal or the principal’s designee shall, within one school day after the student’s removal from class, send to the student’s parents or guardians written notification that the student was removed from class, a copy of the report filed by the teacher, and information regarding how the students parents or guardians may contact the principal or the principal’s designee. (O.C.G.A. § 20-2-738)

The principal meets with the teacher and student by the end of the day or the beginning of the next school day. During the meeting the student receives information, oral or written, describing the grounds for his or her removal from class. The student is afforded the opportunity to rebut the allegations. Once the informal hearing occurs, the principal, with the teacher’s approval, may return the student back to his or her original class. If the teacher withholds his or her consent to allow the student to return, the principal assigns the student to an appropriate
Figure 1: Teacher Removal Process: O.C.G.A. § 20-2-738

(Student Support Team Manual, Clayton County Public Schools, 1998)
temporary placement by the end of the first day following the removal. The Teacher Removal Act requires that:

An appropriate temporary placement for the student shall be a placement that, in the judgment of the principal or the principal’s designee, provides the least interruption to the student’s educations and reflects other relevant factors, including, but not limited to, the severity of the behavior that was the basis for the removal, the student’s behavioral history, the student’s need for support services, and the available education settings; provided, however, that the student shall not be returned to the class of the teacher who removed him or her, as an appropriate temporary placement, unless the teacher gives his or her consent. (O.C.G.A. § 20-2-738)

If the student is not returned to his or her original placement, the temporary placement stands until such time the review committee issues a placement determination. The placement review committee is convened by the end of the second day to review the circumstances surrounding the student’s removal. The principal may also elect to impose discipline in accordance with the school district’s behavior guidelines.

The placement review committee is composed of three teachers. Two are elected by the faculty, and one is appointed by the principal. The Teacher Removal Act declares that: “The teacher withholding consent to readmit the student may not serve on the committee” (O.C.G.A. § 20-2-738). The placement review committee has the authority to return the student to class or to refer the student for administrative discipline, which could include an alternative education program, out-of-school suspension, or any other discipline consistent with local board policy. The committee may choose to prohibit the student from returning to class. If this happens, the
principal assigns the student to an appropriate placement and reserves the option to impose further discipline measures, such as in-school suspension or out-of-school suspension. The principal is responsible for issuing written notification to the teacher and parents or guardians of the student. The Act requires that:

Within one school day of taking action pursuant to subsection (e) of this Code section, the principal or the principal’s designee shall send written notification of such action to the teacher and the parents or guardians of the student and shall make a reasonable attempt to confirm that such written notification has been received by the student’s parents or guardians. (O.C.G.A. § 20-2-738)

In addition, the Teacher Removal Act suggests that parents may be required to participate in conferences requested by the school. Failure on the part of the parents to participate may not lead to sanctions against the student. The last section of this code states that conference and notification requirements set forth in the act are minimum requirements. The Teacher Removal concludes by stating that:

Nothing in this Code section shall be construed to limit the authority of a local board of education to establish additional requirements relating to student conferences, notification of parents or guardians, conferences with parents or guardians, or other procedures required by the Constitutions of the United States or this state. (O.C.G.A. § 20-2-738)

The Teacher Removal Act suffers from the same ambiguous identification criteria as the Chronic Disciplinary Problem Student Act. Only here, instead of four or five administrators interpreting the identification criteria, the discretion is placed in the hands of 80 to 100 teachers. The Teacher Removal Act removes students from their educational placement who “repeatedly or
substantially” interfere with classroom instruction or who pose a danger to the class. The statute does not clearly define the threshold to be used in identifying a student eligible for removal. Chewing gum may qualify as repeatedly or substantially disruptive in one teacher’s class, but not in another teacher’s class. Another example may include a student removed after two incidences of using profanity in a class while another student commits the same violation three or four times before being removed from class. The lack of clarity in identification can, as in the chronic disciplinary student process, bring about issues of inequity and discrimination as the criteria changes from teacher to teacher. The teacher is empowered with a great amount of discretion to temporarily alter a student’s educational placement.

The special education issue imbedded in the Teacher Removal Act is similar to the Chronic Disciplinary Problem Student Act because a student demonstrates inappropriate behavior that is repetitive or substantially interferes with the classroom environment.

The student slated for removal from class is placed into a category where an evaluation for special education services is needed because the school is acknowledging that the student is having behavioral problems and something must be done.

The removal of a student from one class to another does not trigger the “Stay Put” provision set forth in IDEA as it may in the Georgia Chronic Disciplinary Problem Student Act because the action does not constitute a change in the student’s educational placement. The Teacher Removal Act simply moves a troublesome student from one class to another, but a series of removals combined with administrative discipline may reach a level of interference with the student’s educational progress to constitute a change in placement. Even though the “Stay Put” provision of IDEA is not relevant, the application of the Teacher Removal Act for a chronically disruptive student brings to the forefront the school’s responsibility to identify students who may
need special services under the IDEA’s “Child Find” provision (20 U.S.C § 1412). The special education implications for the Teacher Removal Act are put forth in 20 U.S.C § 1412 of the IDEA. The provision is called “Child Find.” It states that:

All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. (20 U.S.C § 1412)

The identification of a student for removal under the Teacher Removal Act qualifies a student for special education evaluation because the school is indicating that the student is demonstrating aberrant behavior, which may be a result of an emotional or psychological disorder. Failure to recognize that students slated for removal under the Teacher Removal Act are eligible for identification and evaluation under the IDEA’s “Child Find” provision may result in legal ramifications for the school district.

The most glaring weakness of the Teacher Removal Act is the absence of any meaningful parent or guardian participation. No effort is made to include the parent or guardian until the end of the process, which concludes by stating that parents may be required to attend a conference. The school possesses no obligation to seek assistance from the parent or guardian to curb the inappropriate behavior. This directly opposes O.C.G.A § 20-2-735 which states, “Parental involvement processes developed pursuant to this subpart shall be designed to create the expectation that parents and guardians, teachers, and school administrators will work together to improve and enhance student behavior.” The statute only requires that the parent be informed of
the decision made by the placement committee. The final determination of the child’s placement is left to a faculty review committee, which brings into question the fitness of a group of teachers, who may be unfamiliar with the student’s circumstances to decide on the appropriate placement of the student. The lack of participation from a wide variety of school personnel, such as counselors, administrators, or social workers, limits the ability of the review committee to see the problem in its totality. For example, if the student is removed from his third-period, remedial algebra course and placed into the only other remedial algebra class offered, he may be required to drop his fourth period elective because it will not fit into his schedule. This may seem rather benign, but in some instances this could deny the student the opportunity to complete a required course and remain on track for graduation or receive a particular diploma type. This may be particularly problematic in small schools which do not have the staff for multiple course offerings.

The Teacher Removal Act, like the Chronic Disciplinary Problem Student Act, is reactionary. It begins to deal with the problem once it has reached a critical stage. The statute offers no provisions for troubleshooting. It neither seeks to identify the source of the student’s behavior nor to correct the inappropriate behavior. The removal process merely moves the problem to another teacher. Additionally, the Teacher Removal Act fails to address the reoccurrence of inappropriate behavior from the same student. Under the statute, a student could be moved from class to class numerous times throughout the year. An argument could be made that a series of removals and the inherent disruption in instruction that could result may warrant more than rudimentary due process.
CHAPTER 4
CONCLUSION

This chapter explores policy considerations for local school administrators to strengthen the implementation of the Georgia Chronic Disciplinary Problem Student Act and the Teacher Removal Act. Suggestions are provided to attempt to mitigate the major weaknesses of the chronic discipline statutes in Georgia: ambiguity in identification, special education ramifications, and parental participation.

Findings

This study found that the Georgia Chronic Disciplinary Problem Student Act and the Teacher Removal Act contain ambiguous language that fails to provide school administrators with the necessary direction to equitably implement the law. The Georgia Chronic Disciplinary Problem Student Act defines a chronically disruptive student as “a student who exhibits a pattern of behavioral characteristics which interfere with the learning process of students around him or her and which are likely to reoccur” (O.C.G.A. § 20-2-764). The Teacher Removal Act defines a student eligible for removal as a student who “repeatedly or substantially interferes with the teacher’s ability to communicate with the students in the class, or with the ability of the student’s classmates to learn” (O.C.G.A. § 20-2-738). The language provided in the Georgia Chronic Disciplinary Problem Student Act and the Teacher Removal Act do not clearly define targeted behaviors nor the number of incidents that may lead to sanctions under the Acts and leave implementation in the hands of individual administrators.
Secondly, some students identified under the Chronic Disciplinary Problem Student Act and the Teacher Removal Act may be eligible for protection under the Rehabilitation Act of 1973 and the Individuals with Disability Education Act (1997) because the Acts target students who have reoccurring behaviors that are inappropriate for an instructional setting. The Georgia Chronic Disciplinary Problem Student Act defines the behaviors as those that “interfere with the learning process of students around him or her” (O.C.G.A. § 20-2-764). The Teacher Removal Act defines the behaviors as those that “substantially interfere with the teacher’s ability to communicate with the students in the class” (O.C.G.A. § 20-2-738). Identification of these behaviors may, in some cases, implicate a need for special education services and protections.

Finally, Georgia law, O.C.G.A. 20-2-735, requires that discipline procedures involve parent participation, but neither the Georgia Chronic Disciplinary Problem Student Act nor the Teacher Removal Act require any meaningful parental involvement. The Georgia Chronic Disciplinary Problem Student Act explicitly weakens the school’s position by stating that: “Failure of the parent or guardian to attend shall not preclude the student from being readmitted to school” (O.C.G.A. § 20-2-766). The Teacher Removal Act states that parents “may be required to participate in conferences that may be requested by the principal or the principal’s designee; provided, however, that a student may not be penalized for the failure of his or her parent or guardian to attend such a conference” (O.C.G.A. § 20-2-738). These disclaimers undermine the school leverage to encourage and require parents to assist the school in changing student’s behavior.

Practice Suggestions for School Administrators

The Chronic Disciplinary Problem Student Act and the Teacher Removal Act suffer from the same ambiguity that may pose problems for local school administrators—the method by which
students are identified as chronic discipline problems. To strengthen the implementation of the two statutes, school administrators or school districts may establish a policy that clearly defines a minimum threshold of incidents in order to be classified as a pattern or be considered repetitive. Additionally, the types of behavioral infractions subject to chronic discipline identification need to be clearly articulated to establish a minimum level of consistency. Clarification of behaviors considered to be substantially disruptive will provide a more equitable playing field for students across a school district. Although the A Plus Education Reform Act of 2000 (O.C.G.A. § 20-2-735) requires local boards of education to establish progressive discipline plans, many of these plans are very broad, stating only that a student’s infraction could lead to in-school suspension, out-of-school suspension, a disciplinary hearing, or a disciplinary tribunal. A more detailed set of guidelines is necessary for local schools to ensure that all students identified as a chronic discipline problem or slated for removal are somewhat similarly situated. This would greatly reduce the possibility that issues of inequity and discrimination would arise.

The Georgia Chronic Disciplinary Problem Student Act and the Teacher Removal Act may trigger special education safeguards. Since the IDEA (1997) establishes a provision whereby schools are required to locate, identify, and evaluate students who may need special education services, administrators must be careful to evaluate chronically disruptive students to determine whether the student is in need of special education services. According to IDEA (1997), it is illegal to discipline a student for behavior that is a manifestation of his or her disability. Each student considered for chronic discipline identification or removal from his or her current placement must be evaluated in a pre-special education referral process to ensure the student receives all necessary due process and services. It is important to reiterate that the school is required under the IDEA to extend due process protections to children not currently eligible for
special education services as long as “the behavior or performance of the child demonstrates the need for such services” (20 U.S.C. § 1415).

The A Plus Education Reform Act of 2000 mandates parental participation and the consideration of support services when disciplining students. While the Chronic Disciplinary Problem Student Act provides adequate opportunities for parental involvement, the Teacher Removal Act falls short. In both chronic discipline options, the role of support services is absent.

The Chronic Disciplinary Problem Student Act and the Teacher Removal Act can be strengthened through the use of Georgia’s Student Support Team process. This process, if used as a proactive means to manage chronically disruptive student, can guarantee consistency in identification, meet the requirements set forth in the IDEA (1997) and ensure meaningful parental participation.

The Student Support Team and Chronic Discipline

The Student Support Team (SST) is an interdisciplinary group that uses a systematic process to address learning and/or behavior problems of students in grades K-12 (Georgia Board of Education Rule, 160-4-2-.32). The SST process is outlined in Figure 2 (Administrative Disciplinary Guidelines and Resource Manual, Clayton County Public Schools, 2003).

The Student Support Team was developed in response to a class action lawsuit against the State of Georgia. The suit alleged that local school districts were assigning black students to educable mentally retarded programs in a “discriminatory manner with a discriminatory impact” (Georgia State Conference of Branches of the NAACP v. State of Georgia, 1986, p. 16962). The Court found violations of the procedures outlined in Section 504 of the Rehabilitation Act of 1973. The violations were discovered in areas of identification, evaluation, and placement of students. To curtail judicial intervention, the local districts explicitly named in the suit formulated the
Figure 2: SST Flow Chart

Student Support Team. The mission of the Student Support Team is to identify and plan alternative strategies for children prior to or in lieu of special education referral (Georgia State Conference of Branches of the NAACP v. State of Georgia, 1986). By 1987, all districts in Georgia were required to have a Student Support Team at each school.

The Student Support Team process, if used as a first step intervention strategy for chronic disciplinary problem student, may alleviate the weaknesses identified in Georgia’s chronic discipline statutes. The Student Support Team process begins with a simple Student Support Team referral. The referral may be made by anyone working with the student such as a teacher, counselor, administrator, social worker, or the parent and involves the parent or guardian, the student’s teachers, counselor, administrator, and any other school personnel deemed appropriate. To assist in identifying the chronically disruptive student, a referral for Student Support Team must be made at the early onset of inappropriate behavior.

The Student Support Team meeting begins by developing a clear understanding of the student’s behavior. Next, evidence is gathered from all available sources to clarify the variables surrounding the inappropriate behavior. This step is crucial because information is gathered from a variety of sources and does not rely on one person to judge the severity or consistency of the behavior.

The Student Support Team process continues by developing strategies or interventions to improve the student’s behavior. The strategies or interventions formulated in the Student Support Team will, in most cases, meet the requirements for students identified under Section 504 of the Rehabilitation Act of 1973 and satisfy the “Child Find” provision of IDEA (1997). Additionally, the implementation of the Student Support Team strategies is a pro-active measure that will attempt to serve the student in his or her original educational placement.
The evaluation step of the Student Support Team is a crucial step in the identification of the chronically disruptive student. The Student Support Team will assess the success of the strategies and interventions. Continued misbehavior in light of appropriate strategies and interventions may signal that the student is indeed a chronic disciplinary problem student and one who may benefit from removal of his or her original educational placement, or the student may suffer from an emotional disturbance requiring a special education evaluation. Identifying a chronically disruptive regular education student through the Student Support Team process ensures that the student has received the full measure of the school’s expertise to remediate the student before sanctions or special education evaluation begins. The evaluation for the Student Support Team plan will provide further documentation and provide the necessary evidence that the student would be served best in an alternative setting, which may occur through the Georgia Chronic Disciplinary Problem Student Act or the Teacher Removal Act.

In conclusion, the Student Support Team process bolsters Georgia’s chronic discipline statues by seeking the assistance of the parent or guardian to develop early intervention strategies in an effort to ameliorate the student’s behavior before it reaches a chronic level. Additionally, the Student Support Team process assures that the school is acting in accordance with federal special education laws and state statues. When realized as a mechanism to provide meaningful assistance to the student, The Student Support Team process works within the letter and spirit of the law.
REFERENCES


Blackwell v. Issaquena County Board of Education, 363 F. 2d 749 (5th Cir. 1966).

Board of Regents v. Roth, 408 U.S. 564 (1972).


Burnside v. Byars, 363 F. 2d 744 (5th Cir. 1966).


C.B. v. Driscoll, 82 F.3d 383 (11th Cir. 1996).


Cunningham v. Beavers, 858 F. 2d 269 (5th Cir.1988).


Dixon v. Alabama State Board of Education, 294 F.2d 150, (5th Cir. 1961).

Fee v. Herndon, 900 F.2d 804 (5th Cir.1990).

Ferrell v. Dallas Independent School District, 393 F. 2d 697 (5th Cir. 1968).


Garcia v. Miera, 817 F.2d 650 (10th Cir.1987).


Hall v. Tawney, 621 F.2d 607 (4th Cir.1979).


Hodgkins v. Inhabitants of Rockport, 105 Mass. 475 (1870).


Metzger v. Osbeck, 841 F.2d 518 (3rd Cir.1988).

Morrison v. City of Lawrence, 186 Mass 456 (1904).


Neal v. Fulton County Board of Education, 229 F.3d 1069 (11th Cir. 2000).


Newsome v. Batavia, 842 F.2d 920 (6th Cir. 1988).


Palmer v. Merluzzi, 868 F.2d 90 (3rd Cir. 1989).


Rosa v. Connelly, 889 F.2d 435 (2nd Cir. 1989).


School Board v. H.E.W, 525 F.2d 900 (5th Cir. 1976).

Smith v. Severn, 129 F.3d 119 (7th Cir. 1997).


Stratton v. Weona Community Unit District No. 1, 433 Ill 413 (1990).


Waugh v. Board of Trustees of the University of Mississippi, 237 U.S. 589 (1915).


Wiemerslage v. Maine Township High School District 207, 629 F.3d 1149 (7th Cir. 1994).


