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## THE BASICS OF DISCIPLINARY DUE PROCESS

### A. Due Process Requirements

Under the Fourteenth Amendment to the Constitution, no person may be deprived of life, liberty, or property without due process of law. Traditionally, due process did not apply to the discipline of students. However, in Goss v. Lopez, 419 U.S. 565, 95 S.Ct 729, 42 L.Ed.2d 725 (1975), the United States Supreme Court extended minimal due process protection to all students being suspended from a public elementary or secondary school.

### B. Short-Term Suspension

Georgia law defines "short-term suspension" as the suspension of a student from a public school for not more than ten school days. O.C.G.A. § 20-2-751. Short-term suspension does not require a formal due process hearing; however, a student is entitled to:

- (1) oral or written notice of the charges against him;
- (2) an explanation of the evidence the authorities have; and
- (3) an opportunity to refute it.

In most cases, this procedure can occur almost immediately following the misconduct. As a general rule, this discussion should precede the removal of the student from school. If this is not feasible, as where the student's presence endangers persons or property or threatens disruption of the academic process, the student may be immediately removed from school. In such cases, the student should be afforded an explanation of the action against him and an opportunity to refute allegations as soon as practicable.

In cases of short-term suspension, the due process clause does not require that students be afforded:

- (1) the right to counsel;
- (2) the right to call witnesses on their own behalf; or
- (3) the right to confront and cross-examine opposing witnesses.<sup>1</sup>

Goss, 419 U.S. at 583; Paredes v. Curtis, 864 F.2d 426 (6th Cir. 1988)

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<sup>1</sup> However, O.C.G.A. § 20-2-753 does require that a disciplinary hearing be held when an alleged assault or battery by a student upon any school employee occurs if the employee so requests. This hearing must be held whether or not the recommended suspension or expulsion is greater than ten school days.

The United States Supreme Court realized that such formal procedures would overwhelm schools both in time and costs. However, the Court left open the possibility that, in unusual situations, even a short-term suspension might require something more than the informal procedures outlined above.

### **C. Long-term Suspension and Expulsion**

Georgia law defines "long-term suspension" as the suspension of a student from a public school for more than ten school days but not beyond the current school quarter or semester. O.C.G.A. § 20-2-751(2). "Expulsion" is defined as removal of a student from a public school beyond the current school quarter or semester. O.C.G.A. § 20-2-751(1).

Students may be long-term suspended or expelled for various reasons. For example, a Georgia statute requires a mandatory one calendar year expulsion for students determined to have brought a weapon to school. The Georgia General Assembly enacted O.C.G.A. § 20-2-751.1 as required by the federal Gun Free School Act, 20 U.S.C. § 3351. The General Assembly embraced the federal definition of "firearm" for its definition of "weapon" in O.C.G.A. § 20-2-751. The law gives the local board some discretion to modify the discipline on a case-by-case basis.

The United States Supreme Court in Goss did not say what procedures should be applied in imposing suspension or expulsions in excess of ten days, other than to indicate that more formal due process procedures are required. However, courts seem to agree that something more than the informality condoned in Goss and something less than the formality of a criminal trial is required.

Georgia law has "filled in" this area by establishing the Public School Disciplinary Tribunal Act, O.C.G.A. § 20-2-750 *et seq.* O.C.G.A. § 20-2-753 specifically requires local boards of education to provide for a disciplinary hearing if a principal recommends a suspension or expulsion of longer than ten school days or when an alleged assault or battery by a student upon any school employee occurs, if the employee requests this hearing.

If a school official deems a student's conduct to be of such gravity as to require suspension for more than ten days or expulsion, a written notice of the charges must be prepared. This notice must be "reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950).

O.C.G.A. § 20-2-754 requires that notices should be delivered to the student and his parents or guardian personally or by mail. The notice should be delivered in the manner deemed most appropriate to insure prompt delivery, whether by hand or by U.S. mail (where appropriate, certified, return-receipt requested) to the last known address of the parents or guardians. In general, notices should include the following information:

- (a) A description of the acts of the students and the rule allegedly violated. O.C.G.A.

§ 20-2-754 describes this as a “short and plain statement of the matters asserted”. A copy of the rule should be provided, as well as any policy regarding hearing procedures.

- (b) The names of 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;
- (c) The maximum penalty which may be administered for the alleged misconduct;
- (d) A time and place for the hearing;
- (e) A copy of the hearing procedures (if applicable); and
- (f) A statement that the student is entitled to be represented by legal counsel at a hearing and to compulsory process in relation to a hearing, including subpoenas, upon request.

The hearing should provide the student with an opportunity to present a defense and to produce either oral testimony or affidavits of witness on his behalf. Nash v. Auburn Univ., 812 F.2d 655, 660 (11th Cir. 1987); Dixon v. Alabama State Bd. of Educ., 294 F.2d 150, 158-59 (5th Cir.), cert. denied, 368 U.S. 930 (1961). A relatively new addition to O.C.G.A. § 20-2-754 requires that schools must give teachers at least three days notice prior to calling them as witnesses for schools in disciplinary hearings.

Hearsay testimony is generally admissible. Tasby v. Estes, 643 F.2d 1103, 1106 (5th Cir. 1981). However, while admissible, its use may be limited. In Jacob C. v. Columbia County Board of Education, Case No. 1995-31 (St. Bd. 1995), the Georgia Board of Education held that, while hearsay evidence is admissible in an administrative hearing, it cannot, standing alone, serve as the basis for an administrative decision. Therefore, schools will be required to subpoena student eye witnesses if no other direct evidence exists.

#### **D. Appeal Process**

School districts may set policies for appeals on student discipline hearings. For example, if the hearing was heard in the first instance by a Hearing Officer or a panel of school administrations, school districts should permit an appeal to the local board of education pursuant to O.C.G.A. § 20-2-754(c). If a student does appeal the disciplinary decision to the local board, O.C.G.A. § 20-2-754(d) requires that the local board issue a decision on the appeal in writing no later than ten days, excluding weekends and public and legal holidays, from the date that the local board receives notice of the appeal.

Georgia law also gives "any party aggrieved by a decision of the local board" the right to appeal to the State Board of Education. O.C.G.A. § 20-2-1160(b). This law requires that a written appeal be filed distinctly setting forth the questions in dispute, the decision of the local board, and

a concise statement of the reasons why the decision is disputed. A copy of the transcript of hearing is also required. O.C.G.A. § 20-2-1160 authorizes further appeals to the superior court of the county of the local board of education.

#### **E. Investigating Student Misconduct**

School officials commonly conduct searches of students when investigating student misconduct. The standard applicable to student searches is less than the standard for police officers. School officials must only have a "reasonable suspicion," whereas police officers must have "probable cause."

When contemplating a search of a student or student's property, school officials should consider the following:

- (1) Whether the student has a reasonable expectation of privacy in the area being searched, such as a search of the student's person or a book bag;
- (2) Whether the search is based on a reasonable suspicion that it will reveal evidence of a violation of law; and
- (3) Whether the search is "reasonably related in scope to the circumstances that justified the search."

In New Jersey v. T.L.O., 469 U.S. 325, 1055 S.Ct. 733, 83 L.E.2d 720 (1985), the United States Supreme Court held that the warrant and probable cause requirements generally applicable to police-initiated searches do not apply to searches conducted by school personnel. T.L.O. involved a search of a student's purse by an assistant principal. The search occurred after the student was found smoking in the school restroom in violation of the school's no-smoking rule, and revealed cigarette rolling papers, marijuana, and other evidence of drug use.

Attempting to strike a balance between the legitimate privacy interests of students and the school's legitimate need to maintain an environment in which learning can take place, the Court rejected the student's argument that probable cause and a warrant were required for a search by school officials. Instead, the Court held that a student search must be "justified at its inception" based on reasonable grounds for suspecting that the search will reveal evidence of a violation of law or school rules, and the search must be "reasonably related in scope to the circumstances that justified the interference in the first place." Id. at 342. To be justified at its inception, the school official must have a reasonable suspicion that the search would turn up evidence that the student had violated the law or school rules. To be reasonably related, the scope of the search must not be excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction. For example, in T.J. v. Florida, 538 So.2d 1320 (Fla. Dist. Ct. App. 1989), the court held that a search violated the second prong of the T.L.O. test because the principal, who was looking for a knife, looked in a pocket too small to hold the knife and found cocaine.