

## **Student Disciplinary Hearings in Georgia Public Schools**

Randall C. Farmer  
Hall, Booth, Smith and Slover, P.C.  
290 N. Milledge Ave  
Athens, GA 30606  
(706)316-0231  
rfarmer@hbss.net

### **I. OVERVIEW**

Without a doubt, the discipline of students in Georgia's public schools is a vital function. However, the procedures and the decisions leading to a student being disciplined by school administrators are becoming increasingly regulated. School teachers and administrators are called on to make judgments about when student misconduct is a potential violation of the student code of conduct, to conduct an appropriate investigation of that misconduct, to determine exactly what rule was potentially violated, to decide whether there is sufficient evidence of the misconduct to discipline the student, and to follow the appropriate procedures regarding the hearing process on the student's misconduct. What's more, school officials are expected to do this without much, if any, legal training. In the end, the failure to follow the proper procedures during the investigation or prosecution of student misconduct can lead to the disciplinary decision being overturned, or even worse **to** the school district, administrators and/or teachers being sued. This paper will outline some of the basic legal requirements for student disciplinary hearings and will highlight some of the more difficult issues that can, and do, arise.

### **II. CODE OF CONDUCT**

#### **Development and distribution of Student Codes of Conduct**

Local boards of education are required to adopt policies to foster student learning by “improving student behavior and discipline.” The standards for student behavior shall be designed to create the expectation that students will conduct themselves in such a manner so as to facilitate learning, to respect other students and the school staff, and to obey the school district's rules. Finally, the local board’s policies on student discipline are required to include the following: “age appropriate standards of behavior, a progressive discipline process, and process for parental involvement.” These policies are required to be sent to the State Board of Education in order to continue receiving state funding. O.C.G.A. § 20-2-735(a); O.C.G.A. § 20-2-741(a). The policies should conform to the applicable statutes, court decisions, rules and regulations.

Further, student codes of conduct are to be developed by the local boards and shall include the expectations for the student support process, progressive discipline process and parental involvement process. Also, the progressive disciplinary process will take into consideration the "severity of the conduct," the student's past disciplinary history and other relevant factors. Parents, teachers, and administrators are to work together in order to improve school discipline. Finally, it is preferable to reassign disruptive students to alternative school rather than suspending or expelling the student. O.C.G.A. § 20-2-735 (a)-(e).

The method of distribution of the codes to the parents is left to the local board’s discretion. Students and their parents are to be issued a student code of conduct upon their enrollment. O.C.G.A. § 20-2-736(a). Student codes are required to have an acknowledgment form which the parents and students may sign to show receipt of the code. The school district has to request that the student and parent sign and return the acknowledgment form. O.C.G.A. § 20-2-751.5(e). It is good practice for a local board to be persistent in obtaining signed

acknowledgment forms from the parent and/or student showing receipt of the student code of conduct. There are several cases from the State Board of Education requiring the school board to show at the hearing that it communicated its conduct rules to the students. Shaun B. v. Douglas Co. Bd. of Educ., Case No. 1992-39; P.R.M. v. Banks Co. Bd. of Educ., Case No. 2001-23 (Before taking action against a student for the violation of a policy, the policy has to be communicated to the student.) Failure to have an acknowledgment may result in the reversal of the board's decision. Further, student codes of conduct are required to be in **each of schools and each classroom within those classrooms.** ← **What?** O.C.G.A. § 20-2-736.

For school systems that use student handbooks, then either the student code or a summary of it must be included. If the handbook includes a summary of the student code, then the full student code must be available for review at the school. O.C.G.A. § 20-2-751.5(e).

### **Content of Student Codes of Conduct**

Generally, each student code of conduct shall contain provisions that address student misconduct during school hours and at school related functions. Such conduct includes: verbal assault of teachers, administrators, and other school personnel; physical assault or battery of teachers, administrators, and other school personnel; disrespectful conduct toward teachers, administrators, and other school personnel; verbal assault of other students; physical assault or battery of other students; disrespectful conduct toward other students; and verbal assault of, physical assault or battery of, and disrespectful conduct toward persons attending school related functions. O.C.G.A. § 20-2-751.5(a). In addition, the student conduct codes should address inappropriate conduct on school buses and off campus misconduct. O.C.G.A. § 20-2-751.5(b) & (c). The latter two provisions will be addressed in more detail below.

### III. INVESTIGATING AND CHARGING STUDENT MISCONDUCT

#### Investigations

One common question that arises during investigations of student misconduct is whether a student has to be read their Miranda rights before questioning or searching the student. Generally, a Miranda warning only has to be given for purposes of criminal proceedings, and there is no exclusionary rule which is applicable at administrative hearings, such as student disciplinary hearings. Hence, although the failure to provide a Miranda warning can result in the exclusion of evidence in a criminal proceeding, there is no such requirement for a Miranda warning in an administrative hearing. V.F. v. Fulton Co. BD. OF EDUC., Case No. 2003-24; M.S. v. Clarke Co. BD. OF EDUC., Case No. 2002-25; Coplier v. Conejo Valley Unif. Sch. Dist., 903 F. Supp. 1377 (C.D. Dist. 1995). Further, a student does not have the right to remain silent during an investigation or at a hearing. S.E. v. Gwinnett Co. Bd. of Educ., Case No. 2003-30; L.W. v. Gwinnett Co. Bd. of Educ., Case No. 200-3.

The issue may arise that a student refuses to cooperate with an investigation conducted by a school official. If the student refuses to do so, then can the school district discipline the student for that refusal? There is no case addressing this question in the Eleventh Circuit or in the Georgia state courts. However, at least one federal district court answered this question in the affirmative. Maimonis v. Urbanski, 2004 U.S. Dist. LEXIS 12900 (N.D. Ill. 2004) In Maimonis, the school district was dismissed from the student's complaint alleging violations of her various constitutional rights, including the Fifth Amendment. The plaintiff was a student at York Community High School. The school official removed the student from her first period class as part of a search for illegal drugs. The principal informed the student that she was suspected of possessing drugs and that if she did not consent to a search of her personal property

she would be suspended from school for a week. The student refused and was then suspended for one week.

Another issue that arises during investigations of student misconduct is whether the parent has to be informed of the investigation. The answer is no. The State Board of Education has rejected the student's claim that parental notice was required before he gave any statement to school administrators. M.S. v. Clarke Co. Bd. of Educ., Case No. 2002-25; A.C. v. Henry Co. Bd. of Educ., 2002-26. ("Although parents feel that should be notified so they can be involved in the investigation, or take disciplinary action themselves, or to provide counsel to their children, due process does not require such notice.")

### **Deciding whether the misconduct is punishable**

One of the most important decisions that school administrators make in the disciplinary process is determining whether the student's conduct violated any code provision and, if so, which provision specifically. In short, this decision is based in part on an examination of the evidence gathered at that point about the misconduct and assessing whether there is sufficient evidence to charge a student with the misconduct.

By way of background, school officials should typically undertake the following steps in this decision making process. First, the decision about whether to charge a student should be reached after an investigation is completed. Second, the decision should be based on objective information, i.e., a witness stating the he/she saw the student commit an act, or on physical evidence gathered about the misconduct. Third, always consult the code of student conduct prior to making any decision as to what offense the student is charged with. Fourth, in difficult or high profile cases, it is advisable that school officials consult with school board counsel before sending out the charge letter or proceeding to a hearing on the charges. Fifth, school officials

will need more than hearsay evidence to substantiate the charge at the hearing. Thus, most cases require that evidence be introduced showing that the student admitted to committing the act or that a witness saw the student committing the act.

Some of the most difficult decisions about student misconduct are in the context of charging a student for acts that occur away from campus. In particular, cases involving student speech away from campus can pose difficult questions for school officials. At the outset, school officials should be careful in deciding if the misconduct is truly off campus. For example, is the misconduct off campus if it occurs away from campus but during school hours, i.e., while the student was skipping? The Education Code does not define "off campus." However, O.C.G.A. §§ 20-2-751.5(a)-(c) address the arenas in which student misconduct can occur, thus establishing where and when the school district has jurisdiction to discipline that conduct. First, misconduct can occur "during school hours, at school related functions, and on the school bus." O.C.G.A. § 20-2-751.5(a). Second, it can occur on a school bus. O.C.G.A. § 20-2-751.5(b). ← Redundant--why is on the school bus mentioned twice? Third, it can occur off campus. O.C.G.A. § 20-2-751.5(c). Hence, student misconduct that occurs off campus, but during school hours, should be prosecuted under the rules set forth in O.C.G.A. § 20-2-751.5(a).

Student misconduct that occurs off campus, i.e., not at school, during school hours, at a school event, or on a school bus, must be able to satisfy the two part test set forth in O.C.G.A. § 20-2-751.5(c). First, to be actionable, off campus student misconduct must rise to the level of a potential felony. O.C.G.A. § 20-2-751.5(c). In terms of these types of crimes, a felony is criminal conduct punishable by death, life imprisonment or imprisonment of twelve (12) months or longer.

School officials should not guess as to when misconduct could potentially be a felony. They should consult the Georgia Criminal and Traffic Law Manual or a similar source, or contact the school board's attorney. That's because not all violent acts by students away from campus are potential felonies. Several cases from the State Board of Education provide good examples of this requirement. In William J. E., the local board's expulsion of a student was reversed where the student killed his cousin while they were playing a form of Russian roulette on a Sunday morning. William J. E., v. Griffin-Spalding Bd of Educ., SBD. OF EDUC. Case No. 1996-7. The State Board reversed the local board's expulsion of the student despite the local board's having a policy which provided for expulsion of a student for off-campus criminal conduct anytime such conduct was a felony and the student's continued presence on campus would be a disruption to the educational environment. However, the State Board ruled that this policy did not apply since no felony had been committed. The student was convicted of involuntary manslaughter by a juvenile court, which is a misdemeanor offense. Furthermore, the local board did not provide sufficient evidence of the student's threat to the educational environment. The student was related to and best friends with the student whom he shot, and there was no evidence that he was a threat to commit altercations or other disruptions at school. A similar result was reached in another involuntary manslaughter case conducted at an off-campus location. Tyrone B. v. Houston Co. Bd of Educ., SBOE Case No. 1994-6. (Local board's expulsion of a student was reversed where there was a lack of evidence that the student committed involuntary manslaughter in the shooting of another student.)

Another troubling area for school officials involves the types of off campus speech by students that are punishable. This is especially true in light of student speech that can occur via the internet. Examples of speech that may rise to a felony are terroristic threats or bomb hoaxes.

O.C.G.A. § 16-11-37 & 16-10-28. A terroristic threat is defined as a threat "to commit any crime of violence or to burn or damage property with the purpose of terrorizing another or of causing the evacuation of a building, place of assembly, or facility of public transportation or otherwise causing a public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience." O.C.G.A. § 16-11-37. The criminal code has a provision which states that no person shall be convicted of a terroristic threat based on the uncorroborated testimony of the party to whom the threat is communicated.

The student's defense to charges based on off campus speech is typically that **he or she** was only joking or that **he or she** really did not intend to do any harm to anyone. This in turn raises the question for school officials about whether the threat is credible or **in other words**, a "true threat." If the school official decides that the threat is credible, then he or she should be prepared to defend that decision based on the circumstances surrounding the incident. For the most part, credible threats are those that threaten some sort of violence to **an individual** or to an identifiable group of people.

Second, school officials should be able to prove at a hearing that the charged off campus misconduct poses a "potential danger" to persons or property at the school or actually disrupts the educational process. O.C.G.A. § 20-2-751.5(c).

### **Progressive Discipline Procedures**

Another key decision in the disciplinary process is whether the recommended punishment is the least severe given the context of misconduct and the student's disciplinary history. State law requires school systems to adopt policies for progressive discipline of students.

O.C.G.A. § 20-2-735(a). When it is necessary to impose discipline, school administrators and teachers follow a progressive disciplinary process. A major consideration in the application of

the code is that the disciplinary action taken by school officials be the least extreme measure to resolve the discipline problem. The circumstances to be considered include the severity of the behavior, the previous disciplinary history and "other relevant factors." O.C.G.A. § 20-2-735(d). Such factors may be taken into account in determining the punishment to be imposed, including any decision to impose a punishment that is more or less severe than suggested in **the** Code of Conduct.

### **Mandatory Discipline**

Finally, before disciplining a student, school officials should be mindful of which offenses have mandatory punishments. The good news is that, in general, school districts are given discretion as to how to best discipline students for violations of the Codes of Conduct. Hence, there are few mandatory punishments required for student misconduct. There are several statutes in which it appears that mandatory punishments are required. A close reading of those statutes reveals that school districts are given discretion as to how to discipline students.

For instance, Georgia law requires expulsion for at least one year for certain weapon violations. O.C.G.A. § 20-2-751.1(a). However, local boards have the authority to modify this expulsion requirement on a case-by-case basis. O.C.G.A. § 20-2-751.1(b). This holds true for acts of physical violence against a teacher, school bus driver or other school official. O.C.G.A. § 20-2-751.6(c)(1).

Similarly, another statute permits, but does not require, that a school district refuse to readmit a student for committing a felony or any delinquent act under O.C.G.A. § 15-11-28. O.C.G.A. § 20-2-768. A local board can refuse to readmit or reenroll a student who was suspended or expelled for being convicted of, being adjudicated of, being indicted for or having

information filed for the commission of any felony or any delinquent act under O.C.G.A. § 15-11-28 which would be a felony if committed by an adult. If such a student is refused enrollment or readmission, then the student or his/her parent or guardian has the right to request a hearing. A hearing officer, tribunal, panel, superintendent, or local board is authorized to place a student in an alternative school as appropriate. O.C.G.A. § 20-2-768.<sup>1</sup> However, it is the policy of the state that the students are to be assigned to alternative school rather than **expelled**.

At least one act of misconduct requires that students receive a certain type of punishment. Students who have been found to have violated the prohibition against bullying for the third time in a school year have to be assigned to the alternative school. O.C.G.A. § 20-2-751.4(b).

### **Scope of Student Misconduct**

Where the student misconduct occurs is at times just as important as the underlying misconduct itself. As previously stated, students can be disciplined for any misconduct at school, at a school-related event or on a school bus. O.C.G.A. § 20-2-751.5(a). To be sure, school officials need to exercise caution in disciplining students for off campus misconduct because those actions must **constitute** a potential felony and must make the student's continued

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<sup>1</sup> OCGA 15-11-63 defines a designated felony as: “A second or subsequent offense under section b of OCGA 16-11-32 if committed by a child 13 to 17 years old; Kidnapping or arson in the first degree done by a child over 13 or more years of age; aggravated assault, arson in the second degree, aggravated battery, robbery not involving a firearm, if done by a child 13 or more years of age; attempted murder or attempted kidnapping if done by a child of 13 or more years of age; carrying or possession of a weapon in violation of OCGA 16-11-127.1; hijacking a motor vehicle if done by a child 13 or more years of age; any violation of OCGA 16-7-82, OCGA 16-7-84, or OCGA 16-7-86 if done by a child 13 or more years of age; any other act, if done by an adult, would be a felony if the child committing the act has three times previously been adjudicated delinquent for such acts; any violation of OCGA 16-13-31 relating to trafficking in cocaine, illegal drugs, marijuana, or methamphetamine; any criminal violation of OCGA 16-10-52 relating to racketeering; any violation of OCGA 16-10-52 relating to escape if the child was involved in the commission of such act as has been previously adjudicated to have committed a felony; constitutes a second or subsequent adjudication of delinquency based on violation of 16-7-85 or 16-7-87; constitutes any violation of OCGA 16-15-4 relating to criminal street gangs; constitutes an offense within the original jurisdiction of OCGA 15-11-28; constitutes a second or subsequent violation of OCGA 16-8-2 through 16-8-9 relating to theft.

presence at school a potential danger to persons at school or to school property or **an actual disruption to the** educational process. O.C.G.A. § 20-2-751.5(c).

Further, the statute provision regarding possession of a weapon is also noteworthy. Under Georgia law, it is unlawful for any person to carry, possess or have under their control any weapon in a school zone, which is defined as within 1000 feet of school property. O.C.G.A. § 20-2-751.5(a)(12); O.C.G.A. § 16-11-127.1. In some weapon possession cases, a key issue to be determined is whether the student knew of the weapon being present on campus. In a line of weapon-in-car cases, the State Board of Education has sustained the discipline of a student who knew of a gun being in a truck but failed to remove it prior to coming to campus. Julie R. v. Hall Co. Bd. of Educ., Case No. 1996-22. However, the State Board reversed the local board's disciplinary decision where the student claimed that he was not aware of the weapon being in his car. Matthew H. v. Muscogee Co. Bd. of Educ., Case No. 1994-24; Lackey v. Clayton Co. Bd. of Educ., Case No. 1994-17.

Finally, while on-campus student misconduct is fairly straightforward, other misconduct that occurs in the course of transporting students on school buses may not be. Certainly, misconduct that occurs while the school bus is in operation falls within the school district's authority. But what about misconduct at school bus stops? The State School Board has upheld decisions by local boards to discipline students for misconduct that occurs at school bus stops. In Fabiyon B., the State School Board upheld a local board's suspension of a student for his involvement in a fight immediately after leaving the school bus. Fabiyon B. v. DeKalb Co. Bd of Educ., Case No. 1991-20. In a similar decision, the State School Board upheld the local board's decision to suspend a student for attacking and injuring another student as he exited a school bus.

W.R.P. v. Gwinnett Co. Bd of Educ., Case No. 1994-50; *See also*, L.W. v. Gwinnett Co. Bd of Educ., Case No. 2000-3 (Local board's decision to suspend a student for his involvement in a fight with other students at a school bus stop.)

In a related fact pattern, the State School Board upheld a local board's authority to discipline students for their misconduct on the way to and from a school bus stop. In M.H., a student was expelled for attacking another student with a tree limb on the way home from school. M.H. v. Gwinnett Co. Bd. of Ed., Case No. 2000-37. The student's challenge was based on the contention that the students were outside the school system's jurisdiction because they were on their way home from school. The State Board found that the students had not arrived home by merely going to another's house to drop off school materials. For a similar result, see Toronald J. v. Muscogee Co. Bd of Educ., Case No. 1990-10 (the State Board sustained the local board's suspension of students involved in a "savage" beating of other students from another school 45 minutes after the dismissal of school and when the students were on their way home from school).

#### **IV. DISCIPLINARY ACTION RESULTING IN LESS THAN TEN (10) DAYS SUSPENSION**

Based on the suspected misconduct and specific violation, school officials next have to determine "how much" due process the student is due for the charges(s) against him or her. Essentially, if the student is to be removed from school for more than ten (10) days, then he or she is due greater due process rights. However, students have only limited due process right when facing discipline that is ten days or less. Goss v. Lopez, 419 U.S. 565 (1975). Discipline for short-term suspensions may take several forms, including in-school suspension, out-of-school

suspension or other disciplinary decisions. Students facing such discipline have the following basic rights:

- 1) the right to be told of the charges, either in person or in writing;
- 2) the right to admit or deny the charges;
- 3) the right to be told about the alleged evidence, after denying the charges; and
- 4) the right to tell his or her side of the incident.

However, in some limited circumstances, school officials do not have to provide students with the foregoing minimal due process rights. In those instances, students do not have to be provided with the charge(s) or an opportunity to respond if their presence on campus poses a significant risk to the safety of the school. C.B. v. Driscoll, 82 F. 3d 383 (11<sup>th</sup> Cir. 1996). The Eleventh Circuit Court of Appeals noted that the general rule is that notice and a hearing should precede removal of a student from school. However, if prior notice and a hearing are not feasible, and the student's presence on campus endangers persons or property or threatens disruption of the academic process, then the student may be removed immediately from school and notice and a hearing can be provided later.

As stated, students facing short-term suspension, which is defined as suspension out of school for not more than ten school days, do not have the right to a formal disciplinary hearing. O.C.G.A. § 20-2-751(3). The school may conduct an informal hearing immediately after the incident occurs. These students do not have the right to hire a lawyer or to present witnesses. Additionally, a student is not entitled to a formal disciplinary hearing during short-term suspension even if he or she is missing exams. All the due process that is required is simply that the student be told what misconduct he or she engaged in and **that he or she be provided with an opportunity to respond**. In the Pyre case, this minimal due process requirement was met when the

instructor notified the student of his misconduct and gave him an opportunity to respond.

Wayne Co. Board of Education v. Pyre, 199 Ga. App. 384, 404 S.E. 2d 809 (1991).

## **V. DISCIPLINARY ACTION RESULTING IN GREATER THAN TEN (10) DAYS OF SUSPENSION**

More stringent due process rights are required for students facing expulsion or suspension for more than ten school days.<sup>2</sup> Goss v. Lopez, 419 U.S. 565, 995 S.Ct. 729 (1975). Because these students have more at risk, due process requires detailed written notice and a formal student disciplinary hearing.

Hence, the students are due the following rights:

- 1) the right to written notice stating the time and place of the hearing, the rule allegedly violated by the student, the alleged acts committed by the student, a summary of evidence to use against the student, and the name of the witnesses against the student. O.C.G.A. § 20-2-754(b)(1).
- 2) the right to a formal hearing either before a tribunal panel of school officials, a hearing officer, or directly before the local board of education. O.C.G.A. § 20-2-752.
- 3) the right to obtain legal representation at the formal disciplinary hearing. O.C.G.A. § 20-2-754(b)(1).
- 4) the right to present evidence and witnesses for the student and cross-examine witnesses against the student. O.C.G.A. § 20-2-754(b)(2).

It is important that these basic requirements be followed. Reasonable notice of the opportunity for a disciplinary hearing must be personally served or made by mail. 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 the time, place, and nature of the hearing; a short and plain statement of the matters asserted; and a statement as to the right of all parties to present evidence and to be

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<sup>2</sup> Long-term suspension is defined as suspension out of school for more than ten school days but not beyond the current quarter or semester. O.C.G.A. § 20-2-751(2). Expulsion means expulsion from school beyond the current semester. O.C.G.A. § 20-2-751(2).

represented by legal counsel. O.C.G.A. § 20-2-754(b). However, the local board is not required to have any particular witnesses present to testify. Shaun B. v. Douglas Co. Bd. of Educ., Case No. 1992-39.

A local board of education should specify which provision in the code of conduct the student allegedly violated. In J.G., the local board had failed to identify any provision within the code of conduct that the student violated. Further, on appeal, the Local Board failed to include copies of local board's policies that the student allegedly violated. The State Board concluded that the local board did not have any policies to govern the student's conduct and reversed in part the local board's decision on this basis. J.G. v. Walton Co. Bd. of Educ., Case No. 1999-56.

Further, the better practice is to include the recommended disposition in the notice letter. To be sure, a frequent question at the hearing is what the recommended punishment is. However, O.C.G.A. § 20-2-754 is not clear on this point. Arguably, the recommended disposition of the case falls under the requirement that the notice contain a "short and plain statement of the matters asserted." The recommended disposition or punishment of the student is a matter to be asserted by the school district at the hearing.

Local boards are also required to issue subpoenas upon request by the student to insure that witnesses for the student will be present at the hearing. SBOE Rule 160-1-3-.04(3). Locally, the president of the local board signs the subpoenas when they are issued. If the witness is a teacher, then the teacher must be given three days advance notice of the hearing. SBOE Rule 160-4-8-.15; O.C.G.A. § 20-2-754(b)(4). The service of the subpoena by the student or the student's attorney is an issue from time to time. The recommended practice is that the subpoenas be served outside of school time, especially if it involves student witnesses. That's because it is better to give the parents of the student witness the opportunity to become aware that the student

is being requested to be a witness to testify at a hearing and potentially miss class time as a result.

Further, the parents or guardians, or legal counsel of the student involved, may obtain a copy of any documents relating to the disciplinary proceeding. O.C.G.A. § 20-2-757(e). The form of the request for the documents by the parents or the student's attorney is not specified. However, at least one State Board of Education decision stated that the request must be in the form of a subpoena. L.W. v. Gwinnett Co. Bd. of Educ., Case No. 2000-3.

The Education Code does not specify the grounds upon which a continuance of a student disciplinary hearing can be granted. Generally, a continuance is granted when the student needs time to prepare an adequate defense. N. L. v. Brooks Co. Bd. of Educ., Case No. 1999-73. In these instances, the student may remain in the alternative school setting pending the hearing. If the parent requests a postponement always obtain a written waiver of the ten day rule. ← Is this sentence advising the school to always obtain the written waiver? Sort of unclear. However, several cases from the State Board of Education reflect some of the outer contours of the law in this area. The State Board of Education has held that a school board's decision to deny a continuance was arbitrary and capricious when the only basis for the denial was that the request was made to the board attorney's office rather than to the tribunal. Damon P. v. Cobb Co. Bd. of Educ., Case No. 1993-9; N. L. v. Brooks Co. Bd. of Educ., Case No. 1999-73 (Local board violated student's due process rights by not granting a continuance of the hearing.) However, a student waived his right to a continuance when the student did not seek one until after the witnesses had presented their testimony. J.W. v. Henry Co. Bd. of Educ., Case No. 1997-47.

The student disciplinary hearing is to be held no later than ten (10) school days after the beginning of the suspension unless the school system and parents or guardians mutually agree to

an extension. O.C.G.A. § 20-2-754(b)(2). Further, as stated, Goss requires that a student cannot be suspended more than ten (10) school days without a hearing. O.C.G.A. § 20-2-750; Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729 (1975); Ryan B. v. Gwinnett Co. Bd. of Educ., Case No. 1995-24. (Student was suspended from school for more than ten (10) days without receiving a due process hearing.)

In terms of the operation of disciplinary hearings, such proceedings do not follow the stringent requirements of criminal proceedings. Harvey D. v. Rabun Co. Bd. of Educ., Case No. 1989-8. Nevertheless, the local board has the burden of establishing that the student violated its policy. Owens v. Burke Co. Bd. of Educ., Case No. 1978-6. (A local board of education has the burden of proof when it charges a student with an infraction of its rules.) See also, Scott G. v. Dekalb Co. Bd. of Educ., Case No. 1988-26.

The basic requirements of the hearing are as follows: All parties have the opportunity to present and respond to evidence and to examine and cross-examine witnesses on all issues unresolved.<sup>3</sup> A verbatim electronic and written record of the hearing shall be made and shall be available to all parties. The student is entitled to a review of the local board's decision by the local board. O.C.G.A. § 20-2-754(b)-(e).

Several State Board of Education cases have addressed appeals based on alleged violations of the student's due process rights. However, those cases make clear that a student's due process rights were not violated when the student was given notice of the right to have an attorney, given notice of the right to subpoena witnesses, informed of the right to cross examine

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<sup>3</sup> At least one State Board decision has stated that a student's due process rights are not violated if the names of student witnesses are not revealed or cross examination of the student witnesses is not possible. Harvey D. v. Rabun Co. Bd. of Educ., Case No. 1989-8.

witnesses, given notice of the witnesses who would testify on behalf of the system with the substance of the testimony they would give **and informed of the violations** ← **unclear, who is informed of the violations--the witnesses or the student?** , and given an opportunity to present evidence at the hearing. S.E. v. Gwinnett Co. Bd. of Educ., Case No. 2003-30. **However**, a student's due process rights were violated where the student was found guilty of a different violation from that with which he was initially charged. E.W. & N.W. v. Henry Co. Bd. of Educ., 2001-36. (A student cannot be found guilty for an offense for which he or she has not been charged.) J.G. v. Columbia Co. Bd. of Educ., Case No. 1996-40.(Student denied due process where tribunal did not permit the student to present a witness' testimony.) C.W. v. Dekalb Co. Bd. of Educ., Case No. 2000-15. (Due process rights of student violated where student was prevented by hearing officer from presenting further evidence on the issue of intent. By refusing to consider evidence on the issue of intent, the local board failed to meet its burden of proof.) B.G. v. Pike Co. Bd. of Educ., Case No. 2001-13 (Local board decision reversed because student not allowed to cross examine witnesses who appeared at other hearings and were presenting evidence that the tribunal was considering in the case against this student.)

### **Expulsions**

Expulsions are some of the most difficult decisions made during the disciplinary process. To be sure, such decisions are scrutinized by the State Board of Education because of the severity of the action.

Several decisions handed down by the State Board of Education have reversed the local board's decision to expel a student. The State Board has stated that permanent expulsion is a drastic response that seldom can be justified in instances where a student has not posed a threat to other students. Michael C. v. Houston Co. Bd. of Educ., Case No. 1992-19. The decision to

expel a student is reversed if there is a “shocking disparity between the offense and penalty.”  
Lee v. Macon Co. Board of Education, 490 F. 2d 458, 460 (5<sup>th</sup> Cir. 1974).

The following are examples in which the State Board of Education found a "shocking disparity" between the conduct and the decision, resulting in a reversal of the local board's decision: Michael C. v. Houston Co. Bd. of Educ., Case No. 1992 -19(expulsion not appropriate when the incident involved no weapons, the incident was unplanned, and there were no vicious blows.);D.H. v. Brooks Co. Bd. of Educ., Case No. 1994-15(expulsion of a student was reversed when the student wore his hat into the school building and resisted the teacher’s efforts to remove it.) Dwight F. v. Clayton Co. Bd. of Educ., Case No. 1994-23. (Student expulsion for bringing an unloaded gun to campus reversed because of a lack of evidence that anyone was endangered or that there was a potential danger); Todd G. v. Cobb Co. Bd. of Educ., Case No. 1994-45 (Expulsion reversed where student brought an unloaded pellet gun to school where there was no evidence that anyone was endangered.); Tyrone B. v. Houston Co. Bd. of Educ., Case No. 1994-6. (Permanent expulsion reversed where student was charged with involuntary manslaughter in an off-campus incident.); Eugene B. v. Burke Co. Bd. of Educ., Case No. 1994-44 (Local Board permanent expulsion for repeated violations was excessive when school system failed to determine whether expulsion was the only alternative.)

### **The Disciplinary Decision and Appeal**

After the hearing, the student has the right to a written decision based solely on the evidence received at the hearing. The disciplinary officer, panel or tribune is authorized to determine what, if any, disciplinary action shall be taken. Such action may include, but not limited to, expulsion, long term suspension, or short term suspension. Any decision of the officer, panel or tribune is subject to modification by the local board. O.C.G.A. § 20-2-755.

The decision of the disciplinary hearing shall be in writing and shall be given within ten (10) days of the close of the record. That decision will be provided to all parties . O.C.G.A. § 20-2-754(c). The decision must also notify the parties of their right to appeal. State Board of Education Rule 160-1-3-.04(3); O.C.G.A. § 20-2-754(c). Any decision of the hearing officer or panel may be appealed to the local board of education by filing a written notice of appeal within twenty (20) days of the date the decision was rendered. Any disciplinary action imposed by such officer or tribunal may be suspended by the school superintendent pending the outcome on the appeal. O.C.G.A. § 20-2-754.

The local board has to review the appeal and render a decision in writing within ten(10) days from the date the board received the appeal. The timeframe does not include weekends or holidays. The local board's decision shall be given to all parties. A local board cannot impose a harsher punishment than the one imposed by a disciplinary tribunal if the local board does not provide an explanation for the harsher punishment. S.S. v. Columbia Co. Bd. of Educ., Case No. 1997-6; See also, Chauncey Z. v. Cobb Co. Bd. of Educ., Case No. 1992-42. Sam A. v. Tift Co. Bd. of Educ., Case No. 1994-74; B.J.D v. Walker Co. Bd. of Educ., Case No. 2000-23.

### **Appeal of Local Board Decision**

Appeals of local board decisions may be made to the State Board of Education pursuant to O.C.G.A. § 20-2-1160. Subsection (b) of that statute sets forth the requirements to appeal a local board decision to the State Board of Education. The appeal must be in writing and "shall distinctly set forth the question in dispute, the decision of the local board, and a concise statement of the reasons why the decision is complained of; . . ." O.C.G.A. § 20-2-1160(b). The party taking the appeal shall file with the appeal a transcript of the hearing, which is certified as correct and true by the superintendent. This appeal must be filed with the superintendent within

thirty (30) days of the decision by the local board. The school district is required to make available a copy of the hearing transcript to all parties. O.C.G.A. § 20-2-754(b)(5).

Within ten (10) days of receipt of the appeal, the superintendent has to submit a copy of the appeal together with the transcript of evidence and the hearing, the decision of the local board, and any other matters relating to the appeal. The State Board of Education shall issue its decision within twenty-five (25) days after the hearing and shall notify the party of the right to appeal the decision to the superior court.

The party aggrieved by the decision shall file the appeal of the decision within thirty (30) days of the decision by the State Board. Within ten (10) days of the receipt of the appeal, the State School Superintendent has to submit a certified copy of the appeal together with the transcript of evidence and the hearing, the decision of the local board, the state board's decision and any other matters relating to the appeal to the superior court. O.C.G.A. § 20-2-1160(c).

### **Reporting of Student Misconduct**

Student misconduct sometimes requires a school official to make a report of it to the appropriate law enforcement official. Two separate statutes control whether or not a school official is required to report any student criminal misconduct. First, school administrators, disciplinary officers and local boards of education **may** report any student who is believed to have committed a criminal act. Those officials who choose to report the criminal behavior should do so to the appropriate law enforcement agency. Reporters of the criminal conduct are immune from any claim of malicious prosecution. O.C.G.A. § 20-2-756. Second, any teacher or other person employed at a public elementary or secondary school **is required** to report certain criminal activities committed on school property or at school functions when he or she

has reasonable cause to believe that a student took part in the prohibited activity. Those activities are:

- Aggravated assault if a firearm is involved;
- Aggravated battery;
- Sexual offenses;
- Carrying a weapon on school campus or at school functions; and
- Illegal possession of a pistol or revolver under 18 years old;

The principal or designee who receives a report or has reasonable cause to believe that the report is valid shall make an oral report by telephone or otherwise to the appropriate school system superintendent and to the appropriate police authority and district attorney. O.C.G.A. § 20-2-1184(b).

In addition, at times, student misconduct might trigger the mandatory reporting requirements of the Georgia child abuse statutes. There, school administrators, teachers, guidance counselors, social workers, psychologists, and school nurses, who have a reasonable belief that a student who is 17 years old or younger has been abused, must make a report of that abuse immediately to a principal or the principal's designee. In turn, the principal or the principal's designee must make an immediate oral report to child protective services and make a written report if requested.

Reporters of suspected child abuse are provided immunity from civil and criminal penalties when the report is made in good faith. A mandatory reporter is subject to a misdemeanor for the knowing and willful failure to make a report of child abuse. O.C.G.A. § 19-7-5.

Child abuse is defined as "[p]hysical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, physical forms of discipline may be used as long as there is no physical injury to the child; [n]eglect or exploitation

of a child by a parent or caretaker thereof; [s]exual abuse of a child; or [s]exual exploitation of a child. O.C.G.A. § 19-7-5(b). However, "sexual abuse" does not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than five years older than the minor.

Further, school districts are required to file an annual report regarding any disciplinary and placement decisions taken the prior school year. The following are the actions that are required to be reported: student assignment to in-school suspension; student suspensions for ten (10) days or less; student suspensions for ten (10) days or more but not beyond the current semester; student expulsions; students who were permanently expelled; students who were assigned to alternative school; students who were suspended from riding the bus; instances of corporal punishment; and instances where students were removed from class. For each of the disciplinary actions, the student's age and grade level must be reported, including the student's race or gender. O.C.G.A. § 20-2-740.

Further, under the No Child Left Behind Act (NCLB), states are required to report all public schools that are labeled "persistently dangerous." However, NCLB does not provide a single definition of "persistently dangerous" that is applicable to all states. Instead, the law leaves it to each state to set its own standard. Under Georgia's definition of a persistently dangerous school, any school in which for three consecutive years either of the following has occurred: At least 1 student is found by official tribunal action to have violated a school rule related to a violent criminal offense (including aggravated battery, aggravated child molestation, aggravated sexual battery, aggravated sodomy, armed robbery, arson, kidnapping, murder, rape, & voluntary manslaughter) either on campus or at a school-sanctioned event; or at least 2% of the student body or 10 students, whichever is greater, have been found to have violated school rules related

to other identified criminal offenses, including non-felony drugs, felony drugs, felony weapons, terroristic threats; or any combination of the two. SBOE Rule 160-4-8-.16. In order to make the “persistently dangerous” determination, the Georgia Department of Education uses records provided by local school districts annually covering three years of data on official tribunals held by those districts.