

State Laws for Student Suspension Procedures: The Other Progeny of *Goss v. Lopez*

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I. INTRODUCTION

In the Supreme Court's seminal 1975 decision, *Goss v. Lopez*, the Court held:

[D]ue process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.¹

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1. 419 U.S. 565, 581 (1975). In contrast to suspensions of ten days or less, the Court only addressed the application of Fourteenth Amendment procedural due process

In his dissent to the *Goss* decision, writing on behalf of three other members of the Court, Justice Powell countered:

The Court holds for the first time that the federal courts, rather than educational officials and state legislatures, have the authority to determine the rules applicable to routine classroom discipline of children and teenagers in the public schools. It justifies this unprecedented intrusion into the process of elementary and secondary education by identifying a new constitutional right: the right of a student not to be suspended for as much as a single day without notice and a due process hearing either before or promptly following the suspension.²

The majority's holding and the dissent's criticism provide the foundational framework for the continuing rhetoric and more recent research concerning procedural constraints on student suspensions in public schools.

The purpose of this Article is to provide a systematic synthesis of the myriad state procedural due process provisions for suspensions of one to ten days. The results will contribute to determining whether federal courts, as compared with state legislatures, are the appropriate arena for resolving any perceived problems.

II. THE RHETORIC AND RESEARCH

Criticism of the *Goss* ruling began in the wake of Justice Powell's dissent³ and continues to the present day.⁴ During this time, the mass media,⁵ political spokespersons,⁶ special interest groups,⁷ and education

to lengthier exclusions with this brief dictum: "Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures." *Id.* at 584.

2. *Id.* at 585 (Powell, J., dissenting). Justice Powell reasoned that Ohio's statute, which required parents to be provided with written notice of the suspension and the reasons for the suspension within twenty-four hours, was amply sufficient—and possibly superior to the majority's constitutional ruling—to avoid the risk of arbitrary administrative action. *Id.* at 596.

3. See, e.g., David L. Kirp, *Proceduralism and Bureaucracy: Due Process in the School Setting*, 28 STAN. L. REV. 841, 863–64 (1976); Leon Letwin, *After Goss v. Lopez: Student Status as Suspect Classification?*, 29 STAN. L. REV. 627, 662 (1977); J. Harvie Wilkinson III, *Goss v. Lopez: The Supreme Court as School Superintendent*, 1975 SUP. CT. REV. 25, 46.

4. See, e.g., RICHARD ARUM, JUDGING SCHOOL DISCIPLINE: THE CRISIS OF MORAL AUTHORITY 38, 63 (2003); Richard Arum & Doret Preiss, *From the Schoolhouse to the Courthouse: School Discipline and the Law*, in FROM BROWN TO BONG HITS: ASSESSING A HALF CENTURY OF JUDICIAL INVOLVEMENT IN EDUCATION (Joshua Dunn & Martin West eds., forthcoming 2009); Julie Underwood, Commentary, *The 30th Anniversary of Goss v. Lopez*, 198 EDUC. L. REP. 795, 798–803 (2005); Richard Arum, *For Their Own Good: Limit Students' Rights*, WASH. POST, Dec. 29, 2003, at A17; George F. Will, *Schools Beset by Lawyers and Shrinks*, WASH. POST, June 15, 2000, at A33.

5. See, e.g., ELLEN JANE HOLLINGSWORTH ET AL., SCHOOL DISCIPLINE: ORDER AND AUTONOMY 114 (1984) (citing negative predictions in education publications such as Kirp, *supra* note 3, and Wilkinson, *supra* note 3). For an example of the press's

publications⁸ reinforced the perception of *Goss* and its lower court progeny as disabling school discipline. Recently, though, a counterbalancing view has started to emerge. For example, in her article commemorating the thirtieth anniversary of the *Goss* decision, Julie Underwood initially followed the lead of the Powell dissent, commenting that “[b]y making student discipline a constitutional issue, by elevating it to a ‘federal issue,’ the court has left educators fumbling away through their daily disciplinary dealings with students wondering and working at their peril.”⁹ However, despite this contention, Underwood at least partially recognized that the ultimate problem is a matter of state law: “Certainly the three minute due process [outlined in *Goss*] is still within constitutional limits. Since control of the schools rests in the hands of state legislatures, it would be up to them to enact such [limited suspension requirements] in their states.”¹⁰

sensationalizing and selectively covering suspension and expulsion due process cases, see Perry A. Zirkel, *The Midol Case*, 78 PHI DELTA KAPPAN 803, 803–04 (1997).

6. David Schimmel & Richard Williams, *Does Due Process Interfere with School Discipline?*, 68 HIGH SCH. J. 47, 48 (1985) (referencing Gary Bauer, the former presidential assistant who was then-Chairman of the Federal Working Group on School Violence and Discipline, and his belief that *Goss* “deprive[s] school administrators of the tools they need to control school violence”).

7. The current leading organization on this subject is Common Good. See, e.g., PUBLIC AGENDA, “I’M CALLING MY LAWYER”: HOW LITIGATION, DUE PROCESS AND OTHER REGULATORY REQUIREMENTS ARE AFFECTING PUBLIC EDUCATION 11 (2003), <http://commongood.org/assets/attachments/96.pdf>; see also Perry A. Zirkel, *Paralyzing Fear? Avoiding Distorted Assessments of the Effect of Law on Education*, 35 J.L. & EDUC. 461, 466–70 (2006) (scrutinizing Common Good’s research studies). For a summary of the previous efforts of other such interest groups, see, for example, Perry A. Zirkel, Commentary, *The Coverdell Teacher Protection Act: Immunization or Illusion?*, 179 EDUC. L. REP. 547, 547–51 (2003). For a more recent forum that included finger pointing at *Goss*, see Am. Enter. Inst. for Pub. Policy Research, From *Brown* to “Bong Hits”: Assessing a Half-Century of Judicial Involvement in Education (Oct. 15, 2008), http://www.aei.org/events/eventID.1746/event_detail.asp.

8. Henry Lufner, Jr., *The School of Law Litigation Explosion: A Specious Generalization 1–2* (Nov. 1988) (unpublished paper presented at the annual conference of the National Organization on Legal Problems of Education, on file with author) (attributing this reinforcing tendency to a slowness in education law commentators’ recognition of changes in litigation patterns).

9. Underwood, *supra* note 4, at 803.

10. *Id.* at 805–06. Underwood also partially hit the target via a shotgun-like accusation against state legislatures and “the state agencies, the school boards, the administrators, and even the courts [for] expand[ing] the minimal due process set forth in *Goss*, making the process much more complex and legalistic than originally set out by the Court.” *Id.* at 798.

A pair of recent studies successively found that the procedural constraints on student suspensions were more a matter of state law than the *Goss* decision. In the first study, Youssef Chouhoud and Perry Zirkel empirically analyzed the frequency and outcomes of *Goss* progeny, defined as lower court rulings based on procedural due process (PDP) specific to school student suspensions and expulsions.¹¹ They found that the frequency of these rulings increased from 1986 to 2000 and then leveled off from 2000 to 2005, but that during this entire period, the outcomes overwhelmingly favored school districts, and the relatively few student victories were largely limited to rulings based on state laws that expanded the *Goss* holding.¹² The authors concluded:

[C]ontrary to the position of the various commentators and the mass media, *Goss* is not responsible for a dramatic expansion of students' PDP rights. Although the *Goss* dissent was partially correct to the extent that the lower court progeny has amounted to a rising tide, although not a flood, the results of this study disprove the dissent's accompanying prediction of judicial activism. The primary source of any expansion of the *Goss* decision is not the judiciary, from the *Goss* Court to the federal and state courts that have interpreted its decision, but state codes, either in the form of legislation or regulation.¹³

In a follow-up analysis, Chouhoud and Zirkel found that (1) federal law rulings—those based on Fourteenth Amendment PDP, which was the fulcrum for *Goss*—were significantly more skewed in favor of school districts than were state law rulings; (2) rulings for suspensions—which are also more closely connected to *Goss*—were significantly more skewed in favor of school districts than were rulings for expulsions; and (3) federal rulings—as compared with state law rulings—for suspensions were significantly more skewed in favor of school districts, and none of these “pure” *Goss* rulings were conclusively in favor of the plaintiff student.¹⁴ As a result, the authors of the study recommended, inter alia, “[f]ollow-up research to provide systematic data as to which state laws merely codify the *Goss* holding for suspensions and the extent to which the others expand it.”¹⁵

This study is intended as the recommended follow-up, and it provides a systematic survey of state laws for *Goss* suspensions—those of ten

11. Youssef Chouhoud & Perry A. Zirkel, *The Goss Progeny: An Empirical Analysis*, 45 SAN DIEGO L. REV. 353, 354–63 (2008). For the specific scope of their sample, see *id.* at 363–66. They started their case coverage in 1986 because previous PDP studies had found that *Goss* had not led to an explosion of litigation and that the outcomes did not move at all in favor of students. *Id.* at 358–59 (citing Lufler, *supra* note 8, at 5).

12. *Id.* at 378, 381–82.

13. *Id.* at 382 (footnotes omitted).

14. Perry A. Zirkel & Youssef Chouhoud, *The Goss Progeny: A Follow-Up Outcomes Analysis*, 13 U.C. DAVIS J. JUV. L. & POL'Y (forthcoming 2009).

15. *Id.*

days or less—in terms of their procedural requirements. The entries in the tabular analysis differentiate between codifications and expansions of the *Goss* requirements.

III. METHOD

In light of the various requirements for procedural due process that each state provides through its legislation or regulation, it is important first to establish the specific scope of this survey. In limiting the study to *Goss* suspensions, state law procedural requirements for removals of more than ten days—whether termed “suspensions” or “expulsions”—have been excluded. Similarly, in limiting the study to *Goss* protections, substantive state law provisions for suspensions of up to ten days—the specific grounds for such suspensions and the requirements for alternative education placements or the right to make up work—have also been excluded.¹⁶ Additionally, the study was limited to suspensions from school, thus excluding state law provisions concerning in-school suspensions, teacher-imposed removals from class, and timeouts.¹⁷ Finally, and also in line with *Goss*, the study’s scope was limited to regular education in public school settings, thereby excluding the specialized procedural protections under state and federal law for removals of students with disabilities.¹⁸

Next, within the scope of the study, a variety of search strategies ensured comprehensive coverage. Specifically, the primary sources of the study’s search were (1) the websites for state education agencies and state legislatures; (2) the “Recent State Policies/Activities” feature of the

16. See, e.g., N.J. ADMIN. CODE § 6A:16-7.2(a)(5) (2008) (requiring that suspended students be provided make up work); TEXAS EDUC. CODE ANN. §§ 37.0051, 37.008, 37.011 (Vernon 2006 & Supp. 2008) (requiring placement in disciplinary or juvenile justice alternative education programs). Other states enacted special substantive requirements for suspensions. See, e.g., N.J. ADMIN. CODE § 6A:16-7.2(a)(4) (2007) (mandating supervision of the student while waiting for the student’s parent to remove the student from school during the school day); N.C. GEN. STAT. § 115C-391(b) (2007) (containing provisions for textbooks, homework, and tests).

17. See, e.g., GA. CODE ANN. § 20-2-738(b), (c) (2005) (teacher removals from class); 22 PA. CODE § 12.7 (2009) (in-school suspensions).

18. For the relevant regulatory requirements and case law on the federal level, see, for example, Perry A. Zirkel, *Discipline of Students with Disabilities: A Judicial Update*, 235 EDUC. L. REP. 1 (2008), and Perry A. Zirkel, *Suspensions and Expulsions of Students with Disabilities: The Latest Requirements*, 214 EDUC. L. REP. 445 (2007), and see also Perry A. Zirkel, *Suspensions and Expulsions Under Section 504: A Comparative Overview*, 226 EDUC. L. REP. 9 (2008).

Education Commission of the States for “Safety/Student Discipline—Expulsion/Suspension”;¹⁹ and (3) the Westlaw database for supplementation and verification.²⁰

Finally, a comprehensive table—provided herein as the Appendix—served to synthesize the variations of the *Goss* theme within the specific boundaries of the study. The first two columns follow the *Goss* foundational framework of notice and hearing, with the entries “x” representing explicit codifications of the associated *Goss* requirements (for example, oral notice of the charges and a conditional hearing if the student denies the charges as the minimum).²¹ A blank entry for the notice and hearing columns specific to students is an entirely implicit indication of the same minimum level of procedural protection, given the Constitution-based effect of the Supreme Court’s unchanged decision.²² For the first two columns, an unshaded entry of “x” represents a similar, relatively low level of procedural obligation beyond *Goss*, such as oral notice to the student’s parents, the school district superintendent, or both, whereas an “X” represents a more formal level of procedural obligation beyond the *Goss* minimum, such as the required addition or alternative of written notice,²³ or a hearing not conditioned on the student’s denial.²⁴ The final three columns in the Appendix represent further and sometimes much more significant additions to the *Goss* procedural prerequisites, with the “X” entries for the “Additional Levels” column meriting special attention.²⁵ The other more limited entry variations

19. See Educ. Comm’n of the States, Recent State Policies/Activities, <http://www.ecs.org/ecs/ecscat.nsf/WebTopicView?OpenView&count=-1&RestrictToCategory=Safety/Student+Discipline--Expulsion/Suspension> (last visited Apr. 23, 2009).

20. In the few cases in which a Westlaw search did not reveal an otherwise referenced provision or the particular provision was difficult to interpret, a state education law expert was e-mailed for assistance. See *infra* notes 52, 72, 89, 176. For example, in the Texas law, the definition of suspension—a removal of one to three days, with removals beyond three days termed “expulsions”—is distinguishable from its meaning in most states. See *infra* note 176.

21. See *supra* note 1 and accompanying text.

22. In contrast, as shown in the key accompanying the table presented on the title page of the Appendix, a bracketed entry designates some other implied entry based indirectly on the language of—as contrasted with silence in—the state law. See *infra* notes 59, 69 and accompanying table.

23. Where the statute or regulation provided for “oral or written notice,” the entry is only “x,” which corresponds to the same optional—rather than required—written notice in *Goss*. Where the state law provided for written notice rather than, or as a required addition to, oral notice, the entry in the Notice column is “X” or “x, X,” respectively.

24. Inasmuch as the Appendix provides for two Hearing columns corresponding to the two required elements of the hearing referenced in *Goss*, the entries may vary as to whether the explanation of the evidence or the student’s side of the story is expressly conditional on the student’s denial of the charges.

25. For example, Pennsylvania provides for two levels of suspension: one to three days and four to ten days. See *infra* note 162. The entries in the Appendix for Pennsylvania

are explained in the introduction to the Appendix. The process of reducing the pertinent language of the relevant state laws, which vary in their clarity and complexity, to these symbolic representations entails interpretation and approximation that cautions against reliance on the individual tabular entries without examining the cited legal provisions themselves.

IV. RESULTS

An examination of the Appendix reveals that express codifications of the *Goss* minimums—designated by a shaded “x” in the “Notice” and “Hearing” columns—are relatively infrequent. Looked at horizontally, that is, row by row, the Appendix shows (1) that seven state laws are entirely silent on the issue, thereby implicitly incorporating, or at least not adding, any procedural protections beyond the constitutional minimum of *Goss*;²⁶ and (2) that approximately an additional ten states’ laws only include negligible additions to *Goss*.²⁷ Thus, approximately thirty-three states have statutes or regulations that notably extend beyond the procedural due process requirements of *Goss*.²⁸

The “Notice” columns in the Appendix reveal that the most common procedural additions to *Goss* are notification to the parent (n~25) and notification to the superintendent (n~12),²⁹ with several of these state laws adding specifications for the contents, timing, and form of this notification.³⁰ In addition, approximately five state laws specify a minimum of written notice to the student, whereas *Goss* provided for the alternatives

correspond to the procedural requirements for the first level, which is for removals of up to three days. See *infra* notes 161, 162. For suspensions of four to ten days, the regulations additionally require the school to provide an informal conference among the student, the parent, and the principal within the first five days of the suspension. See *infra* note 162. This “hearing” must include the right to question witnesses present and to produce witnesses on the student’s behalf. See *infra* note 162.

26. These states are Alabama, Delaware, Maine, Michigan, Mississippi, New Hampshire, and North Dakota.

27. Although “negligible” is only an estimation, these states are Alaska, Arizona, Colorado, Iowa, Massachusetts, Montana, North Carolina, Oklahoma, Rhode Island, and Vermont.

28. The gradations of “negligibly” and “notably” are not objectively distinguishable. Thus, the respective numbers of states in each category are, to a limited extent, only approximations.

29. These numbers are only approximations because they do not include the partial entries.

30. As unusual additions, Utah’s law requires notice, upon request, to the noncustodial parent, and West Virginia requires notice to the school’s faculty senate. See *infra* notes 180, 194.

of oral or written notice, and three states require notice to the school board.³¹

The “Hearing” and “Other Hearing Rights” columns of the Appendix show that the most common procedural additions to *Goss* are unconditional opportunity for the student’s side of the story (n~20), accompanied in approximately half of these states with a corresponding unqualified school official’s obligation—without the triggering condition of the student denying the charges³²—to explain the evidence.³³ Less frequently, state laws provide the right to appeal to the superintendent (n~7), the board (n~5), or both (n~1).

Finally, the “Additional Levels” column provides the most significant expansion of *Goss* rights by limiting the application of *Goss* to a substantially lower ceiling than ten days and adding stronger PDP rights for the remaining period of suspension. The most notable variations, in order of strength, are as follows: (1) Minnesota provides limited additional protections for suspensions of six consecutive and eleven cumulative days;³⁴ (2) Texas and Pennsylvania provide an intermediate level of PDP for suspensions of three to ten and four to ten days, respectively;³⁵ and (3) California, Nebraska, and New York effectively redraw the *Goss* ten-day boundary between suspensions and expulsions at five days.³⁶ As an unusual variation, Tennessee’s law requires the principal to develop a behavior improvement plan for the student upon a suspension of six to ten days.³⁷ Finally, illustrating the blurry boundary between procedural and substantive requirements, the recently amended Connecticut law limits out-of-school suspensions of one to ten days to circumscribed serious safety grounds, thus effectively collapsing the *Goss* ceiling to zero days for the bulk of disciplinary violations.³⁸

V. DISCUSSION

Almost two-thirds of the states have statutes or regulations that extend notably beyond the procedural due process requirements of *Goss* for out-

31. Again, this approximation does not include the partial entries.

32. See *supra* text accompanying note 1.

33. As with the prior frequencies, these numbers are conservative approximations, which do not include partial entries. As notable additions, Hawaii, see *infra* note 84, New York, see *infra* note 146, and Washington, see *infra* note 188, provide the opportunity for the parent’s participation, and unusually, California calls for the participation “whenever practicable, [of] the teacher, supervisor, or [referring] school employee,” CAL. EDUC. CODE § 48911(b) (West 2006).

34. See *infra* note 119 and accompanying table.

35. See *infra* notes 162, 179 and accompanying table.

36. See *infra* notes 65, 134, 147 and accompanying table.

37. See *infra* note 175.

38. See *infra* note 70 and accompanying table.

of-school suspensions of one to ten days. Most often, states add to the basic requirement of notice by requiring recipients beyond the student, although states also extend beyond *Goss* in terms of the content, timing, and form of the requisite notification. Although not overwhelmingly onerous, each of these additional requirements represents additional inconvenience and—in cases of noncompliance—legal vulnerability for the administrative disciplinarian. On the other side of the balance, these requirements provide additional protection and, at least potentially, fairness for the affected student. The most common alteration to the hearing procedure articulated in *Goss* is the removal of the condition antecedent to a hearing, that is, the student’s denial of the noticed charges. This alteration is common because the difference between providing an explanation of the evidence and giving the student an opportunity for rebuttal is not particularly significant; most legislatures likely did not notice the difference and most courts are likely to regard the difference as *de minimis*. In contrast, the effects of adding a right of review at the superintendent’s level, the board’s level, or both, are akin to those of the varying supplemental notice requirements. These additional levels, which exist in approximately six to eight states’ laws, are the most significant extensions of *Goss* and largely have the effect of reducing the ten-day ceiling of its procedural requirements.³⁹ These additional levels therefore trigger the more extensive procedural requirements that the *Goss* reasoning and state law codifications have reserved for longer exclusions, herein referred to generically as “expulsions.”

The Supreme Court has repeatedly emphasized the value of experimentation among the states, within constitutional boundaries, as one of the benefits of federalism.⁴⁰ The *Goss* Court provided a relatively non-onerous procedural rule as the constitutional minimum for short-term suspension of students as one of the primary tools of school discipline.⁴¹ Beyond this minimum, the substantive requirements that may—as Connecticut’s recent amendments

39. See *supra* notes 34–38 and accompanying text, along with the entries under “Additional Levels” in the Appendix, *infra* pp. 354–55.

40. See, e.g., *Dep’t of Revenue v. Davis*, 128 S. Ct. 1801, 1808 (2008); *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738, 2786 n.28 (2007) (Thomas, J., concurring); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 418 (1999); *EEOC v. Wyoming*, 460 U.S. 226, 264–65 (1983); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 617 (1982) (Burger, C.J., dissenting). Justice Brandeis’s dissenting opinion in *New State Ice Co. v. Liebmann*, 285 U.S. 262, 310–11 (1932), is usually credited with the conception of states as laboratories.

41. *Goss v. Lopez*, 419 U.S. 565, 581–83 (1975).

illustrate⁴²—reduce the availability of this disciplinary alternative are properly a matter for state experimentation. This Article’s systematic canvassing of current state variations thus serves more than one purpose.

First, these survey data help inform states of what others are doing so that they can see what may be considered in, and customized to, their respective jurisdictions. Second, this study builds on predecessor studies to provide an added basis and direction for future research.⁴³ For example, a useful follow-up study would be to determine the relationship, if any, between these statutory findings and the suspension case law in the previous two studies. More specifically, it would be beneficial to determine if those jurisdictions that have experienced the most frequent and least district-friendly decisions correspond closely to the state laws that this study revealed as having the most significant extensions of the *Goss* requirements. As a second example, this analysis provides the template for a systematic canvassing of state laws with regard to expulsions, generically referred to here as exclusions of more than ten days.

Finally, this study adds to the evidence from its pair of predecessors that the characterization of *Goss* and its judicial progeny as disabling the discipline of school students is a misconception.⁴⁴ Rather, state authorities that forge binding rules in the form of legislation and regulations, with due allowance for further experimentation and variation at the local level, are the primary—and proper—sources of the procedural and substantive requirements for student suspensions. In this modern era of judicial deference rather than activist intervention in public school student cases,⁴⁵ state policymaking is both necessary and proper to balance the competing interests, which include minimizing the risk of error that ultimately may harm both the individual and the institution.

42. See *infra* note 70 and accompanying table.

43. See *supra* notes 11–15 and accompanying text.

44. See *supra* notes 3–8 and accompanying text.

45. See, e.g., Anastasia D’Angelo & Perry A. Zirkel, *An Outcomes Analysis of Student-Initiated Education Litigation: A Comparison of 1977–1981 and 1997–2001 Decisions*, 226 EDUC. L. REP. 539, 550–53 (2008); Perry A. Zirkel, *National Trends in Education Litigation: Supreme Court Decisions Concerning Students*, 27 J.L. & EDUC. 235, 242 (1998). One of the factors that appeared to influence the courts was the increased concern with safety and security in the schools, particularly in the wake of Columbine and similar well-publicized incidents within and beyond the schools. See, e.g., Chouhoud & Zirkel, *supra* note 11, at 379 (citing Robert C. Cloud, *Due Process and Zero Tolerance: An Uneasy Alliance*, 178 EDUC. L. REP. 1, 17 (2003)). Whether the various states’ legislatures and their education agencies will accord this interest the same weight and direction, especially in comparison to competing interests—such as the value of using alternate disciplinary mechanisms for the limited level of student conduct violations that are typically grounds for short-term suspensions—is an open question left to the policymaking function of these nonjudicial branches of government.

VI. APPENDIX

OVERVIEW OF PDP PROVISIONS OF STATE LAWS
FOR OUT-OF-SCHOOL SUSPENSIONS OF
ONE TO TEN DAYS⁴⁶

The Method section explains the basic format and entries for this tabular analysis.⁴⁷ In addition, some entries have these specialized features, which are explained in the respective footnotes:

- “()” = implied via indirect language⁴⁸
- “[]” = partial, or limited, variation⁴⁹
- “+” = limited addition⁵⁰
- “?” = open question⁵¹

46. The entries in the tabular analysis are current as of July 1, 2008.

47. *See supra* Part III.

48. *See, e.g., infra* notes 55, 56.

49. *See, e.g., infra* notes 59, 69.

50. *See, e.g., infra* notes 62, 63.

51. *See, e.g., infra* notes 56, 64.

STATES	NOTICE				HEARING		OTHER HEARING RTS.	ADDITIONAL LEVELS	OTHER PROCEDURAL SAFEGUARDS
	Student [Gross=x]	Parent	Supt.	Bd.	Explanation of evidence [Gross = x]	Side of story [Gross = x]	Appeal	x = minor X = major	
	x=oral X=written				x=conditional X=unconditional +=parents or others		x=supt. X=school bd.		
Alabama ⁵²									
Alaska ⁵³							X		
Arizona ⁵⁴			(x) ⁵⁵				(X?) ⁵⁶		X ⁵⁷
Arkansas ⁵⁸		X					x, [X] ⁵⁹		
California ⁶⁰	x	x, X ⁶¹	x		X+ ⁶²	X+ ⁶³	(x/X?) ⁶⁴	X ⁶⁵	
Colorado ⁶⁶		x							x ⁶⁷
Connecticut ⁶⁸	X		X		[x] ⁶⁹	X		x ⁷⁰	x ⁷¹
Delaware ⁷²									
Florida ⁷³	x, X	x, X ⁷⁴	[X] ⁷⁵		X	X			x ⁷⁶
Georgia ⁷⁷	(X) ⁷⁸	(X) ⁷⁹			(x) ⁸⁰	(x) ⁸¹			x ⁸²
Hawaii ⁸³	x	x, X ⁸⁴	X		x+ ⁸⁵	x+ ⁸⁶		X ⁸⁷	x ⁸⁸
Idaho ⁸⁹	x			x ⁹⁰	[X] ⁹¹	[X] ⁹²		X ⁹³	
Illinois ⁹⁴		X ⁹⁵		x	[X] ⁹⁶		X ⁹⁷		
Indiana ⁹⁸	x	X			x	X			
Iowa ⁹⁹				X ¹⁰⁰					
Kansas ¹⁰¹	x, X ¹⁰²	X			X	X			
Kentucky ¹⁰³	x	X	X		x	X			

Louisiana ¹⁰⁴	x	X			X	X	x ¹⁰⁵		
Maine ¹⁰⁶									
Maryland ¹⁰⁷	[x] ¹⁰⁸	[x] ¹⁰⁹			[x] ¹¹⁰	[x+] ¹¹¹			x ¹¹²
Massachusetts ¹¹³									x ¹¹⁴
Michigan ¹¹⁵									
Minnesota ¹¹⁶	X, X ¹¹⁷	x ¹¹⁸			X	X		x ¹¹⁹	x ¹²⁰
Mississippi ¹²¹									
Missouri ¹²²	x ¹²³	x ¹²⁴	x ¹²⁵		x ¹²⁶	X ¹²⁷	x ¹²⁸		x ¹²⁹
Montana ¹³⁰									x ¹³¹
Nebraska ¹³²	X, X ¹³³	X			X	X		X ¹³⁴	x ¹³⁵
Nevada ¹³⁶	x				X	X			
New Hampshire ¹³⁷									
New Jersey ¹³⁸	X	x ¹³⁹	x	x ¹⁴⁰	x	X			x ¹⁴¹
New Mexico ¹⁴²	x	X, X ¹⁴³			x ¹⁴⁴	x			
New York ¹⁴⁵	X				x	X+ ¹⁴⁶		X ¹⁴⁷	
North Carolina ¹⁴⁸		x ¹⁴⁹							
North Dakota ¹⁵⁰									
Ohio ¹⁵¹	X					X ¹⁵²	X ¹⁵³		
Oklahoma ¹⁵⁴							[X] ¹⁵⁵		
Oregon ¹⁵⁶	x	x ¹⁵⁷			[X] ¹⁵⁸	X	[X] ¹⁵⁹		
Pennsylvania ¹⁶⁰	x	X	X		[X] ¹⁶¹	X		X ¹⁶²	
Rhode Island ¹⁶³							(X) ¹⁶⁴		x ¹⁶⁵
South Carolina ¹⁶⁶		X ¹⁶⁷					X ¹⁶⁸		
South Dakota ¹⁶⁹	x	x	x		X	X	[x] ¹⁷⁰		
Tennessee ¹⁷¹	x	X ¹⁷²	x		[x] ¹⁷³	X+ ¹⁷⁴		x ¹⁷⁵	
Texas ¹⁷⁶		[x] ¹⁷⁷					[x] ¹⁷⁸	X ¹⁷⁹	
Utah ¹⁸⁰		X ¹⁸¹							
Vermont ¹⁸²		x ¹⁸³							
Virginia ¹⁸⁴	x	X	X		x	x	x, [X] ¹⁸⁵		
Washington ¹⁸⁶	x		X		X ¹⁸⁷	X+ ¹⁸⁸	x, X ¹⁸⁹	x ¹⁹⁰	x ¹⁹¹
West Virginia ¹⁹²	x	x, X ¹⁹³	X+ ¹⁹⁴		x	x	(X) ¹⁹⁵		
Wisconsin ¹⁹⁶	x	(x) ¹⁹⁷			[x] ¹⁹⁸		x	[x] ¹⁹⁹	
Wyoming ²⁰⁰	x				X	X			

52. Alabama regulations define suspensions but do not specify the prerequisite procedural requirements, inferably leaving such matters to local school board policy. ALA. ADMIN. CODE r. 290-3-1-.02 (2008). The authors acknowledge with appreciation the assistance of Doris McQuiddy for confirmation that Alabama school districts develop their policies and procedures for suspensions as well as expulsions. E-mail from Doris McQuiddy, Educ. Specialist, Ala. Dep’t of Educ., to Perry A. Zirkel, Professor of Educ. and Law, Lehigh Univ. (May 29, 2008) (on file with second author).

53. ALASKA ADMIN. CODE tit. 4, § 06.060 (2009).

54. Except for the implied notice requirement, *see infra* note 55, and the possible additional rights, *see infra* notes 56, 57, the relevant state law defers to school boards “in consultation with the teachers and parents of the school district” to “prescribe rules for the discipline, suspension and expulsion of pupils,” ARIZ. REV. STAT. ANN. § 15-843(B) (2008). However, the law sets the procedural minimum only for suspensions of more than ten days and merely mandates that the rules be “consistent with the constitutional rights of pupils.” *Id.*

55. In requiring the superintendent to notify the school board within five days of all suspensions, the legislation implies that the suspending administrator provide notice to the superintendent. ARIZ. REV. STAT. ANN. § 15-843(K).

56. Quere whether the connected requirement that the suspension be for “good cause” implies a right of appeal to the school board. *Id.* The related requirement for access to specified board proceedings, *see infra* note 57, does not necessarily add to this arguable right; if the legislature intended that any board proceeding for suspensions be discretionary—in contrast with the explicit right to a board hearing for expulsions—the access right is only conditional, ARIZ. REV. STAT. ANN. § 15-843(G).

57. For suspensions and expulsions, the legislation also accords the student, parents, and their legal counsel the right to attend and have access to the minutes or recording of “any executive session pertaining to the proposed disciplinary action.” ARIZ. REV. STAT. ANN. § 15-843(H).

58. ARK. CODE ANN. § 6-18-507(f)(1) (2007).

59. The Arkansas legislation only allows for appeals to the school board if the superintendent initiates the suspension. *Id.* § 6-18-507(c)(2).

60. CAL. EDUC. CODE § 48911 (West 2009).

61. In addition to requiring written notice to the parents regarding the suspension decision, at the time of the decision, the suspending administrator must make reasonable efforts to contact the parents in person or by telephone. *Id.* § 48911(d).

62. The administrator must have an informal conference with not only the student, but also “whenever practicable, [with] the teacher, supervisor, or [referring] school employee.” *Id.* § 48911(b).

63. *Id.*

64. Quere whether the requirement that the suspending administrator report the suspension—with the reason for the suspension—to the superintendent or board implies a right of appeal to said level. *Id.* § 48911(e).

65. California law treats suspensions of six days or more as expulsions, which separately have more formal rights, including, inter alia, written notice and a hearing with right to counsel. *Id.* §§ 48911(a), 48918.

66. COLO. REV. STAT. § 22-33-105 (2008).

67. The Colorado legislation requires, as a prerequisite to the suspended student's readmission, a meeting between the student, parent, and suspending administrator to discuss the "need to develop a remedial discipline plan for the pupil in an effort to prevent further disciplinary action." *Id.* § 22-33-105(3)(b)(II).

68. CONN. GEN. STAT. § 10-233c (Supp. 2008).

69. Connecticut law requires providing the student with the reasons for the suspension, which equate more with notice of the charges than an explanation of the evidence. *Id.* § 10-233c(a).

70. The state law provides that "no pupil shall be suspended more than ten times or a total of fifty days in one school year, whichever results in fewer days of exclusion, unless such pupil is granted a formal hearing." *Id.* Additionally and more significantly, an amendment to said statute, effective July 1, 2008, requires that schools replace out-of-school suspensions—as contrasted with expulsions—with in-school suspensions, except when the administration determines that the student "poses such a danger to persons or property or such a disruption of the educational process" to justify out-of-school suspension. *Id.* § 10-233c(g). The state education agency, pursuant to the directive in the amendment, has issued guidelines for this determination. CONN. STATE DEP'T OF EDUC., GUIDELINES FOR IN-SCHOOL AND OUT-OF-SCHOOL SUSPENSIONS 1 (2008), available at http://www.sde.ct.gov/sde/lib/sde/pdf/pressroom/In_School_Suspension_Guidance.pdf. Finally and peripherally, a Connecticut regulation requires "prompt referral to a planning and placement team of all children who have been suspended repeatedly." CONN. AGENCIES REGS. § 10-76d-7 (2008).

71. The state law provides that "no pupil shall be suspended more than ten times or a total of fifty days in one school year, whichever results in fewer days of exclusion, unless such pupil is granted a formal hearing." *Id.* § 10-233c(a).

72. Delaware does not have relevant legislation or regulations. More specifically, "Delaware has not enacted any statutory or regulatory provisions which either repeat or add to the *Goss* notice and hearing requirements." E-mail from Mary L. Cooke, Deputy Att'y Gen., Del., to Perry A. Zirkel, Professor of Educ. and Law, Lehigh Univ. (June 13, 2008) (on file with second author). Previously, the state education department issued nonbinding guidelines that recommended oral notice and a written decision that included the charges, evidence, sanction, and right to internal appeal, first to the superintendent, then to the board. WILLIAM B. KEENE, DEL. STATE DEP'T OF PUB. INSTRUCTION, GUIDELINES FOR THE DEVELOPMENT OF DISTRICT POLICIES ON STUDENT RIGHTS AND RESPONSIBILITIES 10–11 (1988), available at http://www.doe.k12.de.us/infosuites/students_family/climate/files/climate_Codes_Conduct_1992.pdf. However, recently the state education department issued its intention, see 12 Del. Reg. Regs. 219 (Aug. 1, 2008), available at <http://regulations.delaware.gov/register/august2008/final/12%20DE%20Reg%20219%2008-01-08.pdf>, to amend title 14, section 605 of the Delaware Administrative Code, which requires school districts to keep local rights and responsibilities policies on file with the state department of education, so as to delete reference to these guidelines, DEL. ADMIN. CODE tit. 14, § 605 (2008), available at <http://regulations.delaware.gov/AdminCode/title14/600/605.pdf>.

73. FLA. STAT. ANN. § 1006.09(1)(b) (West 2004 & Supp. 2009).

74. Florida's legislation requires the suspending administrator to make "a good faith effort to immediately inform a student's parent by telephone" and to report the suspension and its reason "within 24 hours to the student's parent by United States mail." *Id.*

75. This requirement also applies to school bus suspensions. *Id.*

76. Florida also requires the principal or the principal's designee to make a "good faith effort . . . to employ parental assistance or other alternative measures prior to suspension, except in the case of emergency or disruptive conditions which require immediate suspension or in the case of a serious breach of conduct as defined by rules of the district school board." *Id.* Additionally, Florida, by regulation, has special provisions for suspension of students who are prosecuted for a felony off school property that has an adverse impact on the educational process. FLA. ADMIN. CODE ANN. r. 6A-1.0956 (2008).

77. GA. CODE ANN. § 20-2-738 (2005). In line with its specific provisions, *see infra* notes 78–79, this statute authorizes the principal or the principal's designee to suspend the student "consistent with any applicable procedural requirements of the Constitutions of the United States and this state and after considering the use of any appropriate student support services," GA. CODE ANN. § 20-2-738(e)(1).

78. The written notice and other *Goss*-plus protections are a requisite step after the teacher's removal of the student from class. GA. CODE ANN. §§ 20-2-738(b), (c). Arguably, these minimums would seem to implicitly apply when an administrator removes the student from school. *See id.* § 20-2-738(e)(2).

79. §§ 20-2-738(b), (c).

80. *Id.*

81. *Id.*

82. In addition to the notable right of a teacher to remove a child from the classroom, the Georgia statute also establishes a placement review committee that serves as an intermediate step between the teacher's removal of the student and the exercise of the principal's suspension options. *Id.* §§ 20-2-738(d), (e).

83. HAW. CODE R. §§ 8-19-6, -8 (Weil 2008).

84. The rules require the school to provide the parents with initial notice by telephone "if feasible" and, upon completion of the required investigation, written notice. *Id.* § 8-19-8(d). In addition, the rules require the principal "to attempt to confirm the [written] notice by telephoning the parent." *Id.* Although unclear whether it repeats the first step or serves as an intermediate step, the rules also require the principal to notify the parents "[u]pon preliminary investigation and findings." *Id.* § 8-19-8(a).

85. The required elements of the written parental notice include a statement "[t]hat the parent may request a conference with the principal or designee," thus providing the parent with at least an equivalent right. *Id.* § 8-19-8(d)(4).

86. *Id.*

87. Hawaii's rules trigger the more formal procedural protections of expulsion upon the accumulation of eleven or more days of suspension. *Id.* § 8-19-8(c).

88. For the *Goss*-type notice and hearing for the student, the rules require the principal to request the parents to participate "where the student is unable to understand the seriousness of the charges, the nature of the proceedings, and consequences thereof, or is of such age, intelligence or experience as to make meaningful discussion difficult." *Id.* § 8-19-8(b). More generally, the rules require counseling of the student in connection with each suspension. *Id.* § 8-19-6(g).

89. IDAHO CODE ANN. § 33-205 (2008). We acknowledge with appreciation the assistance of attorney Elaine Eberharter-Maki in ascertaining the pertinent state law of Idaho. E-mail from Elaine Eberharter-Maki, Att’y, Eberharter-Maki & Tappen’s Boise, Idaho Office, to Perry A. Zirkel, Professor of Educ. and Law, Lehigh Univ. (June 9, 2008) (on file with second author).

90. “The board of trustees [of the school district] shall be notified of any temporary suspensions, the reasons therefor, and the response, if any, thereto.” § 33-205.

91. The required “informal hearing” specifies that the principal must provide the student with the reasons for the suspension, which—corresponding more closely to the charges—do not necessarily equate fully with an explanation of the evidence. *Id.*

92. Similarly, the requirement is “the opportunity to challenge [the] reasons.” *Id.*

93. At any one of the following applicable limits, the more formal notice and hearing requirements for an expulsion apply: (1) the principal suspends the student for more than five days; (2) the superintendent extends the suspension by an additional ten days; or (3) the school board extends the suspension by an additional five days because the suspended student poses a risk to the health, welfare, or safety of other pupils. *Id.*

94. ILL. COMP. STAT. § 5/10-22.6(b) (West 2006).

95. The notice to the student’s parents or guardian must include “a full statement of the reasons for [] suspension and a notice of their right to [school board] review.” *Id.*

96. As in Idaho, *see supra* note 91, this right appears to be partial, based on the connected notice-of-reasons requirement, § 5/10-22.6(b).

97. If the parents exercise this required appeals opportunity, then they have the right to appear and participate at the school board review. § 5/10-22.6(b).

98. IND. CODE ANN. § 20-33-8-18(b) (West 2008).

99. IOWA CODE § 282.4(1) (West 1996 & Supp. 2008).

100. This procedural requirement is the only one specified in the Iowa legislation and—along with the teacher’s, principal’s, and superintendent’s authorities for suspensions—the requirement is conditioned upon the school board’s delegation. *Id.*

101. KAN. STAT. ANN. § 72-8902(b), (c) (2002).

102. In addition to the immediate oral notice, the legislation requires that written notice, including the reasons for suspension, be given to the student and the student’s parent within twenty-four hours. *Id.* § 72-8902(c).

103. KY. REV. STAT. ANN. § 158.150(5), (6) (West 2006 & Supp. 2008).

104. LA. REV. STAT. ANN. § 17:416 (2001 & Supp. 2009).

105. *Id.* § 17:416(C).

106. The Maine legislation merely requires “proper investigation of a student’s behavior” and “due process proceedings” for student suspensions and expulsions. ME. REV. STAT. ANN. tit. 20-A, § 1001(9) (2008).

107. The Maryland legislation only provides, in pertinent part, that “[t]he student or the student’s parent or guardian promptly shall be given a conference with the principal and any other appropriate personnel during the suspension period.” MD. CODE ANN., EDUC. § 7-305(a)(2) (LexisNexis 2006).

108. *Id.*

109. *Id.*

110. *Id.*

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111. *Id.*
112. The Maryland regulations provide a narrowly circumscribed right to appeal to the State Board of Education. MD. CODE REGS. 13A.01.05.05 (2009).
113. The Massachusetts legislation generally requires each school district to have policies that provide “disciplinary proceedings, including procedures assuring due process” and “standards and procedures for suspension and expulsion of students.” MASS. GEN. LAWS ANN. ch. 71, § 37H (West 1996).
114. This legislation only specifies procedural prerequisites in cases of student felonies. *Id.* § 37H1/2.
115. Michigan’s legislation authorizes the school board and administrators to suspend students for “gross misdemeanor or persistent disobedience,” but it does not specify any relevant procedural prerequisites. MICH. COMP. LAWS ANN. § 380.1311(1) (West 2005 & Supp. 2008). Michigan has a separate statute that authorizes teachers to suspend students from a class, subject, or activity. *Id.* § 380.1309. Although this statute unusually allows such action “for up to 1 full school day,” *id.*, the chart does not include the specified procedural requirements due to the aforementioned exclusion, *see supra* note 17 and accompanying text.
116. MINN. STAT. ANN. § 121A.46 (West 2008).
117. The written notice, which must be served on the student at or before the time the suspension is to take effect, must include “the grounds for suspension, a brief statement of the facts, a description of the testimony, a readmission plan, and a copy of the [relevant statutory provisions].” *Id.* § 121A.46(3).
118. The district must make reasonable efforts to notify parents by telephone as soon as possible and must send the parents a copy of the student’s written notice within forty-eight hours. *Id.*
119. For suspensions beyond five days, the suspending administrator must provide the superintendent with a reason for the suspension. *Id.* § 121A.41(10). Moreover, if the suspension, whatever its length, would result in the student missing more than ten cumulative days in a school year, the district must make reasonable efforts to meet with the student and the student’s parent, and with the parent’s permission, conduct a mental health screening of the student. *Id.* § 121A.45(3).
120. The readmission plan, which is treated as permissive in this part of the statute—although subsequently seemingly mandatory by implication, *see supra* note 117—“must not obligate a parent to provide a sympathomimetic medication for the parent’s child as a condition of readmission,” § 121A.41(10).
121. Mississippi’s legislation requires each school board to adopt a code of student conduct, including “[p]rocedures to be followed for acts requiring discipline, including suspensions and expulsion, which comply with due process requirements.” MISS. CODE ANN. § 37-11-55 (1999 & Supp. 2007).
122. The Missouri legislation uses the term *suspension* generically—without any mention of *expulsion*—for removals for up to 180 days, distinguishing procedurally between those for up to ten days and those for more than ten days only indirectly in terms of the respective authority of principals and superintendents. MO. ANN. STAT. § 167.171 (West 2000 & Supp. 2008). The requirements coded herein are those for removals by the principal, thus suspensions of up to ten days. *Id.*
123. *Id.* § 167.171(2).
124. *Id.* § 167.161(1).
125. *Id.*

126. § 167.171(2).

127. *Id.*

128. *Id.* § 167.171(1). This right of appeal is a de facto result of the requirement that suspensions by the principals—those up to ten days—be “immediately reported to the superintendent who may revoke [them] at any time.” *Id.*

129. Additionally, a separate statute provides specific hearing requirements for a pupil who “poses a threat of harm to such pupil or others, as evidenced by the prior conduct of such pupil.” § 167.161(1).

130. The specifically relevant provision in the Montana legislation merely requires the school board to “adopt a policy defining the authority and procedure to be used . . . in suspending a pupil.” MONT. CODE ANN. § 20-5-202 (2007); *see id.* §§ 20-4-402, -4-403, -5-202. The only other procedural provision is for the limited situation in which a school does not have a superintendent or principal, whereupon the teacher has the authority to suspend the student, but it must “notify the trustees and the county superintendent immediately of the action.” *Id.* § 20-4-302(5).

131. Montana’s regulations require that each school “maintain a record of any disciplinary action that is educationally related [including suspensions], with explanation, taken against the student.” MONT. ADMIN. R. 10.55.910 (2007).

132. NEB. REV. STAT. § 79-265 (2003).

133. The principal must send written notice to the student and the parent within twenty-four hours of the suspension. *Id.*

134. Without further differentiation for suspensions exceeding ten days, the statute provides that suspensions exceeding five days require more formal procedural protections, including the right to a formal hearing with counsel and witnesses. *Id.* § 79-268.

135. Prior to a “short-term” suspension, the principal must make “an investigation of the alleged conduct or violation and [determine] that such suspension is necessary to help any student, to further school purposes, or to prevent an interference with school purposes.” *Id.* § 79-265(b)(2). Prior to the end of the suspension, the principal must make “a reasonable effort to hold a conference with the parent or guardian before or at the time the student returns to school.” *Id.* § 79-265(b)(5).

136. NEV. REV. STAT. § 392.467(2) (2007).

137. The legislation that authorizes student suspensions does not specify procedural prerequisites. N.H. REV. STAT. ANN. § 193:13 (LexisNexis 2006).

138. N.J. ADMIN. CODE § 6A:16-7.2 (2008).

139. The school must provide this parental notice prior to the end of the school day on which the administrator makes the suspension decision. *Id.* § 6A:16-7.2(a)(3). Additionally, the notice has various required elements, and it must include “[t]he provision(s) of the code of student conduct the student is accused of violating” as well as “[t]he student’s due process rights, pursuant to [the state regulations].” *Id.*

140. The chief school administrator must report the suspension to the district board of education at its next regular meeting. *Id.* § 6A:16-7.2(b).

141. The chief school administrator must annually report specified discipline information, including the number of suspensions, to both the local and the state board of education. *Id.* § 6A:16-7.1(a).

142. N.M. CODE R. § 6.11.2.12(D)(2) (Weil 2001).

143. The relevant regulation provides:

The school shall exert reasonable efforts to inform the student's parent of the charges against the student and their possible or actual consequence as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the first full day of suspension, the school shall on that day mail a written notice with the required information to the parent's address of record.

Id.

144. The regulations clarify that the suspending administrator "is not required to divulge the identity of informants, although (s)he should not withhold such information without good cause." *Id.*

145. N.Y. EDUC. LAW § 3214 (McKinney Supp. 2009).

146. New York provides the student and parents with the right, upon request, to "an informal conference with the principal at which the pupil and/or person in parental relation shall be authorized to present the pupil's version of the event and to ask questions of the complaining witnesses." *Id.* § 3214(3)(b)(1).

147. New York law treats suspensions of six days or more effectively as expulsions, according expelled students the rights, inter alia, of "reasonable notice," legal representation, and cross-examination. *Id.* § 3214(3)(c)(1). New York does not have any subsequent, differentiating level for removals of more than ten days.

148. N.C. GEN. STAT. § 115C-391(b) (2007).

149. The statute clarifies that "[t]he notice [to the parents] shall be given by telephone, telefax, e-mail, or any other method reasonably designed to achieve actual notice." *Id.*

150. Without specifying any procedural requirements, North Dakota's statute delegates authority to school boards to develop rules regarding suspensions and expulsions. N.D. CENT. CODE § 15.1-19-09 (Supp. 2007).

151. OHIO REV. CODE ANN. § 3313.66(A) (West Supp. 2007).

152. The legislation provides students with the opportunity to appear at an informal hearing to "challenge the reason for the intended suspension or otherwise to explain [their] actions." *Id.*

153. *Id.* § 3313.661(A).

154. The Oklahoma legislation requires districts to develop policies, including procedures, for student suspensions, but the only specified procedure is the right of appeal to a district panel. OKLA. STAT. ANN. tit. 70, § 24-101.3 (West 2005 & Supp. 2009).

155. Districts must create a policy that determines an appeals panel for suspension and expulsions. *Id.* § 24-101.3(A). The panel may be a committee made up of teachers, district administrators, or both, or the panel may be the district board of education. *Id.* § 24-101.3(B)(1).

156. OR. ADMIN. R. 581-021-0065 (2008).

157. This notice must include "the conditions for reinstatement, and appeal procedures, where applicable." *Id.*

158. Oregon's regulations require "specification of [the] charges," which does not appear to equate fully to an explanation of the evidence. *Id.*

159. The regulations provide the school board, not the parent, with the right of final review, and this is seemingly only when the "executive officer of the school district or designated representative" makes the suspension decision. *Id.*

160. 22 PA. CODE §§ 12.6(b), 12.8(b), (c) (2009).

161. Pennsylvania's regulations require providing the student with the reasons for the suspension, which equate more with notice of the charges than an explanation of the evidence. *Id.* § 12.6(b).

162. For suspensions of four to ten days, the regulations require providing an informal conference among the student, the parent, and the principal within the first five days of the suspension. *Id.* §§ 12.6(b)(1)(iv), 12.8(c). This "hearing" must include the right to question witnesses present and to produce witnesses on the student's behalf. *Id.* § 12.8(c). The regulations provide a further, more formal level of hearing for removals of more than ten days. *Id.* § 12.8(b).

163. Rhode Island's "safe school" legislation authorizes the school committee, or a school principal as designated by the school committee, to suspend "disruptive" students, but it does not specify the procedural requirements beyond a multistep right of appeal. R.I. GEN. LAWS § 16-2-17(a), (b) (1996). The legislation includes a definition of "disruptive." *Id.* § 16-2-17(a).

164. When the delegated school principal issues the suspension, the statute is not clear whether there is a right to appeal to the board. It may be alternatively argued that the principal and the board for such action are effectively the same or that the specified higher levels imply full exhaustion from the principal to the board. *Id.* § 16-2-17(b); *see infra* note 165.

165. The Rhode Island legislation provides the successive appellate rights to "the [state] commissioner of elementary and secondary education," "the [state] board of regents for elementary and secondary education," and "the family court for the county in which the school is located." § 16-2-17(b).

166. S.C. CODE ANN. § 59-63-230 (2004).

167. Written notice must include the reasons for the suspension and provide the parents with an opportunity for a meeting with the administrator within three days of the suspension. *Id.*

168. The aforementioned meeting with the administrator must be exhausted to trigger this right to appeal to "the board of trustees or to its authorized agent." *Id.*

169. S.D. CODIFIED LAWS §§ 13-32-4, -4.2 (2004).

170. After stating that school boards "may authorize the summary suspension of pupils by principals of schools for not more than ten school days," South Dakota's legislation then appears to give the superintendent, not the parent, the right of review, specifically providing: "Any suspension by a principal shall be immediately reported to the superintendent who may revoke the suspension at any time." *Id.* § 13-32-4.2.

171. TENN. CODE ANN. § 49-6-3401(a) to (c) (2002 & Supp. 2007).

172. The required notice to both the parents and the superintendent must include "[t]he cause for the suspension" and "[t]he conditions for readmission, which may include, at the request of either party, a meeting of the parent or guardian, student and principal." *Id.* § 49-6-3401(c).

173. The required information is limited to "the nature of the student's misconduct." *Id.*

174. As a prerequisite to suspension, the legislation additionally requires the suspending administrator's affirmative act of questioning the student. *Id.*

175. The legislation provides as follows: “If the suspension is for more than five (5) days, the principal shall develop and implement a plan for improving the behavior which shall be made available for review by the [superintendent] upon request.” *Id.*

176. TEXAS EDUC. CODE ANN. §§ 37.001, 37.005, 37.009 (Vernon 2006). We acknowledge with appreciation the assistance of attorney Christopher Borreca in confirming that Texas legislation focuses its procedural protections on suspensions of more than two days. E-mail from Chris Borreca, Att’y, Houston Office of Thompson & Horton, LLP, to Perry A. Zirkel, Professor of Educ. and Law, Lehigh Univ. (May 28, 2008) (on file with second author).

177. Texas’s legislation requires the school board to “address the notification of a student’s parent or guardian of a violation of the student code of conduct committed by the student that results in suspension.” TEXAS EDUC. CODE ANN. § 37.001(a)(6) (Vernon 2006).

178. The legislation leaves the right of appeal within the discretion of the district via its policy. *Id.* § 37.009(a).

179. For suspensions of three to ten days, Texas legislation provides:

[T]he principal or other appropriate administrator shall schedule a conference among the principal or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference.

Id.

180. Utah’s legislation delegates suspension policies to school boards “consistent with due process and other provisions of law,” with the only specifically required procedure being notice to the custodial parent. UTAH CODE ANN. § 53A-11-903 (2006 & Supp. 2008).

181. Additionally, the legislation requires notice to the noncustodial parent upon written request from such parent. *Id.* § 53A-11-903(1)(b)(i).

182. Vermont legislation simply provides “standard due process procedures for suspension and expulsion of a student.” VT. STAT. ANN. tit. 16, § 1161a(a)(7) (2004). The only exception is the specific requirement that the school’s discipline plan include procedures for “notifying parents of student misconduct.” *Id.* § 1161a(a)(3).

183. § 1161a(a)(3).

184. VA. CODE ANN. § 22.1-277.04 (2006).

185. It is not clear whether the school board policy may limit this right, given the following language in the statute: “The decision of the division superintendent or his designee may be appealed to the school board or a committee thereof in accordance with regulations of the school board . . .” *Id.*

186. WASH. ADMIN. CODE §§ 392-400-245, -250 (2007).

187. Washington’s regulations require that the notice also include an explanation of “the corrective action or punishment which may be imposed.” *Id.* § 392-400-250.

188. The regulations additionally provide that “[a]ny student, parent, or guardian who is aggrieved by the imposition of [a short-term suspension] shall have the right to an informal conference with the building principal or his or her designee for the purpose of resolving the grievance.” *Id.* § 392-400-240; *see also id.* § 392-400-245 (referring to short-term suspensions).

189. The student or parent may appeal successively to the principal, the superintendent, and then the school board. § 392-400-240.

190. The regulations in one part separate suspensions into those for one day and those for more than one day—presumably two to ten days—with the only distinction appearing to be with regard to the parent’s right to notice and an informal conference. *Id.* § 392-400-250(2). Yet, the prefatory part of the same regulation seems to provide these rights, by cross-reference, for suspensions of one to ten days generally. *See* § 392-400-250.

191. The regulations condition suspensions on “a general rule”: “[N]o student shall be suspended unless another form of corrective action or punishment reasonably calculated to modify [the student’s] conduct has previously been imposed upon the student as a consequence of misconduct of the same nature.” *Id.* § 392-400-245(2). This requirement has a provision for exceptional circumstances, which includes the school district’s consultation with an ad hoc citizens committee. *Id.* The regulations also limit the total number of days a student may be suspended based on age: students in kindergarten through grade four may miss no more than ten days per semester or trimester, while students in grades five and above may miss no more than fifteen days per semester or trimester. *Id.* § 392-400-245(4) to (5). Finally, the regulations expressly permit school boards to establish one or more “student disciplinary boards composed of students, teachers, administrators, or parents, or any combination thereof.” *Id.* § 392-400-220.

192. W. VA. CODE ANN. § 18A-5-1a(d) (LexisNexis 2007).

193. The legislation specifically provides that the parent “shall be given telephonic notice, if possible, of this informal hearing, which notice shall briefly state the grounds for suspension.” *Id.* The legislation also requires that written notice be sent to the parent on the same day the suspension was decided upon “by regular United States mail.” *Id.*

194. The legislation additionally requires that the written notice be provided to “the county superintendent and to the faculty senate of the school.” *Id.*

195. Not appearing to distinguish procedurally between suspensions of one to ten days and expulsions or other removals beyond ten consecutive days, the legislation provides for a board hearing with the various associated more formal protections, including the right to counsel. *Id.* § 18A-5-1a(f). In the case of a suspension, this proceeding is inferably by way of an appeal. *Id.*

196. WIS. STAT. ANN. § 120.13(1) (West 2004).

197. The requirement for parental notice when a teacher removes the student from class suggests that the same requirement exists when a student is suspended from school. *Id.* § 120.13(1)(a)(4).

198. The required information is “the reason for the proposed suspension,” which does not equate fully with an explanation of the evidence. *Id.* § 120.13(1)(b)(3).

199. The legislation limits suspensions to no more than five days for certain offenses, but it does not specify additional procedural prerequisites until the expulsion stage. *Id.* § 120.13(1)(b)(2).

200. WYO. STAT. ANN. § 21-4-305 (2007).

