

Due Process in Disciplinary Suspensions and Expulsions

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“In case of dissension, never dare to judge till you've heard the other side.”

— Euripides, *The Children of Herakles*

What is Due Process?

The State may not deprive any person of:
 life,
 liberty, or
 property,
without due process of law. . . .
–The Constitution of the United States,
Amendment XIV.

Due Process Clause

Why Does the Due Process Clause Apply to Academic Dismissals or Disciplinary Suspensions or Expulsions?

- A Legitimate entitlement to public education is a property interest.
- Reputation, honor, or integrity are forms of liberty.

Due Process Clause

How Does a School Satisfy the Due Process Clause When Implementing Disciplinary Suspensions or Expulsions?

- The Basic Requirements of Due Process Are:
 - Notice, and
 - An Opportunity to be Heard.

Notice:

- Advises of the sanction(s) sought, i.e. suspension/expulsion
- Advises of the allegations against the student.

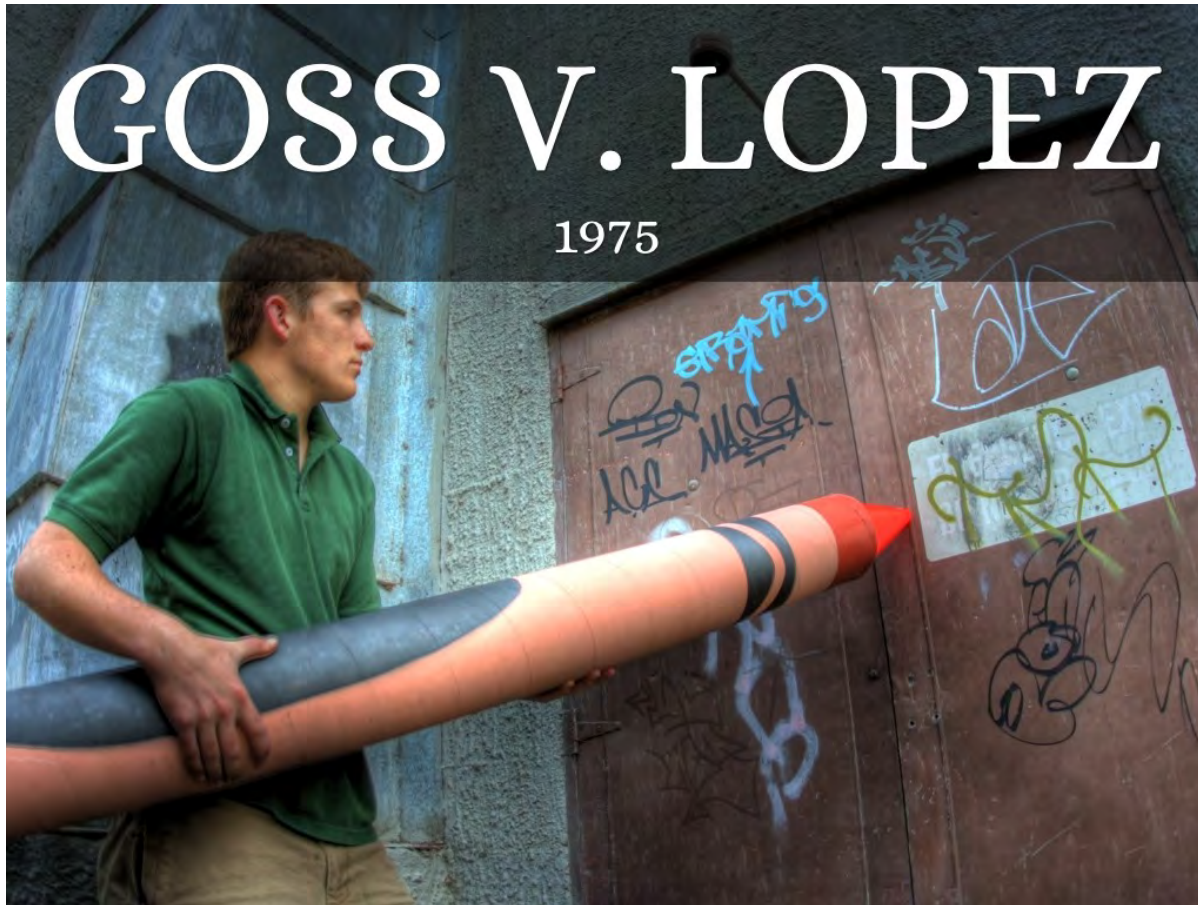
Opportunity to Be Heard

- Due process may require some opportunity to counter allegations.

How Much Due Process is DUE?

- Two distinct scenarios:
 - Disciplinary Suspensions of Ten Days or Less
 - Disciplinary Suspensions/Expulsions for More than Ten Days

Disciplinary Suspensions for Ten Days or Less



Goss v. Lopez Facts

- Nine students suspended for ten days for destroying school property and disrupting learning environment
- Ohio law allowed principal to suspend the students for 10 days or expel them
- Expelled students entitled to a hearing under state law
- Suspended students were not entitled to a hearing

Quotable

“Although Ohio may not be constitutionally obligated to establish and maintain a public school system, it has nevertheless done so and has required its children to attend. Those young people do not ‘shed their constitutional rights at the schoolhouse door.’”

Goss v. Lopez Decision

- Ten-day expulsion is not *de minimis* and may not be imposed in complete disregard of the Due Process Clause
- School must give oral or written notice of allegation.
- If the allegation is denied:
 - An explanation of the evidence
 - Opportunity to present student's side
 - Notice and the “hearing” can be simultaneous

Goss v. Lopez Decision (Cont.)

- Disciplinary Suspensions of Less Than Ten Days Do Not Require:
 - Opportunity to secure counsel;
 - Opportunity to cross examine witnesses;
 - Opportunity to present your own witnesses.

Suspensions of Ten Days or Less, Cont.

West

v.

Derby Unified

School District no. 260

West v. Derby Unified Facts

- District Policy prohibited racial and ethnic harassment including displays or possession of materials associated with hate-groups such as Klu Klux Klan, Arayan Nations, Black Power, Confederate flags.
- Middle-school student suspended for three days for drawing picture of confederate flag during math class.

West v. Derby Unified Decision

- Suspension of three days entitled student to due process
- Student received due process when the assistant principal gave student notice of the violation of policy by confronting him regarding the drawing of the flag and gave the student an opportunity to respond and the student did so in writing.
- T.W. knew the flag violated the policy because he'd signed an acknowledgment of the student handbook.

Longer Suspensions/Expulsions

Watson v. Beckel

2001

Watson v. Beckel Facts

- Student at State Military School assaulted Roommate
- During investigation student was advised that:
 - The assault was the subject of the investigation
 - The school believed the assault was racially motivated
 - Advised of hearing concerning the assault and his motivation
 - Given opportunity to have an advisor at hearing, call witnesses, testify, or remain silent
 - Expelled after hearing where he admitted assault and that the assault was racially motivated

Watson v. Beckel Decision

The Due Process provided for in *Goss* is the minimum amount of due process that must be afforded for longer suspensions and expulsions.

Watson v. Beckel Decision (Cont.)

- Notice required is that which allows the student to “prepare for the hearing and defend the charges.”
- Notice specifying the written charges was unnecessary because the student knew that the hearing:
 - Was about the assault
 - That the school believed the assault was racially motivated.

Watson v. Beckel Decision (Cont.)

- Due process does not require:
 - written notice specifying charges
 - legal counsel
 - presentation of evidence
 - the right to cross examine
 - an impartial board
 - a transcript,
 - independent review of the decision

Dangerous or Threatening Behavior, or Threats of Ongoing Disruption

- The Supreme Court in *Goss* states:
 - The school may immediately remove the student
 - After removing student University must:
 - Provide necessary notice
 - Provide a hearing “as soon as practicable”

District Procedures

- Failure to follow \neq due process violation.
-however-
- Courts will uphold School decision if:
 - The School follows procedure, and
 - Procedure provides more than sufficient procedural protection.

The Takeaway

- For students suspended due to danger or threats:
 - Immediately provide written notice of
 - Allegation
 - Known Supporting Facts and Evidence
 - Identify Student Code Provisions Violated
 - Provide rudimentary hearing within 5 business days

The Takeaway (Cont.)

- All other complaints:
 - Provide Written Notice Whenever Possible
 - State Allegation
 - Identify Facts and Supporting Evidence
 - Identify Student Code Provisions that Were Violated
 - For Suspensions of Ten Days or Less
 - Hearing may occur at the same time that notice is given
 - All that is required is an “informal give-and-take” that gives student the opportunity to characterize his or her conduct and put it in what the student considers proper context
 - Longer Suspensions/Expulsions
 - Provide a hearing that offers the student an opportunity to explain
 - “Trial” type hearing procedures are not constitutionally required but student should be permitted to rebut allegations