Analysis of implementation and application of procedural due process required by Goss v Lopez

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ANALYSIS OF IMPLEMENTATION AND APPLICATION OF PROCEDURAL DUE PROCESS REQUIRED BY GOSS V. LOPEZ

by

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Bachelor of Science
California Lutheran University
1988

Master of Education
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ABSTRACT

Analysis of Implementation and Application of Procedural Due Process Required by Goss v. Lopez

by

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This dissertation examines the jurisprudence of student procedural due process rights. Review of the literature available prior to the recognition of student due process rights by the Supreme Court in Goss v. Lopez (1975) was performed and subsequently led to questions directly related to the emergence of due process protections. A detailed analysis of Goss v. Lopez (1975) identified student due process standards. Following the decision, courts cited the precedent on nearly two thousand five hundred occasions. Review of these citations yielded eighty-six cases relevant to analysis of implementation and application of the Goss precedent. Finally, the patterns of interruption and application and unanswered questions were identified.

Since 1975 Federal Courts have been called upon to interpret and apply the Goss precedent. This study investigates the implementation and application of Goss by Federal Courts. This study targeted student due process. In reviewing case law dealing with the administration of the Fourteenth Amendment, the study determined how the various federal courts have interpreted and applied the Goss landmark over the past three
decades. This study also reviewed Nevada Revised Statutes and Clark County School District Policy and Regulations to determine their consistency with *Goss v. Lopez*. Special attention to cases in which school administrators were questioned with regard to the application of due process during student discipline procedures was presented. Finally, the study sought to identify patterns in the courts’ rulings that provide guidance for today’s school administrators faced with student discipline issues.
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My eternal gratitude and love extends to my parents, Gwendolyn and John Stephens, for their persistent efforts and lessons, which have formed my life. I wish to thank my children Tori Lynn Stephens, Tyler John Stephens, and Frank Joseph Gould III for giving me the spirit to succeed by providing me with undying love and admiration. Finally, I declare my deepest love and thanks to my wife Jillyn Stephens, the love of my life and best friend, for her constant patience, understanding, friendship, and love.

"Just Another"

Just another old person out on the street. You would never take the time to say hi or meet. They could be a small child or a grown up adult. They could be as innocent as ever or at great fault. You may not recognize them or know they are there. But they are a hero to someone somewhere. (*Tori Lynn Stephens, 2004*)
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CHAPTER 1

INTRODUCTION

Introduction

Between February and March 1971, there was widespread student unrest in the Columbus Public School System in Ohio. It was a turbulent time throughout the country and the students in Columbus were riding the wave of civil disobedience. The Vietnam War had sparked riots throughout the country with many protesters of the War committing the same offenses they vocalized against. *Tinker v. Des Moines School District* upheld the right of high school students to wear black armbands in protest to the Vietnam War and, more importantly the right to engage in protest as long as it did not materially or substantially disrupt learning in the school environment. Administrators throughout the Country recognized student discipline as a problem. The discipline of students as a result of a high school disruption ultimately led to a determination of constitutional implications of student discipline.

Six of the students were suspended from Marion-Franklin High School in Columbus for ten-days for disruptive or disobedient conduct, which was committed in the presence of the school administrator. Tyrone Washington was demonstrating in the school auditorium when he was directed by the school principal to leave. Washington refused to comply and was being physically escorted out of the auditorium by a police officer when another student, Rudolph Sutton, attacked the officer. The principal
immediately suspended Sutton, Washington, and four others. None of the students were
given the opportunity to tell their side of the story at the time of their suspensions.

Also during that time, student unrest was also escalating at Central High School in
Columbus as well. Dwight Lopez was suspended for damaging school property in the
lunchroom during a disturbance. Lopez was among seventy-five students suspended
from Central High School that day; however, he later insisted he was simply an innocent
bystander rather than an active participant. Like the students at Marion-Franklin High
School, Lopez also did not receive an opportunity to state his side of the story at the time
of his suspension. (Goss v. Lopez, 1975 P. 734)

According to Ohio Rev. Code Section 3313.66 (1972), school administrators were
empowered to suspend an unruly student for ten days or expel a student for misconduct.
The administrator was required to notify the student's parents within 24 hours and state
the reasons for his/her actions. There were, however, no provisions in the Rev. Code that
afforded any due process procedures for a student who was suspended. Ohio Law also
stated that children in the state were entitled to a free education between the ages of six
and twenty-one. (Rev. Code Ann 3313.64, 1972)

Students challenged their discipline in the United States District Court for the
Court panel overturned the disciplinary action finding the state law constitutionally
flawed because it failed to afford students due process. The panel then established a
three-pronged standard of due process. The first standard permitted the immediate
removal of a student whose conduct "disrupts the academic atmosphere of the school,
endangers fellow students, teachers, or school officials, or damages property." Second,
the District Court declared that there were “minimum requirements of notice and a hearing prior to suspension, except in emergency situation.” The District Court stated that relevant case authority would “require notice of suspension proceedings to be sent to the student’s parents within 24 hours of the decision. Third, the District Court required a hearing of sorts, in which the student would be informed of the charge and allowed to respond to allegations / charges. (Goss v. Lopez, 1975 P. 735)”

The Fourteenth Amendment provides in relevant part that “nor shall any state deprive any person of life, liberty, or property, without due process of law… (U.S. Constitution, 14th Amendment)” The school discipline obviously did not infringe a life interest, however, the District Court reasoned that removal from school implicated a property interest established by the Ohio Law providing that Ohio children were entitled to an education. The panel also determined that removal from school implicated a liberty interest because of the record made of such action. Specifically, the District Court held;

1. Students facing temporary suspension from a public school have property and liberty interests that qualify for protection under the Due Process Clause of the Fourteenth Amendment. (Goss v. Lopez, 1975 P. 735)

(a) Having chosen to extend the right to an education to people of appellees’ class generally, Ohio may not withdraw that right on grounds of misconduct, absent fundamentally fair procedures to determine whether the misconduct has occurred, and must recognize a student's legitimate entitlement to a public education as a property interest that is protected by the Due Process Clause, and that may not be taken away for misconduct without observing minimum procedures required by that Clause. (Goss v. Lopez, 1975 P. 731)

(b) Since misconduct charges if sustained and recorded could seriously damage the students' reputation as well as interfere with later educational and employment opportunities, the State's claimed right to determine unilaterally and without process whether that misconduct has occurred immediately collides with
the Due Process Clause's prohibition against arbitrary deprivation of liberty. (Goss v. Lopez, 1975 P. 732)

c) A 10-day suspension from school is not de minimis and may not be imposed in complete disregard of the Due Process Clause. Neither the property interest in educational benefits temporarily denied nor the liberty interest in reputation is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary. (Goss v. Lopez, 1975 P. 732)

2. Due 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 version. Generally, notice and hearing should precede the student's removal from school, since the hearing may almost immediately follow the misconduct, but if prior notice and hearing are not feasible, as where the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school, the necessary notice and hearing should follow as soon as practicable. (Goss v. Lopez, 1975 P. 732)

Additionally, the District Court ruled;

"that there were "minimum requirements of notice and a hearing prior to suspension, except in emergency situations." In explication, the court stated that relevant case authority would: (1) permit "[immediate] removal of a student whose conduct disrupts the academic atmosphere of the school, endangers fellow students, teachers or school officials, or damages property"; (2) require notice of suspension proceedings to be sent to the student's parents within 24 hours of the decision to conduct them; and (3) require a hearing to be held, with the student present, within 72 hours of his removal. Finally, the court stated that, with respect to the nature of the hearing, the relevant cases required that statements in support of the charge be produced, that the student and others be permitted to make statements in defense or mitigation, and that the school need not permit attendance by counsel. (Goss v. Lopez, 1975 P. 735)"

Various administrators of the Columbus, Ohio, Public School System challenged the judgment of the three-judge federal court by filing an appeal with the Supreme Court of the United States. The Goss v. Lopez Court rejected the view that attendance at public school was a privilege, allowing administrators to withdraw students at will, and further rejected the notion that school authorities stand in loco parentis to the student and thereby, have full parental discretion in matters of discipline. (Wilkinson III, 1975)
Justice White, writing for the majority noted that Ohio law provided for a free education and also allowed for a principal of an Ohio public school to suspend a pupil for misconduct for up to 10 days without a hearing or to expel him. He also noted that the statute required the principal to notify the parent within 24-hours of their child's removal from school. A pupil or parent of a pupil that is recommended for expulsion has the right to appeal to the Board of Education. The Board also had the right to reinstate such student.

Justice White found that Columbus, Ohio Public School System was devoid of any written procedure applicable to suspensions. Additionally, Justice White declared, 

"[M]any school authorities may well prefer the untrammeled power to act unilaterally, unhindered by rules about notice and hearing. But it would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his dereliction and to let him tell his side of the story in order to make sure that an injustice is not done. (Goss v. Lopez, 1975 P.739)"

Even when the disciplinarian is the person who witnessed the misbehavior of the student, which had necessitated the suspension, Justice White insisted that the student was still entitled to notice and a hearing. "The student will at least have the opportunity to characterize his conduct and put it in what he deems the proper context. (Goss v. Lopez, 1975 P. 739)"

The narrow, 5-4, decision fundamentally changed the procedure used by school administrators disciplining students. Specifically, the Supreme Court held;

"This appeal by various administrators of the Columbus, Ohio, Public School System (CPSS) challenges the judgment of a three-judge federal court, declaring that appellees -- various high school students in the CPSS -- were denied due process of law contrary to the command of the Fourteenth Amendment in that they were temporarily suspended from their high schools without a hearing either prior to suspension or within a reasonable time thereafter, and enjoining the administrators to remove all references to such suspensions from the students' records. (Goss v. Lopez, 1975 P. 732)"
At the outset, appellants contend that because there is no constitutional right to an education at public expense, the Due Process Clause does not protect against expulsions from the public school system. This position misconceives the nature of the issue and is refuted by prior decisions. The Fourteenth Amendment forbids the State to deprive any person of life, liberty, or property without due process of law. Protected interests in property are normally "not created by the Constitution. Rather, they are created and their dimensions are defined" by an independent source such as state statutes or rules entitling the citizen to certain benefits. (Goss v. Lopez, 1975, P. 735)

Here, on the basis of state law, appellees plainly had legitimate claims of entitlement to a public education. Ohio Rev. Code Ann. §§ 3313.48 and 3313.64 (1972 and Supp. 1973) direct local authorities to provide a free education to all residents between five and 21 years of age, and a compulsory-attendance law requires attendance for a school year of not less than 32 weeks. (Goss v. Lopez, 1975, Pp. 735 - 736)

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. Tinker v. Des Moines School Dist., 393 U.S. 503, 506 (1969). "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures -- Boards of Education not excepted." West Virginia Board of Education v. Barnette, 319 U.S. 624, 637 (1943). The authority possessed by the State to prescribe and enforce standards of conduct in its schools although concededly very broad, must be exercised consistently with constitutional safeguards. Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause. (Goss v. Lopez, 1975, P. 736)

The Due Process Clause also forbids arbitrary deprivations of liberty. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him," the minimal requirements of the Clause must be satisfied. Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971); Board of Regents v. Roth, supra, at 573. School authorities here suspended appellees from school for periods of up to 10 days based on charges of misconduct. If sustained and recorded, those charges could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment. It is apparent that the claimed right of the State to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution. (Goss v. Lopez, 1975, P. 736)

Appellants proceed to argue that even if there is a right to a public education protected by the Due Process Clause generally, the Clause comes into play only
when the State subjects a student to a "severe detriment or grievous loss." The loss of 10 days, it is said, is neither severe nor grievous and the Due Process Clause is therefore of no relevance. Appellants' argument is again refuted by our prior decisions; for in determining "whether due process requirements apply in the first place, we must look not to the 'weight' but to the nature of the interest at stake." Board of Regents v. Roth, supra, at 570-571. Appellees were excluded from school only temporarily, it is true, but the length and consequent severity of a deprivation, while another factor to weigh in determining the appropriate form of hearing, "is not decisive of the basic right" to a hearing of some kind. Fuentes v. Shevin, 407 U.S. 67, 86 (1972). The Court's view has been that as long as a property deprivation is not de minimis, its gravity is irrelevant to the question whether account must be taken of the Due Process Clause. Sniadach v. Family Finance Corp., 395 U.S. 337, 342 (1969) (Harlan, J., concurring); Boddie v. Connecticut, 401 U.S. 371, 378-379 (1971); Board of Regents v. Roth, supra, at 570 n. 8. A 10-day suspension from school is not de minimis in our view and may not be imposed in complete disregard of the Due Process Clause. (Goss v. Lopez, 1975, Pp. 736 - 737)

"A short suspension is, of course, a far milder deprivation than expulsion. But, "education is perhaps the most important function of state and local governments," Brown v. Board of Education, 347 U.S. 483, 493 (1954), and the total exclusion from the educational process for more than a trivial period, and certainly if the suspension is for 10 days, is a serious event in the life of the suspended child. Neither the property interest in educational benefits temporarily denied nor the liberty interest in reputation, which is also implicated, is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary. (Goss v. Lopez, 1975, P. 737)"

"Once it is determined that due process applies, the question remains what process is due." Morrissey v. Brewer, 408 U.S., at 481. We turn to that question, fully realizing as our cases regularly do that the interpretation and application of the Due Process Clause are intensely practical matters and that "[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." Cafeteria Workers v. McElroy, 367 U.S. 886, 895 (1961). We are also mindful of our own admonition:"

"Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint. . . . By and large, public education in our Nation is committed to the control of state and local authorities. (Goss v. Lopez, 1975, P. 738)"

"There are certain benchmarks to guide us, however. Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950), a case often invoked by later opinions, said that "[m]any controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and
opportunity for hearing appropriate to the nature of the case." Id., at 313. "The fundamental requisite of due process of law is the opportunity to be heard," Grannis v. Ordean, 234 U.S. 385, 394 (1914), a right that "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to . . . contest." Mullane v. Central Hanover Trust Co., supra, at 314. See also Armstrong v. Manzo, 380 U.S. 545, 550 (1965); Anti-Fascist Committee v. McGrath, 341 U.S. 123, 168-169 (1951) (Frankfurter, J., concurring). At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing. "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. (Goss v. Lopez, 1975, P. 738)"

"It also appears from our cases that the timing and content of the notice and the nature of the hearing will depend on appropriate accommodation of the competing interests involved. Cafeteria Workers v. McElroy, supra, at 895; Morrissey v. Brewer, supra, at 481. The student's interest is to avoid unfair or mistaken exclusion from the educational process, with all of its unfortunate consequences. The Due Process Clause will not shield him from suspensions properly imposed, but it deserves both his interest and the interest of the State if his suspension is in fact unwarranted. The concern would be mostly academic if the disciplinary process were a totally accurate, unerring process, never mistaken and never unfair. Unfortunately, that is not the case, and no one suggests that it is. Disciplinarians, although proceeding in utmost good faith, frequently act on the reports and advice of others; and the controlling facts and the nature of the conduct under challenge are often disputed. The risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process. (Goss v. Lopez, 1975, Pp. 738 - 739)"

"The difficulty is that our schools are vast and complex. Some modicum of discipline and order is essential if the educational function is to be performed. Events calling for discipline are frequent occurrences and sometimes require immediate, effective action. Suspension is considered not only to be a necessary tool to maintain order but a valuable educational device. The prospect of imposing elaborate hearing requirements in every suspension case is viewed with great concern, and many school authorities may well prefer the untrammeled power to act unilaterally, unhampered by rules about notice and hearing. But it would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his dereliction and to let him tell his side of the story in order to make sure that an injustice is not done. "[Fairness] can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . ." "Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Anti-Fascist Committee v. McGrath, supra, at 170, 171-172 (Frankfurter, J., concurring) (Goss v. Lopez, 1975 P. 739)"

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"We do not believe that school authorities must be totally free from notice and hearing requirements if their schools are to operate with acceptable efficiency. Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due 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. The Clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school. (Goss v. Lopez, 1975 P. 739 - 740)"

"There need be no delay between the time "notice" is given and the time of the hearing. In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred. We hold only that, in being given an opportunity to explain his version of the facts at this discussion, the student first be told what he is accused of doing and what the basis of the accusation is. Lower courts which have addressed the question of the nature of the procedures required in short suspension cases have reached the same conclusion. Tate v. Board of Education, 453 F.2d 975, 979 (CA8 1972); Vail v. Board of Education, 354 F.Supp. 592, 603 (NH 1973). Since the hearing may occur almost immediately following the misconduct, it follows that as a general rule notice and hearing should precede removal of the student from school. We agree with the District Court, however, that there are recurring situations in which prior notice and hearing cannot be insisted upon. Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable, as the District Court indicated. (Goss v. Lopez, 1975 P. 740)"

"In holding as we do, we do not believe that we have imposed procedures on school disciplinarians which are inappropriate in a classroom setting. Instead we have imposed requirements, which are, if anything, less than a fair-minded school principal would impose upon himself in order to avoid unfair suspensions. Indeed, according to the testimony of the principal of Marion-Franklin High School, that school had an informal procedure, remarkably similar to that which we now require, applicable to suspensions generally but which was not followed in this case. Similarly, according to the most recent memorandum applicable to the entire CPSS, see n. 1, supra, school principals in the CPSS are now required by local rule to provide at least as much as the constitutional minimum which we have described. (Goss v. Lopez, 1975, P. 740)"

"We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident. Brief disciplinary suspensions are almost countless. To impose in each such case even truncated trial-type procedures might well overwhelm

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administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process. (Goss v. Lopez, 1975 P. 740 - 741)"

"On the other hand, requiring effective notice and informal hearing permitting the student to give his version of the events will provide a meaningful hedge against erroneous action. At least the disciplinarian will be alerted to the existence of disputes about facts and arguments about cause and effect. He may then determine himself to summon the accuser, permit cross-examination, and allow the student to present his own witnesses. In more difficult cases, he may permit counsel. In any event, his discretion will be more informed and we think the risk of error substantially reduced. (Goss v. Lopez, 1975 P. 741)"

"Requiring that there be at least an informal give-and-take between student and disciplinarian, preferably prior to the suspension, will add little to the fact-finding function where the disciplinarian himself has witnessed the conduct forming the basis for the charge. But things are not always as they seem to be, and the student will at least have the opportunity to characterize his conduct and put it in what he deems the proper context. (Goss v. Lopez, 1975 P. 741)"

"We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures. Nor do we put aside the possibility that in unusual situations, although involving only a short suspension, something more than the rudimentary procedures will be required. (Goss v. Lopez, 1975 P. 741)"

"The District Court found each of the suspensions involved here to have occurred without a hearing, either before or after the suspension, and that each suspension was therefore invalid and the statute unconstitutional insofar as it permits such suspensions without notice or hearing. Accordingly, the judgment is Affirmed. (Goss v. Lopez, 1975 P. 741)"

Justice Powell wrote the dissenting opinion. He vocalized his concern that schools should be run and governed by the experts, school officials. Justice Powell, with whom The Chief Justice, Mr. Justice Blackmun, and Mr. Justice Rehnquist joined, in his dissenting opinion, warned, “no one can foresee the ultimate frontiers of the new ‘thicket’ the Court now enters.” “This potential ‘thicket’ of micromanagement of the nation’s
public schools by the Courts necessitated changes in school district’s policies and
regulations as well as laws governing the disciplining of students in each state throughout
the country. (Goss v. Lopez, 1975 P. 741)” Justice Powell warned;

“"The Court today invalidates an Ohio statute that permits student suspensions from school without a hearing “for not more than ten days.” The decision unnecessarily opens avenues for judicial intervention in the operation of our public schools that may affect adversely the quality of education. 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. (Goss v. Lopez, 1975 P. 741)”

Justice Powell continued by stating,

"The Court’s decision rests on the premise that, under Ohio law, education is a property interest protected by the Fourteenth Amendment’s Due Process Clause and therefore that any suspension requires notice and a hearing. In my view, a student’s interest in education is not infringed by a suspension within the limited period prescribed by Ohio law. Moreover, to the extent that there may be some arguable infringement, it is too speculative, transitory, and insubstantial to justify imposition of a constitutional rule. (Goss v. Lopez, 1975 P. 742)”

School authorities were troubled by the Court’s ruling. Specifically, could the decision regarding the new requirement to provide notice and due process procedures when suspending students be extended to include academic decisions, such as grade promotion, or suspension from extra-curricular activities? Or, could its scope be extended to include even more trivial disciplinary decisions such as giving a child detention or In-House Suspension?

Thirty years have now passed since the Court’s ruling in Goss yet, no study has examined the implementation and application of the landmark decision. Since 1975, Courts have rendered a variety of decisions citing Goss that both affirm the due process
standard set forth in Goss, and determined its scope and impact on other issues unrelated to student discipline in the educational setting.

Research Problem

This study examined how the Supreme Court and federal courts have interpreted and applied the standard set forth in this landmark case. Additionally, the study analyzed issues that have emerged since the landmark precedent. The study includes a review of the Nevada Revised Statutes in addition to Clark County School District Policies and Regulations. The focus of the review was to determine whether the Clark County School District Policies and Regulations complied with the notice and due process standard set forth in Goss v. Lopez. Finally, the study provides guidance to current and future administrators with regard to the Goss v. Lopez decision/precedent.

Research Questions

In the course of surveying the literature related to Goss v. Lopez, reviewing rulings in various federal courts—district, circuit, and Supreme—and analyzing the Nevada Revised Statutes and Clark County School District Policies and Regulations, the study sought answers to the following research questions:

- How have the Federal Courts interpreted and applied the due process standard set forth in Goss v. Lopez?
- What if any issues as to the meaning of Goss v. Lopez have emerged since the landmark precedent?
- Have the Nevada Statutes been revised to comply with the standard set forth in Goss v. Lopez?
- Have the Clark County School District Regulations and Policies been aligned with the Nevada Statutes and Goss v. Lopez?
Based on jurisprudence of Goss what should administrators do to comply with the Goss v. Lopez decision/precedent?

Methodology Summary

"The purpose of researching the law is to ascertain the legal consequences of a specific set of actual or potential facts" (Wren & Wren, 1986). In this study a specific methodology was utilized. Review of pertinent literature was performed. Specifically, law reviews, books, periodicals, and journals were examined for their relevance with regard to Goss v. Lopez and student procedural due process. Goss v. Lopez was "Shepardized." Shepardization of the landmark case produced 2,492 federal court cases that cited Goss. Each of the nearly 2,500 cases was examined. Specifically, all cases that did not directly apply to public schools, students, and procedural due process were discarded. Eighty-six cases were relevant to the study. Each of the remaining eighty-six cases were briefed, with respect to the following categories; case, procedural setting, facts, holding, rationale of holding, and if applicable the concurring and / or dissenting opinions offered by the court.

The cases were studied for implementation and application patterns contained therein. Nevada Revised Statutes and Clark County School District Regulations and Policies were scrutinized in order to determine if they adhered to the jurisprudence of Goss. Finally, interpretation and application of Goss v. Lopez was utilized in order to answer the research questions raised by the review of literature. This analysis of Goss v. Lopez jurisprudence provided data regarding appropriate practice when dealing with student discipline.
Significance of the Study

The purpose of this dissertation was to examine jurisprudence of *Goss v. Lopez* precedent regarding legal controversies over due process rights of students in public schools. The results of the study are useful for school administrators throughout the State of Nevada and elsewhere who are considering due process concerns when making disciplinary and non-disciplinary decisions related to students.

In an age when school officials are frequently sued by parents for making unpopular disciplinary related decisions, this study will serve as a useful tool to ensure the Fourteenth Amendment rights of students are not violated. By referring to the study when making difficult disciplinary decisions, a school principal may prevent a lawsuit by complying with precedents that have been established by the courts. Finally, state legislators and school board members may also refer to the study as a guide when considering changes in law and/or policy in regard to complying with the due process standard set forth in *Goss v. Lopez*.

Definitions of Terms

For the purpose of this study, definitions provided by the courts are used when possible, otherwise the default authority is Blacks Law (2000). The following definitions of terms are provided:

**Amendment:** A formal revision or addition proposed or made to statute, constitution, or other instrument (Blacks Law, 2000 P. 33).

**Appeal:** A proceeding undertaken to have a decision reconsidered by bringing it to a higher authority; esp., the submission of a lower court’s or agency’s decision to a higher court for review and possible reversal (Blacks Law, 2000 P. 38).
Bill of Rights: A section or addendum, usu. in a constitution, defining the situations in which a politically organized society will permit free, spontaneous, and individual activity, and guaranteeing that governmental powers will not be used in certain ways; esp., the first ten amendments to the U.S. Constitution (Blacks Law, 2000 P. 69).

Brief: A written statement setting out the legal contentions of a party in litigation, esp., on appeal; a document prepared by counsel as the basis for arguing a case, consisting of legal and factual arguments and the authorities in support of them (Blacks Law, 2000 P. 78).

Certiorari: Gaining appellate review. An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review (Blacks Law, 2000 P. 91).

Constitutional Rights: A right guaranteed by a constitution; esp., one guaranteed by the U.S. Constitution or by a state constitution (Blacks Law, 2000 P. 134).

Decision: A judicial determination after consideration of the facts and the law; esp., a ruling, order, or judgment pronounced by a court when considering or disposing of a case (Blacks Law, 2000 P. 178).

Due process: The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case (Blacks Law, 2000 P. 223).

En Banc: With all judges present and participating; in full court (Blacks Law, 2000 P. 223).

Equal Protection: The constitutional guarantee under the 14th Amendment that the government must treat a person or class of persons the same as it treats other persons or classes in like circumstances (Blacks Law, 2000 P. 240).

Fighting words: Inflammatory speech that might not be protected by the First Amendment’s free speech guarantee because it might incite a violent response (Blacks Law, 2000 P. 283).

In Loco Parentis: Of, relating to, or acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent (Blacks Law, 2000 P. 351).

Procedural Due Process: The minimal requirements of notice and a hearing guaranteed by the Due Process Clauses of the 5th and 14th Amendments, esp., if the deprivation of a significant life, liberty, or property interest may occur (Blacks Law, 2000 P. 223).

Speech: The expression or communication of thoughts or opinions in spoken words; something spoken or uttered (Blacks Law, 2000 P. 658).
Student: Any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution (FERPA, 2000).

Substantive Due Process: The doctrine that the Due Process Clauses of the 5th and 14th amendments require legislation to be fair and reasonable in content and to further a legitimate governmental objective (Blacks Law, 2000 P. 223).

Supreme Court: An appellate court existing in most states, usu. as the court of last resort (Blacks Law, 2000 P. 682).

U.S. Supreme Court: The court of last resort in the federal system, whose members are appointed by the President and approved by the Senate (Blacks Law, 2000 P. 682).

Limitations and Delimitations

The following six limitations and delimitations should be considered when the results of this study are reviewed. First, the case law examined in the study was limited to reported decisions of actions brought in the federal courts. Even though the rights in question are also guaranteed in many state constitutions, the ultimate authority in such matters rests with the federal court system. Second, with the exception of the text of Goss v. Lopez, which is located in Appendix A, the full text of the other reviewed court decisions was not included within the study, instead appropriate citations and brief format were utilized to examine the relevant case law. Therefore, this study relies in the skills of the researcher to determine critical aspects of the relevance of each case. Third, a cutoff date of December 31, 2003 was imposed on the inclusion of completed and published federal court cases in the study, because of the amount of material to be examined. Fourth, because of the sheer bulk of cases citing Goss, only those involving public K-12 school students were examined. Some selected non-school / non-student cases were referenced because of their relevance to the inquiries made by the study, and to their having been cited in court opinions. Fifth, Goss v. Lopez is referenced by page number.
from Appendix A. Finally, the results of the legislative review of the Nevada Revised Statutes and the Clark County School District Policies and Regulations may not be applicable to other states or school districts.

Summary

Goss v. Lopez established the basic framework for student procedural due process that has been in place for almost thirty years. First, a student may be immediately removed if his conduct “disrupts the academic atmosphere of the school, endangers fellow students, teachers, or school officials, or damages property.” Second, Goss requires issuance of notice of the infraction which usually takes place in a pre-suspension conference with the student. Additionally, during that hearing the school administrator must provide “statements in support of the charge.” Third, the student must be permitted to respond in defense or mitigation (Goss, 1975).

While a landmark decision, such as Goss v. Lopez, provides a standard that must be implemented throughout the country, it is not written in stone and is subject to both interpretation and application. Since 1975, Courts have rendered a variety of decisions that both affirm the due process standard set forth in Goss, and also define its scope and impact on other issues related to student discipline.

This chapter has introduced the inquiry, the research problem, and the research questions. It has also delineated the research methodology and provided a definition of relevant terms, introduced the significance of the study, and outlined the limitations and delimitations. Chapter 2 will review relevant literature.
CHAPTER 2

REVIEW OF LITERATURE

Introduction

Chapter two provides an overview of the law and literature in place before and during the Goss v. Lopez litigation as well as scholarly commentary and a review of the federal court system.

“Ever since antiquity, every society has had some concept of due process. Due process is tied to custom, which can vary even among regions or localities within a nation. Due process generally refers to the regularity, fairness, equality, and degree of justice in both procedures and outcomes. Fairness is the idea of doing what’s best. It may not be perfect, but it’s the good and decent thing to do. Not only does the outcome have to be fair, but so does everything along the line such as evidence gathering and presentation (Chemerinsky, 2000).”

Due process, that which comports the notion of what is fair, right, and just, has been evolving since the beginning of time (Solesbee v. Balkcom, 1950). The oldest court record (2500 B.C.) showed the Egyptian legal procedure included allegations of a claim, denials by the other, and the requirement that the first party produce credible witnesses who will make oath supporting him (Forkosch, 2003).

Around 2000 B.C., Mesopotamian legal records also showed similar procedures by following the statement, “Neither shalt thou bear false witness against thy neighbor” (Forkosch, 2003). Additionally, China detailed the provision of “notice” around the same time frame. The Roman Twelve Tables also required analogous notice and hearing. Even into the eleventh century, procedural requirements were adhered to, as in the decree
of Conrad II in 1037 that “no man shall be deprived of life...but by the laws of the empire and the judgment of his peers...” (Stubbs, 1908). Article 39 of the Magna Carta (June 15, 1215) and its subsequent interpretation clearly outlined procedures for due process. The Magna Carta became a sacred text in England and famous as the precursor of the phrase, “due process of law,” first used by Edward III in a statute of 1354 (Forkosch, 2003).

At the beginning of the modern period in France, the Declaration of the Rights of Man and of the Citizen (Droits de l'homme et du citoyen) stated that “no man should be accused, arrested, or held in confinement, except in cases determined by the law, and according to the forms which it has prescribed” (Forkosch, 2003). The American colonials modified the idea of due process of law in the documents preceding and following the American Revolution. Due process law claimed as a right by the Congress of the Colonies held in New York in 1765. Similarly, the famous Declaration of Rights adopted by Virginia in 1776 guaranteed that “no man be deprived of his liberty, except by the law of the land, or the judgment of his peers” (Forkosch, 2003).

In 1789 James Madison proposed the clause that eventually became part of the Fifth Amendment, that “No person shall...be deprived of life, liberty, or property, without due process of law” (Forkosch, 2003). The Fourteenth Amendment was added in 1868. The Fourteenth Amendment included “No State shall,” to the phrase. Therefore, as the Fifth Amendment limits federal government, the Fourteenth Amendment limits the power of the state.
Review of the Law and Literature

The Washington Post noted, “It is estimated by the National Education Association that at least 70,000 teachers are being assaulted every year by students and that 15,000 have had personal property stolen or vandalized. In the school year 1972-73, (large) numbers (of students) were assaulted, beaten, stabbed, robbed or shot” (Washington Post, 1975). A subcommittee of the Senate Judiciary Committee, chaired by Senator Birch Bayh, conducted the most extensive study on the subject of student violence for the school years 1970 – 71, 1971 – 72, and 1972 – 73. It concluded:

“It is alarmingly apparent that student misbehavior and conflict within our school system is no longer limited to a fistfight between individual students or an occasional general disruption resulting from a specific incident. Instead our schools are experiencing serious crimes of a felonious nature including brutal assaults on teachers and students, as well as rapes, extortions, burglaries, thefts and an unprecedented wave of wanton destruction and vandalism. Moreover our preliminary study of the situation has produced compelling evidence that this level of violence and vandalism is reaching crisis proportions which seriously threaten the ability of our educational system to carry out its primary function” (Washington Post, 1975).

Student rights in public schools are not completely guaranteed by law; however, due to many court precedents student rights have been established. Many other cases have helped pave the road to how schools can discipline students.

Dixon v. Alabama State Board of Education (1961) dealt with a black college student that participated in a “sit-in” at a white lunch counter. The student was not given notice nor was there a hearing regarding the alleged violations (San Diego Law Review, 1975). Subsequent decisions have extended Dixon to high school suspensions. Williams v. Dade County School Board (1971), Hobson v. Bailey (1970), and Vought v. Van Buren Public Schools (1969), all proclaimed that students were arbitrarily suspended
without the right to vocalize their side of the story and without prior notice of the allegations. Prior to 1969, the federal courts had not faced a short suspension case. Dixon and its progeny had established procedural guidelines only for long or indefinite suspensions and expulsions, (Notre Dame Lawyer, 1974). Therefore, the Dixon Court set forth the following five standards, which it felt would decrease the possibility of arbitrary decisions and afford the student minimum due process protection:

1. Notice of specific charges and grounds against the student.

2. A hearing, the nature of which should vary depending upon the circumstances of the particular case.

3. The student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies.

4. The student should be given the opportunity to present his own defense against the charges.

5. If the hearing is not before the Board directly, the results and findings of the hearing should be presented in a report open to the student (Dixon v. Alabama State Board of Education, 1961 P. 159).

A hearing should serve two functions. First, it should determine whether or not the student in fact did commit the alleged act. Second, it must designate appropriate discipline with regard to the degree of the committed offense (San Diego Law Review, 1975). The student need not admit his wrongdoing for the fact-finding aspect of the hearing to become less important. As when the court in Bett v. Board of Education, City of Chicago (1972) stated: Since the student admitted setting false alarms (the misconduct with which she was charged) the function of procedural protection is insuring a fair and reliable determination of the retrospective factual question whether she in fact did it is not essential (Bett v. Board of Education, City of Chicago, 1972 P. 629).
The 1969 federal decision, Baker v. Downey City Board of Education, was the first to directly confront a short suspension. Two students were placed on ten-day suspensions, without notice or hearing, for distributing a student publication named Oink. The Principal conferred with the students’ parents two days after the suspension had been applied. The court held that this post-suspension conference satisfied due process requirements. Baker failed to consider the possibility of procedures less demanding than the Dixon safeguards but more protective than the perfunctory post-suspension parental conference (Baker v. Downey City Board of Education, 1969). Madera v. Board of Education was cited for the proposition that due process procedures may vary according to the circumstances and that the right to counsel does not apply to school disciplinary hearings:

“Law and order in the classroom should be the responsibility of our respective educational systems. The courts should not usurp this function and turn disciplinary problems, involving suspensions, into criminal adversary proceedings – which they definitely are not” (Madera v. Board of Education, 1967 Pp. 788-789).

The classical situation arises when the violation of rules takes place in front of the school official that maintains the authority and duty to discipline students. In this type of instance, a determination of whether the student was involved in misconduct would be a needless step in the disciplinary process. However, this is not the typical situation. More often, the offense occurs in front of other students, which requires investigation on the part of the administrator. Disciplinarians for the most part must seek out the student, in order to obtain his side of the story and then render his decision on whether to suspend the student or not. As was pointed out by the Court:

“Fairness can rarely be obtained by secret, one sided determination of the facts decisive of rights... No better instrument has been devised for arriving at truth
than to give a person in jeopardy of serious loss notice of the case against him and
opportunity to meet it” (Anti-Fascist Comm. v. McGrath, 1931 P. 123).

In Farrell v. Joel, high school students were placed on fifteen-day suspensions
after participating in protests that revolved around prior school disciplinary actions. The
students were warned that their activity violated school rules and if they continued in the
protest they would be suspended. The facts surrounding the incident included; the
removals from school were later reduced to ten-day suspensions, and there was no
hearing prior to their dismissal. The court held that the circumstances surrounding the
suspensions did not require notice or a prior hearing. Since the students knew that their
conduct violated school rules, they had been previously warned, and a ten-day suspension
was classified as a minor disciplinary action similar to staying after school and extra
homework, which do not require formal procedures, the Court explained a prior hearing
would have served no purpose except to set a penalty (Farrell v. Joel, 1971 P. 163).

In addition, a student who has been arrested by a court agency does not fulfill the
student’s due process rights. Specifically, if a student is suspended after being arrested
on their way to school, the court system has the right to drop the charges, thereby,
removing the sole evidence against the student in question and thus violating the student’s
due process rights. The accuracy of witnesses generally will raise issues, which can only
be adequately tested if the accused student has an opportunity to present their side of the
story (Strickland v. Inlow, 1973 P. 189).

Schools have tried to circumvent student due process rights by claiming that
student due process rights fail to recognize emergency situations that may arise. A
general principle of procedural due process is that the need for quick action by the state in
serious emergency situations will overcome the individual interest in procedural protections (Board of Regents v. Roth, 1972 P. 577).

In Banks v. Board of Public Instruction, the Fifth Circuit Court considered The Dade County school regulation, which authorized a ten-day suspension without prior hearing (Banks v. Board of Public Instruction, 1970). Although the court discussed Dixon, and decided that any and all suspensions required a hearing, it felt that in the matter of short suspensions a prior hearing would disrupt learning. This conclusion was reached through a discussion of hypothetical classroom misconduct. The discussion assumed extreme misconduct requiring immediate removal from school to maintain the learning environment. However, the Court did not acknowledge that severe misconduct justifies dispensing with a prior hearing even when normally required.

Banks avoided the primary question of whether a prior hearing should be required in non-emergency situations. Similar incomplete analysis was afforded in Dunn v. Tyler Independent School District (1971, P. 530). Dunn was placed on a three-day suspension for involvement in riotous activity. Although the suspension could have been sustained on the act alone the court emphasized particular facts surrounding the incident. Therefore, the applicability of the “emergency” exception was not explicitly recognized (Dunn v. Tyler Independent School District, 1971). Another Fifth Circuit case, Black Students ex rel. Shoemaker v. Williams (1970), acknowledged the relation of due process protections to emergency situations (Black Students ex rel. Shoemaker v. Williams, 1970).

Black Students like Dixon considered a ten-day suspension to be substantial and cited Pervis v. LaMarque, which reminded that minimal punishment and emergency
situations are the only exceptions to a prior hearing requirement. Therefore, Black Students is near the position that any suspension requires a prior hearing except in emergency situations (Black Students ex rel. Shoemaker v. Williams, 1970 P. 1215).

Determination as to whether due process applies to school discipline in emergency situations has been questioned for years. In 1943, the Fourteenth Amendment was applied to the States by protecting the citizen against the state itself and all of its creatures – Boards of Education not excepted (West Virginia Board of Education v. Barnette, 1943 P. 637).

Benchmarks such as Mulane v. Central Hanover Trust Co. (1950) have given guidance as to what process is due. This particular case, often invoked by later opinions, said that, “Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property be preceded by notice and opportunity for hearing appropriate to the nature of the case.” Due process is a right that “has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to … contest” (Mulane v. Central Hanover Trust Co., 1950 P. 313).

Furthermore, “The fundamental requisite of due process of law is the opportunity to be heard” (Grannis v. Ordean, 1914 P. 394).

The Due Process Clause also forbids random deprivations of liberty. Satisfaction of the minimal requirements of the Clause was mandated in Wisconsin v. Constantineau (1971). “Where a person’s good name, reputation, honor, or integrity is at stake because of what the government is doing to him,” (Wisconsin v. Constantineau, 1971 P. 437).
The courts have also determined that the length and consequent severity of a deprivation “is not decisive of the basic right” to a hearing of some kind (Fuentes v. Shevin, 1972 P. 86). “Education is perhaps the most important function of state and local government” (Brown v. Board of Education, 1954 P. 493). Thus, exclusion from the educational process is a serious event in the life of a suspended child. The Court’s stance has been that as long as a property deprivation occurs, its gravity is irrelevant to the question of whether due process should be afforded.

“Fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights...” “Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it” (Anti-Fascist Committee, 1951 Pp. 168 - 172).

Three different constitutional models of hearings have emerged under Supreme Court decisions. The models diverge sharply in their procedural formalities:

1. **Full dress due process.** The accused has the right to a speedy and public trial by an impartial jury or judge, notice of the charges, to confront and cross-examine adverse witnesses, to be present at trial, to retain counsel, protection against being put twice in jeopardy and a standard of proof of beyond a reasonable doubt.

2. **Medium due process.** Some of the more formal manifestations of the criminal trial, such as the jury, complex rules of evidence, and stricter standards of proof are absent. The right to cross-examine is accorded but the Court’s attitude toward counsel is more ambivalent. Counsel need not be provided at the pre-termination stage, but the accused must be allowed to retain counsel if so desired.

3. **Skeletal due process.** Rights to counsel and cross-examination are almost wholly absent. Skeletal due process contains only the barest rudiments: advance notice of the charges, a statement of the evidence backing them, some chance to present one’s own side of the story, and perhaps a brief statement of reasons for the adverse action (Wilkinson III, 1975).

According to the Fourteenth Amendment, “No state shall deprive any person of life, liberty, or property without due process of law.” When a school administrator
disciplines a student as a result of misconduct, the school official is exercising “state”
action, while the student would be the “person” being deprived of liberty and/or property.
Deprivation of life is reserved to the criminal justice process and by government action
and therefore is not relevant to this issue. According to William Buss, of the University
of Iowa Law School, the due process clause contained in the Fourteenth Amendment
poses three distinct procedural due process issues:

(1) Is the claimant before the court entitled to any constitutionally
required process at all?

(2) If the claimant is entitled to any “due process,” when is that
process due?

(3) At whatever time or times the constitutional protection attaches, what
procedural safeguards does due process in fact require—what process is due?
(Buss, William G., 1975)

If the individual deprivation is not of “life, liberty, or property,” the individual has
no constitutional right to any form of due process protection; if the interest is protected,
some form of prior hearing is required” (Arnett v. Kennedy, 1974 P. 1650).

In Lopez v. Williams a number of students were suspended from the Columbus,
Ohio, public schools after being involved in a student demonstration during a time of
racial tension in early 1971. The facts established that at least some of the students were
suspended without any form of hearing. The students gave testimony that they did not
participate in the demonstration/misconduct and were subsequently suspended by
administration. The suspensions were imposed under an Ohio statue, which authorized
principals to impose suspensions up to ten-days without prior notice and hearing (Lopez
v. Williams, 1974 P. 1299).
The students claimed that they were denied their due process rights and filed suit against the district. A three judge panel utilized the Supreme Court two-phase approach and held that the statutory right to public education is a protected liberty requiring prior hearing before deprivation thus, invalidating the Ohio statute. The Court weighed the interest of school authorities in regulating discipline and declined to outline/specify a precise form of hearing;

“If school administrators follow procedures, which result in a fair factual determination made after notice and an opportunity to defend against the charges of misconduct, then no matter how informal the procedure, the student has been accorded (due process)...” (Lopez v. Williams, 1974 P. 1291).

The decision also noted that students who committed serious disruptions could be suspended without a prior hearing. It was also documented that when such situations occur, an adversary hearing should be held within 72 hours after the infraction.

In opinions handed down in 1972, including Roth v. Board of Regents (1972), the Supreme Court developed a new approach to procedural due process cases (DuPriest, Douglas M, 1977). It established a two-part analysis, determining first whether property or liberty interest was involved in the dispute. If such interests were involved the Court would decide how it should be protected. In Roth, the Court indicated that due process protections couldn’t be invoked to protect a right guaranteed by one of the first eight amendments without an accompanying finding that a liberty or property interest is involved (Roth v. Board of Regents, 1972 P. 577).

However, the nature and weight of the accused interests must be taken into consideration when establishing whether or not due process is required. The factors appropriate at one stage are intended to be exclusive of those at the other stage. In Morrissey v. Brewer the Court used a two-part test that considered both the nature and
the weight of the interest in determining whether a protected right existed. This approach is more tenable than that espoused in Roth. It is impossible to wholly separate values of quality and quantity. “Some valuing is inevitably necessary to determine if a particular limitation of freedom rises to the level of a fourteenth amendment deprivation of liberty” (Notre Dame Law, 1975).

The Supreme Court’s analytical framework was first applied to public school suspensions in Vail v. Board of Education, when Vail held that access to education itself is a protected property interest. Any suspension greater than five days required the safeguards established in Dixon. Vail with the possible exception of Black Students, is the furthest extension of Dixon to short suspensions, by complying with the dictates of Roth, which mandates some form of hearing before any suspension (Vail v. Board of Education, 1973).

The “informal administrative consultation” allows for satisfaction of due process by requiring in order that:

“...the student can know why he is being disciplined and so that the student can have the opportunity to persuade the school official that the suspension is not justified, e.g., that this is a situation of mistaken identity or that there is some other compelling reason not to take action” (Vail v. Board of Education, 1973 P. 603).

Several Supreme Court cases have determined that public education is a guaranteed “liberty.” Eighty years ago the Court held that liberty, “includes... not merely freedom from bodily restraint but also the right of the individual ... to acquire useful knowledge ...” (Meyer v. Nebraska, 1923 P. 399). A few years later in Pierce v. Society of Sisters the Court reaffirmed by stating that, “the liberty of parents and guardians to direct the upbringing and education of children under their control” is protected by due process (Pierce v. Society of Sisters, 1928 Pp. 534 - 535).
Therefore, the Court supported *Lopez* on the constitutional status of public education, but could not support on the hold that only long and not short suspensions from school are protected interests. In *Fuentes v. Shevin* it was held that, “While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not decisive of the basic right to a prior hearing of some kind” (*Fuentes v. Shevin*, 1972 P. 86).

In *Lopez v. Williams* (1974) it was concluded that “Weight” only pertains to the first-phase analysis of any incident. The valuing of a liberty after the misconduct has been determined is to decide if it deserves fourteenth amendment status. As Judge Kinneary stated:

“If education is a protected liberty when expulsion is involved, then it remains a liberty when suspension occurs. The right to an education is the interest being afforded procedural protection. It either is, or is not a liberty under the Fourteenth Amendment. The difference between expulsion and suspension becomes important only when the Court confronts the question of what process is due to protect the Fourteenth Amendment liberty” (*Lopez v. Williams*, 1974 P. 1300).

Student interest in being suspended has been argued throughout the years. Society clearly places high value on education as indicated by the compulsory attendance laws. The interest of the student is to avoid the harm that could occur from being excluded from school. In *Shanley v. Northeast Independent School Dist.*, it was held that:

“The ‘magnitude’ of a penalty should be gauged by its effect upon the student and not simply meted out by formula. For example, a suspension of even one hour could be quite critical to an individual student if that hour encompassed a final examination that provided for no ‘make-up’ (*Shanley v. Northeast Independent School Dist.*, 1972 P. 967).

Others have argued that the collateral damage to the student is more significant than the academic harm. Suspensions generally become part of a student’s permanent records and
may effect their admission into higher learning or their employment in the future.

Furthermore, suspensions may also cause psychological harm from the stigmatization of a school suspension as indicated in Lopez when psychologists testified that, “suspensions cause lowered self-esteem, resentment of school authorities, and withdrawal” (Lopez v. Williams, 1974).

In Sullivan v. Houston Independent School District, the Court indicated that:

“Suspension is a particularly humiliating punishment evoking images of the public penitent of medieval Christendom and colonial Massachusetts, the outlaw of the American West, and the ostracized citizen of classical Athens. Suspension is an officially-sanctioned judgment that a student be for some period removed beyond the pale” (Sullivan v. Houston Independent School District, 1971 P. 1172).

Banks v. Board of Public Instruction elaborated on the discussion of classroom misconduct and prior hearings. The court held that; “If student misconduct is so severe that learning can be maintained only by immediate removal from school, extreme physical violence for instance, a prior hearing is dispensable even if normally required” (Banks v. Board of Public Instruction, 1970 P. 296). Classroom misconduct is generally not as bad as Banks assumed and very seldom does it require the instantaneous removal of a student from school. Generally, when a student misbehaves in class and does not respond to the teacher’s interventions the student is sent to an administrative office. The administrator will then take into account prior incidents and the severity of the incident at hand. A suspension may occur, however, the administrator has the chance to have the student understand that the suspension has been judiciously imposed. By means of this type of informal due process the student is less likely to suffer psychological harm and more likely to reevaluate his conduct (O’Toole, 1972).
The Court’s phrase “ongoing threat of disrupting the academic process,” has also been scrutinized. The problem is that not all administrators or teachers view similar behaviors as being disruptive in nature. In Hawkins v. Coleman, students alleged that the school’s suspension policy was being administered in a racially discriminatory manner. Two experts testified and one found that the ethnicity of black students was the sole reason that students were being suspended. Specifically he stated, “There was a substantial reliance upon non-violent “offenses” as a justification for suspension when, in fact, such conduct may be a pivotal ethnic characteristic” (Hawkins v. Coleman, 1974 P. 1335). The second expert concluded that in schools where there is institutional racism toward Blacks:

“Conduct by black students that would not be “unusual” or “offensive” in a black environment becomes to many teachers as being “disruptive” or suspendable conduct.” To teachers with Blacks, this conduct, that is non-violent and characteristic of the black race, stands out and becomes thereby subject to selective prosecution (Hawkins v. Coleman, 1974 P. 1336).

The qualification of any incident being deemed as an “ongoing threat” is dependent on the view of the teacher and the administration and therefore is susceptible to the same kind of judicial reasoning as “continuing danger” (Hawkins v. Coleman, 1974 P. 1336).

Brief of Goss v. Lopez

Case

Goss v. Lopez, 95 S. Ct. 729 (1975)

Procedural Setting

U.S. Supreme Court
Facts

In Ohio, during the early 1970’s, the state’s compulsory attendance law required children to attend school and established education as a right for all students within the appropriate age range. This provided the basis for the plaintiffs in Goss to argue that they had been deprived of their property interest, which was guaranteed by state law, of an education. Ohio law also allowed students to be suspended up to ten days without any procedural safeguards.

The storm of student protest movements was clearly gaining speed in the 1960’s and during the Vietnam War on college campuses. By the early 1970’s the widespread student unrest had spread to many high schools. Nine students alleged that they were suspended from school for up to 10 days without a hearing (Goss v. Lopez, 1975 P. 730 - 731).

Six of the plaintiffs, Rudolph Sutton, Susan Cooper, Deborah Fox, Tyrone Washington, Bruce Harris, and Clarence Byars, were students at the Marion-Franklin High School. These six students were suspended for disruptive and disobedient conduct committed in the presence of the school administrator who ordered the suspension. Specifically, Tyrone Washington began to demonstrate in the school auditorium while a class was being conducted. The school principal directed him to leave. Washington refused and was subsequently suspended. As a police officer was trying to remove Washington, Rudolph Sutton physically attacked the police officer in front of the Principal and was also suspended (Goss v. Lopez, 1975 P. 732).

Around the same time, Dwight Lopez, Betty Crome and seventy-five other public school students were suspended from school in Columbus, Ohio. It was reported that the
students caused a disturbance and then destroyed school property at Central High School. Dwight Lopez contended that he did not participate in the disruption. Many of the students did not participate in the protest but were nonetheless suspended for being present at the demonstration. The suspended students did not receive hearings before their suspensions were imposed, though some of the students and their parents met in informal conferences with school officials at a later date. (Goss v. Lopez, 1975 P.733)

Betty Crome was at a demonstration at a school other than her own. She was arrested, taken to the police station, and then released without being charged. Crome received a notice of suspension the following day. School administrators did not testify in front of the Court with respect to the Lopez and Crome suspensions. Therefore, the record did not show why the decision to suspend was made. It was clear that no hearing was ever held for either student (Goss v. Lopez, 1975 P. 733).

Carl Smith, the ninth named plaintiff, was also suspended in a similar fashion. His disciplinary file did not contain information with regard to his suspension. Furthermore, school officials did not testify as to the reason for the suspension.

**Holding**

**District Court**

The District Court found in favor of the Plaintiffs.

**Supreme Court**

The Supreme Court also found in favor of the Plaintiffs, however, the Supreme Court removed various restrictions, such as timelines, created by the District Court.
Rationale of Holding

District Court

Students challenged their discipline in the United States District Court for the Southern District of Ohio, Eastern Division (372 F. Supp. 1279). In the District Court’s decision, a three-judge panel overturned the disciplinary action and established a three-pronged standard of due process. The first requirement, according to the District Court, only permitted the immediate removal of a student whose conduct “disrupts the academic atmosphere of the school, endangers fellow students, teachers, or school officials, or damages property.” The District Court declared that there were “minimum requirements of notice and a hearing prior to suspension, except in an emergency situation.” The District Court stated that relevant case authority would:

“(1) permit immediate removal of a student whose conduct disrupts the academic atmosphere of the school, endangers fellow students, teachers or school officials, or damages property; (2) require notice of suspension proceedings to be sent to the student’s parents within 24 hours of the decision to conduct them; and (3) require a hearing to be held, with the student present, within 72 hours of his removal.” Finally, the Court stated that, “during the required hearing, the school administrator must provide ‘statements in support of the charge,’ and, “the student and others be permitted to make statements in defense or mitigation” (Goss v. Lopez, 1975 P. 735).

The decision of the court was based upon the Fourteenth Amendment’s constitutional guarantee of due process rights. According to the Fourteenth Amendment, “nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws” (U.S. Constitution, 14th Amendment). Finally, the District Court held that in some instances in which prior notice and hearing were not feasible and the immediately removed student should be given necessary notice of hearing as soon as practicable. Subsequently, the
District Court judges ordered that all references to the suspensions be removed from all of the Plaintiffs’ records.

The Supreme Court

Various administrators of the Columbus, Ohio, Public School System challenged the judgment of the three-judge federal court by filing a petition of certiorari with the Supreme Court. The petition for certiorari was granted and the Court scheduled oral arguments to begin on October 14, 1974. The main arguments raised by various administrators of the Columbus, Ohio, Public School System included;

1. Attendance at public school was a privilege.
2. Administrators could withdraw students at will.
3. School Authorities stand in loco parentis to the student and thereby, have full parental discretion in matters of discipline (Oral Arguments, 1971).

The Supreme Court decided that the students in Goss had been deprived of their property interest of an education and their liberty interest had also been impacted due to the damage to their reputations by having a suspension placed in their school records and their potential standing with future teachers. Once this was decided, the Court set about determining what level of due process a student who may be subjected to disciplinary action by a school administrator deserves. The Court handed down its decision January of 1975 that students facing suspension, “Must be given some kind of notice and afforded some kind of hearing,” before being deprived of their education (Goss v. Lopez, 1975 P. 738).

The decision of the Court established that due process was due; however, the amount of due process for students determined by the Court was limited. Goss focused on the distinction between fundamental rights and due process liberties. Goss concluded that Rodriguez does not control the first-phase analysis. Rodriguez endorsed the

The Goss Court failed to specify the mildest form of suspension that would invoke due process and only generally described the type of notice and hearing required. While this deliberate redaction of specificity should not cause many problems, the Court’s statement of the situations where immediate removal without prior notice and hearing could be troublesome. Although Goss did state that in cases of immediate suspension, a hearing should follow “as soon as practicable.”

According to the Goss decision, school administrators are required to give a student notice of the accusation made against him/her and the student must be provided an opportunity to respond and give the disciplinarian their own version of the events which may have occurred. The Court stopped short of allowing a formal hearing with the cross-examination of witnesses due to the logistical intrusion this would create on the normal operation of schools (Goss v. Lopez, 1975 P. 741).

The school also has an interest in student suspensions. School administrators, are mandated to maintain the educational atmosphere in the schools. Therefore, administrators require broad authority to control student conduct and have an interest in avoiding restrictions, which could hamper their ability to respond to varying disciplinary problems. The courts felt that if the procedures outlined in Dixon were to be followed for all suspensions, the procedures themselves would be more disruptive than the incidents.
Therefore, Vail required administrative consultation in an informal manner for suspensions shorter than six days (Goss v. Lopez, 1975 P. 740).

The Court then referred to Wood v. Strickland (1975), which dictated, “that the plaintiff must have a ‘specific’ property interest in interscholastic high school competition.” Since Goss spoke of a “total exclusion from the educational process,” and while the Court conceded that interscholastic athletics could be a benefit of education, the Court decided that a property interest was created only in “participation in the entire process” (Dallam v. Cumberland Valley School District, 1975 P. 361). Education is formulated on the basis that all activities culminate into the educational process.

Dissenting/Concurring Opinions

Majority Opinion

According to Justice White, who wrote the majority opinion, Ohio law provided for a free education and also allowed for a principal of an Ohio public school to suspend a pupil for misconduct for up to 10 days without a hearing or to expel him. Furthermore, the principal must notify the parent within 24-hours of the removal from school. A pupil or parent of a pupil that is recommended for expulsion has the right to appeal to the Board of Education. The Board also had the right to reinstate such student. Justice White noted that Columbus, Ohio Public School System was devoid of any written procedure applicable to suspensions. Additionally, Justice White declared,

“[M]any school authorities may well prefer the untrammeled power to act unilaterally, unhindered by rules about notice and hearing. But it would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his dereliction and to let him tell his side of the story in order to make sure that an injustice is not done. (Goss v. Lopez, 1975 P. 739)”
Even when the disciplinarian is the person who witnessed the misbehavior of the student, which had necessitated the suspension, Justice White insisted that the student was still entitled to notice and a hearing. “The student will at least have the opportunity to characterize his conduct and put it in what he deems the proper context” (Goss v. Lopez, 1975 P. 739).

Dissenting Opinion

Although five of the Justices concurred with the Plaintiffs, Justice Powell, who wrote the dissenting opinion, vocalized his concern that schools should be run and governed by the experts, school officials. Justice Powell, with whom The Chief Justice, Mr. Justice Blackmun, and Mr. Justice Rehnquist joined, in his dissenting opinion, warned, “no one can foresee the ultimate frontiers of the new ‘thicket’ the Court now enters.”

This potential ‘thicket’ of micromanagement of the nation’s public schools by the Courts necessitated changes in school district’s policies and regulations as well as laws governing the disciplining of students in each state throughout the country. Justice Powell offered the following as part of his dissent:

“The Court today invalidates an Ohio statute that permits student suspensions from school without a hearing "for not more than ten days.” The decision unnecessarily opens avenues for judicial intervention in the operation of our public schools that may affect adversely the quality of education. 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. (Goss v. Lopez, 1975 P. 741)”
Justice Powell continued by stating,

"The Court’s decision rests on the premise that, under Ohio law, education is a property interest protected by the Fourteenth Amendment’s Due Process Clause and therefore that any suspension requires notice and a hearing. In my view, a student’s interest in education is not infringed by a suspension within the limited period prescribed by Ohio law. Moreover, to the extent that there may be some arguable infringement, it is too speculative, transitory, and insubstantial to justify imposition of a constitutional rule. (Goss v. Lopez, 1975 P. 742)"

Justice Powell’s dissent followed the two-step analysis of Roth. Powell emphasized that property interests “are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law” (Board of Regents v. Roth, 1972). Furthermore, since the Ohio statute which created the student’s property right also defined its limitations by giving the principal power to suspend students.

Therefore, Ohio legislature had made the student’s right and the principal’s right inseparable. Additionally, to ignore the limitation placed upon the student’s right was to disregard the clear intent of the legislature. Finally, Justice Powell declared that a ten-day suspension hardly constituted a “grievous loss.” Since the appellees’ grades had not suffered from the ten-day suspensions, there was no serious deprivation of the students’ entitlement to education (Goss v. Lopez, 1975 P. 742).

Scholarly Commentary

Various administrators of the Columbus, Ohio, Public School System challenged the judgment of the three-judge federal court by filing an appeal with the Supreme Court of the United States. The Goss v. Lopez Court rejected the view that attendance at public school was a privilege, the policy that administrators could withdraw students at will, and
the notion that school authorities stand *in loco parentis* to the student and thereby, have full parental discretion in matters of discipline (Wilkinson III, 1975).

The arguments in the judicial process that influenced the United States Supreme Court's decision involved the type of deprivations that incurred, specifically, short term suspensions and suspensions that occurred when the administrator saw the incident and did not allow the perpetrator to tell his side of the story. If the individual deprivation is not of "life, liberty, or property," the individual has no constitutional right to any form of due process protection. "If the interest is protected, then some form of prior hearing is required" (*Arnett v. Kennedy*, 1974 P. 1650). In Ohio, during the early 1970's, the state's compulsory attendance law required children to attend school and established education as a right for all students within the appropriate age range. This provided the basis for the plaintiffs in *Goss* to argue that they had been deprived of their property interest, which was guaranteed by state law, of an education. Ohio law also allowed students to be suspended up to ten days without any procedural safeguards.

The narrow, 5-4, decision fundamentally changed the way school administrators were able to discipline students. It also presented a significant change that needed to be made among school administrators regarding their perceptions of the constitutional rights of students while at school as the ruling to expunge the Plaintiffs' records reflected. Furthermore, the Court held that students facing suspension, "Must be given some kind of notice and afforded some kind of hearing," before being deprived of their education (*Ruetter, Edmund E. JR.*, 1982). Therefore, since property interest could not be established, the plaintiff's rights were not violated and the case was subsequently dismissed. If argument had been made where the plaintiff disputed his liberty interest by
making a case that showed the denial of a year of interscholastic athletics affected his opportunity to attend college or damaged his self-esteem, then the student may have prevailed.

Outline of Law

Case Law

“The purpose of researching the law is to ascertain the legal consequences of a specific set of actual or potential facts” (Wren & Wren, 1986). The legal system of the United States is based upon the common law of England. Common law is based on a system of rights and most of the law is created by judges. As the law grows, courts are faced with interpreting laws by applying them to specific circumstances. Accordingly, in some instances the courts may modify the jurisprudence. Rights are an abstract concept which may provide to be very confusing however, the basic idea is straightforward. Rights are thought of as domains in which people may act freely without harassment from other individuals with differing opinions (Federal Judiciary, 2002).

Court System

The court system in the United States is comprised of a variety of courts throughout the land. Specifically, each of the states and territories operates as an independent entity. Thus each state has different court structures and laws. Above all of these courts sits the federal government, which also has its own laws and courts. A further complication is that the courts often overlap and parties have the choice as to
which court to file their dispute in. Federal courts are often called upon to apply state law
and state courts similarly must apply federal law (Federal Judiciary, 2002).

There are two types of courts in the United States. The Trial Courts consider
evidence, listen to testimony, and decide facts. After the Trial Court has made a decision,
the losing party may be able to appeal the decision to an Appeals Court. In an Appeals
Court, one party presents arguments supporting the decision of the Trial Court while the
other party makes an argument asking the court to change the previous decision. Most
cases are not granted the opportunity to an appeal. Usually, an appeal is only possible
when there is a claim that the Trial Court has committed an error of law. Error of law
occurs when the judge makes a mistake as the law applicable in the case. An example of
error of law is when the judge gives the wrong instructions to the jury or permits
evidence that should not have been allowed. When an Appeals Court issues a ruling, the
opinion of the court sets a precedent for similar cases in the future. However, a court in
another area or a higher court can disagree with the previously set precedent (Arbetman,
1990).

Federal Courts

"The United States district courts are the trial courts of the federal court system.
Within limits set by Congress and the Constitution, the district courts have jurisdiction to
hear nearly all categories of federal cases, including both civil and criminal matters.
There are 94 federal judicial districts, including at least one district in each state, the
District of Columbia and Puerto Rico. Three territories of the United States -- the Virgin
Islands, Guam, and the Northern Mariana Islands -- have district courts that hear federal

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cases, including bankruptcy cases” (Federal Judiciary, 2002). District courts are divided into eleven separate sections throughout the United States and its territories.

“The 94 U.S. judicial districts are organized into 12 regional circuits, each of which has a United States court of appeals. A court of appeals hears appeals from the district courts located within its circuit, as well as appeals from decisions of federal administrative agencies. In addition, the Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws and cases decided by the Court of International Trade and the Court of Federal Claims” (Federal Judiciary, 2002). Appeal courts are very different from the district courts. The primary purpose of an appeal court is to correct legal mistakes, not reheat the facts. As a result the appeal courts main function is to rule on mistakes made by the judges regarding the law (Federal Judiciary, 2002).

United States Courts of Appeals and District Courts Geographic Boundaries

(Federal Judiciary, 2002)
The highest court of the land is the Supreme Court. “The United States Supreme Court consists of the Chief Justice of the United States and eight associate justices. At its discretion, and within certain guidelines established by Congress, the Supreme Court each year hears a limited number of the cases it is asked to decide. Those cases may begin in the federal or state courts, and they usually involve important questions about the Constitution or federal law” (Federal Judiciary, 2002). The Supreme Court hears very few cases compared to the lower courts. Furthermore, the United States Supreme Court may hear disputes from either the District Court or the Court of Appeals. The Supreme Court plays an important role in shaping our laws and protecting our rights. Under American political theory of judicial review, the Supreme Court has the power to interpret laws passed by legislature and declare them null and void if it finds that those laws created conflict with State or Federal Constitution. Therefore, many of the cases decided by the Supreme Court are far more important to society than the individual matter being litigated (Federal Judiciary, 2002).

Nine justices hear and decide all cases before the U.S. Supreme Court and a majority rules. When all of the judges cannot agree on a decision, two or more written opinions may be issued. The majority opinion states the decision of the court while the dissenting opinion states the reasons for the disagreement. Furthermore, judges agreeing with the decision, but for a different reason, may write a concurring opinion (Arbetman, 1990). A decision made in the Supreme Court is considered final and binding with no other avenue of appeal once a decision is rendered. This study focused on federal law in the various federal District Courts, Appeal Courts, and Supreme Court.
In its landmark Goss v. Lopez decision, the Supreme Court established that students are entitled to due process procedural safeguards when facing a suspension from school. Chapter two outlined the jurisprudence that preceded Goss v. Lopez. An overview of the law and literature in place before and during the Goss litigation was provided. Additionally, Goss v. Lopez was analyzed and briefed. Specifically, the facts, holding, and rationale of the holding were presented. Furthermore, Justice White’s opinion and the dissenting opinion, written by Justice Powell, were examined. Finally, scholarly commentary and an outline of the Federal Court System were offered. Chapter Three will present the research design and methodology utilized in this study.
Chapter three is a description of the research design and methodology incorporated into this work, thereby outlining a review of implementation and application of procedural due process required by Goss v. Lopez. Specifically, chapter three outlines the method in which data was collected, disaggregated, and prepared for application to several questions relating to public school education and due process rights. Briefing the cases was the main technique utilized for gathering information in this study.

"Briefing cases can serve as an important analytical tool, especially for beginning legal researchers (Wren & Wren, 1986)." "The art of taking notes on court decisions has been refined over the years into a widely accepted technique, called ‘briefing,’ which serves both as an efficient means of recording notes and as an additional analytical tool (Wren & Wren, 1986)." Furthermore, the purpose of this study was to investigate due process law by analyzing all Federal Case Law subsequent to Goss v. Lopez, Nevada Revised Statues, and Clark County School District Policies and Regulations as they pertain to public school students.

Methodology

In this study a specific methodology was utilized. The study conducted was a qualitative analysis of the impact of the Goss v. Lopez decision. The study included a
comprehensive survey of the related literature, a review of rulings from the various federal courts—district, circuit, and supreme—as well as an analysis of the Nevada Revised Statutes and the Clark County School District Policies and Regulations. The cases were studied for patterns contained therein. Those patterns were examined for application and interpretation with regard to Goss v. Lopez. When applicable to Goss the page numbers quoted from Goss refer to the associated pages in Appendix A. Nevada Revised Statutes and Clark County School District Regulations and Policies were scrutinized in order to determine if they adhered to the jurisprudence of Goss. Finally, interpretation and application of Goss v. Lopez was administered in order to answer the research questions raised by the review of literature.

Examination of the Clark County Law Library and UNLV’s William S. Boyd Law School’s library, indexes of legal periodicals, revealed many sources for the literature review. Case law and law journal databases on the Lexis service at the School of Business at the University of Nevada, Las Vegas was utilized to provide additional information. On-line journals, journal articles available through the Educational Resources Information Center (ERIC), West’s Education Law Reporter, Education Law and related textbooks were reviewed to supplement current literature. Furthermore, “Blacks Law” was utilized to define the definitions of selected words, phrases, and legal terms.

The following procedure was followed in order to identify appropriate cases for analysis. First, the Goss case was “Shepardized.” “Shepardizing” a case is a process that involves the manipulation of a computerized database of United States case law in order
to extract a listing of all subsequent cases that have cited *Goss v. Lopez*. The process revealed 2,492 federal and state cases which cited *Goss v. Lopez* since 1975.

Second, each of the nearly 2,500 cases was reviewed individually in order to determine applicability to the study. For example, cases decided outside the federal courts and those taking place outside an educational setting were discarded. Specifically, thousands of cases merely cited *Goss* but had no relevance to the study. This sifting process sorted each of the cases into relevant and irrelevant groupings, thereby leaving 136 cases to be considered for study. Next, an additional forty-two cases that were outside the K-12 spectrum or in the private sector were removed from consideration, with the exception of one higher education case that was particularly relevant to this study (*Board of Curators, Univ. of MO v. Horowitz*, 1978).

Of the 94 remaining cases another eight were also removed from consideration, since they were not directly related with procedural due process or did not provide instructive analysis on the subject of procedural due process as it relates to *Goss v. Lopez* (e.g. Special Education due process). Finally, the 86 cases that remained were examined for relevance.

Each of the remaining eighty-six cases were briefed, with respect to the following categories; citation, procedural setting, facts, holding, rationale of holding, and if applicable the concurring and / or dissenting opinions offered by the court. Specifically, the name of the case and procedural setting, i.e. *Goss v. Lopez* 95 S. Ct. 729, were listed. Next the facts as they related to *Goss v. Lopez* were explained in narrative form. The holding, (who the court ruled for) and the rationale of the holding, (why the court ruled in
favor of one party) were detailed. Finally, if applicable, the concurring and/or dissenting opinions of the court were reported.

“Briefing” the cases provided an analytical synopsis in standard form which, allowed for the disclosure of emerging patterns and the various courts’ standard *modus operandi*. Each of the cases was documented in chapter four by chronological order and by jurisdiction, (E.g. Supreme Court, 1st Circuit, 2nd Circuit, etc...). *Goss v. Lopez* was applied to each case, thus revealing even more patterns as well as emerging/confusing questions to be considered and analyzed.

**Summary**

Chapter three explained the means and methods utilized to explore the jurisprudence of *Goss v. Lopez*. Specifically, the process in which Federal Case Law, Nevada Revised Statutes, and Clark County School District Policies and Regulations were obtained, disaggregated, and prepared for inclusion in the study were outlined. Furthermore, it documented the various resources that were examined with regard to due process in public schools and relevance to the Clark County School District and Nevada Law as they pertain to the precedent set forth in *Goss v. Lopez*. Chapter Four will outline the findings of the study. More specifically, it will present case law, Nevada Revised Statutes, Clark County School District Policy, and Clark County School District Regulations as they pertain to *Goss v. Lopez*. 

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CHAPTER 4

FINDINGS OF THE STUDY

Introduction

Eighty-six federal cases, Goss v. Lopez (Appendix A), CCSD Policy and Regulations (Appendices B-F), and Nevada Revised Statutes (Appendix K) became the focus of this study. Each of the court cases examined fell into the parameters of K – 12 public education and each had an alleged complaint of procedural due process violation. Furthermore, each of the court cases was examined to determine the facts, procedural setting, holding, rationale, and minority opinions. The cases were organized by jurisdiction in chronological order and placed into sub-categorical order within each federal circuit beginning with the Supreme Court then the First Circuit and ending with the Eleventh Circuit. The Nevada Revised Statutes and Clark County School District Regulations and Policies that pertained to due process were examined and summarized and then categorized at the end of the Ninth Circuit, since Nevada is bound by Ninth Circuit jurisprudence.

Case Law (Supreme Court)

Case

Wood v. Strickland, 95 S. Ct. 992 (1975)
Procedural Setting

U.S. Supreme Court

Facts

Students enrolled at an Arkansas high school were expelled from school after they violated a school regulation that prohibited them from using or possession intoxicating beverages at school or school activities. Specifically, the students were charged with "spiking" the punch that was served at a meeting. It seems that a girl drove across state lines to procure the alcohol since the county in which she resided was "dry." Although there were no apparent effects of the "spiked punch," ten days later a teacher heard and then questioned the girls about the punch. At first they denied any involvement and then later admitted to it. The three girls then admitted their participation to Principal Waller who subsequently suspended them from school for ten school days. Shortly after, Waller decided to expel the girls. The School Board upheld the recommendation and voted to expel the girls for the remainder of the semester.

The school regulation in which the girls were suspended for violating, prohibited students from the use or possession of intoxicating beverages, was linked to the definition of "intoxicating liquor" under Arkansas statutes. Those statutes, by weight, did not include beer, which is the beverage the girls spiked the punch with. Furthermore, the adoption of the regulation was to be applied to include beer. The District Court however, indicated in its instructions that the question of the proper construction of the regulation would not be relevant if the jury found that the school officials in good faith considered the malt liquor and punch to fall within the regulation. The Court of Appeals ruled that
the Defendants had the authority to prohibit the use and possession of alcoholic beverages or to continue its policy of only prohibiting intoxicating beverages.

The Supreme Court reaffirmed Goss by stating:

"Consider, for example, the recent five-to-four decision in Goss v. Lopez, 419 U.S. 565 (1975), holding that a junior high school pupil routinely suspended for as much as a single day is entitled to due process. I suggest that most lawyers and judges would have thought, prior to that decision, that the law to the contrary was settled, indisputable, and unquestioned.

The Court's rationale in Goss suggests, for example, that school officials may infringe a student's right to education if they place him in a noncollege-preparatory track or deny him promotion with his class without affording a due process hearing. See 419 U.S., at 597-599 (POWELL, J., dissenting). Does this mean that school officials who fail to provide such hearings in the future will be liable under § 1983 if a court subsequently determines that they were required? (Wood v. Strickland, 1975 P. 1004)"

Holding

The judgment of the Court of Appeals was vacated and the case remanded for further proceedings consistent with the opinion of the Supreme Court.

Rationale of Holding

The District Court ruled in favor of the Defendants on the ground that, absent proof of malice, the defendants were immune from damage suits. The Court of Appeals for the Eighth Circuit, finding that the facts showed a violation of the students' rights to "substantive due process," reversed and remanded for appropriate injunctive relief and a new trial on the question of damages. Soon after, this suit was heard on certiorari in the United States Supreme Court.

The Supreme Court held that in the specific context of school discipline, school officials are not immune from liability for damages if the school officials knew or should have known that the actions would violate the constitutional rights of the students.
Certiorari was granted to consider whether the application of due process governing
immunity for school board members from liability for compensatory damages was the
correct one. Therefore, the Supreme Court reaffirmed Goss by allowing the disciplinary
action, due to the fact that the girls had been informed of the charges against them and
provided an opportunity to respond.

Dissent/Concurring Opinions

Judge Justice Powell, with Chief Justice Blackmun and Judge Rehnquist,
concurred in part and dissented in part with the ruling. They agreed that the judgment of
the court of Appeals should have been vacated and the case remanded. They also
dissented, with regard to the portion of the case that appeared to impose a higher standard
of care upon public school officials than that which is required of any other official.

Case

Ingraham v. Wright, 97 S. Ct. 1401, (1977)

Procedural Setting

U.S. Supreme Court

Facts

The complaint alleged that a violation of both Eighth and Fourteenth Amendment
Rights had been violated when the plaintiff's children were paddled. They contended
that the plaintiffs were paddled without prior notice and hearing and that the paddlings
were so severe as to keep one of the plaintiffs out of school for eleven days and to
deprive the other plaintiff of the full use of his arm for a week. Specifically, Ingram
presented testimony from sixteen students that suggested that because he was slow in
responding to his teacher's instructions, was subjected to "more than 20 licks" with a
paddle while being held over the Principal’s desk. The paddling was so severe that he suffered a hematoma requiring medical attention, which kept him out of school for several days. Andrews claimed that he was paddled several times for minor infractions. On two occasions he was struck on his arms, once depriving him of the full use of his arm for a week.

The Supreme Court granted certiorari, in the Supreme Court on appeal from the Fifth Circuit Court of Appeals who initially was inclined to reverse the Fifth Circuit District Court’s decision to dismiss the complaint, holding that there was no constitutional basis for relief. However, the Fifth Circuit Court of Appeals eventually upheld the initial decision by ruling in favor of the Defendants.

**Holding**

On Certiorari, the United States Supreme Court affirmed the District Court’s decision to dismiss the complaint. In an opinion by Powell, J., joined by Burger, Ch. J., and Stewart, Blackmun, and Rehnquist, JJ., it was held that the disciplinary paddling of public school students did not constitute cruel and unusual punishment in violation of the Eighth Amendment, and that due process was not due, because “no state-created interest in liberty going beyond the Fourteenth Amendment’s protection of freedom from bodily restraint and corporal punishment is involved with regard to corporal punishment of a public school student” (US L Ed Digest, Constitutional Law 527, 803.5; Schools 1).

**Rationale of Holding**

The United States Supreme Court affirmed that the disciplinary paddling of public school students did not constitute cruel and unusual punishment in violation of the Eighth
Amendment since it did not violate the jurisprudence set forth in Goss v. Lopez. The Supreme Court found;

“although corporal punishment in public schools implicated a constitutionally protected liberty interest under the due process clause of the Fourteenth Amendment, nevertheless the due process clause did not require prior notice and a hearing before the disciplinary paddling of a student, since (a) the traditional common law remedies preserved under state law were fully adequate to afford due process, particularly when considered in light of the openness of the school environment, and (b) even if the need for advance procedural safeguards were clear, imposing a constitutional requirement of prior notice and a hearing would significantly burden the use of corporal punishment as a disciplinary measure and would entail a significant intrusion into an area of primary educational responsibility, whereas the risk of error that might result in violation of a student's substantive rights could only be regarded as minimal, in view of the low incidence of abuse of corporal punishment by school authorities, the openness of the public schools, and the common law safeguards. (Ingraham v. Wright, 1977 P. 1402)”

Therefore, the Court affirmed and re-defined Goss when it sided for the Defendants. The Court affirmed the process that is due for disciplinary actions. However, by acknowledging that the intent of Goss was for disciplinary actions that deprive of life, liberty, or property interests it redefined the utilization of the precedent by limiting Goss to only such deprivations. It should also be noted that although procedural due process is not guaranteed by law in corporal process cases, if corporal punishment is so harsh then substantive due process may become necessary, per the Fourteenth Amendment.

Dissent/Concurring Opinions

White, J., joined by Brennan, Marshall, and Stevens, JJ, dissented. They expressed the view that the Eighth Amendment’s prohibition against cruel and unusual punishment should not be restricted to those convicted of crimes, but should also prohibit all “barbaric punishments.” White further contended that disciplinary spanking of school children was in fact “punishment” which was covered by the Eighth Amendment.
notwithstanding that schools were open institutions subject to public scrutiny or that adequate state remedies were available to school children.

White continued by stating that while not every instance of spanking was prohibited, it is necessary to provide minimal due process between the student and disciplinarian since the student could not recover when the punishment resulted from a reasonable, good faith mistake in the school disciplinary process. With regard to due process claims, White stated in his dissenting opinion;

"the availability of a tort action for "excessive" punishment did not afford due process to the student, since the student could not recover when the punishment resulted from a reasonable, good faith mistake in the school disciplinary process, and particularly since even if the student could sue for good faith error in the infliction of punishment, the lawsuit would occur after the imposition of the physical pain, which was final and irreparable and could not be undone in a subsequent proceeding. (Ingraham v. Wright, 1977 P. 1425)"

Case
Board of Curators, Univ. of MO. v. Horowitz, 98 S. Ct. 948 (1978)

Procedural Setting
U.S. Supreme Court

Facts
Horowitz was a student in her final year of study at the University of Missouri-Kansas City Medical School in 1971. In the Spring of Horowitz’s first year of study, several faculty members expressed dissatisfaction with her performance, hygiene, and attendance. Upon recommendation by the Council of Evaluation she was advanced to her second and final year on a probationary basis. Dissatisfaction amongst the staff continued during the second year, and they subsequently decided to deny her graduation
for June of 1971. Additionally, the Council recommended that, absent "radical improvement," Horowitz be dropped from school.

Horowitz was permitted to appeal the decision by taking a set of oral and practical examinations. At the conclusion of the examinations, two physicians recommended that she be allowed to graduate, two recommended she be dropped from the school, and three recommended that she should not be allowed to graduate and remain on probationary status, pending further reports on her clinical progress. The Council on Evaluation met in May, 1971 to consider whether Horowitz be allowed to remain in school beyond June of that year. The Council unanimously reaffirmed its recommendation and dropped Horowitz from the school. Suit was filed in the Eighth Circuit District Court, which subsequently sided in favor of the School, however, the Eighth Circuit Court of Appeals reversed the decision and found in favor of Horowitz. The school then brought a third and final court action to the United States Supreme Court.

Holding

The United States Supreme Court held that Horowitz was afforded full procedural due process and thereby sided with the school of medicine.

Rationale of Holding

The Supreme Court ruled in agreement with the District Court that Horowitz;

"was afforded full procedural due process by the [School]. In fact, the Court is of the opinion, and so finds, that the school went beyond [constitutionally required] procedural due process by affording [respondent] the opportunity to be examined by seven independent physicians in order to be absolutely certain that their grading of the [respondent] in her medical skills was correct. (Board of Curators, Univ. of MO. v. Horowitz, 1978 P. 952)"

Furthermore, the Court held in accordance with Goss that due process requires, in connection with the suspension of a student for disciplinary reasons; notice, opportunity
to respond, and an appeal process. Additionally, the Court found that the decision to dismiss, Horowitz, was careful and deliberate.

According to the Court, disciplinary cases have;

"no application...Misconduct is a very different matter from failure to attain a standard of excellence in studies. A determination as to the fact involves investigation of a quite different kind. A public hearing may be regarded as helpful to the ascertainment of misconduct and useless or harmful in finding out the truth as to scholarship. (Board of Curators, Univ. of MO. v. Horowitz, 1978 P. 953)"

Furthermore, the Court, with respect to procedural due process, warned against any such judicial intrusion into academic decision making, by declaring the following;

"Academic evaluations of a student, in contrast to disciplinary determinations, bear little resemblance to the judicial and administrative fact finding proceedings to which we have traditionally attached a full-hearing requirement. In Goss, the school's decision to suspend the students rested on factual conclusions that the individual students had participated in demonstrations that had disrupted classes, attacked a police officer, or caused physical damage to school property. The requirement of a hearing, where the student could present his side of the factual issue, could under such circumstances "provide a meaningful hedge against erroneous action." Ibid. The decision to dismiss respondent, by comparison, rested on the academic judgment of school officials that she did not have the necessary clinical ability to perform adequately as a medical doctor and was making insufficient progress toward that goal. Such a judgment is by its nature more subjective and evaluative than the typical factual questions presented in the average disciplinary decision. Like the decision of an individual professor as to the proper grade for a student in his course, the determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision making.

Under such circumstances, we decline to ignore the historic judgment of educators and thereby formalize the academic dismissal process by requiring a hearing. The educational process is not by nature adversary; instead it centers on a continuing relationship between faculty and students, "one in which the teacher must occupy many roles - educator, adviser, friend, and, at times, parent-substitute (Goss v. Lopez, 1975)." This is especially true as one advances through the varying regimes of the educational system, and the instruction becomes both more individualized and more specialized. In Goss, this Court concluded that the value of some form of hearing in a disciplinary context outweighs any resulting harm to the academic environment. Influencing this conclusion was clearly the belief that disciplinary proceedings, in which the teacher must decide whether to punish a student for disruptive or insubordinate behavior, may automatically bring
an adversary flavor to the normal student-teacher relationship. The same conclusion does not follow in the academic context. We decline to further enlarge the judicial presence in the academic community and thereby risk deterioration of many beneficial aspects of the faculty-student relationship. (Board of Curators, Univ. of MO. v. Horowitz, 1978 Pp. 953 - 954)"

Dissent/Concurring Opinions

Judge Justice Marshall concurred and dissented in the judgment and expressed the following view:

"I agree with the Court that, "assuming the existence of a liberty or property interest, respondent has been awarded at least as much due process as the Fourteenth Amendment requires." Ante, at 84-85. I cannot join the Court's opinion, however, because it contains dictum suggesting that respondent was entitled to even less procedural protection than she received. I also differ from the Court in its assumption that characterization of the reasons for a dismissal as "academic" or "disciplinary" is relevant to resolution of the question of what procedures are required by the Due Process Clause. Finally, I disagree with the Court's decision not to remand to the Court of Appeals for consideration of respondent's substantive due process claim. (Board of Curators, Univ. of MO. v. Horowitz, 1978, P. 958)"

Case

Bethel School Dist. v. Fraser, 106 S. Ct. 3159 (1986)

Procedural Setting

U.S. Supreme Court

Facts

A high school student delivered a speech, nominating one of his friends for a student council office, at an assembly. The speech included numerous references to the candidate in terms of sexual metaphors. After Fraser made statements like, "he's firm in his pants... his character is firm," "a man who takes his point and pounds it in," and "a man who will go to the very end – even the climax, for each and every one of you," the students at the assembly began to make sexually suggestive gestures while others
appeared to be bewildered and embarrassed. Furthermore, some of the students continued to be disruptive many days after the incident. Additionally, before Fraser made the speech, he discussed it with at least two of his teachers, who informed him that the speech was “inappropriate” and that if given he might have to endure “severe consequences.” The day after the speech, Fraser was placed on a three-day suspension. He served two of the three-days and was readmitted on the morning of the third day.

Bethel brought an action suit in the District Court for the Western district of Washington.

**Holding**

The United States Supreme Court held that Fraser’s free speech and due process rights had not been violated when Bethel School District suspended him for two days after he made sexually suggestive comments during a speech at a school assembly.

**Rationale of Holding**

The District Court awarded Fraser damages and allowed him to speak at graduation. On certiorari, the United States Supreme Court reversed the order claiming that there was no merit to the claim that the suspension violated due process on the ground that Fraser had no way of knowing that the delivery of the speech would subject him to disciplinary sanctions. Furthermore, the Court ruled that a two-day suspension does not call for full panoply of procedural due process protections applicable to a criminal prosecution. The Court also recognized that because the school had a prior disciplinary rule in effect and that because of the prior admonitions of at least two teachers, Fraser was given adequate warning that his speech could subject him to sanctions when at least two of his teachers warned of the consequences if he chose to give his speech as written. Additionally, the Court found no merit to the claim that the
suspension violated due process due to the fact that Fraser had adequate notice and opportunity to tell his side of the story and still chose to give a speech that contained graphic and explicit sexual metaphors. The Court cited Goss v. Lopez by stating;

"Two days' suspension from school does not rise to the level of a penal sanction calling for the full panoply of procedural due process protections applicable to a criminal prosecution. The school disciplinary rule proscribing "obscene" language and the pre-speech admonitions of teachers gave adequate warning to Fraser that his lewd speech could subject him to sanctions. (Bethel School Dist. v. Fraser, 1986 P. 3163)"

Finally, it has been noted that the ruling in Bethel further affirmed the ruling of Goss. Specifically, the Bethel decision was based on the facts that all due process protections outlined in Goss were adhered to.

**Dissent/Concurring Opinions**

Judge J. Brennan concurred in the judgment and expressed the following view:

“(1) It was not unconstitutional for school officials to conclude under the circumstances that the student’s remarks exceeded permissible limits, and (2) the officials did not exceed the bounds of their disciplinary authority, but (3) the language of speech was not obscene, and (4) school officials thus could not punish the speech out of a need to protect younger students.” (Bethel School Dist. v. Fraser, 1986, P. 3165)

Judge J. Marshall dissented by expressing the view that;

“The Court of Appeals’ judgment should not have been disturbed, because the school district had failed to bring in evidence sufficient to convince either the District Court or the Court of Appeals that education was disrupted at the school by the student’s speech.” (Bethel School Dist. v. Fraser, 1986, P. 3166)

Finally, Judge J. Stevens dissented by stating,

“(1) Neither the school’s disciplinary rule nor the teachers’ warnings gave the student fair notice that he would be punished for delivering his speech, and (2) the speech’s impropriety was not so obvious that no specific notice was required.” (Bethel School Dist. v. Fraser, 1986, P. 3168)
Summary

Wood, Horowitz, Ingraham, and Bethel comprised the only four federal cases heard by the Supreme Court dealing with procedural and substantive due process, within the parameters of this study, since Goss. All four cases reaffirmed the prior ruling, set forth in Goss v. Lopez. However, in the case of Ingraham, which the disciplinary action taken by the school was in the form of corporal punishment, the Court held that Goss was intended to be utilized as a guideline for loss of life, liberty, and property violations, of which corporal punishment did not apply. More specifically, Ingraham did not find infringement of a property interest in administration of corporal punishment. Therefore, while Ingraham affirmed Goss, it also redefined the landmark case by limiting its applicability to only short-term suspensions as a loss of constitutionally protected property interest in the form of removal from school or termination of educational services.

Furthermore, in the case of Horowitz, it should be noted that although this case deals with higher education, it was evident to this author that its relevancy to this work outweighed the sifting process noted in Chapter Three. The Horowitz Court ruled that academic discipline does not fall under the protection of Goss, because administrative decisions based on incompetence do not constitute disciplinary action or loss of property interest based on disciplinary action.

Case Law (1st Circuit)

Case

Bauza v. Morales Carrion, 578 F.2d 447, (1st Cir., 1978)
Procedural Setting

1st Circuit – Court of Appeals

Facts

Claudio Bauza was one of 102 applicants in March of 1976 trying to vie for 25 positions in the upcoming kindergarten class of the Elementary School of the University of Puerto Rico, Rio Piedras Campus. Admission to kindergarten of the elementary school opens up an opportunity to stay at the school through its various levels that ultimately includes high school. The parents of Bauza alleged that the school had preferred some children rather than selecting by lot from among all qualified applicants. Bauza’s family indicated that five of the vacancies were filled with students who had not achieved progress the previous year and were retained, thereby only creating twenty vacancies for the 1976 – 1977 school year. Bauza and 76 other students survived the initial testing and interview procedure. Twenty of those students were subsequently selected of which Bauza was not one of them.

In May of 1976, a waiting list was derived and each of the students on the list was separated into three categories by I.Q. The categories were labeled excellent, good and average, of which Bauza was not placed on the “excellent” list. By mid August, eight spaces had opened and seven students were selected. The director testified that she chose those students whose parents had re-expressed interest after their initial rejection. An eighth student was selected from the “good” list solely on the basis of being the child of a new teacher at the school, which is a preference specified in the school regulation and approved by the District Court. It was also revealed that the initial seven students were children of professors at the University of Puerto Rico. The regulation read, “There will
be no waiting list neither of Level 1 nor for any other level while the registration per
group is not reduced to the agreed norm.” Bauza failed to be admitted to the school and
her parents brought suit against the school.

**Holding**

The Court granted judgment as a matter of law for the school, since there was no
violation of procedural due process.

**Rationale of Holding**

The Court found that the practice of waiting list selection, although carried on in
the past, had been abolished since 1973. The Court ruled that the defendants had adopted
and implemented a discriminatory system of admission to the school and therefore
violated rights to the equal protection laws, in which *Brown v. Board of Education* and
*Goss v. Lopez* were cited. The court also found that Bauza had met all eligibility
requirements, and was, “Entitled to be considered in the lottery for entrance along with
many other qualified applicants.” Furthermore, the Court stated;

“Plaintiffs' claim does not rest on any contention that their child was being denied
a free public education generally. Other schools are available. Indeed, plaintiffs' claim
no absolute right for their child to attend the University School -- their
claim boils down to a claim of right to participate in a lottery for the limited
number of available places. Nor is this a case where having been admitted to a
particular school, plaintiffs' child was suspended or dismissed without being
afforded adequate process. (Bauza v. Morales Carrion, 1978 P. 452)”

The Court held that because the Plaintiff was not denied a liberty or property
interest without adequate process, and the fact that other schools were available to the
plaintiff, Bauza had no absolute right to attend the University School. Therefore, the
Court found that any claims of due process violations were moot. Therefore, although
Goss was cited, Bauza just as Ingraham found that in order for Goss to be applicable a denial of school attendance must have occurred.

Case


Procedural Setting

1st Circuit - U.S. District Court

Facts

On December 11, 1979, while attending public school at Mattanawcook Academy, Daniel Boynton was questioned by the school principal and vice-principal concerning his use of marijuana on school premises. During the questioning, Boynton admitted using marijuana on school property and was immediately suspended from school.

The disputes stemmed from four alleged violations. The first count was due to Boynton being questioned without his parents being present and subsequently admitting to possessing and using marijuana on school property. Boynton's second count claimed that although he attended various "substance abuse" programs the school board expelled him from school without identifying the reason. The third count in question was because, Boynton alleged that the disciplinary committee's actions were "arbitrary, improper and an abuse of the discretion given to the school officials." Boynton argued, (count three) that he was not given notice or opportunity to be heard and, (count four), that he was placed on school probation, were in violation of his due process rights. Finally, Daniel Boynton brought suit, alleging that the principal and vice-principal denied him due process of the law.
Holding

The complaints were dismissed for failure to state a federal constitutional claim upon which relief could be granted.

Rationale of Holding

The Court found that with regard to the first count, Boynton was granted due process rights through the questioning that took place at the school. Furthermore, the Court found no authority sustaining any constitutional right to have Boynton’s parents present during questioning. Boynton’s allegation that he was not read his rights was not applicable in the school setting. The second count of the complaint, failure to assign reasons for the expulsion, cited Wood v. Strickland, where the Eighth Circuit held that the evidence produced at the school board disciplinary hearing was insufficient. However, the Court found that the necessary evidence was produced and thereby sided with the school. With regard to the third count, the Court ruled that Boynton was given ample opportunity to be heard during the initial questioning that took place at the school. The Court went on to hold that the expulsion of a student for the remainder of the school year for smoking marijuana in school was not unconstitutional. Although the plaintiff seemed to suggest that his participation in substance-abuse programs satisfactorily evidenced his repentance that entitled him to immediate reinstatement into school.

The Court held that participation in the courses did not render the boards action as arbitrary. Finally, with regard to count four, placing Boynton on “school probation,” the court ruled that the action taken did not amount to deprivation of any constitutionally protected property or liberty interest, thereby adhering to Goss. Therefore, because the case at hand did not constitute violation of due process law because there was no loss of
protected interests, the Court found that the fundamental jurisprudence of Goss was followed.

Case


Procedural Setting

1st Circuit - Court of Appeals

Facts

On September 18, 1994, approximately fifteen students gathered in a student’s home and created “The Shit List.” “The Shit List” contained general remarks of “boorish” nature and also zeroed in on 140 named students. One or more lines of crude descriptions of character and/or behavior followed each name. The descriptions included insulting comments about appearance or social conduct, epithets that were suggestive of sexual capacity, proclivity, and promiscuity. Donovan and two other boys made copies of the list, put them in a trash barrel, and then delivered it to the school shortly after. Mr. Ritchie, principal, began an investigation soon after a faculty member discovered the documents. On Monday, September 26, 1994, two days later, Donovan and two others were summoned to Mr. Ritchie’s office and subsequently denied any involvement. The next day the students returned and confessed that they had photocopied the material. Furthermore, the students stated that because the copying had been done off school property they were not subject to school discipline. On Thursday, September 29, 1994, a letter was sent to the fifteen students requesting a meeting with them and their parents.

During that meeting, Mr. Ritchie informed the students that they were in violation of the school’s rules, regarding school disruption, and suspended the students.
indefinitely. He also informed the students that information would be forthcoming and that each student was to write an apology letter. On September 30, 1994, Donovan issued his letter, which apologized for his “bad mistake.” Two days later, Mr. Ritchie wrote Donovan’s mother and issued a ten-day suspension as well as exclusion from any school social events and interscholastic athletics. Appeals to the superintendent and later to the school committee were unsuccessful. Donovan brought suit under both state and federal statutes and constitutional provisions after he was suspended for ten days from school and excluded from various extracurricular activities. During a five-day bench trial the argument focused on whether Donovan had been afforded procedural due process. The District Court applied the jurisprudence in Goss v. Lopez by stating:

“We are, therefore, dealing with the kind of temporary suspension at issue in Goss v. Lopez. In that case the Court succinctly summarized the three procedural prerequisites: "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." The Court added, "In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred." In order for the student "to explain his version of the facts at this discussion, [he should] first be told what he is accused of doing and what the basis of the accusation is." "Requiring that there be at least an informal give-and-take between student and disciplinarian," the Court concluded, would at least give the student "the opportunity to characterize his conduct and put it in what he deems the proper context. (Donovan v. Ritchie, 1995 P. 17)"

Holding

The Court granted judgment as a matter of law for the school since notice and opportunity to be heard was granted.

Rationale of Holding

The Appeals Court declared that Donovan had clearly been given adequate notice and he had ample opportunity to present his version of the facts. Finally, the District
Court granted judgment as a matter of law for the school and found the process given Donovan was adequate. Specifically, Donovan was allowed to give his side of the story on September 26, 27, and 30, 1994. Furthermore, he was issued notice of his suspension and the facts surrounding the decision in written and oral form on September 29, 1994. Donovan filed an appeal in the United States Court of Appeals for the First Circuit. The Court of Appeals reaffirmed Goss by stating:

"We conclude from the record that appellant had, and took advantage of, multiple opportunities to present his view of what occurred. On September 26, he and two others met with Principal Ritchie and denied any involvement. On September 27, they had another meeting and admitted photocopying, but no knowledge of contents. They also advanced their defense that their act did not take place on school property. On September 30, appellant and his mother met separately with Principal Ritchie, after a larger meeting, and had the opportunity to add to what had been said. (Donovan v. Ritchie, 1995 P. 18)"

Case


Procedural Setting

1st Circuit - U.S. District Court

Facts

On October 15, 1993, Zehner, a senior at Wahconah Regional High School in Dalton, Massachusetts, was leaving the school parking lot at the conclusion of the school day. Zehner drove his truck at a very slow rate, thus hampering the flow of traffic. The defendants provided the school handbook that stated that student driven cars must not interfere with the school buses and infractions of motor vehicle rules would result in the loss of the privilege of bringing a car to school. Zehner informed Mr. Farley, Assistant Principal, that his parents were out of town and parental contact advising of the loss of privileges was not conveyed to Zehner’s parents until later in the week.
Zehner attended a school dance with his girlfriend on October 29, 1993. According to school officials, Zehner attended the dance, "exhibiting impaired speech, a strong odor of alcohol and an unsteady gait." Farley and Mr. Potter, Principal, questioned Zehner about his condition and Zehner denied using alcohol prior to attending the dance. Potter charged Zehner with the use of alcohol and gave him the opportunity to respond. Officer McGinnis then took Zehner's car keys away from him. Zehner was directed to report to the principal's office the following Monday, and no attempt was made to contact his parents.

On November 1, 1993, Zehner was met by his soccer coach and informed that he was off the team for the rest of the season. Zehner then called his mother asking her to come to his school. At approximately 8:00 a.m. Mrs. Zehner met with Farley and Potter concerning the incident at the dance. During that conference, Zehner and his mother were informed of the charges and told that Zehner would not only be excluded from the soccer team but would also have to serve a three-day suspension from school. Zehner in the presence of his mother called Potter a "fucking prick" and then left the office. Mrs. Zehner was advised of her right to appeal to the superintendent. Documentation of the suspension was provided to Mr. and Mrs. Zehner.

The third and final disciplinary action, a three day suspension, occurred on November 10, 1993, when Zehner was questioned by a teacher as to why he skipped his study hall class. Zehner immediately became hostile and threatened the teacher by saying, "That's it buddy, I am going to get you! I am going to sue you!" Farley ultimately called the police at which point Zehner turned his anger towards him by saying, "You think you are so tough, why don't you take off your badge."
Subsequently, William Zehner Jr. alleged that he wrongfully received two three-day suspensions from school, was excluded from the soccer team for the remainder of the season, and not allowed to park his truck in the school lot.

**Holding**

Zehner’s motion for summary judgment was denied and the cross motion for summary judgment by the school was allowed since Zehner was granted full procedural due process.

**Rationale of Holding**

The District Court found that Zehner was given both oral and written notice and an opportunity to present his side of the story consistent with *Goss*. Furthermore the Court ruled that while the suspensions clearly fell under due process safeguard due to property/liberty interests, it found that loss of parking privileges and removal from the soccer team did not. Therefore, removal from extracurricular activities and loss of privileges are not protected under constitutional law. Finally, the District Courts and Courts of Appeals have consistently found that if no determination of loss of life, property, or liberty is made, due process claims are outside the protection of *Goss*.

**Case**


**Procedural Setting**

1st Circuit - U.S. District Court

**Facts**

On April 5, 2000, Michael Demers was a fifteen year-old eighth grade special education student at Northwest School in Leominster, Massachusetts. On that day he was
disrupting his English class through excessive talking and was reprimanded by his teacher. When he continued to be disruptive, Demers was asked to go next door to his math teacher’s classroom. The math teacher instructed him to draw a picture showing how he felt about being removed from his English class. Michael made a drawing of his school surrounded by explosives and students hanging out of the windows. On the other side of the paper Demers drew the Superintendent of the school with a gun at his head. Later that same day, the drawing was delivered to the principal’s office. Two days later, Michael was called to the principal’s office and confronted with the drawing. Michael stated that it was only an assignment and he was expressing his feelings. Michael was suspended until a meeting could be held on April 11, 2000.

Michael was required to meet with the personnel director, who told him that if he was “cleared” by a psychiatrist and got “medication,” he could remain in school. A “team” meeting took place on April 11, 2000, which included Michael, his father, the principal, the personnel director and members of his special education team. Michael was allowed to remain in school on the condition that he received a psychiatric evaluation. The record was unclear as to whether Michael ever intended to see a psychiatrist after Michael’s dad informed the principal that he was unable to get Michael to the psychiatric evaluation. The principal did not allow Michael to return to school due to the fact that the stipulated condition had not been met.

On May 1, 2000, a team meeting was held which resulted in the decision that Michael should be excluded from school for the remainder of the school year and that alternative special services would be provided. The personnel director received a letter via the superintendent that requested an immediate appeal of the exclusion. The
personnel director then informed Michael's father that there would be no hearing and that the school department was required only to provide Michael with an alternative education plan. On May 16, 2000, an action was filed in the Court alleging violations of Michael's state and federal constitutional rights and state law.

**Holding**

The court held that the school officials did not violate Demers due process rights since there was no loss of property interest.

**Rationale of Holding**

The Court ruled that due process requirements of Goss were met with regard to Michael's initial suspension. Specifically, Demers was presented with the charges against him, provided the opportunity to respond, and given various avenues in which to appeal. Furthermore the Court cited IDEA, which requires that parents be provided the "opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the [disabled] child. Further, parents with a complaint are entitled to an impartial due process hearing." Therefore, the Court held that Michael had other avenues that had not been exhausted in which to be heard. With regard to Goss, Demers was given the opportunity to attend an alternative setting and therefore was not removed from school. Thus from a procedural due process perspective, Goss did not apply since there was no loss of property interest.

**Summary**

Five cases relevant to this study from the 1st Circuit were briefed. Specifically, three from the U.S. District Court and two from the U.S. 1st Circuit Court of Appeals.
were examined for relevance. Furthermore, of the five cases all were sided in favor of the Defendants.

Case Law (2nd Circuit)

Case


Procedural Setting

2nd Circuit - U.S. District Court

Facts

Missisquoi Valley Union High School (MVUHS) established physical education as a required course of study in which Ouimette refused to attend and participate. Subsequently, she was suspended from school. A hearing on November 14, 1975, permitted Yvonne to return to classes pending further hearing on the merits that was held on November 28, 1975. In the interim, a board hearing was held (which also allowed the plaintiffs the opportunity to present reasons for Ouimette’s refusal to attend and participate in class) and the board members to continue its policy of requiring all seventh grade students to attend classes in physical education and to continue the suspension from the school until she attended and participated in physical education class.

At the beginning of the school year, the Ouimette’s were informed that Yvonne would have to participate in physical education class and that classes would be conducted two hours each week during the school year. It was also stated that the remaining three hours a week would be devoted to Language Arts class. However, due to a curtailment in funds, the Language Arts class was eliminated and Babbie supplemented the schedule
with an additional three hours of physical education class. Yvonne attended all of her classes with the exception of physical education. The school entertained numerous conferences with Yvonne and her parents. Yvonne and her father were adamant that she would not attend the class. Supervised study periods were substituted until the next board meeting.

On September 18, 1975, the board of directors of MVUHS gave Yvonne and her parents the opportunity to present their objections. The only argument presented was that Yvonne “should have every right to do only what she wanted to.” Subsequently, the board denied the request and continued to direct Ouimette to attend all of her classes or be excluded from school altogether. Plaintiff Kent Ouimette brought suit, on behalf of his daughter Yvonne, against the principal, Babbie, and school directors of the Missisquoi Valley Union High School (MVUHS) for excluding her from attending school.

**Holding**

The District Court held that the requirements of Goss had been satisfied and subsequently denied the plaintiffs’ request for injunctive relief by dismissing the case.

**Rationale of Holding**

The Court found that when the Ouimette’s testified in court the reasons for Yvonne not attending class were expanded to not having enough time to get to class without being tardy, lack of individual shower rooms, and disinterest in competitive athletics. The defendants offered to accommodate Yvonne by scheduling the physical education class for the last period of the day. Furthermore, since Yvonne was given adequate opportunity to present her side of the story and because the Ouimettes were
notified of the charges against Yvonne, the Court held that Yvonne had been deprived of
the opportunity to attend school. However, they also found that in this particular instance
the deprivation was the product of the plaintiffs’ choice.

According to Goss, the District Court held that since it was the Ouimette’s choice
to not attend school, there were no substantial grounds that property interest had been
denied. Moreover, the District Court cited Goss by citing the following:

“The essentials of due process are notice that disciplinary action is under
consideration and an adequate opportunity for the student and her parents to
present their side of the story. This includes the opportunity to listen to the
explanation of the school authorities concerning the reasons for any disciplinary
action that may be contemplated in the situation that confronts them. These
precautionary measures, absent an emergency situation, should precede removal.
(Ouimette v. Babbie, 1975 P. 525)”

"Each of these requirements was fulfilled in Yvonne's temporary suspension, both
at the initial hearing in September and at the second hearing on November 20,
when the plaintiffs had the assistance of counsel. From the record it appears that
both hearings were essentially fair. The process due the plaintiffs has been
accorded them within the precepts of Goss. The court recognizes that the school
board and the administration, in the action taken, were deciding on the validity of
policy requirements which were imposed by the defendants. In this civil rights
action under 42 U.S.C. § 1983, only the constitutional right to Due Process has
been asserted. Once these requirements have been met, there is no remaining issue
for decision. (Ouimette v. Babbie, 1975 P. 529)”

Additionally, although minimal due process had been given to the Ouimette’s, in the
case at hand Goss does not apply when deprivation of life, liberty, or property is absent.

Case


Procedural Setting

2nd Circuit - U.S. District Court / N.Y.
Facts

Joseph Johnpoll was a tenth grade special education student in September of 1980. Johnpoll, while in junior high school, was asked to choose the school he would like to attend the following year. Johnpoll subsequently choose John Jay High School because the two schools he desired to attend were not on the issued list. It also seems that Johnpoll was informed that he would likely be assigned to either Murrow or Midwood, which were his schools of choice. Johnpoll brought suit when he learned that he was assigned to John Jay.

Johnpoll contended that the district failed to consider his emotional and physical handicap and was denied due process. The plaintiffs alleged that compelling Johnpoll to attend John Jay High School would make it impossible for him to gain an education by stating, “With its rampant crime, violence, drugs and social behavior that is sexually and emotionally far more open than Joseph has experienced.”

Holding

The motion for a preliminary injunction was denied since Johnpoll was not denied property interests.

Rationale of Holding

The District Court found that this particular case did not present a situation, which the Goss Court sought to protect, due to the fact that Johnpoll had not been denied his right to education. Therefore, because Johnpoll was offered an education but refused to attend the protections guaranteed by Goss did not apply. Specifically, the District Court stated;

“This case does not present a situation which the Goss court sought to protect since Joseph has not been denied his right to education. He can receive an
education at John Jay. Merely because Joseph is not being permitted to attend the
school of his choice is not tantamount to a denial of a right to an education.
(Johnpoll v. Elias, 1980 P. 431)"

Case


Procedural Setting

2nd Circuit - U.S. District Court / N.Y

Facts

On September 9, 1987, Sixta L. Orozco tried to enroll in the Mount Vernon public
schools after professing her desire to find permanent housing in that city. School
officials informed her and her mother that she could not be enrolled in that school system
since she did not reside in Mount Vernon. On September 10, 1987, Ms. Arroyo, Orozco’s
mother attempted to enroll Orozco into the Yonkers school system and was again refused
enrollment for the same reason.

School opened on September 10, and Ms. Arroyo instituted action contending that
Orozco was denied her right to a public education in New York without being afforded
the protections accorded by due process. Furthermore, the State Commissioner of
Education, who has general supervisory authority over New York’s public school system
under N.Y. Educ. Law, knew that local school districts had a pattern and practice of
denying homeless children admission into their schools without any modicum of
procedural protections.
Holding

The Court ruled that certain levels of appeal did exist; therefore a minimal amount of due process also existed. Consequently the defendant's motion to dismiss was granted in part.

Rationale of Holding

The Court granted the plaintiff a preliminary injunction requiring that Orozco be admitted to the Yonkers school district so long as her then-existing living conditions continued to occur (living in a shelter in Yonkers). After the ruling two important events occurred, first Orozco and her mother moved to Puerto Rico, thus voluntarily withdrawing from the Yonkers school system, and secondly the New York Board of Regents approved new regulations governing the placement of homeless children in New York's educational system. The second change mandated that any decision denying a child from attending school must be preceded by a hearing and accompanied by notice outlining the bases of the decision and avenues of appeal.

The court quoted Honig v. Doe by citing the mootness doctrine. The fact that the plaintiff had returned to Puerto Rico suggested that she no longer retained a "personal stake" in the outcome of the litigation, and thereby rendered her claims moot. The Court ruled that if local school districts had a practice of summarily denying education to students already enrolled in their school would certainly violate due process rights. However, a student who has not enrolled does not necessarily have a cognizable property interest in public education. In this particular case Orozco was sheltered at the time in question in Yonkers, and her mother desired to live in Mount Vernon. However, given her economic situation, she had little control of where she could afford to live and there
was no need for a hearing to resolve factual disputes since all pertinent information was fairly known. Therefore, although Goss would have applied because Orozco was previously enrolled in Yonkers and because Orozco was living in a shelter located in the attendance zone of Yonkers, since Orozco and her family moved to Puerto Rico, her due process rights were no longer applicable.

"If local school districts had a practice of summarily denying continued education to students already enrolled in their schools, then we have little doubt that this would constitute a violation of due process and noting that when a child is already within a school district's control and is subsequently denied continued admission without notice and hearing, such conduct violates due process. That is not the situation before us, however. We are presented with a homeless child -- who was not then enrolled in a New York school and whose residency for school purposes is a matter of great dispute -- who was seeking and was summarily denied admission. (Orozco v. Sobol, 1989 P. 1118 - 1119)"

"Indeed, although this case is framed within the context of procedural due process, the issue is more one of placement than it is of process -- i.e., defining how a timely and fair determination of plaintiff's residence can be made so as to allow her placement in the proper public school. To be sure, this question embraces certain Fourteenth Amendment concerns. Whatever means are chosen, they must comport with the root requirements of due process (notice and hearing) since plaintiff has a constitutionally cognizable property interest in a New York public education. It does not necessarily follow, however, as plaintiff contends, that due process requires the local school districts to provide the hearing on residency matters. (Orozco v. Sobol, 1989 P. 1118 - 1119)"

Case

Procedural Setting
2nd Circuit - U.S. District Court / N.Y.

Facts
F.N., a tenth grade student at Sachem High School South, was a special education student whose history of academic, social, and emotional difficulties dated back to his
kindergarten year. Although there had never been any documented misconduct at school prior to January 5, 1995, F.N. was suspended for five-days for inappropriate sexual behavior directed at his Spanish teacher.

On January 5, 1995, F.N.'s Spanish teacher reported that while she was alone in the classroom with F.N., he began to masturbate, followed her around the room, and refused to either stop or leave the room as directed. F.N.'s parents alleged that they were not advised by the school district at the January 10, 1995, meeting of their son's rights under IDEA, the Rehabilitation Act, or N.Y. Educ Law Article 89, which identifies rights of children with handicaps. The school alleged that they had informed the parents and gave them a packet entitled “Parental Due Process Rights.” The plaintiffs deny that they received any information.

During the hearing conducted by the superintendent on January 10, 1995, it appeared that the defendants agreed that F.N. would be referred for evaluations and receive home instruction pending completion of the evaluations. F.N.'s parents requested an impartial hearing to review the determination of the suspension. The plaintiffs refused to attend the hearing and instead threatened to bring suit if their son was not allowed to return to school. On April 25, 1995, one of the initial psychologists reevaluated his earlier findings, which recommended that F.N. be returned to the regular classroom and that he was suffering an adverse impact from his continued exclusion from school. Subsequently, F.N. was denied his motion for a temporary restraining order and preliminary injunction after he brought suit against the Board of Education of Sachem Central School District at Holbrook.
Holding

The plaintiff's motion for a temporary restraining order and preliminary injunction with regard to the claim that the defendants have deprived F.N. of a public education, to which he is entitled by N.Y Educ. La in violation of the Fourteenth Amendment, was denied.

Rationale of Holding

The Court found that the school-directed evaluations took place and resulted in a determination that F.N. was not handicapped. Furthermore, the Court found that it was evident that the home instruction was not conducted in a regular or reliable manner. With this in mind the Court held that the school had satisfied due process procedures set forth by both state and federal law. Additionally, while the Court was concerned with the lengthy period in which F.N.'s education was interrupted, it also found that the plaintiffs failed to show that the school district had violated any prescribed procedure with regard to notice and hearing. Finally, the Court ruled that since F.N. was not only allowed but also directed to attend school F.N. was not denied an education according to Goss.

Case


Procedural Setting

2nd Circuit - U.S. District Court / N.Y.

Facts

During the 1994 – 95 School year George Mazeyski was a junior at Horseheads High School and a member of the marching band. Mazeyski alleged that he had three musical performances scheduled of which two were associated with the school.
Mazevski stated that Carichner had informed him that he could miss one of two events but not both. Carichner contended that he gave Mazevski permission to miss the first event scheduled on October 15, but not the one set for October 22, 1994.

Mazevski attended the performance on the 15th and subsequently missed the 22nd performance. The next Monday when Mazevski attended school, his counselor informed him that he was no longer part of the marching band because he missed the performance on October 22. Furthermore, due to his dismissal from the band he was no longer eligible to participate in the All State Band.

Mazevski’s parents met with Principal Kent and were informed that the circumstances would be reviewed. Kent talked to all of the school’s music teachers and it was decided that the dismissal would stand. The court ruled in favor of the defendants by granting summary judgment, arguing that participation in a high school marching band does not constitute a constitutionally protected property interest, entitling Mazevski to procedural due process.

Mazevski’s parents opposed the motion for summary judgment by claiming that their son’s participation in the band was constitutionally protected because it was a curricular activity that Mazevski received academic credit and because he had to pay $75 to participate. Therefore, the issue in this case is whether Mazevski was denied a specific constitutional guarantee.

**Holding**

The defendants’ motion for summary judgment was granted and the plaintiffs’ complaint was dismissed for lack of property interest.
Rationale of Holding

The Court found that before one is entitled to due process, a property interest must be established. Dangler v. Yorktown Cent. Sch. Therefore, the issue was whether Mazevski’s participation in the marching band rises to the level of a property interest. Goss v. Lopez spoke in terms of the total “educational process,” and not the right to participate in each individual component of that process. The Court Cited Dallam v. Cumberland Valley Sch. Dist. According to the Dallam court:

“...The property interest in education created by the state is participation in the entire process. The myriad activities which combine to form that educational process cannot be dissected to create hundreds of separate property rights, each cognizable under the Constitution. Otherwise, removal from a particular class, dismissal from an athletic team, a club or any extracurricular activity, would each require ultimate satisfaction of procedural due process. (Mazevski v. Horseheads Cent. Sch. Dist., 1997 P. 72)”

Accordingly, the court reaffirmed Goss and Dallam by ruling that only exclusion from the entire educational process requires implementation of due process rights stipulated by Goss.

Summary

Five cases relevant to this study from the 2nd Circuit were briefed. Specifically, all five from the U.S. District Court were examined for relevance. Furthermore, of the five cases all were sided in favor of the Defendants.

Case Law (3rd Circuit)

Case

Procedural Setting

3rd Circuit - U.S. District Court / M.D.

Facts

George Dallam, a fifteen-year old plaintiff, transferred to Cumberland Valley School District from the neighboring Camp Hill School District. Cumberland Valley is a member of the Pennsylvania Interscholastic Athletic Association (P.I.A.A.). The Association’s function is to develop and enforce uniform rules governing interscholastic athletic competition among member schools. Dallam brought suit against Cumberland Valley School District, in the Third Circuit District Court, due to a rule of the P.I.A.A. which, automatically bars a student from participation from interscholastic high school athletic competition for one school year if a student transfers from one school district to another, but does not reside in the transferee district with a parent or guardian.

The underlying objective of the rule is to prohibit athletically motivated transfers and high school athletic recruiting. The plaintiff argued that the automatic ineligibility rule acts as an irrefutable presumption in violation of his equal protection and due process rights. The defendants concede that no hearing procedure is provided in which a student could establish that he transferred for wholly non-athletic reasons, but following his transfer, desired to participate in interscholastic athletics.

Holding

The District Court found itself without subject matter jurisdiction. Therefore, the motion to dismiss was granted.
Rationale of Holding

The Court held that the plaintiff misperceived the issue. It is irrelevant whether the plaintiff’s participation in interscholastic athletics is either a right or privilege. At no time did the plaintiff point to any act of Congress, which might serve as the basis for a right or privilege. Instead, the plaintiff based his argument solely on the 14th Amendment to the United States Constitution. Goss speaks in two ways. First, the Court speaks of the serious damage to the plaintiff’s reputation because misconduct was allegedly the basis for the suspension. Second, the Court looks at the nature of the interest and not its weight.

The plaintiff was not seeking instruction, or even participation in a particular area of athletics. The record showed that the plaintiff had both instruction and athletic competition available to him. The only avenue of athletics temporarily closed was the opportunity to compete as a member of a high school team against other high school teams. The Court decided that there existed no constitutionally protected property interest in competing for a place on a high school athletic team. Therefore, Goss which protects the entire educational process had been complied with.

Case


Procedural Setting

3rd Circuit - U.S. District Court

Facts

Everett, a student in the School District of Philadelphia was transferred from his school to another after being referred to the Principal’s Office numerous times for
misconduct. Donna Everett brought suit against Michael Marcase, Superintendent of the
School District of Philadelphia, in the Third Circuit of the United States District Court,
citing that transferring students to behavioral school as a result of misconduct violated
Fourteenth Amendment rights. The School District of Philadelphia mandated that a pupil
may not be suspended from school in excess of five days unless precise “due process”
procedures are applied. The District entered a consent decree that approved extensive
procedures applicable to involuntary transfers of pupils from a non-disciplinary public
school to a special disciplinary public school maintained by the School District. In the
past the District had conducted such transfers on an informal and largely ad hoc basis,
without precise internal guidelines.

The class action was filed primarily to compel the School District to employ more
detailed and precise procedures for such transfers. The District throughout the litigation
took the legal position that the transfers require no due process procedural protections
because the transfer deprives a pupil of no constitutionally cognizable property right and
does not amount to punishment. The district agreed that certain procedures could be
incorporated into a consent decree, which would be applied to all future involuntary
disciplinary transfers to non-disciplinary school. Unfortunately, the parties could not
reach agreement as to certain issues that remained unsolved. They were: the right of the
pupil to be represented by legal counsel, designation of the hearing officer or tribunal and
place of hearing, right of appeal from final decision to transfer, and the right of pupils to
continue attending school pending final decision on the transfer.

Holding

88
The Court ruled in part for both parties. With regard to legal counsel, the designation of the hearing officer and/or hearing tribunal and place of hearing, and the right to appeal a final decision to transfer the Court ruled in favor of the defendants. However, the court felt that a transfer prior to final hearing, where there exists no emergency situation, would appear to violate the due process prescribed.

Rationale of Holding

The Court ruled that a transfer from one school to another within the same school district does not reduce the educational opportunities of the transferred pupil. School districts may assign pupils among its various schools as it deems appropriate and may, for purely administrative purposes, assign pupils from one school to another. There is no inherent right of the pupil to attend the school of his or her choice, or the choice of the parents, within the school district. However, an administrative transfer is vastly different from a disciplinary transfer. The terminology of “disciplinary” transfer suggests punishment. Goss stated any disruption in primary or secondary education, whether by suspension or involuntary transfer, is a loss of education benefits and opportunities.

The first unresolved issue is the right of a pupil to be represented by legal counsel. The Court found that there is no practical advantage to the pupil having the right to be represented by an attorney at any informal hearing with the principal. The Court continued by stating that there should be no prohibition against a principal permitting, in his discretion, the attendance and advice of counsel at such informal hearing. The Court cited Dunmore v. Costanzo and Jones v. Gillespie that no specific mention is made as to the right to counsel. In practice, attorneys may be permitted to represent pupils and parents, but law does not mandate such requirement.
The next unresolved area was the designation of the hearing officer and/or hearing tribunal and place of hearing. The plaintiffs contend that if the superintendent's office has the authority to choose the hearing officer, that person may be inclined to "rubber stamp" the principal's original decision of disciplinary transfer. The Court reaffirmed that the informal process in place throughout the country does not prohibit a superior of the principal as the designated hearing officer. The Court concluded as to the hearing officer, that it shall remain the responsibility of the School District to designate a fair and impartial person or group of persons to conduct the hearing and make a determination. Furthermore, it is not for the federal courts to dictate the internal affairs of local governmental agencies.

Concerning the unresolved question of any right to appeal a final decision to transfer, the Court affirmed that to provide a third-step hearing or right to appeal would not appear to be a requirement of due process. This, of course, does not preclude any party involved from calling upon any appropriate court of competent jurisdiction to decide issues it may properly determine.

The final issue is the right of the pupil to continue attending the school from which he or she is proposed to be transferred pending final determination. The Court felt that a transfer prior to final hearing, where there exists no emergency situation, would appear to violate the due process prescribed. Therefore, with regard to Goss the Court determined that students are to be given due process protection if the student is transferred from one school to another for disciplinary reasons, but is not required for non-disciplinary transfers.
Case


Procedural Setting

3rd Circuit - U.S. District Court / M.D.

Facts

Davis was a member of the senior class and a member of the Varsity Basketball team of Central Dauphin East High School. On January 30, 1979, Davis played in a basketball game that was hotly contested and subsequently had a dispute in the locker room with a fellow teammate. The dispute resulted in Davis striking Gregg Ludlam on the jaw, which caused a compound fracture and hospitalization of the victim.

On January 31, 1979, Dio K. Chamberlin, principal, held a conference and advised Davis that he would be suspended from school attendance for a period of one to three days. Davis was given ample opportunity to present his version of the incident. The principal decided to impose an indefinite suspension from the basketball team because of Davis’s conduct, which was unbecoming of an athlete as pursuant to the Athletic Association Policy of the Central Dauphin School District adopted in August, 1975. The policy stated if a student’s “conduct unbecoming an athlete as determined by the coach and principal shall become ineligible in all sports for a period of 12 calendar months from the day of dismissal.”

On February 1, 1979, a conference was held with Davis, his mother, and Ellis Van Orman, Superintendent of Central Dauphin School District in Mr. Van Orman’s office at which Davis related his version of the incident. The next day Davis was readmitted to school and was suspended from the basketball team for the remainder of the season. Mrs.
Davis, Russell’s mother, argued that her son was suspended from the basketball team without any hearing in violation of his constitutional rights to due process of law. Davis further argued that the defendants failed to furnish notice and a hearing. Russell Davis brought suit against Central Dauphin School District in the Third Circuit of the District Court in 1979, alleging that the defendants violated his constitutional rights.

**Holding**

The Court believed that Davis’s argument was without merit and the case was dismissed.

**Rationale of Holding**

The defendants contended that Davis was not deprived of a property interest, which is protected by the due process clause of the Fourteenth Amendment. The Court had the view that Davis had a reasonable expectation under the athletic policies that he would be permitted to participate in high school athletics unless he violated the provisions of the athletic policies. At the very least, then, it is arguable that Davis had a property interest in participating in high school athletics. After an independent review of the statues of the Pennsylvania, the Court was of the view that the superintendent was without authority to suspend Davis from the basketball team for the remainder of the season. However, the court concluded that a fair reading of the athletic policies permitted the coach, with the approval of the principal, to impose a suspension up to 12 months.

The Court would normally decide if due process rights were infringed upon, however, since the court needed not to decide if property interest was created, due process was received. Davis was aware of the charges and was given opportunity to
respond. Therefore, the Court affirmed Goss by citing that no property interest is afforded to students on athletic teams.

**Case**


**Procedural Setting**

3rd Circuit - U.S. District Court

**Facts**

Although the specific improprieties of Jordan were not detailed in the case, *Jordan v. School Dist.* occurred due to questions concerning the due process rights of students who were temporarily removed and transferred because of behavioral problems in their regularly assigned school to another school designed to meet the needs of such students. Suit was filed by Jordan, in the Third Circuit Court of Appeals in 1975, for incidents that occurred in 1973. The question before the Court was whether the principles of *Goss v. Lopez* required any modification of the decree, as originally drafted.

**Holding**

The Court ruled in favor of the defendants and dismissed the suit in its entirety since the Plaintiff was removed from school after receiving adequate procedural due process.

**Rationale of Holding**

The Court concluded that students faced with suspension from a public school have property and liberty interest that qualify for protection under the Fourteenth Amendment. The court held that, “the student (must) 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.” The plaintiffs argued that the case was not about disciplinary suspension but rather disciplinary transfer. A consent decree was rendered and stated in part:

“When a student faces removal from his regularly assigned classroom, and the consequential recommendation for transfer, the consent decree requires the principal to give written notice to both the student and his parent in person or by certified mail detailing the reasons for the proposed transfer. Furthermore, the provisions of the consent decree provide for an informal meeting between the student, his agents, and the principal before the transfer, as well as two formal hearings at which evidence may be presented and witnesses examined. (Jordan v. School Dist., 1980 P. 87)”

The Court found that the decree clearly exceeded the rudimentary precautions required by Goss. Although there was no provision in the consent decree for notice or a hearing before a disruptive or dangerous student is physically removed from class, Goss indicated none is required as long as such removal is followed by appropriate notice and hearings, as was the case in Jordan v. School Dist.

According to the decree; a student who is non-disruptive or does not pose a continuing danger to persons or property could be removed from the classroom without notice or opportunity to explain his version of the occurrence at an informal meeting. Therefore, the Court added that a person who is non-disruptive or does not pose a continuing danger could not be removed until after notice of proposed action and basis therefore and opportunity to explain.

The Third Circuit District Court of Appeals modified the original order and directed the addition of paragraph 32 and the deletion of paragraphs 33 and 34. The court also held that the relevance of Goss did not apply since the argument at hand was involuntary transfer as opposed to suspension.

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Case


Procedural Setting

3rd Circuit - U.S. District Court

Facts

On February 1, 1980, an officer of the Salisbury Township Police Department conducted a surprise raid at the high school for the purpose of confiscating drugs and paraphernalia. The target of the police was a group of students who regularly gathered outside the gymnasium doors each morning. Twenty-one students, including the plaintiffs, were arrested, taken inside the gymnasium, and searched. Although the police found marijuana and various articles of drug paraphernalia on a number of the students, no contraband was found on the plaintiffs. The plaintiffs were directed to sign an attendance sheet and then report to their regularly scheduled classes. No disciplinary action was taken on that date.

Mr. White and Mr. Rappaport were told of the arrests and searches, which had taken place at the high school, and demanded information with respect to the arrest of their sons. Mr. White went to the police office and saw video surveillance, which purported to show David and Peter in the group of students smoking marijuana. He was also informed that several officers had observed his sons smoking.

On February 4, 1980, Mario Donnangelo, Principal, was given a report from the police department and immediately began to hold informal conferences with the students named in the report. The students were informed that they could attend the remainder of their classes, but could not come to class the next day and were to attend suspension...
hearings as a result of information provided school officials in the police report. Oral
notification of the hearing was ultimately given to all involved students. David White
was absent from school on February 4, 1980, and although was not personally notified of
the hearing to be held on February 5, 1980, both his brother and mother were notified and
they passed the information to him and his father. Mr. White and Mr. Rappaport retained
counsel for their sons. On February 5, 1980, the District was made aware that the
White’s and the Rappaport’s had retained counsel. Therefore, the hearing was postponed
until February 6, 1980 with the school and both families.

During the hearings, testimony was presented by the police officer involved and
photographs were shown. The plaintiffs in their own behalf presented no testimony. At
the conclusion of the hearing, a ten-day suspension was formally imposed. The school
also explained that the suspension would not be made part of any of the student’s
permanent record. David White, Peter White and Eric Rappaport, brought suit against
the Salisbury Township School District and the Salisbury Township Board of Education
in the Third Circuit District Court for imposing suspensions on them without affording
them due process of law. The relevant facts were not seriously disputed.

Holding

The Court felt that the one-day delay of the hearing was in many ways attributable
to the plaintiffs themselves and subsequently ruled in favor of the defendants’ motion for
summary judgment.

Rationale of Holding

The Court ruled that the plaintiffs were orally notified of the charges against them
and of the suspension hearing being held in connection with those charges, thereby,
complying with the notice requirements of Goss. There was a dispute as to whether the suspensions were imposed prior to or subsequent to the hearings. The Court ruled that although the plaintiffs were not afforded their right to a hearing prior to suspension, Goss points out that a hearing prior to suspension is merely a general rule to be followed particularly where the student’s removal from school occurs “almost immediately following the misconduct.” However, the school allowed the students to attend school for the remainder of the day on February 1, 1980. Therefore, the Court reaffirmed Goss by ruling in favor of the defendants.

Case

Procedural Setting
3rd Circuit – Court of Appeals / N.J.

Facts
Daniel Palmer was a senior at Hunterdon Central High School in September of 1986. He was also the starting wide receiver on the school’s football team and enrolled in a course titled “Careers Broadcasting Technology.” On September 28, 1986, Palmer and three other students were assigned to the school radio station which was located on the school’s property. The next morning, beer stains and a marijuana pipe were found at the radio station. Later that same day, Dr. Grimm, school disciplinarian, and Palmer’s football coach, met with Palmer at which time Daniel Palmer admitted to smoking marijuana the night before while at the radio station.

On September 30, 1986, Dr. Grimm sent a letter advising Palmer and his family that Daniel had been placed on a ten-day suspension. The Palmer’s took no action to
contest the suspension. The Superintendent, Merluzzi, imposed a sixty-day suspension from interscholastic activities to all students involved in the incident approximately ten calendar days later. Mr. Palmer, Daniel’s father, heard that rumors that the additional penalties were to be imposed and subsequently attended a Board of Education meeting on October 13, 1986.

The Palmer’s then brought suit stating that it was the ninth day of the school suspension before any mention of additional penalties were announced. Thus Palmer alleged that the defendants violated his right to due process under the Fourteenth Amendment when they suspended Palmer from participating in extracurricular activities for sixty-days without notice and a hearing. The defendants moved for summary judgment on the grounds that New Jersey and the majority of jurisdictions do not recognize a student’s property interest in extracurricular activities, and there being no property interest, Palmer was not entitled to due process protection before the suspension was imposed.

**Holding**

The Court ordered that the plaintiff’s complaint be dismissed because extracurricular activities do not fall under the scope of property interests.

**Rationale of Holding**

The Court cited that “Legitimate claim of entitlement to a specific government benefit and not an abstract need or desire or a unilateral expectation” clearly gave Palmer a claimed property interest and entitlement to a public education (Board of Regents v. Roth 408 U.S. 564 1972 P. 577). In Burnside v. N.J.S.A. the students claimed that they had a constitutional right to participate on their high school’s interscholastic athletic
teams. The Appellate Division disagreed. It found that “While extracurricular activities, including interscholastic athletics, are important factors toward a sound and comprehensive academic education, it emphasized that each pupil does not have a right to participate in interscholastic athletics.”

The District Court stated, “Federal courts are not super referees over high school athletic programs.” Therefore, the District Court ordered that the plaintiff’s complaint be dismissed. However, it should be noted that although the complaint was dismissed, the Administrative Law Judge stated,

“This eleven hour, additional penalty, coming without official notice and without any chance to be heard, flies in the face of all notions of fundamental fairness. Because I believe Superintendent Merluzzi acted in a wholly arbitrary manner in taking away a protected property interest and what may have been Palmer’s only avenue to higher education, I respectfully dissent.” (Palmer v. Merluzzi, 1989 Pp. 92 - 93)

Although the plaintiffs’ cited Goss, the case at hand merely reaffirmed Goss by establishing the fact that the intent of Goss was to protect the entire educational process. Judge Fisher, relying on New Jersey law, found that high school students do not have a property interest in playing football and, therefore, may be dismissed from a team without due process. Specifically, Judge Fisher held:

“As Roth indicates, any analysis concerning whether interscholastic athletics are protected should in the first instance be made by reference to state law. 408 U.S. at 577. In Dennis v. Holmdel Bd. of Ed., 1977 School Law Decision 388, New Jersey’s Commissioner of Education stated, "Participation in interscholastic athletics is a privilege which is subject to rules made by local boards of education". The Third Circuit has also held that a "right" to play basketball did not rise to the level of a specific constitutional guarantee.” (Palmer v. Merluzzi, 1989 P. 98)

Therefore, extracurricular activities are not a property protected interest. Since extracurricular activities do not fall under a protected property interest deprivation of these “extra interests” are not protected by Goss.
Case


Procedural Setting

3rd Circuit – U.S. District Court / N.J.

Facts

On October 30, 1989, Giangrasso, a student at Kittatinny High School, was sleeping in class and when awoken by Ms. Kesselman, his teacher, he threatened to punch her in the head. Giangrasso’s claims were identical in nature to Kesselman’s with the exception that he claimed that Kesselman jerked his head back to awaken him. Witnesses in the classroom collaborated Kesselman’s version.

Ms. Kapler, Assistant Principal, confronted Giangrasso with the evidence and informed him that he would be suspended for five-days. Immediately after conducting the hearing, Giangrasso’s parents were informed. Giangrasso’s stepfather arrived at school to take him home and was also explained the charges against his stepson, the evidence, and the reasons for his suspension.

On November 1, 1989, the plaintiff was placed on homebound instruction, pending the result of a psychiatric review. On December 20, 1989, the plaintiff’s Child Study Team mailed Giangrasso’s Individualized Education Plan that terminated the homebound instruction and directed that Giangrasso be returned to mainstream schooling. Four other potential special education placements were also presented. Giangrasso was subsequently accepted at High Point Regional High School in a special education program with a work-study component. Subsequently, Giangrasso brought suit
against Kittatinny Regional High School Board of Education in the Third Circuit District Court.

Holding

The Court ruled in favor of the defendants by dismissing all claims because the jurisprudence outline in Goss v. Lopez was strictly adhered to.

Rationale of Holding

The Court found that the due process afforded to Giangrasso was in line with Goss and ordered that the plaintiff’s attorney Edward J. Gaffney, Jr., Esq. Pay to the defendants $100,000 and ordered that all claims be dismissed. Therefore, since Giangrasso was informed of the charges against him, given the opportunity to tell his side of the story, and presented with his due process rights, the Court reaffirmed Goss.

Case


Procedural Setting

3rd Circuit – U.S. District Court

Facts

Bartram was a tenth grade student at Pennsbury High School in Bucks County, Pennsylvania. On April 24, 1998, Bartram drove himself and three other students to school later than the starting time of school. Bartram and one of his passengers did not go to the attendance office as required when tardy to school because they were afraid of missing the field trip to the Great Adventure Theme Park.

A teacher, Sanchez, who asked them to breathe on him, confronted Bartram and the other student. He stated that they smelled like “pot” / marijuana. Mr. Knight
confirmed Mr. Sanchez’s suspicion and informed Bartram and his friend that they were on suspension and then took them to his office. The plaintiff claimed that they were, “standing out in a field next to some kids that were smoking pot.” Based upon the strong odor of marijuana, Mr. Knight searched the plaintiff and his friend. The plaintiff was informed that he would be suspended for three-days and that depending on the outcome of an informal hearing; he could be suspended for seven more days. Katz also informed Bartram that he would not pursue further disciplinary action if he revealed the names of the people who were smoking pot.

Bartram’s mother called Mr. Knight in order to find an explanation for her son’s suspension. Mr. Knight explained that her son was being suspended because he had, “either been smoking pot or had been around someone who was smoking pot for an extended period of time.” Mr. Knight then tried to schedule an informal hearing and Mrs. Bartram refused to cooperate and instead, demanded a letter advising her of the suspension. Mrs. Bartram took her son for a drug test and the results indicated that he was drug free. That same day, she received a letter from Mr. Knight explaining her son’s three-day suspension, which also scheduled an informal hearing for April 29th.

During the hearing, Bartram admitted to being around students who were smoking but denied that he was smoking. Mr. Katz ultimately decided to allow Bartram to return to school the following day. The Bartram’s alleged that “despite knowing of the drug test and the fact that it was entirely and completely negative, the school district has refused to amend the improper suspension.” Subsequently, Mary Bartram, on behalf of her son, Neal Bartram, brought suit against Pennsbury School District, William Katz / principal, Charles Knight / assistant principal, and Ray Sanchez / teacher in the Third Circuit
District Court after Neal was suspended from school for three-days for smelling like marijuana.

Holding

The defendants’ motion for summary judgment was granted and the case was closed after the District Court found that Bartram was afforded procedural due process as dictated by Goss v. Lopez.

Rationale of Holding

The District Court found that the plaintiff was suspended from school for a total of three days. Thus, the due process requirements under Goss are applicable in this case. Applying these standards, it was clear to the Court that the plaintiff was afforded all of the process to which he was entitled under the circumstances pursuant to the Fourteenth Amendment. Since the negative drug test was not available to the defendants at the time of the suspension, the Court held that it could not have been a factor in the school’s decision to send him home. The District Court found;

"The undisputed facts reveal that at the April 24th meeting, Plaintiff was notified that he was being suspended for violating the school policy against using drugs and was provided the opportunity to explain his side of the facts. Plaintiff was informed by both Mr. Knight and Mr. Katz that the accusation was derived from his late arrival to school, the odor of marijuana emanating from him, and his admission that he stood around people who were smoking marijuana. Mr. Katz also showed Plaintiff a copy of the Student Conduct Policy and the relevant provision in question. Pursuant to the school's distribution of the policy, it can be inferred that Plaintiff possessed a copy of the policy. Indeed, Plaintiff never denies being aware of the policy provision in question. Finally, Mr. Katz asked for, and received, Plaintiff's version of the incident. Plaintiff's mother was then apprised of the situation through telephone conversations and letters. An informal hearing was conducted immediately after Plaintiff's three-day suspension where, again, Plaintiff was provided with notice and an opportunity to be heard."

"Moreover, this suspension procedure was neither negated nor undermined by Plaintiff's subsequent drug test indicating a negative result. As the test was not available to Defendants at the time Plaintiff was suspended, it could not have been
a factor in the school officials' decision to send Plaintiff home, and consequently, cannot give rise to a procedural due process infirmity. Furthermore, procedural due process challenges based on the Pennsylvania Constitution are evaluated under the same standards as under the federal constitution."

"Accordingly, as Plaintiff was afforded adequate notice and an opportunity to be heard, he has failed to meet his burden of showing that Defendants' conduct violated a clearly established constitutional right." (Bartram v. Pennsbury Sch. Dist., 1999 P. 8)

Case

Procedural Setting
3rd Circuit – U.S. District Court

Facts
Brian was a fifteen-year old tenth grade student who relocated sometime in March of 1999 from New Jersey to the Stroudsburg area with his family. On or about April 27, 1999, Brian wrote a note that stated, "There's a Bomb in this School bang bang!!" and left it on a table in his art class. Brian A. contended that the note was written as a joke for two girls in his class and that he forgot to throw it away after class. Brian A.'s teacher found the note and brought it to the attention of the administration and school police. Brian was questioned about the note. Subsequently, Brian admitted to writing the note and to blowing up a shed while being on probation in New Jersey. Brian later stated that they, "just kept badgering me about it, and then I just ended up admitting it." Brian’s father was called and requested to come to the school.

Brian and his father were informed that Brian would be suspended for ten-days for making terroristic threats. A letter was sent to Brian’s parents informing them that Brian was suspended from school for ten-days “for the following reason: bomb threat to
school.” A few days later, Brian A.’s father again met with the school administration and was informed that Brian would not be receiving credit for the tenth grade. The plaintiff’s father then met with the superintendent and was allegedly told that no charge would be brought against Brian A. if he were to withdraw him from school. A letter dated June 2, 1999, advised Brian’s parents that he was recommended for expulsion and that the proceeding would be initiated if he were not voluntarily withdrawn from school. The letter acknowledged that Brian had signed a sworn statement indicating that he had never previously been suspended. The letter also outlined the previous incident that took place in New Jersey.

A letter advised the plaintiff and his family that an expulsion hearing would be held on June 14, 1999. The hearing was held without the plaintiff. Brian A.’s father stated that he did not attend the hearing because his counsel could not be present. Subsequently, Brian was permanently expelled from the Stroudsburg Area High School. Finally, Brian finished tenth grade through home schooling and was then enrolled in the eleventh grade at Bethesda, an alternative school at the District’s cost. Subsequently, Brian A. brought civil rights action on August 4, 1999, in the Third Circuit U.S. District Court against the Stroudsburg Area School District and Robert L. McGraw, superintendent. The plaintiff alleged that various constitutional rights violations arose from his suspension and later expulsion from the Stroudsburg High School.

Holding

The Court dismissed the plaintiff’s claims without prejudice after it was determined by the District Court that Brian was provided the process that was due under Goss.
Rationale of Holding

The Court held that the school officials, with regard to the suspension, provided the process that was due under Goss. Furthermore, the plaintiffs were given ample opportunity to attend the expulsion hearing on June 14, 1999, and failed to attend. Therefore despite the fact that the hearing was not convenient for the plaintiffs, they were afforded full due process.

Summary

Nine cases relevant to this study from the 3rd Circuit were briefed. Specifically, seven from the U.S. District Court and two from the U.S. 3rd Circuit Court of Appeals were examined for relevance. Furthermore, of the nine cases all but one were sided in favor of the Defendants (Everett v. Marcase, 1997).

Case Law (4th Circuit)

Case


Procedural Setting

4th Circuit – U.S. District Court / M.D.

Facts

The facts of the case arose when Russell Carl Baker was paddled on December 6, 1973, for allegedly violating his teacher’s announced rule against throwing kickballs except during designated play periods. Mrs. Baker had previously requested that her son not be corporally punished. However, shortly after the alleged misconduct her son received two licks in the presence of a second teacher and in view of other students.
Mrs. Baker stated that the administration of the corporal punishment violated her parental right to determine disciplinary methods for her child. Russell notified Owen that the circumstances in which the punishment was administered violated his right to procedural due process and that the punishment itself amounted to cruel and unusual punishment. The Baker’s further claimed that the statue, which empowers school officials to, “use reasonable force in the exercise of lawful authority to restrain or correct pupil and to maintain order,” was unconstitutional because it allowed corporal punishment over parental objection and absence of adequate of procedural safeguards. Subsequently, Russell Carl Baker and his mother filed suit against W.C. Owen, Principal of Gibsonville School, stating that Russell’s constitutional rights were violated when his teacher corporally punished him over his mother’s objections and without procedural due process.

**Holding**

The District Court ruled in favor of the defendants after deciding that the plaintiff’s due process rights were not violated.

**Rationale of Holding**

The Court held that the North Carolina general Statutes (115 – 146) were not unconstitutional. They also held that to implement the statue without giving students procedural due process would be a violation of the Fourteenth Amendment. Furthermore, the District Court suggested minimal procedures would satisfy the Fourteenth Amendment, and that nothing is intended to prevent or dissuade the state from further elaboration upon necessary requirements in order to accomplish fairness in administration of schools. Finally, the District Court ruled that based on the facts of the case, the
punishment of Russell Carl Baker was not cruel and unusual within the meaning of the eighth amendment.

The District Court held that Fourteenth Amendment liberty embraces the right of parents to control the means of discipline of their children, but that the state has a countervailing interest in the maintenance of order in the schools. In this particular case the law was sufficient to sustain the right of teachers and school officials to administer reasonable corporal punishment for disciplinary purposes and that teachers and school officials must accord to students a minimal procedural due process in the course of inflicting such punishment. This was based upon the North Carolina General Statue (115-146), which read as follows:

> "Duties of teachers generally; principals and teachers may use reasonable force in exercising lawful authority. -- It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, teachers' aides and assistants when given authority over some part of the school program by the principal or supervising teacher, to maintain good order and discipline in their respective schools; to encourage temperance, morality, industry, and neatness; to promote the health of all pupils, especially of children in the first three grades, by providing frequent periods of recreation, to supervise the play activities during recess, and to encourage wholesome exercises for all children; to teach as thoroughly as they are able all branches which they are required to teach; to provide for singing in the school, and so far as possible to give instruction in the public school music; and to enter actively into the plans of the superintendent for the professional growth of the teachers. (North Carolina Statues, 1975 P. 115)"

Principals, teachers, substitute teachers, voluntary teachers, teachers' aids and assistants and student teachers in the public schools of this State may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order. No county or city board of education or district committee shall promulgate or continue in effect a rule, regulation or bylaw that prohibits the use of such force as is specified in this section. (North Carolina Statues, 1975 P. 146)"

Defendants argued that school officials can corporally punish pupils over parental objections without antecedent procedural safeguards. The Defendants also cited statute as
authority for their position, thus there was no dispute that they had authority under the
courier for their position, thus there was no dispute that they had authority under the
statute to engage in such practice. The basis of the challenge was that the cited statute
allowed the power to administer corporal punishment and suspend pupils without
procedural safeguards. The District Court saw no difference between Baker v. Owens
and Goss and therefore rejected the Defendants' claim.

The District Court agreed with Mrs. Baker that the Fourteenth Amendment's
concept of liberty embraced the right of a parent to determine and choose between means
of discipline of children, but few constitutional rights are absolute. The Court also
rejected Mrs. Baker's suggestion that her right was fundamental, and that the state can
punish her child corporally only if it showed a compelling interest that outweighed her
parental right.

Different consideration came into play with Baker's claim that the statute allowed
corporal punishment without due process. The District Court believed that Russell Carl
Baker had an interest, protected by the concept of liberty in the fourteenth amendment, in
avoiding corporal punishment. The announced possibility of corporal punishment and an
attempt to modify behavior by some other means would insure that the child had clear
notice that certain behavior would subject him to physical punishment. The student need
not be afforded a formal opportunity to present his side to a second school official (who
must be present and be informed of the reason for the punishment.) The official who had
administered the punishment must only provide the child's parent, upon request, a written
explanation of the reasons and the name of the second official who was present.
Therefore, the Court ruled that under the constitution the school had legally sufficient


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authority to administer the corporal punishment without satisfying the stipulations of
Goss.

Case


Procedural Setting

4\textsuperscript{th} Circuit – U.S. District Court

Facts

On November 2, 1976, David Hillman was a student at Gate High School in Gate City, Virginia, when he was charged with being disrespectful to a teacher and when he used abusive language to his fellow students. That same day, the plaintiff's parents received notice of the plaintiff's three-day suspension by the school's principal. Hillman admitted that he had used abusive language to at least one student. The school board notified the parents of a hearing on the recommended suspension to be held on November 30, 1976. Hillman and his parents failed to attend the hearing and subsequently the board upheld the recommendation for suspension.

Due to the fact that the Defendants' were uncertain about whether they had followed their disciplinary code regulations for suspending a student, they started the disciplinary process over by notifying the plaintiff's parents by letter, which was dated January 4, 1977. The letter also advised of a hearing to be held in the principal's office. After the hearing, the principal suspended Hillman for three days subject to appeal. The Hillman's made their due process objections and then withdrew David from school, at which time the suspension was upheld. The plaintiff and his parents appealed to the Scott County School Board and only made due process objections before walking out. After
being notified that the Board had upheld the suspension, the plaintiff’s filed suit in the
court.

**Holding**

The Court found that the plaintiff was afforded due process as required by Goss, by substantially complying with their disciplinary rules of suspension, which went well beyond the constitutional minimum, and satisfied the due process clause. Therefore, the Court denied the relief requested by the plaintiffs.

**Rationale of Holding**

The first issue confronted by the Court was whether the rule enunciated by Goss v. Lopez is applicable to a three-day suspension from school. The Court in Goss held that a ten-day suspension from school is not *de minimis*... and may not be imposed in complete disregard of the Due Process Clause. The issue turned on whether or not a three-day suspension is *de minimis*. Although the Court recognized that expulsion from the educational process for more than a trivial period is a serious event in the life of a suspended child, it also found that a three-day suspension is not *de minimis* and therefore, due process was required in the suspension of Hillman.

Having decided that due process was entitled, the Court determined that the plaintiff and his parents received written notice of the charges, were advised of the hearing, and had the right to a representative. The Plaintiff’s, however, alleged that the due process afforded after January 1977, did not cure the taint, a neutral hearing officer was not assigned, and that the Defendants failed to follow their own rules for suspending a student.
The Court ruled that the Plaintiff did have notice and a hearing in the early stages of the proceedings at which time the Plaintiff admitted to having used abusive language to one student. Courts have indicated that due process in the school setting does not have to adhere to prescribed patterns. Since Hillman admitted to violating a rule, no time elapsed between giving notice and holding and therefore, did not raise procedural problems. No real evidence was presented to indicate that the principal was biased.

Hillman contended that while he was advised of the rules he was charged with having violated, he was never advised of the “facts and circumstances surrounding the violation.” According to Goss, a student must only be advised of the charges against him. Finally, on three occasions, the plaintiffs had the opportunity to find the specifics of the charges but instead chose to walk out of the proceedings.

Case


Procedural Setting

4th Circuit – U.S. District Court / N.C.

Facts

On January 26, 1976, Alvin Long, Wayne Botts, and Pegram attended a basketball game at Northeast Junior High, in Greensboro, North Carolina. Pegram was fourteen years old and in the ninth grade. Mrs. Jean Trantham discovered that her billfold, which contained about $65, had been stolen and informed the Defendant, Nelson / Principal about the theft. She also stated that the Plaintiff and the other two boys had been sitting behind her. She further explained that all three boys had left the gymnasium just before she noticed that her billfold was missing. Pegram and his two friends were
detained at which point Botts and Long handed over $42. Pegram was searched, however, no money was found.

Long and Botts wrote written statements that detailed how Pegram had stolen the money. The billfold was recovered and Nelson continued his interview of Pegram. Pegram’s father was notified by phone and arrived at the school shortly thereafter. Pegram continued to deny his part in the theft and was informed the following day at school that he would be suspended, beginning January 29, for ten school days, and that he would not be allowed on school grounds after 3:15 p.m. for the remainder of the school year. The plaintiff’s parents received a letter from Nelson, dated January 28, 1976, informing them that:

“...your son is suspended from Northeast Junior High School for ten school days, starting on January 29, 1976. He may return to school on Thursday, February 12, 1976. Also, Lawrence is not to be on the Northeast Junior High School grounds except during regular school hours. He may not attend any after school activities. This is to be for the remainder of the 1975 – 76 school year. (Pegram v. Nelson, 1979 P. 1137)”

Pegram’s father met with Nelson after reading the letter in order to discuss the incident. At that meting, Mr. Pegram offered the names of four students who might have had evidence bearing on the incident. After interviewing the students, Nelson contacted Pegram’s father and notified him that the information obtained did not alter his findings.

Holding

The Plaintiffs’ Motion for Summary Judgment was denied after sufficient evidence that Pegram had been afforded his procedural due process and therefore, the Defendants’ motion for summary judgment was granted.
Rationale of Holding

The Supreme Court cited Goss as the leading case on the applicability of due process to student discipline. The Court held that the student had a “legitimate entitlement to a public education.” The Court also found that an informal hearing is sufficient when a student is given a short suspension that does not exceed ten-days.

On the day of the incident, the principal told the Plaintiff of the accusations and gave him an opportunity to respond. Therefore, Pegram was given due process rights that were fully in accord with Goss. The Plaintiff, however, was issued a second penalty. He was not allowed on school grounds after regular school hours for a period of four months.

The Court held that participation in interscholastic sports or extracurricular activities is not, by and in itself a property interest. The Court cited Colorado Seminary v. N.C.A.A., Mitchell v. Louisiana High School Athletic Association, Dallam v. Cumberland Valley School District, Taylor v. Alabama High School Athletic Association, Denis J. O’Connell High School v. Virginia High School League, and Bishop v. Wood, with regard to its decision. Since there was not a property interest, denial to participate in one or several extracurricular activities did not give rise to a right to due process. Therefore, the Plaintiff was not precluded from participating in all extracurricular activities, but only those occurring after school for a period of four months. (Pegram v. Nelson, 1979 Pp. 1139 - 1141)

Case


Procedural Setting

4th Circuit – U.S. District Court
Facts

John Doe was an eight-year old third grader at Bridgewater Elementary School. “John, Jr. had long been a disciplinary problem and had been involved in a series of incidents which were both disruptive and somewhat violent.” (Doe, 1987) Affidavits indicate that he had long been a disciplinary problem, which had caused school officials to consider a transfer to another school until the precipitating occurrence. While Doe’s actions were not life threatening, and his stature was small enough to permit him to be physically restrained, he periodically engaged himself in verbal and physical temper tantrums, which included kicking, scratching, and hitting teachers and students. After a severe incident on January 9, 1986, Doe was suspended for 35 days from school, from January 10 to February 13, 1986 (the next board hearing).

The plaintiff’s mother contacted the superintendent and Doe was reinstated on January 13, 1986. Two days later another disruptive incident occurred and Doe was again suspended. The school board refused to grant a hearing until the next school board hearing. On January 20, 1986, a licensed psychologist determined that Doe suffered from a learning disability. The school stated that diagnosis of Doe would begin on February 3, 1986. After being informed of the diagnosis, Mr. Pellman refused to reinstate John, Jr. and the parents were urged to consider homebound instruction. Subsequently, this action was brought on behalf of a learning disabled child, “John Doe” by his parent, seeking the child’s readmission to school during the pendency of a twenty-nine-day suspension from school for disciplinary problems.

Holding

The Court ruled that by applying the standard of Goss, the plaintiff’s right to a due process hearing had been violated.
Rationale of Holding

On February 4, 1986, the plaintiff filed the instant cause of action seeking a temporary restraining order to force John, Jr.'s readmission to school and to order further procedural due process. In a hearing conducted on February 6, 1986, the Court granted the plaintiff's motion. On February 18, 1986, John Jr. was reinstated at Pleasant Valley Elementary School.

Under Virginia's statutory law schools were allowed to suspend students up to a period of thirty days pending a decision by the school. Furthermore, the law of the Commonwealth of Virginia did not contemplate a hearing within 72 hours, and could in fact be read to mean that suspensions could continue during the pendency of committee hearing and an appeal to the full school board for a period not to exceed 30 days after the committed hearing. It was noted that the complaint indicated that the school officials talked to John Sr. on January 15, 1986, however it was not contended by defendants that the brief encounter constituted a hearing for due process purposes. Thus, applying the standard of Goss, the plaintiff's right to a due process hearing had been violated.

"The plaintiff has due process rights, since Goss v. Lopez, 419 U.S. 565, 42 L. Ed. 2d 725, 95 S. Ct. 729 (1975), indicates that a disciplinary suspension for even a normal child creates more than a de minimis liberty interest for a school child. Under Goss, the plaintiff would be entitled to notice and at least an informal hearing at which he could give his version of the events. See Goss, supra, at 582-84. For even a 10-day suspension, the court stated that in certain cases the school official "may then determine himself to summon the accuser, permit cross-examination, and allow the student to present his own witnesses. In more difficult cases, he may permit counsel." Id. at 584. The Supreme Court also notes that longer suspensions "may require more formal procedures." Id. In this case, the parents of John, Jr. clearly had ample notice of the reasons for the suspension from school officials. When the plaintiff's father picked John, Jr. up from school on January 15, 1986, he spoke with Mr. Dishner. Mr. Doe was told that "John, Jr. was suspended from school until February 13 at which time the School Board would meet to consider the child's return to school." Complaint at p. 4. It then becomes necessary to decide whether this brief meeting constituted a due process
hearing, whether the plaintiff was under a duty to request further due process, and whether the school was under an obligation to furnish the plaintiff with information regarding what further due process remedies were available, in order to decide whether the plaintiff has exhausted his administrative remedies. 

"It is clear that when a student's conduct disrupts the academic atmosphere of the school and endangers fellow students, teachers, or school officials, or damages property, the Supreme Court opinion in *Goss*, at 572, requires that notice of suspension proceedings be sent to the student's parents and that a hearing be held, with the student present, "as soon as practicable." *Id.* at 583. In *Goss*, the Supreme Court affirmed a district court opinion which specified that notice should be usually given within 24 hours and that a hearing should be held within 72 hours. Clearly *Goss* did not contemplate that a due process hearing 29 days later would be adequate. (*Doe v. Rockingham County School Bd.*, 1987 P. 407)"

Under due process considerations, failure on the part of school authorities to afford a hearing is not excused by later proof that the student is guilty of the offense as charged. Thus, the necessity of a prompt hearing is a constitutional prerequisite, as set forth in *Goss*, despite the fact the Virginia's statutory law allowed suspensions to remain in effect for a period of up to 30-days pending decision by a school board.

**Case**


**Procedural Setting**

4th Circuit – U.S. District Court

**Facts**

The facts of this case stemmed from Kimberly Ann Broussard’s refusal to change out of a shirt printed with the words “Drugs Suck” and was subsequently placed on a one-day suspension. Furthermore, Broussard claimed that she was deprived of her right to due process by being suspended summarily, without according her notice or an opportunity to be heard.
The school’s administration found the shirt inappropriate for school due to the word “Suck” and asked the plaintiff if she had another shirt, if she could borrow a shirt, or if she would turn the shirt inside out for the day in which she refused all three options. Broussard’s mother was contacted and she informed the administration that she would have her husband bring a shirt as soon as possible. Five hours later, the plaintiff’s stepfather arrived with another shirt. Mr. Caprio, school administrator, explained in front of the plaintiff’s that Broussard could either change her shirt or go home for the remainder of the day. Mr. Lord, stepfather, had the impression that she was suspended if she did not change the shirt, even if she went home for the remainder of the day.

Later the same day, Mr. Lord contacted the school and inquired if his daughter had been suspended at which time he was informed that she had not been. He replied that Broussard would return to school wearing the “Drugs Suck” shirt. The Principal stated, “in that case she is suspended.” Mrs. Lord said that she would return to school to obtain a suspension notice, which according to both parties occurred. Broussard’s parents followed the chain of command with respect to appeal for suspension and contacted Dr. Carter who stated that he would not reverse the principal’s decision and wrote:

“Clothing containing messages couched in strong language is inappropriate, especially when the language has an overt sexual connotation. Such messages are even more likely to be disruptive when directed at adolescents as opposed to mature adults. (Broussard v. School Bd. of Norfolk, 1992 P. 1503)”

Subsequently, this action was brought by Kimberly Ann Broussard against the School Board of the City of Norfolk based on assertions that school administrators violated her Fourteenth and First Amendment rights.
Holding

The Court found in favor of the Defendants due process claim since the Plaintiff was given notice and opportunity to be heard.

Rationale of Holding

The Plaintiff’s did not appeal to the school board, the next level of appeal, but instead, with the support of the American Civil Liberties Union, filed a civil rights action. The Court ruled that Broussard and her parents had received notice that the shirt she wore to school violated school rules. Furthermore, the District Court cited Goss by stating that, “due process requires that a student facing suspension of ten days or less must receive oral or written notice of the charge against her and an opportunity to present her story. No waiting period between the misconduct and the hearing is required.” Finally, the Court found that prior to her one-day suspension, Broussard received adequate notice of the conduct that the school found in violation of school rules, that Broussard and her father had adequate opportunity to rebut the school administrators’ finding that the shirt was inappropriate attire for school, and the plaintiff rejected the opportunity to avoid suspension either by changing the shirt or by voluntarily going home for the remainder of the day.

Case


Procedural Setting

4th Circuit – Court of Appeals
Facts

In October 1999, Benjamin Ratner, was thirteen-years old and in the eighth grade at Blue Ridge Middle School in Loudoun County, Virginia. On October 8, 1999, a schoolmate told Ratner that she had been suicidal the previous evening, had contemplated killing herself by slitting her wrists, and that she had brought a knife to school in her binder. Ratner took her binder and put it in his locker. Although he did not tell school authorities, he allegedly intended to tell both his and her parents after school. By lunchtime that same day, Roberta Griffith, Assistant Principal, had learned of the knife.

Kellogg, Dean, believed that Ratner acted in the best interest of the girl and that Ratner did not pose a threat to harm anyone with the knife. Nonetheless, Ratner was suspended by Griffith for ten-days for possessing a knife on school grounds in violation of school board policy. Four days later the Principal affirmed the suspension with written notice and two days after that Edgar Hatrick, Superintendent, informed Ratner that he was being suspended indefinitely pending further action by the school board, which ultimately became a suspension for the remainder of the school term which ended February 1, 2000. Ratner’s parents requested and received the hearing before the school district’s Discipline Committee to appeal, but that committee unanimously approved Ratner’s long-term suspension. Subsequently, Ratner v. Loudoun was heard in the Fourth Circuit Court of Appeals in 2001.

Holding

The Court dismissed Ratner’s complaint for failure to state a claim of due process violations.
Rationale of Holding

Ratner’s complaint asserted that his suspension under zero tolerance policy amounted to violations of his Fourteenth Amendment rights. Board policy in such cases began with a presumption that offending students will be expelled but allowed school officials discretion, “to such lesser disciplinary action, including long-term suspension, as may be deemed appropriate.” The Court dismissed Ratner’s complaint for failure to state a claim of due process violations. The District Court also concluded, correctly, that the school officials gave Ratner constitutionally sufficient, even if imperfect, process in the various notices and hearings it accorded him thereby, not only adhering but also reaffirming Goss.

Dissenting/Concurring Opinions

However harsh the result in this case, the federal court was not called upon to judge the wisdom of a zero tolerance policy. Therefore the Court was limited to whether Ratner’s complaint alleged sufficient facts which if proved would show that the implementation of the school’s policy failed to comport with the United States Constitution. Judge Hamilton concurred and wrote the following which is presented in part:

“I write separately to express my compassion for Ratner, his family, and common sense. Each is the victim of good intentions run amuck... There is no doubt that this zero-tolerance/automatic suspension policy...were adopted in large response to the tragic school shootings that have plagued our nation’s schools over the past several years....Here a young man, Ratner, took a binder containing a knife from a suicidal fellow student in an effort to save her life...The facts do not offer even the hint of a suggestion that Ratner ever intended to personally possess the knife or harm anyone with it....Suffice it to say that the degree of Ratner’s violation of school policy does not correlate with the degree of his punishment...But alas, as the opinion for the court explains, this is not a federal constitutional problem. (Ratner v. Loudoun County Pub. Sch., 2001 P. 146)”