



Highlights

Student Safety/Discipline

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State Procedural Due Process Provisions for Out-of-School Suspensions

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Introduction: The Supreme Court's Imprint

Schools have long been required to provide procedural due process (PDP) protections to students who are permanently expelled from school or suspended for **more** than 10 days. However, these protections were not necessarily provided to students being suspended for **less** than 10 days.

SOURCE: The following is summarized with the author's permission from the law review article, *State Laws for Student Suspension Procedures: The Other Progeny of Goss v. Lopez*.¹

This changed when, in its 1975 ruling on *Goss v. Lopez*, the U.S. Supreme Court ruled that students had a right to due process protections under the U.S. Constitution for out-of-school suspensions that were less than 10 days.

These due process protections require:

- Oral or written **notice** of the charges against the student
- If the student denies the charges, an informal **hearing**, i.e., an explanation of the evidence and an opportunity for the student to give his side of the story.

A recent study by Perry Zirkel and Mark Covelle examined state laws in the wake of the *Goss* decision. In addition to the notice and hearing requirements spelled out in *Goss*, Zirkel and Covelle compiled state policies that were not explicitly required by *Goss*, placing them in the following categories:

- Notice rights
- Hearing Rights
- Additional levels
- Other procedural safeguards.

This *ECS Highlights* document summarizes that study.

What do State Policies Look Like After the Goss Decision?

While meeting the minimums set out in *Goss* is required, states are free to add additional protections that go above and beyond those mandated in *Goss*. The Zirkel-Covelle study provides a systematic survey of state laws for what can be called "Goss suspensions" — those of 10 days or less — in terms of their procedural requirements. Entries in the table on the following page differentiate between codifications and expansions of the *Goss* requirements.

Table Summary

Explicit codifications of the *Goss* minimums are relatively infrequent. In the table, those provisions are designated by a **highlighted** entry in the **Notice** and **Hearing** columns. Non-highlighted entries extend the due process requirements beyond those mandated in *Goss*.

Notice: The most common procedural additions to *Goss* are notification to the parent and to the superintendent. Several of these state laws add specifications for the contents, timing and form of this notification.

Hearing and Other Hearing Rights: The most common procedural additions to *Goss* are unconditional opportunity for the student’s side of the story, accompanied in approximately half of these states with a corresponding unqualified school official’s obligation — without the triggering condition of the student denying the charges — to explain the evidence. Less frequently, state laws provide the right to appeal to the superintendent, the board or both.

Additional Levels: The most significant expansion of *Goss* rights includes limiting the application of *Goss* to a substantially lower ceiling than 10 days and adding stronger PDP rights for the remaining period of suspension.

A Note to Readers:

Accurately reflecting diverse policies from all 50 states in a table can lead to simplification of policies, which may mask important nuances that readers may wish to know about. For that reason, readers are encouraged to reference the endnotes immediately following the table. Endnotes are reproduced in their original form from the law article.

State Policies

Highlighted =
Conforms to
Goss
Requirements

	<u>Notice</u>				<u>Hearing</u>		<u>Other Hearing Rights</u>	<u>Add'l Levels</u>	<u>Other Procedural Safeguards</u>
	Student [Goss= O, W]	Parent	Supt.	Board	Explanation of Evidence [Goss= C, U]	Side of Story [Goss= C, U]	Appeal		
	O = Oral W = Written				C = Conditional U = Unconditional + = parents or others		S = Supt. SB = School board	m = minor M = Major	
Alabama ¹									
Alaska ²							SB		
Arizona ³			O ⁴				S ⁵		m ⁶
Arkansas ⁷		W					S, SB ⁸		
California ⁹	O	O, X ¹⁰	O		U+ ¹¹	U+ ¹²	S/SB ¹³	M ¹⁴	
Colorado ¹⁵		O							m ¹⁶
Connecticut ¹⁷	W		W		C ¹⁸	U		m ¹⁹	m ²⁰
Delaware ²¹									
Florida ²²	O, W	O, W ²³	W ²⁴		U	U			m ²⁵
Georgia ²⁶	W ²⁷	W ²⁸			C ²⁹	C ³⁰			m ³¹
Hawaii ³²	O	O, W ³³	W		C+ ³⁴	C+ ³⁵		M ³⁶	m ³⁷
Idaho ³⁸	O			O ³⁹	U ⁴⁰	U ⁴¹		M ⁴²	
Illinois ⁴³		W ⁴⁴		O	U ⁴⁵		SB ⁴⁶		
Indiana ⁴⁷	O	W			C	U			
Iowa ⁴⁸				W ⁴⁹					
Kansas ⁵⁰	O, W ⁵¹	W			U	U			
Kentucky ⁵²	O	W	W		C	U			
Louisiana ⁵³	O	W			U	U	S ⁵⁴		
Maine ⁵⁵									
Maryland ⁵⁶	O ⁵⁷	O ⁵⁸			C ⁵⁹	C+ ⁶⁰			m ⁶¹
Massachusetts ⁶²									m ⁶³
Michigan ⁶⁴									
Minnesota ⁶⁵	O, W ⁶⁶	O ⁶⁷			U	U		m ⁶⁸	m ⁶⁹
Mississippi ⁷⁰									
Missouri ⁷¹	O ⁷²	O ⁷³	O ⁷⁴		C ⁷⁵	U ⁷⁶	S ⁷⁷		m ⁷⁸
Montana ⁷⁹									m ⁸⁰
Nebraska ⁸¹	O, W ⁸²	W			U	U		M ⁸³	m ⁸⁴
Nevada ⁸⁵	O				U	U			

	<u>Notice</u>				<u>Hearing</u>		<u>Other Hearing Rights</u>	<u>Add'l Levels</u>	<u>Other Procedural Safeguards</u>
New Hampshire ⁸⁶									
New Jersey ⁸⁷	W	O ⁸⁸	O	O ⁸⁹	C	U			m ⁹⁰
New Mexico ⁹¹	O	W, W ⁹²			C ⁹³	C			
New York ⁹⁴	W				C	U+ ⁹⁵		M ⁹⁶	
North Carolina ⁹⁷		O ⁹⁸							
North Dakota ⁹⁹									
Ohio ¹⁰⁰	W					U ¹⁰¹	SB ¹⁰²		
Oklahoma ¹⁰³							SB ¹⁰⁴		
Oregon ¹⁰⁵	O	O ¹⁰⁶			U ¹⁰⁷	U	SB ¹⁰⁸		
Pennsylvania ¹⁰⁹	O	W	W		U ¹¹⁰	U		M ¹¹¹	
Rhode Island ¹¹²							SB ¹¹³		m ¹¹⁴
South Carolina ¹¹⁵		W ¹¹⁶					SB ¹¹⁷		
South Dakota ¹¹⁸	O	O	O		U	U	S ¹¹⁹		
Tennessee ¹²⁰	O	W ¹²¹	O		C ¹²²	U+ ¹²³		m ¹²⁴	
Texas ¹²⁵		O ¹²⁶					S ¹²⁷	M ¹²⁸	
Utah ¹²⁹		W ¹³⁰							
Vermont ¹³¹		O ¹³²							
Virginia ¹³³	O	W	W		C	C	S, SB ¹³⁴		
Washington ¹³⁵	O		W		U ¹³⁶	U+ ¹³⁷	S, SB ¹³⁸	m ¹³⁹	m ¹⁴⁰
West Virginia ¹⁴¹	O	O, W ¹⁴²	W+ 143		C	C	SB ¹⁴⁴		
Wisconsin ¹⁴⁵	O	O ¹⁴⁶			C ¹⁴⁷		S	m ¹⁴⁸	
Wyoming ¹⁴⁹	O				U	U			

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Helping State Leaders Shape Education Policy

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

² ALASKA ADMIN. CODE tit. 4, § 06.060 (2009)

³ Except for the implied notice requirement, see infra note 55, and the possible additional rights, see infra notes 56, 57, the relevant state law defers to school boards "in consultation with the teachers and parents of the school district" to "prescribe rules for the discipline, suspension and expulsion of pupils," ARIZ. REV. STAT. ANN. § 15-843(B) (2008). However, the law sets the procedural minimum only for suspensions of more than ten days and merely mandates that the rules be "consistent with the constitutional rights of pupils." Id

⁴ In requiring the superintendent to notify the school board within five days of all suspensions, the legislation implies that the suspending administrator provide notice to the superintendent. ARIZ. REV. STAT. ANN. § 15-843(K)

⁵ Quaere whether the connected requirement that the suspension be for "good cause" implies a right of appeal to the school board. Id. The related requirement for access to specified board proceedings, see infra note 57, does not necessarily add to this arguable right; if the legislature intended that any board proceeding for suspensions be discretionary—in contrast with the explicit right to a board hearing for expulsions—the access right is only conditional, ARIZ. REV. STAT. ANN. § 15-843(G)

⁶ For suspensions and expulsions, the legislation also accords the student, parents, and their legal counsel the right to attend and have access to the minutes or recording of “any executive session pertaining to the proposed disciplinary action.” ARIZ. REV. STAT. ANN. § 15-843(H)

⁷ ARK. CODE ANN. § 6-18-507(f)(1) (2007)

⁸ The Arkansas legislation only allows for appeals to the school board if the superintendent initiates the suspension. Id. § 6-18-507(c)(2).

⁹ CAL. EDUC. CODE § 48911 (West 2009).

¹⁰ In addition to requiring written notice to the parents regarding the suspension decision, at the time of the decision, the suspending administrator must make reasonable efforts to contact the parents in person or by telephone. Id. § 48911(d).

¹¹ The administrator must have an informal conference with not only the student, but also “whenever practicable, [with] the teacher, supervisor, or [referring] school employee.” Id. § 48911(b)

¹² Ibid

¹³ Quaere whether the requirement that the suspending administrator report the suspension—with the reason for the suspension—to the superintendent or board implies a right of appeal to said level. Id. § 48911(e).

¹⁴ California law treats suspensions of six days or more as expulsions, which separately have more formal rights, including, inter alia, written notice and a hearing with right to counsel. Id. §§ 48911(a), 48918.

¹⁵ COLO. REV. STAT. § 22-33-105 (2008)

¹⁶ The Colorado legislation requires, as a prerequisite to the suspended student’s readmission, a meeting between the student, parent, and suspending administrator to discuss the “need to develop a remedial discipline plan for the pupil in an effort to prevent further disciplinary action.” Id. § 22-33-105(3)(b)(II).

¹⁷ CONN. GEN. STAT. § 10-233c (Supp. 2008).

¹⁸ Connecticut law requires providing the student with the reasons for the suspension, which equate more with notice of the charges than an explanation of the evidence. Id. § 10-233c(a).

¹⁹ The state law provides that “no pupil shall be suspended more than ten times or a total of fifty days in one school year, whichever results in fewer days of exclusion, unless such pupil is granted a formal hearing.” Id. Additionally and more significantly, an amendment to said statute, effective July 1, 2008, requires that schools replace out-of-school suspensions—as contrasted with expulsions—with in-school suspensions, except when the administration determines that the student “poses such a danger to persons or property or such a disruption of the educational process” to justify out-of-school suspension. Id. § 10-233c(g). The state education agency, pursuant to the directive in the amendment, has issued guidelines for this determination. CONN. STATE DEP’T OF EDUC., GUIDELINES FOR IN-SCHOOL AND OUT-OF-SCHOOL SUSPENSIONS 1 (2008), available at http://www.sde.ct.gov/sde/lib/sde/pdf/pressroom/In_School_Suspension_Guidance.pdf. Finally and peripherally, a Connecticut regulation requires “prompt referral to a planning and placement team of all children who have been suspended repeatedly.” CONN. AGENCIES REGS. § 10-76d-7 (2008).

²⁰ The state law provides that “no pupil shall be suspended more than ten times or a total of fifty days in one school year, whichever results in fewer days of exclusion, unless such pupil is granted a formal hearing.” Id. § 10-233c(a).

²¹ Delaware does not have relevant legislation or regulations. More specifically, “Delaware has not enacted any statutory or regulatory provisions which either repeat or add to the Goss notice and hearing requirements.” E-mail from Mary L. Cooke, Deputy Att’y Gen., Del., to Perry A. Zirkel, Professor of Educ. and Law, Lehigh Univ. (June 13, 2008) (on file with second author). Previously, the state education department issued non-binding guidelines that recommended oral notice and a written decision that included the charges, evidence, sanction, and right to internal appeal, first to the superintendent, then to the board. WILLIAM B. KEENE, DEL. STATE DEP’T OF PUB. INSTRUCTION, GUIDELINES FOR THE DEVELOPMENT OF DISTRICT POLICIES ON STUDENT RIGHTS AND RESPONSIBILITIES 10–11 (1988), available at http://www.doe.k12.de.us/infosuites/students_family/climate/files/climate_Codes_Conduct_1992.pdf. However, recently the state education department issued its intention, see 12 Del. Reg. Regs. 219 (Aug. 1, 2008), available at <http://regulations.delaware.gov/register/august2008/final/12%20DE%20Reg%20219%2008-01-08.pdf>, to amend title 14, section 605 of the Delaware Administrative Code, which requires school districts to keep local rights and responsibilities policies on file with the state department of education, so as to delete reference to these guidelines, DEL. ADMIN. CODE tit. 14, § 605 (2008), available at <http://regulations.delaware.gov/register/august2008/final/12%20DE%20Reg%20219%2008-01-08.pdf>.

²² FLA. STAT. ANN. § 1006.09(1)(b) (West 2004 & Supp. 2009).

²³ Florida’s legislation requires the suspending administrator to make “a good faith effort to immediately inform a student’s parent by telephone” and to report the suspension and its reason “within 24 hours to the student’s parent by United States mail.” Id.

²⁴ This requirement also applies to school bus suspensions. Id.

²⁵ Florida also requires the principal or the principal’s designee to make a “good faith effort . . . to employ parental assistance or other alternative measures prior to suspension, except in the case of emergency or disruptive conditions which require immediate suspension or in the case of a serious breach of conduct as defined by rules of the district school board.” Id. Additionally, Florida, by regulation, has special provisions for suspension of students who are prosecuted for a felony off school property that has an adverse impact on the educational process. FLA. ADMIN. CODE ANN. r. 6A-1.0956 (2008).

²⁶ GA. CODE ANN. § 20-2-738 (2005). In line with its specific provisions, see *infra* notes 78–79, this statute authorizes the principal or the principal’s designee to suspend the student “consistent with any applicable procedural requirements of the Constitutions of the United States and this state and after considering the use of any appropriate student support services,” GA. CODE ANN. § 20-2-738(e)(1).

²⁷ The written notice and other Goss-plus protections are a requisite step after the teacher’s removal of the student from class. GA. CODE ANN. §§ 20-2-738(b), (c). Arguably, these minimums would seem to implicitly apply when an administrator removes the student from school. See id. § 20-2-738(e)(2).

²⁸ §§ 20-2-738(b), (c).

²⁹ Ibid

³⁰ Ibid

³¹ In addition to the notable right of a teacher to remove a child from the classroom, the Georgia statute also establishes a placement review committee that serves as an intermediate step between the teacher's removal of the student and the exercise of the principal's suspension options. Id. §§ 20-2-738(d), (e).

³² HAW. CODE R. §§ 8-19-6, -8 (Weil 2008).

³³ The rules require the school to provide the parents with initial notice by telephone "if feasible" and, upon completion of the required investigation, written notice. Id. § 8-19-8(d). In addition, the rules require the principal "to attempt to confirm the [written] notice by telephoning the parent." Id. Although unclear whether it repeats the first step or serves as an intermediate step, the rules also require the principal to notify the parents "[u]pon preliminary investigation and findings." Id. § 8-19-8(a).

³⁴ The required elements of the written parental notice include a statement "[t]hat the parent may request a conference with the principal or designee," thus providing the parent with at least an equivalent right. Id. § 8-19-8(d)(4).

³⁵ 86. Id.

³⁶ Hawaii's rules trigger the more formal procedural protections of expulsion upon the accumulation of eleven or more days of suspension. Id. § 8-19-8(c).

³⁷ For the Goss-type notice and hearing for the student, the rules require the principal to request the parents to participate "where the student is unable to understand the seriousness of the charges, the nature of the proceedings, and consequences thereof, or is of such age, intelligence or experience as to make meaningful discussion difficult." Id. § 8-19-8(b). More generally, the rules require counseling of the student in connection with each suspension. Id. § 8-19-6(g).

³⁸ IDAHO CODE ANN. § 33-205 (2008). We acknowledge with appreciation the assistance of attorney Elaine Eberharter-Maki in ascertaining the pertinent state law of Idaho. E-mail from Elaine Eberharter-Maki, Att'y, Eberharter-Maki & Tappen's Boise, Idaho Office, to Perry A. Zirkel, Professor of Educ. and Law, Lehigh Univ. (June 9, 2008) (on file with second author).

³⁹ "The board of trustees [of the school district] shall be notified of any temporary suspensions, the reasons there for, and the response, if any, thereto." § 33-205.

⁴⁰ The required "informal hearing" specifies that the principal must provide the student with the reasons for the suspension, which—corresponding more closely to the charges—do not necessarily equate fully with an explanation of the evidence. Id.

⁴¹ Similarly, the requirement is "the opportunity to challenge [the] reasons." Id.

⁴² At any one of the following applicable limits, the more formal notice and hearing requirements for an expulsion apply: (1) the principal suspends the student for more than five days; (2) the superintendent extends the suspension by an additional ten days; or (3) the school board extends the suspension by an additional five days because the suspended student poses a risk to the health, welfare, or safety of other pupils. Id.

⁴³ ILL. COMP. STAT. § 5/10-22.6(b) (West 2006).

⁴⁴ The notice to the student's parents or guardian must include "a full statement of the reasons for [] suspension and a notice of their right to [school board] review." Id.

⁴⁵ As in Idaho, see *supra* note 91, this right appears to be partial, based on the connected notice-of-reasons requirement, § 5/10-22.6(b).

⁴⁶ If the parents exercise this required appeals opportunity, then they have the right to appear and participate at the school board review. § 5/10-22.6(b).

⁴⁷ IND. CODE ANN. § 20-33-8-18(b) (West 2008)

⁴⁸ IOWA CODE § 282.4(1) (West 1996 & Supp. 2008).

⁴⁹ This procedural requirement is the only one specified in the Iowa legislation and—along with the teacher's, principal's, and superintendent's authorities for suspensions—the requirement is conditioned upon the school board's delegation. Id.

⁵⁰ KAN. STAT. ANN. § 72-8902(b), (c) (2002).

⁵¹ In addition to the immediate oral notice, the legislation requires that written notice, including the reasons for suspension, be given to the student and the student's parent within twenty-four hours. Id. § 72-8902(c).

⁵² KY. REV. STAT. ANN. § 158.150(5), (6) (West 2006 & Supp. 2008).

⁵³ LA. REV. STAT. ANN. § 17:416 (2001 & Supp. 2009).

⁵⁴ Id. § 17:416(C).

⁵⁵ The Maine legislation merely requires "proper investigation of a student's behavior" and "due process proceedings" for student suspensions and expulsions. ME. REV. STAT. ANN. tit. 20-A, § 1001(9) (2008).

⁵⁶ The Maryland legislation only provides, in pertinent part, that "[t]he student or the student's parent or guardian promptly shall be given a conference with the principal and any other appropriate personnel during the suspension period." MD. CODE ANN., EDUC. § 7-305(a)(2) (LexisNexis 2006).

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ The Maryland regulations provide a narrowly circumscribed right to appeal to the State Board of Education. MD. CODE REGS. 13A.01.05.05 (2009).

⁶² The Massachusetts legislation generally requires each school district to have policies that provide "disciplinary proceedings, including procedures assuring due process" and "standards and procedures for suspension and expulsion of students." MASS. GEN. LAWS ANN. ch. 71, § 37H (West 1996).

⁶³ This legislation only specifies procedural prerequisites in cases of student felonies. Id. § 37H1/2.

⁶⁴ Michigan's legislation authorizes the school board and administrators to suspend students for "gross misdemeanor or persistent disobedience," but it does not specify any relevant procedural prerequisites. MICH. COMP. LAWS ANN. § 380.1311(1) (West 2005 & Supp. 2008). Michigan has a separate statute that authorizes teachers to suspend students from a class, subject, or activity. Id. §

380.1309. Although this statute unusually allows such action “for up to 1 full school day,” *id.*, the chart does not include the specified procedural requirements due to the aforementioned exclusion, see *supra* note 17 and accompanying text.

⁶⁵ MINN. STAT. ANN. § 121A.46 (West 2008).

⁶⁶ The written notice, which must be served on the student at or before the time the suspension is to take effect, must include “the grounds for suspension, a brief statement of the facts, a description of the testimony, a readmission plan, and a copy of the [relevant statutory provisions].” *Id.* § 121A.46(3).

⁶⁷ The district must make reasonable efforts to notify parents by telephone as soon as possible and must send the parents a copy of the student’s written notice within forty-eight hours. *Id.*

⁶⁸ For suspensions beyond five days, the suspending administrator must provide the superintendent with a reason for the suspension. *Id.* § 121A.41(10). Moreover, if the suspension, whatever its length, would result in the student missing more than ten cumulative days in a school year, the district must make reasonable efforts to meet with the student and the student’s parent, and with the parent’s permission, conduct a mental health screening of the student. *Id.* § 121A.45(3).

⁶⁹ The readmission plan, which is treated as permissive in this part of the statute—although subsequently seemingly mandatory by implication, see *supra* note 117—“must not obligate a parent to provide a sympathomimetic medication for the parent’s child as a condition of readmission,” § 121A.41(10).

⁷⁰ Mississippi’s legislation requires each school board to adopt a code of student conduct, including “[p]rocedures to be followed for acts requiring discipline, including suspensions and expulsion, which comply with due process requirements.” MISS. CODE ANN. § 37-11-55 (1999 & Supp. 2007).

⁷¹ The Missouri legislation uses the term suspension generically—without any mention of expulsion—for removals for up to 180 days, distinguishing procedurally between those for up to ten days and those for more than ten days only indirectly in terms of the respective authority of principals and superintendents. MO. ANN. STAT. § 167.171 (West 2000 & Supp. 2008). The requirements coded herein are those for removals by the principal, thus suspensions of up to ten days. *Id.*

⁷² *Id.* § 167.171(2).

⁷³ *Id.* § 167.161(1).

⁷⁴ *Id.*

⁷⁵ § 167.171(2).

⁷⁶ *Id.*

⁷⁷ *Id.* § 167.171(1). This right of appeal is a *de facto* result of the requirement that suspensions by the principals—those up to ten days—be “immediately reported to the superintendent who may revoke [them] at any time.” *Id.*

⁷⁸ Additionally, a separate statute provides specific hearing requirements for a pupil who “poses a threat of harm to such pupil or others, as evidenced by the prior conduct of such pupil.” § 167.161(1).

⁷⁹ The specifically relevant provision in the Montana legislation merely requires the school board to “adopt a policy defining the authority and procedure to be used . . . in suspending a pupil.” MONT. CODE ANN. § 20-5-202 (2007); see *id.* §§ 20-4-402, -4-403, -5-202. The only other procedural provision is for the limited situation in which a school does not have a superintendent or principal, whereupon the teacher has the authority to suspend the student, but it must “notify the trustees and the county superintendent immediately of the action.” *Id.* § 20-4-302(5).

⁸⁰ Montana’s regulations require that each school “maintain a record of any disciplinary action that is educationally related [including suspensions], with explanation, taken against the student.” MONT. ADMIN. R. 10.55.910 (2007).

⁸¹ NEB. REV. STAT. § 79-265 (2003).

⁸² The principal must send written notice to the student and the parent within twenty-four hours of the suspension. *Id.*

⁸³ Without further differentiation for suspensions exceeding ten days, the statute provides that suspensions exceeding five days require more formal procedural protections, including the right to a formal hearing with counsel and witnesses. *Id.* § 79-268.

⁸⁴ Prior to a “short-term” suspension, the principal must make “an investigation of the alleged conduct or violation and [determine] that such suspension is necessary to help any student, to further school purposes, or to prevent an interference with school purposes.” *Id.* § 79-265(b)(2). Prior to the end of the suspension, the principal must make “a reasonable effort to hold a conference with the parent or guardian before or at the time the student returns to school.” *Id.* § 79-265(b)(5).

⁸⁵ NEV. REV. STAT. § 392.467(2) (2007).

⁸⁶ The legislation that authorizes student suspensions does not specify procedural prerequisites. N.H. REV. STAT. ANN. § 193:13 (LexisNexis 2006).

⁸⁷ N.J. ADMIN. CODE § 6A:16-7.2 (2008).

⁸⁸ The school must provide this parental notice prior to the end of the school day on which the administrator makes the suspension decision. *Id.* § 6A:16-7.2(a)(3). Additionally, the notice has various required elements, and it must include “[t]he provision(s) of the code of student conduct the student is accused of violating” as well as “[t]he student’s due process rights, pursuant to [the state regulations].” *Id.*

⁸⁹ The chief school administrator must report the suspension to the district board of education at its next regular meeting. *Id.* § 6A:16-7.2(b).

⁹⁰ The chief school administrator must annually report specified discipline information, including the number of suspensions, to both the local and the state board of education. *Id.* § 6A:16-7.1(a).

⁹¹ N.M. CODE R. § 6.11.2.12(D)(2) (Weil 2001).

⁹² The relevant regulation provides: The school shall exert reasonable efforts to inform the student’s parent of the charges against the student and their possible or actual consequence as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the first full day of suspension, the school shall on that day mail a written notice with the required information to the parent’s address of record.

Id.

⁹³ The regulations clarify that the suspending administrator “is not required to divulge the identity of informants, although (s)he should not withhold such information without good cause.” *Id.*

⁹⁴ N.Y. EDUC. LAW § 3214 (McKinney Supp. 2009).

⁹⁵ New York provides the student and parents with the right, upon request, to “an informal conference with the principal at which the pupil and/or person in parental relation shall be authorized to present the pupil’s version of the event and to ask questions of the complaining witnesses.” Id. § 3214(3)(b)(1).

⁹⁶ New York law treats suspensions of six days or more effectively as expulsions, according expelled students the rights, inter alia, of “reasonable notice,” legal representation, and cross-examination. Id. § 3214(3)(c)(1). New York does not have any subsequent, differentiating level for removals of more than ten days.

⁹⁷ N.C. GEN. STAT. § 115C-391(b) (2007).

⁹⁸ The statute clarifies that “[t]he notice [to the parents] shall be given by telephone, telefax, e-mail, or any other method reasonably designed to achieve actual notice.” Id.

⁹⁹ Without specifying any procedural requirements, North Dakota’s statute delegates authority to school boards to develop rules regarding suspensions and expulsions. N.D. CENT. CODE § 15.1-19-09 (Supp. 2007).

¹⁰⁰ OHIO REV. CODE ANN. § 3313.66(A) (West Supp. 2007).

¹⁰¹ The legislation provides students with the opportunity to appear at an informal hearing to “challenge the reason for the intended suspension or otherwise to explain [their] actions.” Id.

¹⁰² Id. § 3313.661(A).

¹⁰³ The Oklahoma legislation requires districts to develop policies, including procedures, for student suspensions, but the only specified procedure is the right of appeal to a district panel. OKLA. STAT. ANN. tit. 70, § 24-101.3 (West 2005 & Supp. 2009).

¹⁰⁴ Districts must create a policy that determines an appeals panel for suspension and expulsions. Id. § 24-101.3(A). The panel may be a committee made up of teachers, district administrators, or both, or the panel may be the district board of education. Id. § 24-101.3(B)(1).

¹⁰⁵ OR. ADMIN. R. 581-021-0065 (2008).

¹⁰⁶ This notice must include “the conditions for reinstatement, and appeal procedures, where applicable.” Id.

¹⁰⁷ Oregon’s regulations require “specification of [the] charges,” which does not appear to equate fully to an explanation of the evidence. Id.

¹⁰⁸ The regulations provide the school board, not the parent, with the right of final review, and this is seemingly only when the “executive officer of the school district or designated representative” makes the suspension decision. Id.

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

¹¹⁰ Pennsylvania’s regulations require providing the student with the reasons for the suspension, which equate more with notice of the charges than an explanation of the evidence. Id. § 12.6(b).

¹¹¹ For suspensions of four to ten days, the regulations require providing an informal conference among the student, the parent, and the principal within the first five days of the suspension. Id. §§ 12.6(b)(1)(iv), 12.8(c). This “hearing” must include the right to question witnesses present and to produce witnesses on the student’s behalf. Id. § 12.8(c). The regulations provide a further, more formal level of hearing for removals of more than ten days. Id. § 12.8(b).

¹¹² Rhode Island’s “safe school” legislation authorizes the school committee, or a school principal as designated by the school committee, to suspend “disruptive” students, but it does not specify the procedural requirements beyond a multistep right of appeal. R.I. GEN. LAWS § 16-2-17(a), (b) (1996). The legislation includes a definition of “disruptive.” Id. § 16-2-17(a).

¹¹³ When the delegated school principal issues the suspension, the statute is not clear whether there is a right to appeal to the board. It may be alternatively argued that the principal and the board for such action are effectively the same or that the specified higher levels imply full exhaustion from the principal to the board. Id. § 16-2-17(b).

¹¹⁴ The Rhode Island legislation provides the successive appellate rights to “the [state] commissioner of elementary and secondary education,” “the [state] board of regents for elementary and secondary education,” and “the family court for the county in which the school is located.” § 16-2-17(b).

¹¹⁵ S.C. CODE ANN. § 59-63-230 (2004).

¹¹⁶ Written notice must include the reasons for the suspension and provide the parents with an opportunity for a meeting with the administrator within three days of the suspension. Id.

¹¹⁷ The aforementioned meeting with the administrator must be exhausted to trigger this right to appeal to “the board of trustees or to its authorized agent.” Id.

¹¹⁸ S.D. CODIFIED LAWS §§ 13-32-4, -4.2 (2004).

¹¹⁹ After stating that school boards “may authorize the summary suspension of pupils by principals of schools for not more than ten school days,” South Dakota’s legislation then appears to give the superintendent, not the parent, the right of review, specifically providing: “Any suspension by a principal shall be immediately reported to the superintendent who may revoke the suspension at any time.” Id. § 13-32-4.2.

¹²⁰ TENN. CODE ANN. § 49-6-3401(a) to (c) (2002 & Supp. 2007).

¹²¹ The required notice to both the parents and the superintendent must include “[t]he cause for the suspension” and “[t]he conditions for readmission, which may include, at the request of either party, a meeting of the parent or guardian, student and principal.” Id. § 49-6-3401(c).

¹²² The required information is limited to “the nature of the student’s misconduct.” Id.

¹²³ As a prerequisite to suspension, the legislation additionally requires the suspending administrator’s affirmative act of questioning the student. Id.

¹²⁴ The legislation provides as follows: “If the suspension is for more than five (5) days, the principal shall develop and implement a plan for improving the behavior which shall be made available for review by the [superintendent] upon request.” Id.

¹²⁵ TEXAS EDUC. CODE ANN. §§ 37.001, 37.005, 37.009 (Vernon 2006). We acknowledge with appreciation the assistance of attorney Christopher Borreca in confirming that Texas legislation focuses its procedural protections on suspensions of more than two days. E-mail from Chris Borreca, Att’y, Houston Office of Thompson & Horton, LLP, to Perry A. Zirkel, Professor of Educ. and Law, Lehigh Univ. (May 28, 2008) (on file with second author).

¹²⁶ Texas’s legislation requires the school board to “address the notification of a student’s parent or guardian of a violation of the student code of conduct committed by the student that results in suspension.” TEXAS EDUC. CODE ANN. § 37.001(a)(6) (Vernon 2006).

¹²⁷ The legislation leaves the right of appeal within the discretion of the district via its policy. Id. § 37.009(a).

¹²⁸ For suspensions of three to ten days, Texas legislation provides: [T]he principal or other appropriate administrator shall schedule a conference among the principal or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference.

Id.

¹²⁹ Utah’s legislation delegates suspension policies to school boards “consistent with due process and other provisions of law,” with the only specifically required procedure being notice to the custodial parent. UTAH CODE ANN. § 53A-11-903 (2006 & Supp. 2008).

¹³⁰ Additionally, the legislation requires notice to the noncustodial parent upon written request from such parent. Id. § 53A-11-903(1)(b)(i).

¹³¹ Vermont legislation simply provides “standard due process procedures for suspension and expulsion of a student.” VT. STAT. ANN. tit. 16, § 1161a(a)(7) (2004). The only exception is the specific requirement that the school’s discipline plan include procedures for “notifying parents of student misconduct.” Id. § 1161a(a)(3).

¹³² § 1161a(a)(3).

¹³³ VA. CODE ANN. § 22.1-277.04 (2006).

¹³⁴ It is not clear whether the school board policy may limit this right, given the following language in the statute: “The decision of the division superintendent or his designee may be appealed to the school board or a committee thereof in accordance with regulations of the school board” Id.

¹³⁵ WASH. ADMIN. CODE §§ 392-400-245, -250 (2007).

¹³⁶ Washington’s regulations require that the notice also include an explanation of “the corrective action or punishment which may be imposed.” Id. § 392-400-250.

¹³⁷ The regulations additionally provide that “[a]ny student, parent, or guardian who is aggrieved by the imposition of [a short-term suspension] shall have the right to an informal conference with the building principal or his or her designee for the purpose of resolving the grievance.” Id. § 392-400-240; see also id. § 392-400-245 (referring to short-term suspensions).

¹³⁸ The student or parent may appeal successively to the principal, the superintendent, and then the school board. § 392-400-240.

¹³⁹ The regulations in one part separate suspensions into those for one day and those for more than one day—presumably two to ten days—with the only distinction appearing to be with regard to the parent’s right to notice and an informal conference. Id. § 392-400-250(2). Yet, the prefatory part of the same regulation seems to provide these rights, by cross-reference, for suspensions of one to ten days generally. See § 392-400-250.

¹⁴⁰ The regulations condition suspensions on “a general rule”: “[N]o student shall be suspended unless another form of corrective action or punishment reasonably calculated to modify [the student’s] conduct has previously been imposed upon the student as a consequence of misconduct of the same nature.” Id. § 392-400-245(2). This requirement has a provision for exceptional circumstances, which includes the school district’s consultation with an ad hoc citizens committee. Id. The regulations also limit the total number of days a student may be suspended based on age: students in kindergarten through grade four may miss no more than ten days per semester or trimester, while students in grades five and above may miss no more than fifteen days per semester or trimester. Id. § 392-400-245(4) to (5). Finally, the regulations expressly permit school boards to establish one or more “student disciplinary boards composed of students, teachers, administrators, or parents, or any combination thereof.” Id. § 392-400-220.

¹⁴¹ W. VA. CODE ANN. § 18A-5-1a(d) (LexisNexis 2007).

¹⁴² The legislation specifically provides that the parent “shall be given telephonic notice, if possible, of this informal hearing, which notice shall briefly state the grounds for suspension.” Id. The legislation also requires that written notice be sent to the parent on the same day the suspension was decided upon “by regular United States mail.” Id.

¹⁴³ The legislation additionally requires that the written notice be provided to “the county superintendent and to the faculty senate of the school.” Id.

¹⁴⁴ Not appearing to distinguish procedurally between suspensions of one to ten days and expulsions or other removals beyond ten consecutive days, the legislation provides for a board hearing with the various associated more formal protections, including the right to counsel. Id. § 18A-5-1a(f). In the case of a suspension, this proceeding is inferably by way of an appeal. Id.

¹⁴⁵ WIS. STAT. ANN. § 120.13(1) (West 2004).

¹⁴⁶ The requirement for parental notice when a teacher removes the student from class suggests that the same requirement exists when a student is suspended from school. Id. § 120.13(1)(a)(4).

¹⁴⁷ The required information is “the reason for the proposed suspension,” which does not equate fully with an explanation of the evidence. Id. § 120.13(1)(b)(3).

¹⁴⁸ The legislation limits suspensions to no more than five days for certain offenses, but it does not specify additional procedural prerequisites until the expulsion stage. Id. § 120.13(1)(b)(2).

¹⁴⁹ WYO. STAT. ANN. § 21-4-305 (2007)