Improving the “School to Success Pipeline”

An Assessment of Georgia’s Public School Disciplinary Policies, Practices and Outcomes And Recommendations for Change

Appendix E
Public School Student Discipline Legal Setting
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PUBLIC SCHOOL STUDENT DISCIPLINE
LEGAL SETTING

The bulk of the statutory law related to public school student discipline is found in Title 20, Chapter 2, Article 16, Part 2 of the Georgia Code.¹ In particular, the General Assembly substantially rewrote the student discipline law when it passed the "Improved Student Learning Environment & Discipline Act of 1999." Some vestiges of the earlier law remain in force and the 1999 legislation has been subject to some amendments.

A. General Requirements/Principles

1. Local Disciplinary Policies

Primary responsibility for student discipline policy development and implementation rests with the local school districts² and the schools, subject to a limited number of state mandates or minimum standards.

a. General Content

The law provides that:

. . . each local board of education shall adopt policies designed to improve the student learning environment by improving student behavior and discipline. These policies shall provide for the development of age-appropriate student codes of conduct containing standards of behavior, a student support process, a progressive discipline process, and a parental involvement process. The State Board of Education shall establish minimum standards for such local board policies. The Department of Education shall make available for utilization by each local board of education model student codes of conduct, a model student support process, a model progressive discipline process, and a model parental involvement process.³

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¹ Except where otherwise indicated, textual references to a "Section" of pertinent Georgia statutory law will be to the most recent provision found in the Official Code of Georgia Annotated, e.g., "Section 20-2-730."
² In a different context, the Supreme Court of Georgia has very recently noted the " … fundamental principle of exclusive local control of general primary and secondary (K-12) public education . . . ." Gwinnett County School Dist. v. Cox, No. S10A1773, 2011 WL 1836092, at *1 (Ga. May 16, 2011).
³ O.C.G.A. § 20-2-735(a) (2009). The mandatory requirement for the development of model codes of conduct apparently supersedes an earlier provision which stated: "The state board shall, upon request of a local school system, produce model codes of behavior and discipline and shall produce guidelines for application and administration of such codes." §20-2-155 (emphasis added).

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The law goes on to outline minimum expectations for district policies in the four areas mentioned in the provision quoted above, i.e., standards of behavior, student support process, progressive discipline process, and parental involvement process. Of particular relevance is the requirement for a "progressive discipline process," which is described as one that is

... designed to create the expectation that the degree of discipline will be in proportion to the severity of the behavior leading to the discipline, that the previous discipline history of the student being disciplined and other relevant factors will be taken into account, and that all due process procedures required by federal and state law will be followed.

Districts are mandated to "... provide for disciplinary action against students who violate student codes of conduct." In addition, districts are directed to provide for parental involvement in developing and updating the codes.

Each district must send a copy of its adopted policies to the Georgia Department of Education ("GaDOE") in order to be eligible for state education funding but the law makes no mention of any substantive review by GaDOE.

b. Types of Conduct Required to Be Addressed

Section 20-2-751.5 requires that each student code of conduct address (in an age appropriate manner) an extensive list of offenses or other activities when they occur during school hours, at school related functions or on the school bus. The offenses listed include, but are not limited to:

(1) Verbal assault, including threatened violence, of teachers, administrators, and other school personnel;
(2) Physical assault or battery of teachers, administrators, and other school personnel;
(3) Disrespectful conduct toward teachers, administrators, and other school personnel, including use of vulgar or profane language;
(4) Verbal assault of other students, including threatened violence or sexual harassment as defined pursuant to Title IX of the Education Amendments of 1972;
(5) Physical assault or battery of other students, including sexual harassment as defined pursuant to Title IX of the Education Amendments of 1972;

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4 Id. § 20-2-735(b)-(e).
5 Id. § 20-2-735(d).
6 Id. § 20-2-736(b).
7 Id. § 20-2-736(c).
8 Id. § 20-2-741.
9 For a limited number of the listed offenses, the code may address activities outside of normal school hours, e.g., defacing school property.
(6) Disrespectful conduct toward other students, including use of vulgar or profane language;

(7) Verbal assault of, physical assault or battery of, and disrespectful conduct, including use of vulgar or profane language, toward persons attending school related functions;

(8) Failure to comply with compulsory attendance as required under Code Section 20-2-690.1;

(9) Willful or malicious damage to real or personal property of the school or to personal property of any person legitimately at the school;

(10) Inciting, advising, or counseling of others to engage in prohibited acts;

(11) Marking, defacing, or destroying school property;

(12) Possession of a weapon, as provided for in Code Section 16-11-127.1;

(13) Unlawful use or possession of illegal drugs or alcohol;

(14) Willful and persistent violation of the student code of conduct;

(15) Bullying as defined by Code Section 20-2-751.4;

(16) Marking, defacing, or destroying the property of another student; and

(17) Falsifying, misrepresenting, omitting, or erroneously reporting information regarding instances of alleged inappropriate behavior by a teacher, administrator, or other school employee toward a student.

In addition, student codes must address specific activities on school buses.\(^{10}\) Concerns about actions involving physical violence, verbal assault and bullying are restated. In addition, student codes of conduct must prohibit students from using electronic equipment on the bus or using mirrors, lasers, flash cameras, or any other lights or reflective devices in a manner that might interfere with the school bus driver's operation of the school bus.

Finally, the law provides that each student code of conduct must contain provisions that address any off-campus behavior of a student which could result in the student being criminally charged with a felony and which makes the student's continued presence at school a potential danger to persons or property at the school or which disrupts the educational process.\(^{11}\)

c. Dissemination of Codes of Conduct

Districts are required to assure that a copy of the student code of conduct is provided to each student at the time of enrollment and to use reasonable efforts to provide a copy to each

\(^{10}\) Id. § 20-2-751.5(b).

\(^{11}\) Id. § 20-2-751.5(c). For a more detailed discussion of this provision, see Part F.3.
parent or guardian. In addition, a copy is to be available at each school and in each classroom.\textsuperscript{12} If a district or school produces a "student handbook," the code of conduct must be included in the handbook or a copy must accompany the handbook.\textsuperscript{13}

2. \textit{Teacher Control of Classroom}

Georgia law emphasizes the authority of the individual classroom teacher to maintain order.

A teacher shall have the authority, consistent with local board policy, to manage his or her classroom, discipline students, and refer a student to the principal or the principal's designee to maintain discipline in the classroom. The principal or the principal's designee shall respond when a student is referred by a teacher by employing appropriate discipline management techniques that are consistent with local board policy.\textsuperscript{14}

The teacher also has broad authority to mandate the removal of a student from the classroom, as discussed in more detail in Part B.1. below.

3. \textit{Preference for Alternative Education Assignment}

The following language appears at several points in the school discipline code: "It is the policy of this state that it is preferable to reassign disruptive students to alternative educational settings rather than to suspend or expel such students from school."\textsuperscript{15}

B. \textbf{Disciplinary Actions}

1. \textit{Removal from Classroom}

The statute provides that teachers are vested with the authority to remove a student from the classroom if the student "repeatedly or substantially interferes" with the teacher's ability to communicate effectively with the rest of class or with the ability of the rest of the class to learn and where the student's behavior is in violation of the student code of conduct. The teacher must have previously filed a disciplinary report (discussed in Part D.1 below) on the student or must determine that such behavior of the student constitutes "... an immediate threat to the safety of the student's classmates or the teacher."\textsuperscript{16} The law goes on to state:

Each school principal shall fully support the authority of every teacher in his or her school to remove a student from the classroom under this Code section. Each school principal shall implement the policies and procedures of the superintendent and local board of

\textsuperscript{12} \textit{Id.} \textsuperscript{a} § 20-2-736(a).
\textsuperscript{13} \textit{Id.} \textsuperscript{a} § 20-2-751.5(e).
\textsuperscript{14} \textit{Id.} \textsuperscript{a} § 20-2-738(a).
\textsuperscript{15} \textit{Id.} §§ 20-2-735(f); 20-2-751.5(d); 20-2-768(c).
\textsuperscript{16} \textit{Id.} \textsuperscript{a} § 20-2-738(b).
education relating to the authority of every teacher to remove a student from the classroom and shall disseminate such policies and procedures to faculty, staff, and parents or guardians of students.\textsuperscript{17}

The decision of a teacher to remove a student from the classroom can trigger a fairly elaborate process. First, the teacher must promptly file with the principal\textsuperscript{18} a brief written report on the incident and the principal must promptly send a copy to the removed student's parents.\textsuperscript{19} An informal conference must then be held involving the principal, the teacher and the student either on the day of removal or at the beginning of the next school day. At this conference, the principal is required to give the student oral or written notice of the grounds for the removal from class and, if the student denies the alleged conduct, the principal is to explain the evidence that supports removal from class and give the student an opportunity to present his or her explanation of the situation.\textsuperscript{20}

Several scenarios can then ensue.

- Scenario One: The principal agrees with the teacher's decision to remove the student and takes appropriate placement and disciplinary action.\textsuperscript{21}

- Scenario Two: The principal decides to return the student to the classroom and the teacher consents to the return. In this case, the student may be returned to the classroom but the principal is authorized to impose additional discipline. Such action may include: (1) placing the student in an alternative education program; (2) imposing out-of-school suspension for not more than ten school days (including any time during which the student was subject to out-of-school suspension after removal from class) or (3) making another disciplinary decision or recommendation consistent with local board policy.\textsuperscript{22}

- Scenario Three: The principal decides that the student should be returned to the classroom but the teacher disagrees and does not consent. In this case, the principal is required promptly to decide on an appropriate interim placement (which cannot be back to the original classroom absent the teacher's consent) while the matter is considered by a "placement review committee."\textsuperscript{23} Each school has a placement review committee composed of two teachers appointed by the faculty and one administrator appointed by the principal.\textsuperscript{24} The committee must

\textsuperscript{17} Id.

\textsuperscript{18} In many of its provisions, the law allows the principal to appoint a designee to act in his/her stead. For convenience, we will not repeat the "or the principal's designee" language in this memo.

\textsuperscript{19} Id. Similarly, the code provisions almost always refer to the parent "or guardians." We will not repeat this phrase.

\textsuperscript{20} Id. § 20-2-738(c).

\textsuperscript{21} This scenario is implicit in the statutory language but not expressly articulated. The statute focuses on what happens if the principal wants to return the student to the classroom.

\textsuperscript{22} Id. §§ 20-2-738(c); 20-2-738(e) (1).

\textsuperscript{23} Id. § 20-2-738(c).

\textsuperscript{24} The teacher withholding consent cannot serve on the placement review committee. The faculty elects an alternate member who would serve under this circumstance or, presumably, if a primary teacher member was otherwise unavailable.
convene and take action within three school days after the classroom teacher has withheld consent to a proposed return of the student. The committee may decide to return the student to the teacher's class upon determining "... that such placement is the best alternative or the only available alternative." In such a case, the student may be returned to the classroom subject to the same ability of the principal to impose disciplinary action as set forth in Scenario Two above.

- Scenario Four: The committee supports the teacher's decision to remove the student and overrides the principal. Under this scenario, the law provides:

If a placement review committee decides not to return a student to a class from which he or she was removed, the principal or the principal's designee shall implement such decision of the placement review committee. In addition, the principal or the principal's designee shall determine an appropriate placement for the student and may take action to discipline the student, in a manner 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, as follows, provided that the placement or disciplinary action is authorized as a response to the alleged violation of the student code of conduct by local board policies adopted pursuant to [this]Code:

(A) Place the student into another appropriate classroom or an alternative education program;

(B) Impose out-of-school suspension for not more than ten school days, including any time during which the student was subject to out-of-school suspension after his or her removal from class ...; or

(C) Make another placement or disciplinary decision or recommendation consistent with local board policy; or

(D) Implement or recommend any appropriate combination of the above and return the student to the class from which he or she was removed upon the completion of any disciplinary or placement action taken pursuant to this paragraph.26

25 Id. § 20-2-738(d).
26 Id. § 20-2-738(e)(2).
The law thus gives strong deference to teachers in removal decision making and makes it difficult to override a teacher's decision in this area. As a possible check on the potential for abuse, however, the law provides:

Any teacher who removes more than two students from his or her total class enrollment in any school year under subsection (b) of Code Section 20-2-738 who are subsequently returned to the class by a placement review committee because such class is the best available alternative may be required to complete professional development to improve classroom management skills, other skills on the identification and remediation of academic and behavioral student needs, or other instructional skills as identified in a plan derived by the principal of the school in consultation with the teacher. 27

2. Specific Disciplinary Mandates

For the most part, Georgia law defers the responsibility for determining the appropriate level of disciplinary response to violations of student codes of conduct to the districts. In a limited number of situations, however, the General Assembly has mandated certain minimum disciplinary responses.

a. Weapon at School

Section 20-2-751.1 requires each district to adopt a policy requiring the expulsion from school for a period of not less than one calendar year of any student who is determined to have brought a weapon to school. For the purpose of this section a "weapon" is defined as a firearm as that term is defined under federal law. 28 The district, however, is authorized to modify such expulsion requirement on a case by case basis and a student violator can be assigned to an alternative education setting. 29

This provision was likely adopted in response to a mandate found in the federal Gun-Free Schools Act of 1994. 30

b. Bullying

Section 20-2-751.4 mandates certain district policies in connection with "bullying." This provision of the law was substantially amended in the 2010 session of the Georgia General Assembly. 31 The definition of the term "bullying" has been substantially broadened to mean:

27 Id. § 20-2-210(f).
28 Id. § 20-2-751(4) (citing 18 U.S.C. § 921)).
29 Id. 20-2-751.1(b) & (c).
31 S.B. 250, 150th Gen. Assem., 2d Reg. Sess. (Ga. 2010) (hereinafter "SB 250"). Subsequent citations to Section 20-2-751.4 will be to that section as amended by the 2010 bill.
...[A]n act which occurs on school property, on school vehicles, at designated school bus stops, or at school related functions or activities, or by use of data or software that is accessed through a computer, computer system, computer network, or other electronic technology of a local school system, that is:

(1) Any willful attempt or threat to inflict injury on another person, when accompanied by an apparent present ability to do so;
(2) Any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm; or
(3) Any intentional written, verbal, or physical act, which a reasonable person would perceive as being intended to threaten, harass, or intimidate, that:

(A) Causes another person substantial physical harm within the meaning of Code Section 16-5-23.1 or visible bodily harm as such term is defined in Code Section 16-5-23.1;
(B) Causes substantial damage to another person's property;
(C) Has the effect of substantially interfering with a student's education;
(D) Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or
(E) Has the effect of substantially disrupting the orderly operation of the school.32

Prior to the 2010 amendment, the law did not include the listing of the locations where bullying may occur and did not specifically make reference to the potential for "cyber-bullying." In addition, the only bullying activities referenced specifically in the statute were the injury and bodily harm provisions contained in subsections (1) and (2) of the provision quoted immediately above.

School districts are mandated to adopt policies, by no later than August 1, 2011, prohibiting bullying by any student upon any other student.33 The prior version of the law required such policies be established only for middle and high schools.

Upon a finding by a hearing officer, panel or tribunal34 that a student in grades six through 12 has committed a third bullying offense in a school year, the student must be assigned to an alternative school. This action was mandated under the law prior to the 2010 amendment. In addition, the school district is now given the authority to reassign any student regardless of grade level who has committed one or more bullying offenses to a school outside the student's attendance area. Furthermore, a school administrator may assign a student regardless of grade level who has committed one or more bullying offenses to another classroom to separate the

32 O.C.G.A. § 20-2-751.4(a).
33 Id. § 20-2-751.4(b)(1).
34 The disciplinary hearing process is discussed at Section C. below.
student from the victim. The district policy must provide for general notice to all students and parents of the prohibition against bullying. In addition the district must notify the parent when a student has been determined to have committed an act of bullying.

The 2010 amendment requires GaDOE to develop a model policy regarding bullying by January 1, 2011. The model policy must include:

(1) A statement prohibiting bullying;

(2) A requirement that any teacher or other school employee who has reliable information that would lead a reasonable person to suspect that someone is a target of bullying shall immediately report it to the school principal;

(3) A requirement that each school have a procedure for the school administration to promptly investigate in a timely manner and determine whether bullying has occurred;

(4) An age-appropriate range of consequences for bullying which shall include, at minimum and without limitation, disciplinary action or counseling as appropriate under the circumstances;

(5) A procedure for a teacher or other school employee, student, parent, guardian, or other person who has control or charge of a student, either anonymously or in such person's name, at such person's option, to report or otherwise provide information on bullying activity;

(6) A requirement that a parent, guardian, or other person who has control or charge of a student who is a target of bullying or student who bullies another shall be notified;

(7) A statement prohibiting retaliation following a report of bullying; and

(8) A procedure for disseminating and publishing such policy.

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35 O.C.G.A. §§ 20-2-751.4(b)(1) & (2).
36 Id. §§ 20-2-751.4(b)(3) & (4).
37 Id. § 20-2-751.4(c). This policy was published by GaDOE in the fall of 2010. See Ga. DEp’T OF EDUC., POLICY FOR PROHIBITING BULLYING, HARASSMENT AND INTIMIDATION (Sept. 9, 2010), available at http://www.doe.k12.ga.us/DMGetDocument.aspx/GaDOE%20Bullying%20Policy.pdf?p=6CC6799F8C1371F67D7FD6A93F3EB1530C42FA71B560D45A5EF719CD34428842&Type=D.
The law also requires GaDOE to post on its website recommended sources of anti-bullying training and materials. Finally, the new law provides immunity to civil liability for any person who reports an incident of bullying in good faith.

c. Physical Violence

Georgia law also mandates that the districts adopt specific discipline policies for students committing acts of physical violence against a teacher, school bus driver, or other school official or employee. In this provision the term "physical violence" is defined to establish two categories, i.e., (1) intentionally making physical contact of an insulting or provoking nature with the person of another; or (2) intentionally making physical contact which causes physical harm to another unless the student can make a valid self defense claim.

The law requires that a student accused of either category of physical violence must be suspended pending a disciplinary hearing. If a student is found to have committed Category 1 physical violence then the student may be disciplined by expulsion, long-term suspension, or short-term suspension.

If a student is found to have committed Category 2 physical violence, then the student must be expelled from the public school system for the remainder of that student's eligibility to attend public school. The district may, but is not required to, allow the student to attend an alternative education program for the period of expulsion. If the student is in kindergarten through eighth grade at the time of the offense, the district may allow the student to return to public school for the ninth through twelfth grade if the tribunal holding the hearing so recommends.

Furthermore any student who is found to have committed Category 2 physical violence against a teacher, school bus driver, school official, or school employee must be referred to juvenile court with a request for a petition alleging delinquent behavior.

C. Procedural Due Process

The law requires each district to provide certain minimum procedural protections to students subject to disciplinary action. In particular a disciplinary hearing must be held before a
disciplinary hearing officer, panel or tribunal when the principal recommends expulsion or a suspension of greater than 10 days.

1. **Notice & Hearing**

The disciplinary hearing process is required to afford the student with basic constitutional due process. Specifically, the tribunal must provide reasonable notice of the hearing, including a statement of the time, place and nature of the hearing, a short and plain statement of the matters asserted, a statement of the right of all parties to present evidence and to be represented by legal counsel. The hearing is to be held within 10 school days of the start of the suspension, absent agreement by the school and the parents to an extension. At the hearing, all parties are to be afforded an opportunity to present and respond to evidence and to examine and cross-examine witnesses on all unresolved issues. A verbatim written or recorded transcript of the hearing is to be made available to all parties.

2. **Decision**

After receiving all evidence at the hearing, the tribunal is required to render its decision, which decision must be based solely on the evidence received at the hearing. The decision must be in writing and given to all parties within ten days of the close of the record. The tribunal is authorized to determine what, if any, disciplinary action shall be taken. Such action may include, but is not limited to, expulsion, long-term suspension, or short-term suspension. Any action taken by the tribunal is subject to modification by the local school board on appeal as discussed immediately below.

3. **Appeal to District Board**

Any decision by the tribunal may be appealed to the local district board of education by filing a written notice of appeal within twenty days from the date the decision is rendered. Any disciplinary action imposed by the tribunal may be suspended by the school superintendent pending the outcome of the appeal. The local board of education is then required to review the record and render a decision in writing. The decision is to be based solely on the record and given to all parties within ten days (excluding weekends and holidays) from the date the local

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43 The law gives districts broad discretion to adopt rules governing the manner of selecting hearing officers, panels, or tribunals of school officials to impose suspensions or expulsions. O.C.G.A. § 20-2-752. In this memorandum, for convenience, we will refer to these options collectively as the "tribunal."

44 Id. § 20-2-753. This statutory provision also mandates a hearing in the case of an alleged assault and battery upon a teacher, or other school official or employee "if such teacher or other school official so requests." This part of the provision may have been rendered largely irrelevant since Section 20-2-751.6 mandates a disciplinary hearing if a student is accused of physical violence.

45 Id. § 20-2-754(b)(1).

46 Id. § 20-2-754(b)(2).

47 Id. § 20-2-754(b)(3). In March, 2011, a panel of the Court of Appeals of Georgia ruled that, while Code Section 20-2-1160(a) provides that school boards have the "power to summon witnesses," the law contains no specific enforcement mechanism. Accordingly attendance at tribunal hearings by witnesses who have been served with a school board subpoena is not mandatory. McIntosh v. Gordy, 2011 GA. APP. LEXIS 196 (March 15, 2011).

48 Id. § 20-2-754(b)(5).

49 Id. § 20-2-755.

50 Id. § 20-2-754(c).
board of education receives the notice of appeal. The board may take any action it determines appropriate, and any decision of the board shall be final. All parties have the right to be represented by legal counsel at any such appeal and during all subsequent proceedings.

4. **Appeal to State Board of Education**

The final decision of the local district Board may be further appealed to the State Board of Education pursuant to Section 20-2-1160. The scope of this review is quite limited and students rarely prevail. If the decision at the District level is supported by "any evidence," the State Board will uphold the decision and will not independently reweigh the evidence. The appellate review is limited to the facts presented in the action below and the State Board will not allow new evidence to be relied upon in the appeal. In addition, the State Board may only consider legal issues (such as constitutional claims) raised initially in the proceedings below. Finally the State Board takes the position that it does not have the power to modify the level of disciplinary action imposed by a District.

D. **Special Rules for Students with Disabilities**

1. **General**

The federal Individuals with Disabilities Education Act ("IDEA"), imposes certain limitations on the imposition of school disciplinary actions on a student who is a "child with a disability." These IDEA requirements are implemented in Georgia pursuant to GaDOE Rule 160-4-7-.10.

In summary, each student who is a child with a disability ("Special Education Student") is required to have an "individualized education program" ("IEP"). The IEP is a written statement that, among other things, describes the child's disability, establishes goals for the child's education, and lists the special education and related services to be provided to the child. GaDOE Rule 160-4-7-.06(1). Unless the IEP provides specifically otherwise, a Special Education Student is subject to the student code of conduct and may be disciplined in accordance with the terms of the code subject to the limitations discussed below.

2. **Manifestation Determination**

A Special Education Student may be removed from his/her current placement and be assigned to an alternative education setting or be suspended for up to 10 days for a violation of the code of conduct. If the school, however, seeks to remove the student from a current

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51 Id. § 20-2-754(a).
53 The term "child with a disability" is defined as a child (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services. 22 U.S.C. § 1401(3)(A). At the discretion of the state and the local school district the term may also include a child between the ages of three and nine who is experiencing certain developmental delays. Id. § 1401(3)(B).
54 GaDOE Rule 160-4-7-.10(1)(b).
55 Id. 160-4-7-.10(2)(b).
placement for more than 10 consecutive days (or if the student has been removed for multiple similar actions for periods that cumulatively exceed 10 days), this action is considered a "change of placement."\(^{56}\)

Within 10 days of any decision by a school to make such a change of placement, the school, the student's parents, and appropriate members of the student's IEP team are required to make a "manifestation determination." Based on all available relevant information, the group is to determine if the conduct of the Special Education Student triggering the proposed change in placement was (a) caused by or had a direct and substantial relation to the child's disability or (b) was a direct result of the school's failure to implement the IEP.\(^{57}\)

If the group determines that the student's behavior was a manifestation of his/her disability, then the IEP team is required to conduct a "functional behavioral assessment" (if one has not already been done) and develop and implement a "behavioral intervention plan" for the child. If a behavioral intervention plan is already in place, the IEP team is required to review and modify it as appropriate. Following a determination that the conduct in question was a manifestation of the child's disability, no change of placement can be made unless the school and the parents agree to a change as part of a modification to the behavioral intervention plan (subject to the "special circumstances" discussed below).\(^{58}\)

If the school/parents/IEP team determines that the conduct was not a manifestation of the student's disability, then the student may be subject to any disciplinary action that may be properly imposed under the school code of conduct. The student, however, is entitled to continue to receive educational services so as to allow the student to continue participating in the general educational curriculum and to progress toward meeting the goals in the IEP. In addition, the student may receive functional behavioral assessment and intervention services designed to avoid a recurrence of the conduct giving rise to discipline.\(^{59}\)

3. **Special Circumstances**

For certain misconduct involving weapons possession, drug possession, use, or sale, or infliction of serious bodily harm, a Special Education Student may be removed to an interim alternative education setting for a period of not more than 45 school days without regard to whether the conduct was a manifestation of the student's disability.\(^{60}\)

4. **Due Process**

The GaDOE rules provide that a parent must be provided with notice of the decision to effect a removal of a Special Education Student that constitutes a change of placement on the day that such a decision is made. The notice must include detailed information concerning the procedural "safeguards" related to such actions.\(^{61}\)

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\(^{56}\) Id. 160-4-7-.10(12).

\(^{57}\) Id. 160-4-7-.10(3).

\(^{58}\) Id. 160-4-7-.10(4).

\(^{59}\) Id. 160-4-7-.10(2)(e).

\(^{60}\) Id. 160-4-7-.10(5).

\(^{61}\) Id. 160-4-7-.10(6)(a); see also id. 160-4-7-.09.
A parent of a Special Education Student has the right to appeal a placement determination or the outcome of a manifestation determination by seeking a due process hearing before an independent administrative law judge or hearing officer ("ALJ"). In addition, the school may appeal the result of a manifestation determination if it believes maintaining the student's current placement "… is substantially likely to result in injury to the child or others …."\(^\text{62}\)

The hearing will be held on an expedited basis.\(^\text{63}\) The ALJ, after hearing all the evidence, may return the child to the original placement if the ALJ finds a violation of GaDOE rules or finds that the conduct was a manifestation of the student's disability. Alternatively, the ALJ may order a change in placement to an alternative educational setting upon finding that maintaining the current placement is substantially likely to result in harm to the child or others.\(^\text{64}\)

A final decision of an ALJ may be challenged by any aggrieved party by the filing of a civil action in any state court of competent jurisdiction or in a federal district court.\(^\text{65}\)

E. Reporting Requirements

The law imposes a number of reporting obligations. These reports may be required to go to parents, to principals, or to local law enforcement officials. In addition, the law imposes a duty on districts to report certain disciplinary data to GaDOE and upon GaDOE to report on student disciplinary trends to the General Assembly.

1. Code Violations/Removal Actions

District policies must require that a teacher make a prompt (within one day) written report to the principal when the teacher has knowledge that a student has exhibited behavior that repeatedly or substantially interferes with the teacher's ability to communicate effectively with the students in his or her class or with the ability of such student's classmates to learn, when such behavior is in violation of the student code of conduct. Within one day after receiving such a report the principal must transmit a copy to the parents together with information as to how the parent can contact the principal.\(^\text{66}\)

If student support services are utilized or disciplinary action is taken in connection with such reported code violations, the principal must give written notification to the parent and to the teacher within one day after such action is taken. Again contact information for the principal must be provided.\(^\text{67}\)

In addition, as discussed in Part B.1. above, a teacher who removes a student from the classroom must submit a report to the principal who must pass the report on to the parents.

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\(^{62}\) Id. 160-4-7-.10(8)(a).
\(^{63}\) Id. 160-4-7-.10(8)(d).
\(^{64}\) Id. 160-4-7-.10(8)(b).
\(^{65}\) Id. 160-4-7-.12(3)(s).
\(^{66}\) O.C.G.A. § 20-2-737(a).
\(^{67}\) Id. § 20-2-737(b).
2. **Chronic Disciplinary Problem Student**

Anytime a teacher or a principal identifies a student as a "chronic disciplinary problem student," the principal is required to give notice of this determination to the parents.\(^\text{68}\) A chronic disciplinary problem student is defined as a student " ... who exhibits a pattern of behavioral characteristics which interfere with the learning process of students around him or her and which are likely to recur."\(^\text{69}\) The principal is also required to invite the parents to observe the student in class and to attend a conference designed to develop a disciplinary and behavioral correction plan.

See Part E.5. below for further discussion on the consequences of being identified as a chronic disciplinary problem student.

3. **Reports to Law Enforcement Officials**

Section 20-2-756(a) grants broad discretionary authority to a school administration, disciplinary hearing officer, panel, tribunal or the local district to report "any alleged criminal activity by a student" to the appropriate law enforcement agency or office to determine if criminal charges or delinquency proceeding should be initiated.\(^\text{70}\)

In addition to this discretionary power, Section 20-2-1184 imposes a *mandatory duty* on any teacher or other person employed at any public elementary or secondary school\(^\text{71}\) to report to the principal certain listed acts if the teacher or other employee "has reasonable cause to believe that a student has committed such act upon school property or at any school function ... ." If the principal has reasonable cause to believe that the report is valid, the principal is required to make an oral report immediately by telephone or otherwise to the appropriate school system superintendent and to the appropriate police authority and district attorney.\(^\text{72}\)

The acts that trigger the mandatory reporting obligation under this statutory provision include:

(a) Code Section 16-5-21, relating to aggravated assault if a firearm is involved;

(b) Code Section 16-5-24, relating to aggravated battery;

(c) Chapter 6 of Title 16, relating to sexual offenses;

(d) Code Section 16-11-127, relating to carrying deadly weapons at public gatherings;

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\(^{68}\) *Id.* § 20-2-765.

\(^{69}\) *Id.* § 20-2-764(1).

\(^{70}\) Individuals making any such report are granted broad immunity from any action for malicious prosecution, malicious abuse of process, or malicious use of process. *Id.* § 20-2-756(b).

\(^{71}\) This duty also applies to teachers and employees at private schools and to any dean or public safety officer employed by a college or university.

\(^{72}\) *Id.* § 20-2-1184(b).
(e) Code Section 16-11-127.1, relating to carrying weapons at school functions or on school property or within school safety zones;

(f) Code Section 16-11-132, relating to the illegal possession of a pistol or revolver by a person under 18 years of age; or

(g) Code Section 16-13-30, relating to possession and other activities regarding marijuana and controlled substances.

Persons who, in good faith, report conduct pursuant to this provision or participate in judicial or other proceedings arising from the report are granted broad immunity from civil or criminal prosecutions. On the other hand, knowing and willful failure to make a required report is a misdemeanor.

4. *Reports To Schools from Law Enforcement*

Section 15-11-80 provides:

Within 30 days of any proceeding in which a child is adjudicated delinquent for a second or subsequent time or any adjudicatory proceeding involving a designated felony, the court shall provide written notice to the school superintendent or his or her designee of the school in which such child is enrolled or, if the information is known, of the school in which such child plans to be enrolled at a future date. Such notice shall include the specific delinquent act or designated felony act that such child committed.

Such reports can trigger school disciplinary action for off-campus behavior as contemplated by Section 20-2-751.5(c) of the Georgia Code (as discussed in Part A.1.b. above). See the discussion at Part E.3. below as to the further implications for students who are the subject of such a notification.

5. *Reports on Annual Disciplinary Actions*

Section 20-2-740 requires that each district report to the GaDOE each year the number of various types of disciplinary actions taken. The data are to be disaggregated based upon age/grade level, gender, race and eligibility for free or reduced lunch and are to be available for each school in the district. GaDOE is required to review the data and report annually to the General Assembly on trends.

Section 20-2-751.1 was amended in 2010 to add a requirement that school districts report annually regarding disciplinary and placement actions regarding any student determined to have brought a weapon to school. The type of weapon involved and the type of discipline/placement must be reported and shall be reported for each school. The data are to be disaggregated based

73 Id. § 20-2-1184(c).
74 Id. § 20-2-1184(d).
75 This term is defined at Section 15-11-63(2).
upon age/grade level, gender, race, and special education status. The data required by this new 
section may be included in the report required by Section 20-2-740 discussed above.76

F. Additional Provisions

1. Corporal Punishment

Georgia law leaves to each district the discretion to impose corporal punishment as an element of school discipline.77 The administration of corporal punishment is subject to the following limitations:

(1) The corporal punishment shall not be excessive or unduly severe;

(2) Corporal punishment shall never be used as a first line of punishment for misbehavior unless the pupil was informed beforehand that specific misbehavior could occasion its use; provided, however, that corporal punishment may be employed as a first line of punishment for those acts of misconduct which are so antisocial or disruptive in nature as to shock the conscience;

(3) Corporal punishment must be administered in the presence of a principal or assistant principal, or the designee of the principal or assistant principal, employed by the board of education authorizing such punishment, and the other principal or assistant principal, or the designee of the principal or assistant principal, must be informed beforehand and in the presence of the pupil of the reason for the punishment;

(4) The principal or teacher who administered corporal punishment must provide the child's parent, upon request, a written explanation of the reasons for the punishment and the name of the principal or assistant principal, or designee of the principal or assistant principal, who was present; provided, however, that such an explanation shall not be used as evidence in any subsequent civil action brought as a result of the corporal punishment; and

(5) Corporal punishment shall not be administered to a child whose parents or legal guardian has upon the day of enrollment of the pupil filed with the principal of the school a statement from a medical doctor licensed in Georgia

stating that it is detrimental to the child's mental or emotional stability.\textsuperscript{78}

Principals or teachers who administer corporal punishment in accordance with district rules are immune from civil liability or criminal sanctions if the corporal punishment is administered in good faith and is not excessive or unduly severe.\textsuperscript{79}

2. \textit{Disrupting Public School}

Prior to May 27, 2010, Section 20-2-1181 made it unlawful "… for any person to disrupt or interfere with the operation of any public school, public school bus, or public school bus stop … ." A violation of this provision was punishable as a misdemeanor of a high and aggravated nature. Some have argued that this provision has been used inappropriately by school officials to criminalize relatively minor school place misconduct.

The disruption statute was amended in 2010 to add an "intent" requirement. The law now makes it unlawful for "any person to \textit{knowingly and intentionally or recklessly} disrupt or interfere with the operation of any public school, public school bus, or public school bus stop."\textsuperscript{80}

3. \textit{Expulsion or Suspension for Felonies}

Section 20-2-768(a) states:

Each local board of education is authorized to refuse to readmit or enroll any student who has been suspended or expelled for being convicted of, being adjudicated to have committed, being indicted for, or having information filed for the commission of any felony or any delinquent act under Code Section 15-11-28 which would be a felony if committed by an adult. If refused readmission or enrollment, the student or the student's parent or legal guardian has the right to request a hearing pursuant to the procedures provided for in Code Section 20-2-754.

On its face, the plain language of the statute seems to deal only with the proposed readmission or new enrollment of a student that has \textit{previously} been suspended or expelled. We are advised by practitioners that some districts are interpreting this provision as providing authority for initial suspensions. In any event, the language at least implies that a prior suspension or expulsion could be based not only upon conviction or adjudication but also solely upon having an indictment issued or information filed, i.e., pre-conviction.

The statute does provide for a disciplinary hearing (Part C above) but it is not entirely clear that the fundamental decision to deny admission is subject to review. Subsection (b) of this provision states that, if a student is denied enrollment, a tribunal "shall be authorized to place a student denied enrollment … in an alternative educational system as appropriate and in the best

\textsuperscript{78} \textit{Id.} § 20-2-731(1)-(5).
\textsuperscript{79} \textit{Id.} § 20-2-732.
\textsuperscript{80} SB 250, \textit{codified at} O.C.G.A. § 20-2-1181(emphasis added).
interest of the student and the education of other students within the school system.“ 81 Thus, it is not clear if the tribunal could override the district's decision and find that the student should be enrolled in a "regular" school.

School districts also rely upon Section 20-2-751.5(c) when imposing suspension or expulsion upon students for felonious conduct. This section states:

Each student code of conduct shall also contain provisions that address any off-campus behavior of a student which could result in the student being criminally charged with a felony and which makes the student’s continued presence at school a potential danger to persons or property at the school or which disrupts the educational process.

The statute, thus, requires two separate conditions to be met prior to imposing a suspension or expulsion: (i) conduct which could result in the student being criminally charged with a felony and (ii) a nexus between the conduct and the school system. With respect to the first requirement, because those in juvenile court are not “criminally charged,” the language would seem to indicate that the statute only applies to students who are eligible for trial in the adult criminal system. With respect to the second requirement, school systems arguably should be required to present evidence at a due process hearing demonstrating the relationship between the off-campus conduct and a disruption to the educational environment.

An experienced juvenile justice practitioner has asserted that many school systems have expanded the scope of the statutory language in several ways, for example by eliminating the requirement that the off-campus conduct be felonious. 82

4. "Full Faith and Credit" to Disciplinary Orders from Other Schools

Georgia law authorizes (but does not require) districts to honor disciplinary orders issued by any public or private school in Georgia or any public school outside of Georgia which imposes short-term suspension, long-term suspension, or expulsion on a student enrolled or seeking to enroll in a Georgia public school. 83 Although the language of the law could be more clear, it appears that the enrolling school can either refuse to enroll the student (presumably until the term of any prior disciplinary action has expired) or, if the student had already enrolled, suspend or expel the student for a term equal to the unexpired term of the other school's disciplinary action. In either case, the enrolling school must determine that the student behavior in the prior school was an offense that would have triggered suspension or expulsion under the enrolling school's code of conduct.

81 Id. § 20-2-768(b).
82 See e-mail from Randee Waldman, Esq., Director, Barton Juvenile Defender Clinic, Emory University School of Law, to Robert Rhodes, Director of Legal Affairs, Georgia Appleseed (May 31, 2010)(on file at the offices of Georgia Appleseed).
83 O.C.G.A. § 20-2-751.2.
The law goes on to allow an enrolling school to ask the schools that a student has previously attended whether or not a disciplinary order has been issued for the student. If one has been issued and is currently in force, Georgia public and private schools are required to send a certified copy to the enrolling school.84

If any school administrator determines from the information obtained pursuant to the enrollment process, or otherwise, that a student has been convicted of or has been adjudicated to have committed an offense which is a designated felony act under Section 15-11-63, such administrator is required to so inform all teachers and other school personnel to whom the student is assigned. Such teachers and other certificated professional personnel as the administrator deems appropriate may review the information in the student's file that has been received from other schools or from the juvenile courts or superior courts pursuant to this Code section. Such information is required to be kept confidential.85

5. Chronic Disciplinary Problem Student–Return from Suspension/Expulsion

Section 20-2-766 provides that, before any chronic disciplinary problem student (See Part D.2. above) is permitted to return from an expulsion or suspension, the school to which the student is to be readmitted shall request at least one parent or guardian to schedule and attend a conference with the principal to devise a disciplinary and behavioral correction plan. Failure of the parent or guardian to attend does not preclude the student from being readmitted to the school. At the discretion of the principal, a teacher, counselor, or other person may attend the conference.

6. State Training and Support
   a. Conflict Management/Diversity Training

   Section 20-2-739 requires that GaDOE "… shall provide training programs in conflict management and resolution and in cultural diversity for voluntary implementation by local boards of education for school employees, parents and guardians, and students."

   b. School Climate Management Program

   Section 20-2-155 provides that GaDOE is to establish a "state-wide school climate management program" designed to assist local schools and systems requesting assistance in developing school climate improvement and management processes. Such projects are to be designed to optimize local resources through voluntary community, student, teacher, administrator, and other school personnel participation. These processes are also to be designed for, but will not be limited to, promoting positive gains in student achievement scores, student and teacher morale, community support, and student and teacher attendance, while decreasing student suspensions, expulsions, dropouts, and other negative aspects of the total school environment. GaDOE, upon request of a local school system, is authorized to provide the necessary on-site technical assistance to local schools and systems and to offer other assistance

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84 Id. § 20-2-751.2(c).
85 Id. § 20-2-751.2(d).
through regional and state-wide conferences and workshops, printed material, and such other assistance as may be deemed appropriate.