



REPRESENTING STUDENTS IN SCHOOL TRIBUNALS IN GEORGIA ATTORNEY TRAINING MANUAL



Second Edition, March 2013

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INTRODUCTION

The importance of education to success in modern American life cannot be understated. A student who is removed from school as a result of disciplinary action is not getting the education necessary to develop the skills and experiences required to prepare for an increasingly competitive workforce or to adjust to the complex social structures we all confront in adulthood. When a child is subject to a school disciplinary action, it is critical that the student's parents be involved, but in many cases it is also important that the student have access to an attorney familiar with school discipline matters to ensure that the student's rights are respected, that the disciplinary process is carried out in a manner consistent with the requirements of the law, and that the disciplinary action is fair.

Georgia Appleseed, founded in 2005, is a non-partisan not-for-profit justice center dedicated to law that serves the public interest. Its Young Professionals Council (YPC) encourages younger lawyers and other professionals to engage in pro bono activity that will help level the playing field for Georgians who often do not have a voice to effect systemic change.

In 2012, the YPC decided to focus on the due process concerns in school tribunals as its signature project.

The mission of the YPC School Tribunal Project is to provide resources and training to expand the pool of lawyers available to represent K-12 public school students in disciplinary hearings. The involvement of advocates for students who understand the purposes of the disciplinary process and who are well versed in practice and procedures in this forum will benefit both the affected students and the school system.

Making a Difference for School Tribunal Clients

This *Representing Students in School Tribunals in Georgia Attorney Training Manual* has been created to provide attorneys who are not experienced education lawyers with an understanding of the laws and procedures involved in a Georgia school tribunal hearing. It provides tools to navigate pro bono attorneys through the process of representing a student throughout the tribunal process.

This manual is presented as a public service to pro bono attorneys and is intended for educational purposes only. It is presented in loose-leaf format to accommodate future updates and addenda. The forms included are for illustrative purposes only; users of the manual must seek current forms from the appropriate court or agency, where applicable.

A supplemental tool available for school tribunal clients and attorneys is the user friendly, information manual, *When My Child is Disciplined at School: A Guide for Families*, that covers such topics as a parent's first response to school discipline, meeting with the school and challenging a school discipline decision. **This resource in English and in Spanish is available at: <http://www.gaappleseed.org/publications/>.**

We extend our sincerest appreciation to our School Tribunals Project volunteer practitioners and to the many legal volunteers who have helped to bring this Manual to fruition.

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We would like to thank the following individuals and organizations for their participation and support of this project.

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CHAPTER 1 EFFECTIVE CLIENT REPRESENTATION

A lawyer is a representative of clients, an officer of the legal system, and a citizen having special responsibility for the quality of justice. As a representative of clients, a lawyer serves as an advisor, advocate, negotiator, intermediary, and evaluator. As an advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As an advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As a negotiator, a lawyer seeks to produce advantageous results for the client while staying consistent with the requirements of honest dealing with others. As an intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client. As an evaluator, a lawyer examines a client's legal affairs and reports about them to the client or to others. As a citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, and employ that knowledge to reform the law and to strengthen legal education. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that some people cannot afford adequate legal assistance and should, therefore, devote professional time and civic influence in their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Section 1 Who is Your Client?

When meeting with your client, there are certain ethical issues to consider. At the outset, although you are acting as counsel for the student who is the subject of the disciplinary proceeding, the student's parents may attend meetings with the child; however, the typical privilege rules apply and you should give due consideration to whether to exclude parents from these meetings in order to preserve confidentiality and attorney-client privilege, particularly where there are criminal or delinquency charges pending. Further, an attorney must carefully consider issues of conflict of interest, especially among the student and his/her parents. If an attorney is engaged to represent a student with a disability (discussed in Chapter 4 below), the attorney must clarify whether the student is his client, or the student's parent. The attorney should use a detailed Engagement Letter to clarify issues of representation and potential conflicts of interest.

As an attorney, you should take care in setting expectations about the results of the Tribunal. You should ensure that your client understands clearly that just because a hearing will take place does not mean, as a matter of course, that the initial disciplinary charge will be changed. The attorney should exercise caution in making statements regarding the potential results of the hearing process.

Section 2 What is Your Client's Goal?

Once you have established who the client is for the matter, the next important step is to ensure that the client fully understands what you have agreed to do for him/her.

Thus, you must provide, in writing, an agreement between your client and you that sets forth your duties and obligations to the client.

2.1 Explaining Possible Consequences

Your responsibility to the client also includes explaining all of the possible outcomes associated with the tribunal hearing and any related appeals. Rule 1.4 of the Georgia Rules of Professional Conduct provides that a lawyer is required to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, to keep the client reasonably informed about the status of matters and to comply promptly with reasonable requests for information. It is your duty to make sure the client is fully educated in understanding the tribunal process and the reasonably possible outcomes of the process.

2.2 Providing Honest Advice

Rule 2.1 states: “In representing a client, a lawyer shall exercise independent professional judgment and render candid advice.” A client is thus entitled to straightforward advice expressing the lawyer's honest assessment; therefore, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. The rule further provides: “In rendering advice, a lawyer may refer not only to law, but also to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation.” Remember that the different and competing interests can create a sensitive ethical situation. For example, a common situation that may occur is when a client thinks that he/she should not be punished at all for the alleged behavior. Even though it may be unpleasant information, you must explain to the client that if he/she is found to have violated the applicable school code of conduct, he/she is likely to face discipline for that behavior, and your role is to help ensure that the procedure is fair and accords the student due process, and that any discipline is consistent with the behavior and is mitigated to the extent possible under the law.

Rule 1.2 provides that both the lawyer and the lawyer's client have authority and responsibility in the objectives and means of representation. However, the client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Thus, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense and concern for third persons who might be adversely affected. The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. The terms upon which representation is undertaken may exclude specific objectives or means. This agreement should be in writing and in accordance with the rules of professional conduct.

EXHIBIT 1: SCHOOL TRIBUNAL INTAKE FORM

Instructions. In order to preserve attorney-client privileged information, an attorney or a volunteer working under the supervision of an attorney should complete this form. **PLEASE DO NOT GIVE THIS FORM TO THE INDIVIDUAL SEEKING ASSISTANCE TO FILL OUT.**

Part I of this form is intended to obtain information necessary to allow local organizations to determine a potential client's eligibility. It is also intended to allow pro bono law firms to perform conflict searches to determine whether they may represent a potential client.

The remainder of this form (Parts II and III) is intended to guide the person doing the intake through a narrative process that is designed to arrive at the answers to the numbered questions. Below each numbered question is a series of leading questions designed to aid the person doing the intake in leading a conversation with the individual seeking assistance. Do not feel limited to the suggested questions.

To the greatest extent possible, please take this approach with the individuals with whom you are working. Please take as many relevant notes possible and keep all notes on separate pages. This information will be helpful to the attorneys performing the work for this individual.

THE INFORMATION CONTAINED IN THIS FORM IS CONFIDENTIAL AND MAY BE PROTECTED BY THE ATTORNEY CLIENT PRIVILEGE.

PART I. CLIENT INFORMATION

PLEASE PRINT:

Applicant's Name: _____

Soc. Sec.#: _____

Address: _____ County: _____

City: _____ State: _____ Zip: _____

Home Telephone: _____ Work Telephone: _____

Cellular Telephone: _____ Other Telephone: _____

*(Relative Not Living with
You)*

Email Address: _____

School Attended: _____

DATE OF BIRTH: ____/____/____ **AGE:** ____ **SEX:** Male Female

Mother's Name: _____

Soc. Sec.#: _____

Address: _____ County: _____

City: _____ State: _____ Zip: _____

Home Telephone: _____ Work Telephone: _____

Cellular Telephone: _____ Other Telephone: _____

Father's Name: _____

Soc. Sec.#: _____

Address: _____ County: _____

City: _____ State: _____ Zip: _____

Home Telephone: _____ Work Telephone: _____

Cellular Telephone: _____ Other Telephone: _____

APPLICANT'S RACE/NATIONAL ORIGIN: Black White Hispanic Native American
 Asian/Pacific Islander

MARITAL STATUS: Single Married Divorced Separated Widowed

Is this your first time talking with an attorney about this matter? Yes No

Adverse Party: _____

Adverse Party's Address: _____

HOUSEHOLD RESIDENTS:

Name	Age	Relationship	Employer

INCOME: Weekly Monthly Bi-Monthly Annually

Source	Applicant	Spouse	Other
<input type="checkbox"/> Wages	\$ _____	\$ _____	\$ _____
<input type="checkbox"/> Social Security	\$ _____	\$ _____	\$ _____
<input type="checkbox"/> SSI	\$ _____	\$ _____	\$ _____
<input type="checkbox"/> TANF	\$ _____	\$ _____	\$ _____
<input type="checkbox"/> Pension	\$ _____	\$ _____	\$ _____
<input type="checkbox"/> Unemployment	\$ _____	\$ _____	\$ _____
<input type="checkbox"/> Worker's Compensation	\$ _____	\$ _____	\$ _____
<input type="checkbox"/> Child Support	\$ _____	\$ _____	\$ _____
<input type="checkbox"/> Alimony	\$ _____	\$ _____	\$ _____
<input type="checkbox"/> Other	\$ _____	\$ _____	\$ _____
TOTAL AMOUNT	\$ _____	\$ _____	\$ _____

ASSET:

Source	Value	Amount Owed	Monthly Payment
<input type="checkbox"/> Cash	\$ _____	\$ _____	\$ _____
<input type="checkbox"/> Savings/Checking	\$ _____	\$ _____	\$ _____
<input type="checkbox"/> Home/Land	\$ _____	\$ _____	\$ _____
<input type="checkbox"/> Vehicles	\$ _____	\$ _____	\$ _____
<input type="checkbox"/> Other	\$ _____	\$ _____	\$ _____

EXPENSES:

Source	Monthly Payment
<input type="checkbox"/> Employment Related	\$
<input type="checkbox"/> Medical/Nursing Expenses	\$
<input type="checkbox"/> Age / Disability Expenses	\$
<input type="checkbox"/> Dependent Care	\$
<input type="checkbox"/> Paying Current Taxes	\$
<input type="checkbox"/> Property Taxes	\$
<input type="checkbox"/> Child Support	\$
<input type="checkbox"/> Alimony	\$
<input type="checkbox"/> Transportation	\$
<input type="checkbox"/> Other	\$
TOTAL AMOUNT	\$_____

PART II. CLIENT'S GOALS

1. What is the client's immediate goal?
2. What are the critical factors necessary for achieving the goal?

PART III. DOCUMENTS

List documents provided by individual.

DOCUMENTS THAT INDIVIDUAL MAY HAVE OR COULD PROVIDE

EXHIBIT 2: RISK DISCLOSURE LETTER

Dear _____:

For the purposes of this Risk Disclosure Letter, [Insert Name of client] will be referred to as the “Client,” “You” and/or “Your.” “Client,” “You” and “Your” shall also mean your agents, employees, attorneys, insurers, sureties, predecessors, successors, assigns, heirs, executors and administrators, and each of them.

Based on the information You provided to us in Your application, we are of the opinion that You should carefully consider the following information:

PLEASE BE AWARE OF THE FOLLOWING

1. A risk exists that the disciplinary tribunal may uphold the disciplinary action imposed by the school.
2. Anything said at a tribunal can be used against the student in a later criminal or juvenile court proceeding.

PLEASE BE AWARE OF THE FOLLOWING:

WITH YOUR SIGNATURE BELOW, YOU ACKNOWLEDGE AND AGREE THAT:

1. YOU ARE FULLY AWARE OF THE SUBSTANTIAL RISK OF AN UNFAVORABLE OUTCOME AT A SCHOOL TRIBUNAL HEARING;
2. YOU ACCEPT FULL RESPONSIBILITY FOR YOUR DECISION TO HAVE LEGAL COUNSEL REPRESENT YOU IN THE HEARING PROCESS;
3. WE MAY, IN OUR SOLE DISCRETION REFUSE TO ACCEPT YOUR APPLICATION OR DIRECTION TO PROCEED, IF YOUR DECISION TO HAVE LEGAL COUNSEL REPRESENT YOU IN THE SCHOOL TRIBUNAL HEARING PROCESS IS NOT MADE WITH FULL APPRECIATION OF THE RISK OF AN UNFAVORABLE OUTCOME.

Again, while we cannot guarantee the result or outcome of this matter, we will strive to provide You with the highest quality legal representation and endeavor to exercise our best judgment at all time. We look forward to working with you in this endeavor.

Regards,

Name:

Title:

ACKNOWLEDGED BY:

ACKNOWLEDGED BY:

(Signature)

(Signature)

(Print Name)

(Print Name)

(Date)

(Date)

CHAPTER 2 OVERVIEW OF THE TRIBUNAL PROCESS

Students accused of violating school policies are entitled to statutory and due process protections before certain disciplinary actions are imposed. Georgia law requires that students cannot be subject to long-term suspension or expulsion without a disciplinary process where the student has an opportunity to challenge the charged violation and the fairness of the discipline recommended by school administrators. This chapter will provide an overview of the source of student discipline rules and the basic legal requirements for the conduct of a disciplinary tribunal process.

Section 1 Source of Student Discipline Rules

Local boards of education (“LBOEs”) are required to adopt policies or codes of conduct for schools that are designed to improve the student learning environment by improving student behavior and discipline.¹ State law requires that codes of conduct adopted by LBOEs contain provisions that address certain types of student conduct during school hours, at school-related functions, on the school bus and, in certain circumstances, during off-school hours.² Each Georgia public school is required to distribute a copy of the student code of conduct at the beginning of the school year to every child’s parent or guardian.³ Along with the code of conduct, the school must also distribute a form for the student’s parent or guardian to acknowledge receipt of the code, and the parent or guardian must sign and return the acknowledgement form to the school.⁴

In enforcing violations of a school’s code of conduct, a key consideration for school administrators is determining the appropriate degree of discipline to recommend in light of the severity of the violation. Georgia law requires that schools’ policies include progressive levels of discipline that depend on the circumstances of the violation, including the severity of the conduct, the student’s history of violations and other relevant factors.⁵ If a school administrator recommends discipline of suspension from school for ten school days or less, the student is entitled only to oral or written notice of the charges against the student and, if he/she denies them, an explanation of the evidence and an opportunity to present his/her side of the story. The student can then be removed from school and does not have the right to a formal hearing or to appeal the suspension. If, however, the school administrator recommends expulsion or suspension from school for longer than ten school days, the student is entitled to written notice and a formal disciplinary hearing prior to the imposition of the expulsion or long term suspension.⁶ In addition, if the student’s alleged conduct involves assault or battery upon any teacher or other school official or employee, the teacher or school official or employee may request

¹ O.C.G.A. § 20-2-735(a).

² *Id.* § 20-2-751.5.

³ *Id.* § 20-2-736

⁴ *Id.*

⁵ *Id.* § 20-2-735(d).

⁶ *Id.* § 20-2-753 (hearing) & § 20-2-754 (notice).

a formal disciplinary hearing to be held.⁷ Chapter 3 below discusses in more detail a student’s rights before the disciplinary hearing.

Section 2 Procedure at the Tribunal Hearing

If a disciplinary hearing is requested or required by law, depending on the school district, the LBOE will appoint an individual disciplinary hearing officer or a panel of school officials often referred to as a “tribunal” to conduct the hearing and to determine the appropriate discipline.⁸ (Sometimes school officials and other participants in the process refer to the hearing process as a “tribunal” without regard to whether the presiding entity is a single hearing office or a panel.) Before a disciplinary hearing is held, all parties must receive reasonable notice of the hearing, the matters to be discussed and the rights of each party to present evidence and to be represented by legal counsel at the hearing.⁹ At the hearing, all parties may present and respond to evidence and may examine and cross-examine witnesses.¹⁰ At the conclusion of the hearing, the hearing officer or the tribunal will issue a decision determining what, if any, disciplinary action should be taken. Disciplinary action may include, but is not limited to short-term suspension, long-term suspension or expulsion.¹¹ Chapter 5 below addresses effective preparation for the administrative hearing while Chapter 6 discusses the conduct of the hearing.

Section 3 Appeals from the Tribunal’s Decision

After a disciplinary hearing, any decision of the hearing officer, panel, or tribunal imposing long-term suspension or expulsion may be appealed to the LBOE.^{12 13} If a decision is appealed to the LBOE, the LBOE will review the hearing record and may take any action it deems appropriate, including imposing more lenient or a more harsh discipline than that imposed by the disciplinary tribunal.¹⁴ Within thirty days of the LBOE’s decision, the decision can be appealed to the State Board of Education (“SBOE”).¹⁵ If the decision is appealed to the SBOE, both parties will be required to file briefs with the SBOE, and the SBOE may grant oral arguments if requested by either party.¹⁶ After the SBOE issues its decision, either party may then appeal the decision to the Superior Court of the county where the LBOE is situated.¹⁷ You should note that each appeal is required to be filed within a specific number of days of the final decision of the disciplinary hearing, the decision of the LBOE or the decision of the SBOE, as

⁷ *Id.* § 20-2-753.

⁸ *Id.* § 20-2-752.

⁹ *Id.* § 20-2-754(b)(1).

¹⁰ *Id.* § 20-2-754(b)(3).

¹¹ *Id.* § 20-2-755.

¹² *Id.* § 20-2-752(3).

¹³ See each school district’s rules regarding procedures for initiating an appeal and the corresponding deadlines and timing.

¹⁴ O.C.G.A. § 20-2-754(d).

¹⁵ *Id.* § 20-2-1160(b).

¹⁶ Georgia Department of Education (“GaDOE”) Rule 160-1-3-.04(g) & (h).

¹⁷ *Id.* 160-1-3-.04(j).

applicable. Chapter 7 below discusses the appeals process and the relevant timing requirements for each appeal.

Section 4 Children with Disabilities

If the student has a suspected disability or there has been a determination by the student’s LBOE that the student has a disability, there may be a separate complaint and dispute resolution procedure available to that student through the Georgia Department of Education.¹⁸ Chapter 4 discusses the procedures available to students with disabilities in more detail.

Section 5 Discrimination against a Student Based on Race, Color, National Origin, Sex, Disability or Age

If a child has been discriminated against based on race, color, national origin, sex, disability or age, the child/parent may file a complaint with the Office of Civil Rights of the U.S. Department of Education (“OCR”). While it is recommended that parents attempt to resolve the situation first with school administrators and next at the LBOE/SBOE level, it is not necessary to engage at these levels before filing a complaint with the OCR. A complaint must be filed with the OCR within 180 calendar days of the date that the alleged discrimination took place. More information and the OCR complaint form can be found online at: <http://www.ed.gov/about/offices/list/ocr/complaintprocess.html>. Note that this complaint is separate and apart from the tribunal process and does not toll any of the time limits involved in the tribunal process.

¹⁸ *Id.* 160-4-7-.12.

CHAPTER 3 RIGHTS BEFORE THE TRIBUNAL

Constitutional due process requirements and Georgia's Fair Tribunal Act govern a student's rights with respect to a disciplinary tribunal. Because a student's right to a public education is a property interest protected by the Fourteenth Amendment's Due Process Clause, it cannot be taken away for disciplinary reasons unless a school follows procedures complying with constitutional due process requirements.¹⁹ As an initial matter, once school officials determine that a particular student's conduct requires disciplinary action by the school, the length of the prospective disciplinary action determines the due process requirements to which that student is entitled. In *Goss v. Lopez*, the United States Supreme Court made a distinction between suspensions lasting ten days or less and longer-term suspensions or expulsion with respect to the due process requirements for each.²⁰

Section 1 Suspensions of Ten Days or Less

In *Goss v. Lopez*, the Supreme Court held that a student facing a suspension of ten days or less should be given oral or written notice of the charges against the student and an opportunity to tell his/her side of the story by explaining the evidence presented against him/her.²¹ Such a hearing should, as a general rule, be held before the student is removed from school. However, even these basic due process rights may be abridged in certain unusual circumstances. Thus if the student's continued presence at school poses a unique and significant risk to other students or school property, the student may be removed immediately, or at least before a hearing can be held.²²

Georgia state courts have also applied the *Goss* ruling to suspensions of ten days or less.²³ Importantly, for students facing short-term suspension these minimum requirements may be met informally. In *Wayne County Board of Education v. Tyre*, the Georgia Court of Appeals held that in cases where the maximum disciplinary outcome is a suspension of less than 10 days, due process requirements are satisfied when school officials questioned a student at the location where the incident occurred and offered an opportunity for the student to explain the next day.²⁴

Importantly, in cases of possible suspension of ten days or less, students are not entitled to an attorney or to present witnesses. The informal process described above is sufficient and may be conducted as events transpire.

Section 2 Longer Term Suspensions or Expulsion

A student facing removal from school for more than ten days is entitled to greater due process rights. Georgia law defines long-term suspension as a suspension out of

¹⁹ *Goss v. Lopez*, 419 U.S. 565, 574 (1975).

²⁰ *Id.* at 579.

²¹ *Id.* at 581.

²² *C.B. by and through Breeding v. Driscoll*, 82 F.3d 383, 386 (11th Cir. 1996).

²³ *Gamble v. Ware County Board of Education*, 561 S.E.2d 837, 842 (Ga. Ct. App. 2002).

²⁴ *Wayne County Board of Education v. Tyre*, 404 S.E.2d 809, 811 (Ga. Ct. App. 1991).

school for more than ten school days but not beyond the current quarter or semester.²⁵ Expulsion is defined as removal from school beyond the current semester.²⁶ The due process requirements when students are faced with these disciplinary consequences are spelled out in Georgia's Fair Tribunal Act.²⁷ A student facing long term suspension or expulsion is entitled to the rights outlined there, including:

- (1) Notice: reasonable notice must be provided to all parties prior to the hearing;
- (2) Evidence: the right to present and respond to evidence and witnesses; and
- (3) Timing of the hearing: right to a hearing within ten school days after the beginning of a suspension.

2.1 Right to Written Notice

Students and their parents are entitled to "reasonable notice" prior to conducting a hearing.²⁸ Written notice may be personally served or made by mail.²⁹ This notice must be sent to all parties, and to the parent or guardian of the student.³⁰ There is, however, no requirement that the notice be given directly to the parents. In *Harvey R. v. DeKalb County Board of Education*, a notice addressed and delivered to the parents' home, but given to the student, was deemed sufficient.³¹ The notice must include several specific elements, including (a) statement of the time, place, and nature of the hearing, (b) a short and plain statement of the charges asserted against the student, and (c) a statement regarding the student's right to present evidence and to be represented by an attorney.³²

2.1.1 *Statement of Time, Place, and Nature of Hearing*

The State Board of Education has enacted rules requiring the local board to notify parties of the time and place of the hearing.³³ Once notice of the time and place is provided, the local board has no further requirement to ensure a student attends the hearing. Where a student receives notice of the hearing, is given an opportunity to attend, and voluntarily chooses not to, conducting the hearing in his or her absence does not violate due process.³⁴

²⁵ O.C.G.A. § 20-2-751(2).

²⁶ *Id.*, § 20-2-751(1).

²⁷ *Id.* § 20-2-754.

²⁸ *Id.* § 20-2-754(b)(1).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Harvey R. v. DeKalb County BOE* (SBE 1986-38). This and the other appellate decisions of the State Board of Education cited in this manual are available on the Georgia Department of Education "State Board Decisions" web page found at http://archives.gadoe.org/pea_board.aspx?PageReq=PEABoardDecisions&dy=2012.

³² O.C.G.A. § 20-2-754(b).

³³ GaDOE Rule 160-1-3-.04(3)(a)(1).

³⁴ *E.W. v. Douglas County BOE* (SBE 2006-02).

2.1.2 *Short and Plain Statement of Matters Asserted*

Students are entitled to a short and plain statement of the matters to be asserted during the hearing. The notice must specify which provision of the code of conduct the student allegedly violated.³⁵ In *J.G. v. Walton County Board of Education*, the local school board failed to identify any provision within the code of conduct the student violated.³⁶ Because the school board did not provide the particular provision the student violated, the State Board reversed the local board's decision in part and concluded the local board did not have any policies governing the student's behavior in question.³⁷ Students cannot be disciplined for offenses for which they were not specifically charged in the notice of hearing.³⁸

The SBOE does not require the notice to describe the details of the charge. In *V.N. v. Pierce County Board of Education*, the notice of hearing stated the student was charged with battery, but did not lay out the details of the alleged battery.³⁹ The SBOE ruled the notice was sufficient and permitted the student to present a defense to the battery charge.⁴⁰ LBOEs, however, may enact their own rules requiring the notice to include a description of the acts that allegedly violate the code of conduct. If a LBOE enacts such a rule, it must comply with it.⁴¹ Similarly, where a local rule requires the inclusion of the maximum potential consequence, a mere recital is sufficient and need not state the student could be subject to such level of discipline.⁴²

2.1.3 *Right to an Attorney*

Under Georgia Law, a student is entitled to retain counsel to represent him/her in a tribunal.⁴³ However, there is no right to have an attorney appointed if the student cannot afford to retain one. In addition, most schools require advance notice if a student will be represented by an attorney. Students, and the attorneys representing them, should consult local school board rules to determine the manner and timing required for notification of representation prior to the hearing. The school is permitted to bring counsel if the student is represented by counsel.

³⁵ *J.G. v. Walton County BOE* (SBE 1999-56).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *E.W. & N.W. v. Henry County BOE* (SBE 2001-36).

³⁹ *V.N. v. Pierce County BOE* (SBE 2003-22). *See also* *Fluker v. Edwards*, 161 Ga. App. 418, 420 (1982); *Damon P. v. Cobb Co. BOE*. (SBE 1993-9) (*Damon I*) (“One of the main reasons for notice is to permit the accused to prepare a defense.”)

⁴⁰ *Id.*

⁴¹ *Roshon E. v. Burke County BOE* (SBE 1994-54) (notice improper where LBOE policy required notice contain description of events which allegedly violated a rule as well as summary of evidence in support of charges and notice sent contained only charge against student).

⁴² *L.M. v. Gwinnett County BOE* (SBE 2005-09).

⁴³ O.C.G.A. § 20-2-754(b)(1).

2.2 Evidence to Be Presented at Hearing

The notice must also inform students of their right to present evidence and witnesses and cross-examine the witnesses against the student.⁴⁴ Denying a student the right to present a particular witness's testimony is a violation of the student's due process rights.⁴⁵ The SBOE has overturned local tribunal decisions made after denying the student a right to present evidence.⁴⁶

A student, the parent or guardian, or legal counsel for the student may also obtain a copy of any documents relating to the hearing prior to the tribunal.⁴⁷ Georgia law is silent as to the form of a request for such documentary evidence. However, in *L.W. v. Gwinnett County Board of Education*, the SBOE stated such a request should be made in the form of a subpoena.⁴⁸

Practice Pointer: Obtaining documentary evidence can often be obtained through submitting a letter of representation and notifying the School District that you intend to appear at the Tribunal. In this letter, you should include a request for the documentary evidence that is going to be presented at the Tribunal.

Although the Eleventh Circuit ruled in *Nash v. Auburn University* that students are not entitled to a list of witnesses against them or a summary of their testimony,⁴⁹ Georgia's SBOE has decided otherwise. In *K.S. v. Henry County Board of Education*, the state held due process requires a local board to provide a list of witnesses to the student.⁵⁰

2.3 Timing of the Hearing

In *Goss*, the Supreme Court held that, generally, a student is entitled to be heard in connection with a suspension.⁵¹ Where the student presents a risk to other students and school property, the student may be removed from school immediately.⁵² In all cases involving a suspension of more than ten days, a hearing must be held no later than ten days after the beginning of the suspension unless both the school and the parents or guardians consent to an extension.⁵³

A student may request a continuance in order to prepare an adequate defense.⁵⁴ While the Fair Tribunal Act has not codified the grounds on which a student is entitled to a continuance, several decisions make it clear that local school boards should think

⁴⁴ O.C.G.A. § 20-2-754(b)(1).

⁴⁵ *J.G. v. Columbia County BOE* (SBE 1996-40).

⁴⁶ *C.W. v. DeKalb County BOE* (SBE 2000-15); *see also* *B.G. v. Pike County Bd. of Educ.* (SBE 2001-13).

⁴⁷ O.C.G.A. § 20-2-754(e).

⁴⁸ *L.W. v. Gwinnett County BOE* (SBE 2000-3).

⁴⁹ *Nash v. Auburn University*, 812 F.2d 655, 663 (11th Cir. 1987).

⁵⁰ *K.S. v. Henry County BOE* (SBE 2006-42).

⁵¹ *Goss*, 419 U.S. at 579.

⁵² *C.B.*, 82 F.3d at 386.

⁵³ O.C.G.A. § 20-2-754(b)(2).

⁵⁴ *N.L. v. Brooks County BOE* (SBE 1999-73).

carefully before denying such a request. In *N.L. v. Brooks County Board of Education*, the denial of a student's request for a continuance was held to violate the student's due process rights.⁵⁵ Students must, however, ensure that a timely request for a continuance is made. Where a student waits until the witnesses against him/her have already presented testimony, the State Board has held the student waived his right to a continuance.⁵⁶

Practice Pointer: It is imperative that you obtain as quickly as possible a copy of the Notice that the parent and student received as well as any other supporting documents the school may have related to the alleged charge, including any witness statements. It is also imperative that you obtain the Code of Conduct for the school. Often, the Codes of Conduct can be found online if the client does not have a copy. If a copy is not found online, then have the parent go to the school and obtain a copy.

⁵⁵ Note 54 *supra*.

⁵⁶ *J.W. v. Henry County BOE* (SBE 1997-47).

CHAPTER 4 STUDENTS WITH DISABILITIES

Section 1 Overview

The federal Individuals with Disabilities Education Act (“IDEA”)⁵⁷ imposes certain limitations on the imposition of school disciplinary actions on a student who is a child with a disability as well as those children whom the school knew or should have known were suspected of having a disability.⁵⁸ The IDEA requirements are implemented in Georgia pursuant to Georgia Department of Education (“GaDOE”) Rule 160-4-7-.10. Under the IDEA, each student who is a child with a disability (a “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.⁵⁹ 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.⁶⁰

Georgia must also comply with IDEA requirements for children who are deemed “suspected to have a disability” and about whom the school knew or should have known. If a child is not a Special Education Student, but is suspected to have a disability, a written request for an evaluation for services should be made as soon as possible.

In depth information about the issues addressed in this Chapter can be found at:

<http://www.doe.k12.ga.us/Curriculum-Instruction-and-Assessment/Special-Education-Services/Pages/default.aspx>.

Section 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. However, if the school seeks to remove the student from a current 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.” 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 20 U.S.C. §§ 1400-1487.

⁵⁸ *See id.*, § 1401(3)(A) for a definition of this term.

⁵⁹ GaDOE Rule 160-4-7-.06(1).

⁶⁰ *Id.* 160-4-7-.10(1)(b).

For a Special Education Student, 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.

Practice Pointer: If a school decides to suspend a student with a disability for more than 10 days, a "manifestation determination" must be made within 10 days of such a decision.

Practice Pointer: 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 IEP and the IEP's behavior intervention plan.⁶¹

Practice Pointer: If, however, 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.

Section 3 Behavior Intervention Plan

When a Special Education Student exhibits behavior that interferes with the student's learning or that of other students, the IEP team is required to conduct a Functional Behavior Assessment ("FBA"). The FBA is then used to develop a BIP. At a minimum, the BIP should be updated annually, along with the rest of the IEP. In addition, the BIP may be modified at any time circumstances warrant a change in the plan.

Practice Pointer: Make sure the student has a Behavior Intervention Plan ("BIP"), which addresses how specific behavior problems should be addressed. Additionally, BIPs that have been drafted for different behaviors need to be amended to address the current behavior that has triggered this manifestation.

⁶¹ Exception to the rule: 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.

Section 4 Due Process Requirements

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 and provide several pieces of information about the basis for the decision as well as notice of parent’s rights with respect to the decision.

Practice Pointer: A parent of a Special Education Student has the right to appeal a placement determination or the outcome of a manifestation determination through the tools described in the Dispute Resolution rule⁶² including seeking a due process hearing before an independent administrative law judge or hearing officer (“ALJ”). The hearing will be held on an expedited basis.

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.

Practice Pointer: 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.

Practice Pointer: If your client has a disability, it is very important that you ask for a manifestation determination. If your client has a suspected disability, then it is equally important that you notify the School District of the suspected disability in writing and ask for the appropriate testing before any further discipline is imposed.

Practice Pointer: Note also that Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, also requires special treatment in connection with disciplinary actions proposed for disabled children as separately defined under that statute. A detailed discussion of the differences between the IDEA provisions summarized above and Section 504 is beyond the scope of this manual but practitioners representing students with disabilities should determine whether the client is covered by IDEA, Section 504, or both.

Practice Pointer: This chapter provides only a summary review of issues that arise in connection with representation of students with disabilities. Should you have a client with a disability or a suspected disability, it is imperative that you seek out additional resources when representing your client.

⁶² GaDOE Rule 160-4-7-.12.

CHAPTER 5 PREPARATION FOR THE TRIBUNAL

In preparing for the tribunal, it is important to note that a tribunal is different from other legal proceedings, especially criminal proceedings. First, tribunals do not follow the stringent requirements of criminal proceedings.⁶³ Hearsay evidence was previously held to be permissible,⁶⁴ though a more recent line of cases seems to indicate, at least implicitly, that hearsay may be impermissible.⁶⁵ Additionally, when evidence is obtained in violation of the 5th Amendment protections against self-incrimination, including the failure to read Miranda warnings, the exclusionary rule does not apply to the disciplinary hearing.⁶⁶ However, like other legal proceedings, all parties are afforded an opportunity to present and respond to evidence and to examine and cross-examine witnesses on all issues unresolved.⁶⁷ Also, the burden is on the local board to establish that the student violated its policy.⁶⁸ Issues relating to criminal proceedings are outside the scope of this Manual and if you are handling a matter that involves criminal proceedings, law or issues, you should be sure to consult with criminal law counsel regarding those aspects of the matter.

Section 1 Meeting with the Client

1.1 Ethical Issues

When meeting with your client, there are certain ethical issues to consider. At the outset, although you are acting as counsel for the child who is the subject of the disciplinary proceeding, the parent's child may attend meetings with the child; however, the typical privilege rules apply and you should give due consideration to whether to exclude parents from these meetings in order to preserve confidentiality and attorney-client privilege, particularly where there are criminal or delinquency charges pending. Moreover, as attorney, you should take care in setting expectations about the results of the Tribunal. Your client should know that because a hearing will take place does not mean, as a matter of course, that a favorable decision will result from the hearing process. The attorney should exercise caution in making statements regarding the potential results of the hearing process.

1.2 Preparing the Testimony of the Parent

In preparing for the Tribunal hearing, make an assessment of whether you will have the parent provide testimony during the hearing. If so, you should take time to prepare the parent's testimony. This can include creating an outline of proposed topics, and walking the parent through the topics. In particular, the parent will likely need to testify about the student's family history, his/her supervision of the student, as well as the parent's and student's ties to the local community, highlighting the student's

⁶³ Harvey D. v. Rabun County BOE (SBE 1989-8).

⁶⁴ *Id.*

⁶⁵ Z.B. v. Bartow County BOE (SBE 2008-44); A.M. v. Forsyth County BOE (SBE 2009-64).

⁶⁶ V.F. v. Fulton County BOE (SBE 2003-24); S.E. v. Gwinnett County BOE (SBE 2003-30).

⁶⁷ O.C.G.A. § 20-2-754 (b)(2).

⁶⁸ Owens v. Burke County BOE (SBE 1978-6).

contributions. All of this may help mitigate the discipline. The parent should also be prepared for potential cross-examination on such topics, so you can find and work to minimize any potential problems with the parent's testimony.

1.3 Preparing the Testimony of the Student

You should also think carefully about whether the student will provide testimony at the hearing. If so, preparation of the student's testimony will be critical. The attorney should be sure to review with the student, in detail, all of the events that led to the disciplinary action. It is imperative that the attorney obtain any documents that a student may have signed. If a student has submitted a signed confession, the attorney should obtain this document and question the client in detail about the circumstances surrounding the attainment of the confession. It is important to understand that school officials are given greater leeway to question students and ask them to sign "confessions." Statements may be admitted into evidence (or otherwise used), even if Miranda rights have not been read to the student.

It is, therefore, important to ascertain whether or not criminal or juvenile charges are pending against the student.

Practice Pointer: Anything said at a tribunal can be used against the student in a later criminal or juvenile court proceeding, so if criminal or juvenile charges are pending or are going to be filed in the future, you may want to consider not having the student testify.

The student should also be made aware that he/she will be cross-examined about his/her testimony by an attorney for, or other representative of, the school.

It is also important to prepare the child's testimony for the portion of the hearing dealing with the specific discipline to be imposed. The child may read a prepared statement outlining that he/she is sorry for his/her behavior and what steps he/she is taking to ensure good behavior in the future.

1.4 Identifying and Preparing the Testimony of other Witnesses

The attorney must also analyze the facts of the case to determine whether it will be helpful to have other witnesses testify before the Tribunal. This may include individuals who witnessed the events leading to the discipline, such as teachers and other students, or other individuals with knowledge of the student, such as clergy and other community members. The attorney, in determining whether to have other witnesses testify, should keep in mind that such witnesses may be subpoenaed in Tribunal proceedings. (See below.)

The attorney should also determine if character witnesses may be helpful to assist in mitigating the discipline. A child's mentor, clergyman, or sports leader may be a helpful witness to show that the child is a good person with good role models in his or her life. This may help lessen the discipline the child receives. In presenting this style of evidence, the overall focus of the testimony should be that the student is not a threat to

the safety or order of the educational environment. Witnesses should be called that can speak to any intervening events that have occurred since the incident occurred (i.e., the child has started counseling, changed medications, or enrolled in an afterschool program)

Section 2 Preparing the Case—Key Issues

2.1 Subpoenas

Subpoenas are notices that require witnesses to appear at a hearing and provide testimony about what they know about someone's acts, behavior, or conduct. It is up to the local school board to determine how a subpoena will be issued and served (presented) to a witness. Local school boards are required to issue subpoenas to witnesses such as students or school personnel upon request by the student to ensure that witnesses for the student will be present for the hearing.⁶⁹ If the witness is a teacher, he or she must be given three (3) days advance notice of the hearing.⁷⁰ The service of a subpoena by the student or the student's attorney creates an issue from time to time, especially if it involves a student witness. That is because it is better to give the parents of the student witness the opportunity to become aware that the student is being requested by a witness to testify at a hearing and potentially miss class time as a result. However, be aware that attendance at a disciplinary hearing is not mandatory and there is currently no specific mechanism for compelling a witness who has been served with a subpoena to appear.⁷¹

Practice Pointer: Think carefully before subpoenaing a witness who is employed by the School District. Even if your client tells you that an employee will testify favorably for the student, always remember that the person is employed by the School District and may ultimately not be a favorable witness for you. Likewise, for any witness that you intend to call at the hearing, you should first confirm with that witness that he or she is available to testify, willing to testify and will provide testimony that will support your arguments in the case.

2.2 Hearsay

In preparing arguments for the Tribunal hearing, the attorney should keep certain evidentiary issues in mind. For example, the sole reliance on hearsay, such as written statements introduced without the declarant available to testify, is impermissible in disciplinary hearings.⁷² In *C.M. v. Muscogee County Board of Education* (SBE 2002-22), the School Board reversed the decision of the student discipline tribunal on the grounds that only hearsay evidence was presented – written statements by the alleged victims. In another School Board decision, the board found that a student's due process rights were violated because the student did not have the opportunity to cross-examine the witnesses who proffered written statements.⁷³

⁶⁹ GaDOE Rule 160-1-3-.04(3).

⁷⁰ GaDOE Rule 160-4-8-.15; O.C.G.A. § 20-2-754(b)(4).

⁷¹ McIntosh v. Gordy, 2011 GA. APP. LEXIS 196 (March 15, 2011).

⁷² Z.B. v. Bartow County BOE (SBE 2008-44).

⁷³ A..M. v. Forsyth County BOE (SBE 2009-64).

2.3 Notice Issues

In preparing arguments, the attorney should also consider whether the School Board gave “reasonable notice” of the hearing as required by the Georgia Code. As discussed earlier, the notice must be given to all parties and to the parent and guardian of the student involved, and the notice must include a statement of the time, place, and nature of the hearing, a short and plain statement of the matters asserted, and a statement as to the right of all parties to present evidence and be represented by counsel.

2.4 Propriety of Discipline Proposed

The attorney should also consider whether there is a disparity between the proposed disciplinary action and the alleged offense. In certain instances, the State Board of Education reversed the local board’s decision due to such disparity particularly when a student was expelled from school.⁷⁴ The attorney should also determine what arguments about the discipline can be made: Was the student acting in self-defense? Does the student have a disciplinary history? What was the intent behind the student’s actions?

Section 3 Settlement Considerations

In lieu of a full-blown hearing, the child may enter into a settlement agreement with the local school board. Once you are retained by the client, you may want to contact the attorney for the School District to see if settlement is an option.

One option for settlement is for the student to enter into a Behavior Contract with the school administrator. This document will set forth an expectation of appropriate classroom behavior and establish regular communication between the school and the parent.

In negotiating a settlement, there are other options that the attorney should consider. Regardless, it is important that any settlement include a provision requiring the school to give students their regular class assignments during the suspension. The school does not always do so, potentially causing the student to fall behind. Other options include attempting to negotiate to a lesser discipline, such as an in-school suspension whereby the child is moved to a separate in-school suspension classroom to complete class assignments. You should attempt to negotiate to schedule suspension days or detentions so that they do not conflict with tests or other difficult to schedule school work. Other options include school or community service.

⁷⁴ See, e.g., Michael C. v. Houston County BOE. (SBE 1992-19); D.H. v. Brooks County BOE. (SBE 1994-15); Dwight F. v. Clayton County BOE. (SBE 1994-23).

CHAPTER 6 AT THE TRIBUNAL

Section 1 Procedure at a Tribunal Hearing

Public school disciplinary tribunal hearings do not follow the “stringent requirements” of civil or criminal judicial proceedings.⁷⁵ At the disciplinary hearing, the school has the burden of demonstrating that the student violated one of its policies.⁷⁶ When you are representing a student at a tribunal hearing, the school’s attorney may present evidence on behalf of the school.

Practice Pointer: Be sure to check if the LBOE responsible for the school at which your client was disciplined requires advance notice about whether the student will be represented by an attorney. Many do; so notify the school within the appropriate time frame of your representation.

Practice Pointer: Do not treat these proceedings as some counsel would approach a criminal or civil judicial jury trial. It is important that you make your arguments effectively and that you challenge the case put on by the school. But overbearing cross examination, repeated unnecessary objections, and theatrical arguments are not at all well received in disciplinary hearings and most often do not serve the best interests of the client. (The authors also note that this style of litigation is generally not very effective in civil or criminal judicial litigation either.)

The fact-finder, or presiding officer, for the hearing will be selected from a hearing officer, a tribunal, or a panel.⁷⁷ Under Georgia law, all parties at a public school disciplinary tribunal are given an opportunity to present and respond to evidence and to question all witnesses on all issues unresolved.⁷⁸ Witnesses may be questioned about any issues that are relevant to the charges against the student or the appropriate discipline. It is a violation of the student’s due process rights if you are not permitted to present witness testimony or to cross-examine witnesses on behalf of the student.

Teachers may be called as witnesses at the tribunal hearing. Any teacher who is called as a witness by the school system must be given notice at least three days before the tribunal hearing.⁷⁹ Parents and students (or their counsel) are given the opportunity to question all witnesses.⁸⁰

Section 2 Creating the Record at the Tribunal

If an issue is not raised at the initial disciplinary hearing, it cannot be raised for the first time when an appeal is made. The boards will only consider information that was put on the official record during the initial hearing. In order to preserve your right to

⁷⁵ Harvey D. v. Rabun County BOE (SBE 1989-8).

⁷⁶ JG v. Columbia County BOE (SBE 1996-40).

⁷⁷ O.C.G.A. §20-2-752.

⁷⁸ *Id.* §20-2-754.

⁷⁹ *Id.*

⁸⁰ Shaun B. v. Douglas County BOE (SBE 1992-39).

file an appeal after a disciplinary hearing, it is very important that you are prepared to present all of the concerns of the student, to include witnesses, records, and documentation. Even if the hearing officer, tribunal, or panel does not believe proffered evidence is relevant to the alleged infraction, it must be admitted into evidence on the record in order to be considered during the appeals process.

A verbatim electronic or written record of the hearing is required and must be made available to all parties.⁸¹ Parents, legal guardians, or attorneys of the student may obtain a copy of any documents relating to a disciplinary hearing. Once the hearing has concluded, be sure to request an electronic or written recording of the disciplinary hearing and copies of all documents submitting during the hearing. Although the method of requesting these documents is not specified, it has been held by the State Board of Education that this request must be in the form of a subpoena, although often a letter from counsel will be sufficient.⁸²

Section 3 Mitigating the Discipline

One of the key elements of representing a student at the tribunal may be mitigation of the discipline if possible. If a child has committed the alleged offense, then regardless of the reason for committing the offense, it is likely that the student will be subject to discipline. However, one important aspect of representing the student is to attempt to mitigate the level of discipline imposed. The attorney can and should be prepared to present evidence and testimony on the child's community and other activities, including presenting any witnesses that may be able to testify to the child's activities. The parent should also be prepared to testify about what steps he/she is taking to help rehabilitate the student and ensure that this does not happen again. It is also very helpful if the student takes responsibility for his or her actions and apologizes, if appropriate.

⁸¹ O.C.G.A. § 20-2-754.

⁸² L.W. v. Gwinnett County BOE (SBE 2000-3).

CHAPTER 7 AFTER THE TRIBUNAL

Section 1 Appeal of Tribunal Decision

If the student receives an unfavorable result at the disciplinary hearing, the attorney should give due consideration to whether it is appropriate to file an appeal. After a disciplinary hearing, pursuant to O.C.G.A. § 20-2-754, the student has the right to a written decision within ten (10) days of the close of the hearing record. The decision must be provided to all parties, and the GaDOE rules provide that the decision must notify the parties of their right to appeal the decision.⁸³ The attorney representing the student should be aware that while the disciplinary officer, panel or tribunal conducting the hearing has the authority to determine what, if any, disciplinary action shall be taken, the decision must be based solely on the evidence presented at the hearing.⁸⁴ You may appeal the decision to the Local Board of Education (LBOE), which may modify the decision.⁸⁵ Your appeal must be in writing and made to the Local Board of Education within twenty (20) days from the date of the decision.⁸⁶

Practice Pointer: Keep in mind that the time periods for appeals include holidays and weekends. If the twentieth (20th) day falls on a holiday or weekend, the appeal must still be faxed in or submitted prior to that holiday or weekend.

It is important to note that the local school superintendent may suspend the disciplinary action imposed by the disciplinary officer, panel or tribunal, during the pendency of the appeal to the LBOE.⁸⁷ Generally, counsel for a student will send a request to suspend the disciplinary action along with the Notice of Appeal that is filed.

The Local School Board must review the appeal and render its decision in writing within ten (10) days (excluding weekends and public and legal holidays) from the date the Board receives notice of the appeal.⁸⁸ The Local School Board's decision should be based solely on the record and must be given to all parties. Local practice varies from school district to school district with regard to allowing oral argument before the school board concerning the appeal. Some school districts do not allow oral argument and resolve appeals in executive session after reviewing the record. Other school districts may entertain brief oral presentations. The practitioner should determine the local practice by contacting the school board attorney or conferring with other experienced practitioners in the jurisdiction.

While the Local School Board may take any action on the appeal that it deems appropriate, the local board may not impose a harsher discipline than the one imposed by the disciplinary tribunal unless the board provides an explanation of the harsher

⁸³ GaDOE Rule 160-1-3-.04(3); O.C.G.A. § 20-2-754(c).

⁸⁴ O.C.G.A. § 20-2-754(c).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* § 20-2-784(d).

discipline.⁸⁹ The failure to provide such written explanation when imposing a harsher discipline has been held to be a denial of due process,⁹⁰ so the attorney should ensure that the board provides such written explanation if the board imposes a harsher penalty.

Section 2 Appeal of Local Board's Decision

The student may appeal the decision of the Local Board of Education to the State Board of Education by filing a written appeal to the local school superintendent within thirty (30) days after the local board's decision. The appeal must be in writing and "distinctly set forth the question in dispute, the decision of the LBOE, and a concise statement of the reasons why the decision is complained of"⁹¹ The appellant must file at its own expense a transcript of the LBOE hearing with the appeal, which transcript is certified as correct by the local superintendent. Each district will have provisions for obtaining a transcript free of charge in the case of an indigent client. If this is an issue, you should check with the district for the appropriate procedures.

Within ten (10) days after receipt of the appeal, the superintendent must submit to the State Board of Education a copy of the appeal, together with the transcript of evidence and the hearing, the decision of the local board, and any other matters relating to the appeal. The attorney should note that, unlike an appeal of the tribunal's decision, the decision of the Local Board of Education will not be suspended during the period of appeal to the State Board of Education. After a determination that the appeal is in proper form, the appeal shall be docketed before the hearing officer of the State Board of Education at the "earliest practical time."⁹²

If you want to present oral argument during an appeal to the State Board of Education, you must request oral argument within ten (10) days of the date the State Board of Education docketed your case on its calendar. It is therefore critical that the attorney pay very close attention to any communications from the State Board of Education. The appellant should file an appeal brief with the State Board of Education within twenty (20) days of docketing. The opposing party has forty (40) days from the date of docketing to file its brief.⁹³ The State Board of Education shall not receive new evidence in hearing the appeal, and may not consider any question not raised specifically in the written appeal or the statement of contentions.⁹⁴ The practitioner should note that, if oral argument is requested, the appellant may be represented by counsel.

The SBOE shall issue its decision within twenty-five (25) days after the hearing and shall notify the party aggrieved by the decision of its right to appeal to the Superior Court of the county in which the Local Board of Education is located. The SBOE will uphold the LBOE's decision if there is any evidence to support the decision of the LBOE, unless there has been an abuse of discretion, the decision is contrary to law, or "so

⁸⁹ B.J.D. v. Walker County BOE (SBE 2000-23); Chauncey Z. v. Cobb County BOE (SBE1992-42).

⁹⁰ See Georgia Real Estate Commission, et al. v. Hooks, 141 Ga. App. 226, 233 S.E.2d 16 (1977).

⁹¹ O.C.G.A. § 20-2-1160.

⁹² GaDOE Rule 160-1-3-.04(f).

⁹³ *Id.* 160-1-3-.04(g).

⁹⁴ *Id.* 160-1-3-.04(i).

arbitrary and capricious as to be illegal.”⁹⁵ Accordingly, the scope of appellate review by the SBOE is quite narrow and only rarely does the SBOE reverse LBOE actions.

Section 3 Appeal of State Board’s Decision.

An aggrieved party may appeal an adverse ruling by the SBOE to Superior Court. Such an appeal must be filed within thirty (30) days from the decision of the SBOE. Within ten (10) days of the filing of such appeal, the State School Superintendent shall transmit a certified copy of the record, transcript from the LBOE, the LBOE decision, and all orders of the SBOE to the Superior Court. If the student receives an unfavorable ruling from the Superior Court, the attorney may file an application for discretionary review with the Georgia Court of Appeals.⁹⁶

⁹⁵ Ransum v. Chattooga County BOE., 144 Ga. App. 783, 242 S.E.2d 374 (1978); Antone v. Greene County BOE.(SBE 1976-11).

⁹⁶ O.C.G.A. § 5-6-35(a)(1).