



REPRESENTING STUDENTS IN SCHOOL TRIBUNALS IN GEORGIA

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Center for Law & Justice

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INTRODUCTION

School disciplinary actions that remove a student from school can have long-lasting negative consequences. Suspensions and expulsions deprive students of education instruction and important social experiences. Students who are removed from school may not 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. Expulsions and suspensions also increase the student's risk of later involvement with the juvenile justice system.

When a child is subject to a school disciplinary action, the school should involve the student's parents and/or guardians immediately. In many cases, the student should also consult an attorney familiar with school discipline matters. A competent attorney can ensure that the student's rights are respected, that the school carries out the disciplinary process consistent with the requirements of the law, and that the disciplinary action is fair.

Founded in 2005, Georgia Appleseed is a nonpartisan nonprofit 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 developed the first edition of this manual. That YPC project was the precursor to Georgia Appleseed's FAIR (Fairness, Advocacy, and Individual Representation) initiative for children facing school suspensions or expulsions. The FAIR project provides 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 its practice and procedures benefit both the affected students and the school system.

Making a Difference for School Tribunal Clients

This training manual was 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 help pro bono attorneys represent 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.

Supplemental tools available for school tribunal clients and community partners include ***When My Child is Disciplined at School: A Guide for Families*** and ***Help Guides for Children with Behavior and Learning Challenges***. These tools cover such topics as a parent's first response to school discipline, meeting with the school and challenging a school discipline decision, the causes of behavior challenges, and where parents and caregivers can find additional resources and help. Supplemental tools available for attorneys and other advocates include ***Preparing for a School Tribunal, Preparing for a Manifestation Hearing, Common Disabilities and Behaviors***, and ***Trauma Impact Rule Summary***. These resources and others, available in English and in Spanish, can be found by searching Resources at: <http://www.gaappleseed.org>.

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ALSTON & BIRD



**JOSEPH B. WHITEHEAD
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I. OVERVIEW OF THE HEARING PROCESS

This chapter provides an overview of the Manual, including the basic legal requirements of a school tribunal. It discusses:

- How to effectively prepare for a tribunal.
- What to do when meeting a client before the tribunal.
- What to do during the tribunal.
- What to do after the tribunal.
- How one should address student's disabilities or race during a tribunal.

Each section below directs the reader to a later chapter that covers the requirements in more depth.

Students accused of violating school policies are entitled to statutory and due process protections before a school can impose certain disciplinary actions. Georgia law prohibits students from being subject to long-term suspension (defined as **more than ten (10) days**) or expulsion without a disciplinary process (a tribunal) where the student can challenge the charged violation and the fairness of the discipline recommended by school administrators.

A. Sources of Student Procedural Rights and Preparing for a Tribunal

Local Boards of Education (“LBOE” or “Local Board”) are required to adopt codes of conduct for schools, the purpose of which is to enhance the student learning environment by improving student behavior.¹ Each code of conduct must include provisions that address specific types of student conduct: (i) during school hours; (ii) at school-related functions; (iii) on the school bus; and (iv) in certain circumstances, during off-school hours.² The student code of conduct shall be distributed by the LBOE at the beginning of the school year to every student's parent or guardian.³ The LBOE shall solicit or require the signatures or confirmation of receipt from the student and parent or guardian, including but not limited to by electronic mail or facsimile.⁴

The LBOE must “provide for disciplinary action against students who violate” their respective school's code of conduct. The disciplinary processes and the degree of severity of disciplinary action must be proportionate to the student's transgression and take into account the student's history of violations and other relevant factors.⁶

If a school administrator recommends suspension from school **for less than or equal to ten (10) school days**, the student must at least “be given oral or written notice of the charges against [the student] and, if [the student] denies them, an explanation of the evidence the authorities have and an opportunity to present [the student's] side of the story.”⁷ 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 (10) 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.⁸ This hearing is called a **tribunal**.

NOTE: If the student's alleged conduct involves assault or battery upon any teacher or other school official or employee, the student shall be suspended pending the hearing by a disciplinary hearing officer, panel, or tribunal.⁹

The LBOE may appoint individual disciplinary hearing officers, panels, or a group of school officials to conduct the tribunal.¹⁰ Anyone who serves as a hearing officer and/or tribunal member must be “qualified” to serve in this role and must be able to be an independent, neutral arbiter.^{11 12}

Before a disciplinary hearing is held, all parties must receive reasonable notice 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 to be represented by legal counsel....”¹³

Chapter II discusses a student's rights in more detail.

B. Meeting with a Client Before the Tribunal Hearing and the Role of Parents and Setting Expectations

Your client is the student. Build your relationship with the student as you would with any client: listen, engage, and let them ask questions. Be open and honest about the problems and strengths of their case.

The attorney-client privilege applies to your relationship and communication with the **student**. The parent, guardian, or—in the case of foster children—foster care case worker, may want to be engaged with you. Know that the rules of attorney-client privilege do not apply to communications with them. And if they are present in the meetings with you and the student, the attorney-client relationship is compromised.

Navigating the engagement of the parent/guardian/case worker is important. A student's parent or guardian may attend meetings between the student and the attorney. However, attorneys should consider whether to exclude parents from these meetings to preserve confidentiality and attorney-client privilege, particularly where there are criminal or delinquency charges pending.

Take care to set expectations about the results of the tribunal and explain the possible outcomes. Clients should be advised that a favorable decision is far from guaranteed at a hearing. The attorney should exercise caution in making predictions regarding the outcome of the hearing process.

Chapter III “Preparation for the Hearing” addresses in more detail the effective communication with a client before a tribunal hearing.

PRACTICE POINTER:

If the parent/guardian/caseworker comes with a child to meet with you, explain to all that you will meet first with the child alone. Explain the concern about conflicts and that you want to avoid making the adult a potential witness in some future proceeding, such as a tribunal or criminal proceeding. Then, talk with the child alone. Explain your role as their attorney. Let them ask questions. Explain that they can have their parent/guardian in the room but do not have to have them present. Ask if they wish to have the adult in the room.

C. At the Tribunal Hearing

At the tribunal hearing, all parties may present and respond to evidence and may examine and cross-examine witnesses.¹⁴ Chapter III provides more detail about preparing witnesses and preparing evidence.) At the conclusion of the hearing, the hearing officer will issue a decision determining whether the child violated the school's code of conduct and, if so, what disciplinary action should be taken. Disciplinary action may include, but is not limited to, short-term suspension, long-term suspension, or expulsion.¹⁵

Under Georgia law, all parties at a public school disciplinary hearing are given an opportunity to present and respond to evidence and to question all witnesses on all issues unresolved.¹⁶ 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.

Make sure that you protect the record for appeal.¹⁷ Evidentiary issues or other matters not raised at the initial disciplinary hearing cannot be raised for the first time on appeal. The LBOE and SBOE will only consider information that was put on the official record during the initial hearing.¹⁸ For this reason, a verbatim electronic or written record of the hearing is a requirement and must be made available to all parties.¹⁹ Deficiencies in a record, however, are not dispositive of a violation of due process.²⁰ Instead, a violation of due process occurs when deficiencies in the record result in denying a student's effective right of appeal.

Chapter IV discusses the conduct at the hearing.

D. Appeals from the Tribunal's Decision

A student has the right to appeal any decision of the hearing officer, panel, or tribunal imposing a long-term suspension of **more than ten (10) days** or expulsion.²¹ The appeal is made to the LBOE. The LBOE reviews the hearing record and takes the action it deems appropriate, which may include imposing a more lenient or a harsher discipline than that imposed by the disciplinary tribunal.²²

If the LBOE decision is adverse to the client, the attorney may file an appeal to the State Board of Education ("SBOE") **within thirty (30) days** of the LBOE decision.²³ Either party may appeal the decision to the SBOE.²⁴ If the decision is appealed to the SBOE, both parties are required to file briefs with the SBOE.²⁵ Oral arguments occur if either party or the hearing officer requests oral argument **within ten (10) days** of the docketing.²⁶

After the SBOE issues its decision, either party may then appeal to the Superior Court of the county where the LBOE is situated.²⁷ Attorneys should note that they must file an appeal within a specific time frame from the final decision of the tribunal, the LBOE, or the SBOE.

Chapter V discusses the appeals process in greater detail, including timing requirements for each appeal.

E. Students with Disabilities and Discrimination Based on Race, Color, National Origin, Gender, Sexual Orientation, Gender Identity, Disability, or Age

If a student has a suspected disability or the student's LBOE determined 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.²⁸

Chapter VI discusses the procedures available to students with disabilities.

If a child has been discriminated against based on race, color, national origin, gender, sexual orientation, gender identity, disability or age, the child/parent may file a complaint with the Office for Civil Rights of the U.S. Department of Education ("OCR"). While it is recommended that parents/guardians attempt to resolve the situation first with school administrators and next at the LBOE/SBOE level, a complaint may be filed directly with the OCR. A complaint must be filed with the OCR **within 180 calendar days** from 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 the OCR complaint is separate from the tribunal process and does not impact any of the deadlines involved in the tribunal process.

II. THE STUDENT'S RIGHTS BEFORE AND DURING A TRIBUNAL

This chapter explains the rights of students before and during a tribunal. This chapter also describes what qualifies as reasonable notice, a student's right to an attorney, what evidence may be presented by students or the board, and what the right to a timely hearing entail.

A. Source of a Student's Rights in a Tribunal Hearing

A student's rights with respect to a tribunal hearing are governed by Constitutional due process requirements²⁹ and Georgia's Fair Tribunal Act.³⁰ In particular, the right to a public education is a property interest protected by the Fourteenth Amendment's Due Process Clause. Therefore, it *cannot* be taken away for disciplinary reasons *unless* a school follows specific procedures that comply with constitutional due process requirements.

As an initial matter, once school officials determine that a particular student's conduct may require 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*, 419 U.S. 565 (1975), the United States Supreme Court made a distinction between suspensions lasting **ten (10) days or less** and longer-term suspensions or expulsion with respect to the due process requirements for each.³¹ Suspensions of **ten (10) days or less** are not subject to the tribunal process described in this manual.³²

1. The Fourteenth Amendment's Due Process Clause Provides Protected Property and Liberty Interests

Property and liberty interests cannot be taken away for disciplinary reasons without complying with constitutional due process requirements.³³ A student's right to public education is a property interest, and a student's reputation implicates a liberty interest.

2. Georgia's Fair Tribunal Act

The Georgia Fair Tribunal Act identifies the due process requirements needed for students faced with long-term suspension (more than 10 days) or expulsion.³⁴ Under the Act, once school officials determine a particular student's conduct may require disciplinary action by the school, the prospective disciplinary action's length determines the student's due process protections.³⁵

3. Long-term Suspensions or Expulsion

A student facing removal from school for *more than ten (10) days* is entitled to greater due process protections.

Georgia law defines discipline requiring a due process hearing as:

- **Long-term suspension:** a suspension out of school for more than ten (10) school days but not beyond the current quarter or semester.³⁶

- **Expulsion:** removal from school beyond the current quarter or semester.³⁷

Under **Georgia's Fair Tribunal Act**, due process requirements for students who are facing a long-term suspension or an expulsion include:

- **Notice:** reasonable notice to all parties prior to the hearing.
- **Evidence:** the right to present and respond to evidence and witnesses.
- **Timing of the hearing:** the right to a hearing **within ten (10) school days** after the beginning of a suspension. The student can request a continuance of the hearing in writing.

NOTE: The student will likely begin serving the suspension immediately. Extensions may result in the student being out of school for a longer period of time before the hearing.

B. Addressing the Notice Requirements

1. Right to Reasonable Notice

Students and their parent/guardian are entitled to "reasonable notice" prior to a hearing.³⁸ Under Georgia law, to be considered "reasonable notice," the notice **must**:

- Be in writing.
- Be served on the student's parent or guardian, personally or by mail.³⁹
- Include a statement of the time, place, and nature of the hearing.
- Include a short and plain statement of the behavior alleged as violating the school's code of conduct.
- Include a statement as to the right of all parties to present evidence and to be represented by counsel.⁴⁰
- Be sent to all parties and to the parent or guardian of the student or student(s) involved.⁴¹

NOTE: To be entitled to notice, the student's guardian does not have to meet the definition of a "legal guardian." Where "guardianship" can be established by way of authority to provide care for a student, *i.e.*, a foster home, then reasonable notice to such guardian is sufficient under the regulation.⁴²

- Be given before a school disciplinary hearing.⁴³
- Include the names of any witnesses the school intends to call – along with the expected testimony.

Notice need not be given directly to the parents. For example, in one case, a notice delivered to the student rather than mailed to the parents, but ultimately delivered to the parents' home, was sufficient notice, according to the SBOE.⁴⁴

2. Statement of Time, Place, and Nature of Hearing

SBOE rules require that the LBOE notify parties of the time and place of the hearing.⁴⁵ If a student receives notice of the hearing, is given an opportunity to attend, and voluntarily chooses not to, conducting the hearing in the student's absence does not violate due process.⁴⁶ The LBOE has no further requirement to ensure a student attends the hearing.

The notice may offer the student a waiver. If the student accepts the proposed discipline, the school will not hold the tribunal. In some instances, there may be a benefit to accepting the waiver, but it should be considered carefully and discussed with all interested parties, **especially the student**. Please note that, absent court-appointment as a legal guardian with express education related decision-making authority, foster parents, DFCS case managers, and children in care cannot unilaterally waive a child in care's right to a school disciplinary tribunal. Therefore, if the decision is made to waive the tribunal, the best course of action would be to ensure that waivers, when appropriate, are signed by the foster parent (if applicable), the child in care, and a DFCS representative (preferably a supervisor, instead of a case manager).

3. Short and Plain Statement of Matters Asserted

Students are entitled to receive a short and plain statement of the allegations of misconduct to be asserted during the hearing.⁴⁷ The notice must specify which provision of the code of conduct the student allegedly violated.⁴⁸ Students cannot be disciplined for offenses for which they were not specifically charged in the notice of their hearing.⁴⁹

The SBOE does not require the notice to describe the details of the charge.⁵⁰ The LBOE may enact its own rules requiring the notice to include a description of the acts that allegedly violated the code of conduct and if it does, then the LBOE must comply with their rule.⁵¹

NOTE: The LBOE does not need to notify the student that the student could be expelled for their conduct. Rather, O.C.G.A. § 20-2-755 grants the disciplinary officer, panel, or tribunal the authority to determine what disciplinary action should be taken against the student, which can include, but is not limited to expulsion.⁵²

One of the main reasons for requiring notice is to enable the student to prepare a defense. To prepare a defense, the accused student needs to know the rule or rules allegedly violated; the date, time, and place the offense occurred; and the act or actions that resulted in a violation of the rule or rules. Without notice of the conduct charged against the student, the student would be at a disadvantage when preparing their defense. The amount of information needed to prepare the defense depends on the specificity of the rule involved.

C. Right to an Attorney

Under Georgia law, a student is *entitled* to retain counsel to represent them in a tribunal.⁵³

Due process requires only that the student be notified of the right to be represented by an attorney present at the hearing; it does not guarantee that the student will be provided counsel before the hearing.⁵⁴ In other words, unlike in a criminal case, there is no right to have an attorney *appointed* if the student cannot afford to retain one. Most schools require advance notice if a student will be represented by an attorney.

The school is permitted to bring counsel even if the student is not represented by counsel. They need only notify the student and their parent/guardian of their right to be represented by counsel at the hearing.

PRACTICE POINTER:

Students, or the attorney if there is one representing them, should consult local school board rules to determine the manner and timing required for notification of representation prior to the hearing.

D. Evidence to Be Presented at Hearing

The student is entitled to present evidence at the tribunal hearing. SBOE has overturned LBOE decisions made after the student was denied the right to present evidence.⁵⁵

The notice must inform the student of their right to present evidence along with:

- Notice of the right to cross-examine the witnesses on all issues unresolved.
- A list of witnesses' names along with an overview of their expected testimony.⁵⁶

Denying a student the right to present a particular witness's testimony (assuming that witness is present at the hearing) is a violation of the student's due process rights.⁵⁷

Discovery rights: A student, the parent or guardian, or legal counsel for the student may obtain a copy of any documents relating to the hearing prior to the tribunal.⁵⁸ Georgia law is silent as to the form of a request for such documentary evidence, but the SBOE states that such a request **should be made in the form of a subpoena**.⁵⁹ See Appendix B for a sample.

Importantly, while school boards have the power to issue subpoenas, they do not possess the power to enforce them as there are no penalties under the law for a witness failing to appear.⁶⁰ As a result, the student or their representative at the hearing must understand that, even if they subpoena someone (i.e., a teacher) to attend the hearing to provide testimony, there is no guarantee that they will show up. There is no penalty if they fail to appear.

PRACTICE POINTER:

Documentary evidence can often be obtained by 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. Obtaining the student's school records – including academic, disciplinary, and other – requires a signed release from the child's guardian.

E. Right to a Timely Hearing

Students are entitled to a timely hearing. **Georgia law defines timeliness of the hearing as “no later than ten [10] school days after the beginning of the suspension** unless the school system and parents or guardians mutually agree to an extension....”⁶¹ Even if the school system and parents mutually agree to an extension, the hearing must be reset for a date no later than fifteen days after the start of the student’s suspension. There should be a clear notice to the student that there will be a hearing, including the date, time, and location of the hearing.⁶²

The U.S. Supreme Court holds that “notice and hearing should precede removal of the student from school.”⁶³ However, where the student’s presence creates a continued danger to persons or property or an ongoing threat of disrupting the academic process, then the student may be immediately removed from school with the notice and hearing following as soon as practicable.⁶⁴

Students have the right to delay the hearing, in order to prepare, including time to secure a lawyer. SBOE held that a one-day notice does not provide the student enough time to engage the services of an attorney or to secure witnesses.⁶⁵ A teacher called as a witness must have **at least three (3) days** notice prior to the hearing.⁶⁶ At least one SBOE has held that the student should have at least an equivalent amount of time to prepare a response, retain counsel, and secure witnesses.⁶⁷

Sample language Georgia Appleseed provides for requesting a continuance:

“Greetings, Please accept this as a request for a continuance of the disciplinary hearing of STUDENT NAME that is scheduled for DATE at TIME. In order to protect STUDENT NAME’S Constitutional right to Due Process and to provide STUDENT NAME with effective assistance of counsel, we need additional time to prepare and ensure that STUDENT NAME receives adequate (legal representation / advocacy) in this very serious matter. I understand that STUDENT NAME will not be allowed to return to the school’s campus until the hearing has taken place. Please provide me with potential future hearing dates. Thank you in advance.”

The request for continuance needs to be timely, meaning that it should be sent as soon after receiving hearing notice as possible.⁶⁸

While the Fair Tribunal Act has not codified the grounds on which a student is entitled to a continuance, SBOE has suggested that a request for a continuance should be considered carefully, especially when one is needed to permit an appointed attorney time to prepare a defense.⁶⁹ A student may waive their opportunity for a continuance if they make their request after witnesses against them testify.⁷⁰

PRACTICE POINTER:

Discuss the possible benefits or harms of a continuance with the child’s advocacy team to ensure the request is in the best interest of the child. Remember that a continuance will likely result in the child missing more classroom time. However, while waiting for a hearing to occur, the school must provide the child with educational materials.

III. PREPARATION FOR THE HEARING

This chapter provides information that will help you prepare for the hearing, including:

- How tribunals differ from other types of legal hearings with which you have experience.
- What to expect during the hearing.
- How to prepare parents and witnesses to testify on behalf of the client.
- Information on settlement agreements.

A. A Tribunal Is Different from Other Legal Proceedings

Tribunals differ from other legal proceedings in many ways:

(1) Tribunals do not follow the stringent requirements of criminal or civil proceedings.⁷¹

(2) **Hearsay evidence may be permissible.** Hearsay evidence was previously held to be permissible,⁷² though a more recent line of cases seems to indicate, at least implicitly, that hearsay may be impermissible.⁷³

PRACTICE POINTER:

If the school introduces hearsay evidence, that opens the door for you to introduce hearsay evidence. You may want to ask the hearing officer in advance of the hearing if hearsay evidence will be allowed. Have your documents, such as school records or letters from counselors/ doctors/teachers, prepared and ready to offer.

(3) The **Exclusionary Rule does not apply** to a tribunal hearing. Evidence obtained in violation of the Fifth Amendment’s protections against self-incrimination is admissible. In other words, interviews of the student prior to advising them of their Miranda rights are admissible.⁷⁴

PRACTICE POINTER:

When you meet with the student, ask who they have talked to about the accusations. Has the school principal questioned them? Or the school resource officer (SRO – police officer assigned to work at the school)? Or some other person? What did the student tell them? Did they put anything in writing?

(4) The **burden is on the school** to establish that the student violated its policy.⁷⁵ **The burden of proof is a preponderance of the evidence.**

Like other legal proceedings, **all parties are afforded an opportunity to present and respond to evidence. This includes examination and cross-examination of witnesses on all issues unresolved.**⁷⁶ Typically, the school is represented by an attorney that will present the evidence and witnesses for the school. They will cross-examine your witnesses.

NOTE: Sometimes the child is facing criminal charges in juvenile court stemming from the behavior alleged by the school. Issues relating to criminal proceedings are outside the scope of this Manual. If you are handling a matter that involves criminal proceedings, laws, or issues, you should consult with criminal law counsel regarding those aspects. If the child has not been criminally charged, but the alleged behavior involved violence, guns/weapons, or drugs, you should consult a criminal law expert.

B. The Student Is Your Client: Balancing Parent/Guardian Involvement

Remember, your client is the child, not the child's parents or guardians. When representing a child, addressing the concerns of the parent/guardian can be challenging and may raise ethical considerations. If the child has certain disabilities that result in a Manifestation Hearing, the attorney-client relationship may be modified. (See Chapter VI.)

The student's parents or guardians may attend meetings with the student. However, the attorney-client privilege does not apply to those meetings in which the parent/guardians – or any other third party – participate.

It is critical that you thoughtfully explain this situation to the student and to the parent/guardian. You want to assure the student that whatever they share with you is protected. The parent/guardian needs to understand that their support is critical to your work, but that they are not the client. They should be engaged. Their presence at the tribunal is important.

As you build your relationship with your client, consider the following:

- Whether to exclude parents or guardians from the meetings with the child in order to preserve confidentiality and attorney-client privilege, particularly where there are criminal or delinquency charges pending.
- Conflicts of interest that may exist between the student and his/her parents.

NOTE: If you are engaged in the representation of a student with a disability (discussed in Chapter VI), the attorney must clarify to the student and the parent/guardian that the student is the client. The attorney should use a detailed Engagement Letter to clarify issues of representation and potential conflicts of interest.

PRACTICE POINTER WHEN REPRESENTING CHILDREN IN FOSTER CARE:

The same ethical considerations must be weighed when representing a foster child. The child is your client. The foster care worker or foster parent may want to be involved in assisting you with information, background, and providing other important resources that will aid in the defense or mitigation at the tribunal hearing. Their support is important. The child gets to decide whether they are involved in the meetings you have with the child. As mentioned above, if the foster parent or caseworker is in any meeting you have with the child, the attorney-client privilege dissolves for that meeting.

Once you have explained the attorney-client role to the child and parent/guardian, the next important step is to ensure that the client fully understands what you have agreed to do. You should provide, in writing, an agreement between you and your client that sets forth your duties and obligations to the client. See Appendix A for a sample letter of representation.

C. Prepare the Student, Parent, and Witnesses for the Tribunal

1. Prepare the Student to Testify

Carefully consider whether the student should provide testimony at the hearing. As noted in Chapter III, Section A, the alleged behavior may result in criminal charges against the student. Any testimony given at the tribunal by the child can be used against them in a criminal proceeding.

If you decide to have the child testify, preparation of the student's testimony will be critical. To prepare, you should:

(1) Conduct a detailed review of the events that led to the disciplinary action with the student.

(2) Obtain any documents that the student may have signed or statements the student made. If a student submitted a signed confession, you should obtain this confession and talk to the client in detail about the circumstances surrounding the attainment of the confession.

REMEMBER: 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.

(3) Educate the student about the cross-examination process, including that it will be conducted by the school's attorney or other representative for the school. Practice cross-examining them so they are prepared for the different sentence structure and tone the school's attorney may have.

(4) Remind them that they should not immediately answer confusing questions or questions that they do not fully understand. Instead, they should ask that the question be asked again or stated in a different way if they do not understand it.

(5) Consider preparing the student to read a prepared statement outlining that they are sorry for their behavior and what steps they are taking to ensure good behavior in the future.

PRACTICE POINTER:

If the focus is on the consequences, consider having the child write their prepared statement in their own words – even their own handwriting. Or you may want to have them dictate it to you. Work with them. You are a team. This is a good area to show the child that you are working with – and for – them.

NOTE: Anything said at a tribunal can be used against the student in a later criminal or juvenile court proceeding. If criminal or juvenile charges are pending or might be filed, you may want to consider not having the student testify. Make sure the student understands this concern. However, it is ultimately the client's decision on whether to testify or not.

2. Explain Possible Consequences to Your Client

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.

Thus, it is your duty to:

- Fully educate the client about the tribunal.
- Explain all the possible outcomes associated with the tribunal hearing and any related appeals.
- Make information known to the client promptly.

3. Provide Honest Advice While Considering the Client's Situation

Rule 2.1 of the Georgia Rules of Professional Conduct states: "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice."

However, the rule also 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."

Although Rule 1.2 provides that *both* the lawyer *and* the lawyer's client have authority and responsibility in the objectives and means of representation, 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. This agreement of legal services should be in writing and in accordance with the rules of professional conduct.

A client is thus entitled to:

- Straightforward advice expressing the lawyer's honest assessment, even if negative to the client.
- Advice presented in a way that sustains the client's morale and is provided in as acceptable a form as honesty permits.
- The power to determine the ultimate objectives of the attorney, scope of services, and other issues that involve expense and which concerns to prioritize, although the lawyer should assume responsibility for technical and legal tactical issues.

Unrealistic client expectations are a common challenge to providing straightforward advice and sustaining morale. For example, the client may believe that the client should not be punished for the alleged behavior. In this case, you must explain to the client that if the tribunal finds that the client violated the applicable school code of conduct, the client is likely to face discipline for that behavior. Explain that your role is to:

- Provide a defense to the allegations.
- Help ensure that the procedure is fair and affords the student due process.
- If the student is found to have committed a violation, present mitigating evidence to ensure that:
 - Any discipline is consistent with the behavior and code violation.
 - Any discipline is mitigated to the extent possible under the law.

If the student admits doing the behavior, you still have a duty to defend the client's due process rights and ensure that if the client is disciplined, the punishment is consistent with the behavior and mitigated to the extent possible under the law.

4. Prepare the Parent to Testify

In preparing for the tribunal hearing, assess whether you will have the parent/guardian (or foster care case worker) provide testimony. If so, you should take time to prepare their testimony. As with any witness, this preparation can include creating an outline of proposed topics and walking the parent/guardian through each of the topics to be covered during their testimony.

The parent will likely need to testify about:

- The student's family history.
- Their supervision of the student.
- The parent's and student's ties to the local community, highlighting the student's contributions.
- Positive qualities, successes, and what the parent/guardian believes the student needs to be even more successful in school.

All of this serves to mitigate the discipline. The parent/guardian should also be prepared for potential cross-examination on such topics. Prepare them for questions regarding concerning incidents in the student's school record. There is often underlying information behind these incidents. Work with the parent/guardian to minimize any potential problems with their testimony. Also, be sure to learn from them the successes and positive characteristics of the student that serve as mitigation.

5. Identify and Prepare Other Witnesses to Testify

The attorney must analyze the facts of the case to determine whether it will be helpful to have other witnesses testify before the tribunal. When determining whether to have other witnesses testify, the attorney should keep in mind that such witnesses may be subpoenaed in tribunal proceedings. Witnesses may include:

- Individuals who witnessed the events leading to the discipline, such as teachers and other students.
- Individuals with knowledge of the student, such as teachers, clergy, therapists, other community members, and, in the case of a foster child, the foster care worker.

A student's mentor, clergy, or sports leader may be a helpful witness to show that the student is a good person with good role models in their life.

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 who can speak to any intervening events that have occurred since the incident, e.g., the student started counseling, changed medications, or enrolled in an afterschool program. Additionally, if there were services that needed to be provided that had not yet been provided, the witnesses can share these as alternatives to out-of-school suspension. Look for, identify, and highlight the positives in the child's background, experience, and record.

6. Documents to Obtain

As quickly as possible, you must obtain 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. You should also review (often online) a copy of the school code of conduct.

Additionally, you should obtain all school records, including academic, behavioral, and special education services. The records will provide you with the history and background of the student, allow you to highlight successes, and help you identify gaps in services.

7. Key Issues in Preparing the Case

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. Subpoenas also are used to request the production of documents.

Each local school board determines how a subpoena will be issued and served on a witness. Local school boards must issue subpoenas to witnesses upon request by the student to ensure that witnesses for the student will be present for the hearing.⁷⁷

Teacher witnesses must be given at **least three (3) days** advance notice of the hearing.⁷⁸

When subpoenaing a student witness (a student other than your client), it is best practice to notify the parents/guardians of the student witness. The parents/guardians should be notified that the student is requested as a witness to testify at a hearing and that the student might miss class time as a result.

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.⁷⁹

PRACTICE POINTER:

Always interview a potential witness before deciding to subpoena as a witness. You want to know what they would testify about and if they are willing to testify – allowing you to assess whether to call them. For example, a school district employee may not wish to testify against their employer. Regardless of what they may have witnessed, they may ultimately not be a favorable witness for you. For any witness that you intend to call at the hearing, you want to confirm that their testimony will support your case.

8. Hearsay

While many hearings allow hearsay evidence, sole reliance on hearsay, such as written statements introduced without the declarant available to testify, is impermissible in disciplinary hearings.⁸⁰

PRACTICE POINTER:

Be on the lookout for the school district's counsel attempting to admit written evidence into the record without bringing the actual witness to testify, i.e., student witness statements. Hearsay evidence alone cannot justify an alleged violation of the student code. Parties have a right to cross-examine witnesses. In order to introduce documents, like school records, a foundation witness (like custodian of the records) is required. You should talk with the school's lawyer about the documents they intend to introduce and how they intend to offer them. You may agree to their admission by stipulation as a way to allow your own records to be admitted by stipulation.

9. Notice Issues

In your examination of the record, look to 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 student’s parent/guardian. 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 to be represented by counsel.⁸¹

PRACTICE POINTER:

Does the LBOE require advance notice of the student being represented by an attorney? Many do. Be sure to notify the school within the appropriate time frame of your representation.

The SBOE has reversed LBOE decisions when the punishment doesn’t match with the alleged misconduct, particularly when a student was expelled from school.⁸² The attorney should determine what arguments about the impropriety of the discipline can be made: Was the student acting in self-defense? Does the student lack any other disciplinary history? What was the intent behind the student’s actions? What were the actions of others involved?

D. Settlement Considerations

As with any case, settlement is an option when navigating a tribunal. In lieu of a full-blown hearing, the student may enter into a settlement agreement with the LBOE. Once you are retained by the student, you may want to contact the attorney for the school district to see if settlement is an option. Options for settlement include:

- A behavior contract between the student and the school administrator. This document will set forth an expectation of appropriate classroom behavior and establish regular communication between the school and the student’s parent or guardian.
- Negotiating a lesser discipline, such as an in-school suspension where the student is moved to a separate classroom in the school to complete class assignments.
- School or community service instead of a suspension or expulsion. Contact Georgia Appleseed for guidance on how to identify which options may be available for community service.

PRACTICE POINTER:

Include a settlement proposal provision that requires the school to give the student their regular class assignments during the suspension period. The school does not always do so. Failure to provide the assignments can cause the student to fall behind. Also, attempt to negotiate scheduling suspension days or detentions so that they do not conflict with tests or other difficult to schedule school deliverables.

IV. AT THE TRIBUNAL HEARING

This chapter discusses:

- The procedure at a tribunal hearing.
- How to effectively create a record during the tribunal hearing.
- How to mitigate any punishment your client may receive.

A. Procedure Governing Tribunal Hearing

LBOEs have wide discretion on many of the specific procedures followed at the tribunal hearing.⁸³ Procedures can differ from LBOE to LBOE. For example, many tribunal hearings follow a bifurcated format. In the first part of the hearing, the school and student present evidence about whether the student committed the alleged misconduct. The school district typically puts on its case first. During the second half, the tribunal hears evidence to determine the punishment. Not all LBOEs employ this bifurcated approach. You should ask other lawyers in the district who defend students in tribunals, opposing counsel or the hearing officer to explain any local procedures.

There are important legally mandated procedural requirements for tribunal hearings and decisions, including:

- The factfinder or presiding officer for the hearing will be selected from a hearing officer, a tribunal, or a panel.⁸⁴
- All parties at a public school tribunal hearing are given an opportunity to present and respond to evidence and to question all witnesses on all issues unresolved.⁸⁵ Witnesses may be questioned about any issues that are relevant to the allegations 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 (3) days** before the tribunal hearing.⁸⁶
- Parents and students (or the student’s counsel) are given the opportunity to question all witnesses.⁸⁷
- While the tribunal has the authority to determine if and what disciplinary action shall be taken, the decision **must be based solely on the evidence presented at the tribunal hearing**.⁸⁸
- All parties shall receive a written decision **within ten (10) days** of the close of the tribunal hearing record.⁸⁹

PRACTICE POINTER:

It is important that you make your arguments effectively and that you challenge the case put on by the school. Overbearing cross-examination, repeated unnecessary objections, and theatrical arguments are not well received in tribunal hearings and most often do not serve the best interests of the client.

B. Creating the Record at the Tribunal Hearing: Preparing for the Appeal

If an evidentiary issue or other matter is not raised at the initial tribunal hearing, then it cannot be raised for the first time on appeal.⁹⁰ The LBOE and SBOE will only consider information that was put on the official record during the initial hearing.⁹¹

Georgia law requires that there be a verbatim electronic or written record of each hearing made available to all parties.⁹² This right is rooted in the student's right of appeal, and it is the LBOE's responsibility to secure the record.

Deficiencies in a record, however, are not dispositive of a violation of due process.⁹³ Due process is violated when deficiencies in the record result in the denial of a student's effective right of appeal.⁹⁴

PRACTICE POINTER:

If there are documents the hearing officer/panel refused to admit, present them provisionally for the record for appeal. Offer any records that may be useful on appeal that you intend to admit. The SBOE will not allow you to amend your appeal to add any new documents that were not presented at the tribunal hearing.

C. Mitigating the Discipline

If a student 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. You should argue to reduce the level of discipline imposed.

The attorney can and should be prepared to present relevant evidence and testimony, including:

- Any witnesses who may be able to testify to the student's community activities and other local involvement.
- Testimony of the parents/guardian about any steps they are taking to help rehabilitate the student to ensure the behavior does not happen again.
- A statement or testimony of the student taking responsibility for their actions and apologizing, if appropriate. (Remember, these statements can be used against the student in a criminal proceeding.)

- Statistical data relevant to the district, school, grade level, gender, and nationality of the student.

Georgia Appleseed has many resources that may assist you, including "**Find My School's Suspension Rate**," available at: <https://gaappleseed.org/resource/find-my-schools-suspension-rate/>.

If data shows that this particular district/school has a history of disproportionately suspending and/or expelling students of color, you should argue that point during your closing statement. It serves as a counter to the recommendation presented by the district. Then offer an alternative to the district's recommendation.

PRACTICE POINTER:

Once the tribunal hearing has concluded, request an electronic or written recording of the hearing and copies of all documents submitted during the hearing.

Georgia Appleseed's Tribunal Checklist guides advocates through the Tribunal process. See **Appendix D**. Make sure to submit this form to Georgia Appleseed after the Tribunal.

V. AFTER THE TRIBUNAL HEARING: APPEAL PROCEDURES

This chapter discusses possible appeals of tribunal hearing decisions that are not favorable to your client. The first appeal is to the LBOE. The decision of the LBOE can then be appealed to the SBOE. The student may seek judicial review in Superior Court to appeal an SBOE decision. This chapter will discuss each appeal in detail, including timing issues on appeals.

A. Appeal of Tribunal Decisions to the LBOE

After a tribunal hearing, the student may appeal an adverse tribunal ruling to the LBOE, including whether the discipline imposed outweighs the severity of the violation.⁹⁵

All parties shall receive a written decision within **ten (10) days** of the close of the hearing record. If appealing the tribunal decision is appropriate, then the appellant must file a written notice of appeal within **twenty (20) days** from the date of the tribunal's decision.⁹⁶ The written notice of appeal should be sent to the LBOE's attorney and a representative of the LBOE.

The time calculations for appeals include holidays and weekends. If the twentieth (20th) day falls on a holiday or weekend, the appeal must still be submitted prior to that holiday or weekend.

The local school superintendent may suspend the disciplinary action imposed by the tribunal during the pendency of the appeal to the LBOE.⁹⁷ Generally, counsel for a student will send a request to suspend the disciplinary action along with the filed notice of appeal.

After receipt of the appeal, the LBOE shall review the record and render its decision in writing within **ten (10) days** (excluding weekends and public and legal holidays) from the date the LBOE receives notice of the appeal.⁹⁸

Oral arguments: Local practice varies from school district to school district regarding oral arguments as part of the appeal to the LBOE. Some school districts do not allow oral argument and resolve appeals in executive session after reviewing the record. Other school districts 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 LBOE may take any action on the appeal that it deems appropriate,⁹⁹ **the LBOE may not impose a harsher discipline than the one imposed by the tribunal unless the LBOE provides an explanation of the harsher discipline.**¹⁰⁰

B. Appeal of LBOE Decision to the SBOE

The student may appeal the decision of the LBOE to the SBOE by filing a written appeal to the local school superintendent within **thirty (30) days** after the LBOE's decision.¹⁰¹ Unlike an appeal of the tribunal's decision, **the decision of the LBOE will not be suspended during the period of appeal to the SBOE unless the LBOE or the vice chairperson for the appeals of the SBOE so orders.**¹⁰² The appeal must:

- Be in writing.
- "Distinctly set forth the question in dispute, the decision of the [L]ocal [B]oard, and a concise statement of the reasons why the decision is complained of" ¹⁰³
- Include a transcript of the LBOE hearing that is certified as correct by the local superintendent, at the expense of the appellant. ¹⁰⁴

Each district will have provisions for obtaining a transcript free of charge in the case of an indigent client.¹⁰⁵ 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 SBOE:

- A copy of the appeal.
- The transcript of evidence and proceedings.
- The decision of the LBOE.
- Any other matters relating to the appeal. ¹⁰⁶

After a determination that the appeal is in proper form, the appeal shall be docketed before the hearing officer of the SBOE at the "earliest practical time."¹⁰⁷

Appellants must request oral arguments within **ten (10) days** of the date that the SBOE docketed the appellant's case on its calendar.¹⁰⁸ It is critical that the attorney pay close attention to any communications from the SBOE.

The Appellant Brief is due to the SBOE within **twenty (20) days** of docketing.¹⁰⁹ **The Appellee Reply Brief** is due **forty (40) days** from the date of docketing.¹¹⁰

The SBOE 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.¹¹¹

The SBOE shall issue a written decision within twenty-five (25) days after the hearing and shall notify the parties in writing of its decision and of their right to appeal the decision to the Superior Court of the county in which the LBOE is located.¹¹² **The SBOE and Superior Court apply the "any evidence" rule to the LBOE's decision.** The LBOE decision will be upheld "so long as evidence exists that supports the [LBOE's] decision...[and] the record [does not show] the [L]ocal [B]oard grossly abused its discretion or acted arbitrarily or contrary to law."¹¹³ Accordingly, the scope of appellate review by the SBOE is quite narrow and only rarely does the SBOE reverse LBOE actions.

C. Appeal of SBOE Decision to Superior Court

An aggrieved party may appeal an adverse ruling by the SBOE to Superior Court. The appeal must be filed within **thirty (30) days** from the decision of the SBOE.¹¹⁴

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. ¹¹⁵

As with the SBOE, the Superior Court applies the 'any evidence' rule to the LBOE's decision.¹¹⁶ The LBOE decision will be upheld "so long as evidence exists that supports the [LBOE's] decision...[and] the record [does not show] the [L]ocal [B]oard grossly abused its discretion or acted arbitrarily or contrary to law."¹¹⁷

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. ¹¹⁸

VI. STUDENTS WITH DISABILITIES

Special considerations and procedures apply for students with a diagnosed disability or suspected disability. 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. [When you receive information from Georgia Appleseed regarding a referral, it should include whether there is an IEP for the student.] Err on the side of inclusion by always including in your discovery request from the school any IEP or related documents.

In-depth information about the issues addressed in this chapter—including which disabilities are most common and how to prepare for a manifestation hearing—can be found at: <https://gaappleseed.org/resource/help-guides/>. Also, see Appendix C for a checklist to use during the manifestation meetings.

Please reach out to Georgia Appleseed if you have any questions or need additional resources.

A. Overview of Protections

The Individuals with Disabilities Education Act (“IDEA”), a federal law, imposes certain limitations on the imposition of school disciplinary actions on a student who has a disability, as well as on those students whom the school knew or should have known were suspected of having a disability.¹¹⁹ IDEA requirements are implemented in Georgia pursuant to **Georgia Department of Education (“GaDOE”) Rule 1604-7-.10**.

Under IDEA, the school is required to provide to each student who has a disability (a “special education student”) an individualized education program (“IEP”) (as defined below).

An IEP is a written statement that:

- Describes the student’s disability.
- Establishes goals for the student’s education.
- Lists the special education and related services to be provided to the student.¹²⁰

Unless the IEP specifically provides 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.¹²¹

Georgia must comply with IDEA requirements for students who are deemed “suspected to have a disability” **and** about whom the school knew or should have known might have a disability.

If a student is not a special education student but is suspected to have a disability, then a written request for an evaluation for services should be made as soon as possible.

PRACTICE POINTER:

In all cases, you want to obtain copies of all school records. For students with disabilities, request all IEP/504/Behavioral Intervention Plans. Review all school records closely as they are a source for identifying a child who has not received special education services but should. Therapy, counseling, and medical records are critical as well.

B. Manifestation Determination

If a special education student has violated the code of conduct and the misconduct is a manifestation of the disability, the student may only be removed from their current placement and be assigned to an alternative education setting or be suspended for **not more than ten (10) consecutive school days**, with few exceptions.¹²²

1. “Change of Placement”

If the special education student violates the school’s code of conduct,

- **and** the school seeks to remove the student from their current placement for **more than ten (10) consecutive days**
- **or** if the student has been removed for multiple similar actions for periods that cumulatively **exceed ten (10) days**,
- **then** the removal is considered a “change of placement.”

If a change of placement occurs, then the local educational agency (“LEA”), the student’s parent/guardian, and the relevant members of the student’s IEP team must meet **within ten (10) days** of the change of placement.¹²³ The school can provide you information about who is on the IEP team.

At the meeting, the team members review all relevant information to determine whether the student’s conduct was a **“manifestation of the child’s disability.”**¹²⁴

2. “Manifestation of the Child’s Disability”

A student’s conduct is considered a manifestation of the child’s disability if the conduct was:

- Caused by or had a direct and substantial relationship to the student’s disability, **or**
- A direct result of the local educational agency’s failure to implement the IEP.¹²⁵

PRACTICE POINTER:

If your client has a disability, you should 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*. In other words, if it is suspected that the child has a disability and the school has set a tribunal hearing absent a manifestation determination, request that the tribunal hearing be postponed and a manifestation determination review hearing scheduled.

If the IEP team determines that **the student's behavior was a manifestation** of their disability, then the IEP team is required to (1) conduct a functional behavioral assessment (if one has not already been conducted) and (2) develop and implement a behavioral intervention plan for the student.¹²⁶

If a behavioral intervention plan is already in place, the IEP team is required to review and modify it as needed to address the behavior.¹²⁷

The student may then return to their initial placement unless:

- The parents and local educational agency agree otherwise,¹²⁸ **or**
- The student possessed a weapon or illegal drugs or inflicted serious bodily injury while at school.¹²⁹

If the IEP team determines that the student's behavior was not a manifestation of their disability, then the relevant disciplinary procedures applicable to students without disabilities may be applied to the student with the disability in the same manner and for the same duration.¹³⁰ In other words, if the finding is that the student's behavior is not a manifestation of their disability, the tribunal hearing process may be triggered.

PRACTICE POINTER:

Make sure the student has a behavior intervention plan that addresses how specific behavior problems should be addressed. Additionally, behavior intervention plans that have been drafted for different behaviors need to be amended to address the current behavior that has triggered this manifestation.

C. Due Process Requirements

The GaDOE rules provide that a parent/guardian must be notified of a change of placement decision *on the day* that such a decision is made.¹³¹ The notice must include (a) detailed information concerning the procedural safeguards related to such actions; (b) provide several pieces of information about the basis for the decision; and (c) notice of parent's rights with respect to the decision.¹³²

D. Appeal of Manifestation Determination

The manifestation determination finding may be appealed by (1) either the parent/guardian of a student with a disability who disagrees with a decision regarding placement or a manifestation determination; or (2) an educational authority (e.g., school) that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others.¹³³ The student appeals the manifestation determination by filing a due process hearing request pursuant to Rule 1604-7-.12¹³⁴ and seeking a due process hearing before an independent administrative law judge ("ALJ") or hearing officer.¹³⁵

The ALJ, after hearing all the evidence, may return the student 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.¹³⁶ Alternatively, the ALJ may order a change in placement to an interim alternative educational setting for no more than **forty-five (45) days** upon finding that maintaining the current placement is substantially likely to result in harm to the student or others.¹³⁷

While the appeal is under review, the student must remain in the interim alternative educational setting until either a decision has been made or the 45-day time restriction expires, whichever comes first.¹³⁸

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.

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 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.

ENDNOTES

¹ O.C.G.A. § 20-2-735(a).

² O.C.G.A. § 20-2-751.5.

³ O.C.G.A. § 20-2-736(a).

⁴ *Id.* ("A signature or confirmation of receipt may be obtained in writing, via electronic mail or facsimile, or by any other electronic or other means as designated by the [LBOE].").

⁵ O.C.G.A. § 20-2-736(b).

⁶ O.C.G.A. § 20-2-735(d).

⁷ *Goss v. Lopez*, 419 U.S. 565, 581 (1975). While *Goss* is cited throughout this Manual, the Committee recognizes that Courts have refused to apply *Goss* in certain circumstances due to changes in the applicable laws since 1975. Nonetheless, for purposes of this Manual, *Goss* serves as a reliable source for explaining some of the relevant fundamental concepts.

⁸ O.C.G.A. § 20-2-754(b)(1).

⁹ O.C.G.A. § 20-2-751.6(b).

¹⁰ O.C.G.A. § 20-2-752(1).

¹¹ Ga. Comp. R. & Regs. § 160-4-8-.15(1)(j). The rules for the Georgia Department of Education begin with Ga. Comp. R. & Regs. (hereinafter "GaDOE") 160-1-1-.01, et seq.

¹² GaDOE R. 160-4-8-.15(1)(h)(1)(v) (noting that the Tribunal Training Course that Tribunal members must complete includes a session on members being an "independent, neutral arbiter").

- ¹³ O.C.G.A. § 20-2-754(b)(1).
- ¹⁴ O.C.G.A. § 20-2-754(b)(3).
- ¹⁵ O.C.G.A. § 20-2-755.
- ¹⁶ O.C.G.A. § 20-2-754(b)(3).
- ¹⁷ O.C.G.A. § 20-2-1160(e) (confining appellate review to matters in the record).
- ¹⁸ *Sharpley v. Hall Cnty. Bd. of Educ.*, 251 Ga. 54, 54, 303 S.E.2d 9, 10 (Ga. 1983) (noting that the state board's review "shall be confined to the record" (quoting O.C.G.A. § 20-2-1160(e))).
- ¹⁹ O.C.G.A. § 20-2-754(b)(5).
- ²⁰ *See B.M. v. Henry Cnty. Bd. of Educ.*, Case No. 2009-16 (Ga. State Bd. of Educ. Jan. 2009) (holding that although there were several instances in which the transcript appeared inaudible, the deficiencies in the record did not change the record testimony and therefore did not affect the student's due process rights).
- ²¹ O.C.G.A. § 20-2-752(3); O.C.G.A. § 20-2-755. See each school district's rules regarding procedures for initiating an appeal and the corresponding deadlines and timing.
- ²² O.C.G.A. § 20-2-754(d).
- ²³ O.C.G.A. § 20-2-1160(b).
- ²⁴ *Id.*
- ²⁵ GaDOE R. 160-1-3-.04(4)(g) (noting that the appealing party has 20 days to file a brief and the appellee has 40 days).
- ²⁶ GaDOE R. 160-1-3-.04(4)(h).
- ²⁷ GaDOE R. 160-1-3-.04(4)(j).
- ²⁸ GaDOE R. 160-4-7-.12.
- ²⁹ *See Goss*, 419 U.S. at 574-76.
- ³⁰ O.C.G.A. § 20-2-754.
- ³¹ *Goss*, 419 U.S. at 574-76.
- ³² In *Gamble v. Ware Cnty. Bd. Of Educ.*, 253 Ga. App. 819, 823, 561 S.E.2d 837, 842 (2002), the Georgia Court of Appeals applied the *Goss* ruling to suspensions of ten (10) days or less. In *Goss*, 419 U.S. at 581, the Supreme Court held that a student facing a suspension of ten (10) days or less should be given oral or written notice of the charges against the student. If the student denies the charge, they should be given an opportunity to tell their side of the story by explaining the evidence presented against them. (The format of such a presentation varies by District.) In *Goss*, 419 U.S. at 581, the Court provides that as a general rule, the student be given a hearing before the student is removed from school.

Even these basic due process rights may be abridged in certain unusual circumstances. For instance, if the student's continued presence at school poses a danger to persons or property or an ongoing threat of disrupting the academic process, the student may be removed immediately or at least before the hearing. Note that these minimum requirements may be met informally. In *Wayne Cnty. Bd. of Educ. v. Tyre*, 199 Ga. App. 384, 386, 404 S.E.2d 809, 811 (1991), the Georgia Court of Appeals held that when a student faces three days of suspension, due process requirements are satisfied when school officials questioned a student at the location where the incident occurred and offered the student an opportunity to explain the next day.

With short-term suspensions, students may not be entitled to an attorney or to present witnesses, or respond to any evidence and witnesses presented by the school. Because of the informal nature of the process described above for short-term suspensions, these steps may be conducted as the events transpire, making it difficult for the student to secure an attorney or present the testimony of witnesses.
- ³³ *Goss*, 419 U.S. at 574-76.
- ³⁴ O.C.G.A. § 20-2-754.
- ³⁵ O.C.G.A. § 20-2-753(a).
- ³⁶ O.C.G.A. § 20-2-751(5).
- ³⁷ O.C.G.A. § 20-2-751(2).
- ³⁸ O.C.G.A. § 20-2-754(b)(1).
- ³⁹ *Id.*
- ⁴⁰ *Id.*
- ⁴¹ *Id.*
- ⁴² *M.R. v. Fulton Cnty. Bd. of Educ.*, Case No. 2012-61 (Ga. State Bd. of Educ. Aug. 22, 2012) (holding that even though the Fulton County Department of Family and Children Services was the student's legal guardian, the group home that the student was placed was the student's guardian because the school's records indicated that a representative from the group home was the contact for the student and the student appeared with a representative from the group home at the hearing).
- ⁴³ *Goss*, 419 U.S. at 579 (noting that at a minimum, due process requires that the adjudication "be preceded by notice" (internal quotation omitted)).
- ⁴⁴ *Harvey R. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1986-38 (Ga. State Bd. of Educ. Nov. 13, 1986).
- ⁴⁵ GaDOE R. 160-1-3-.04(3)(a)(1).
- ⁴⁶ *See E.W. v. Douglas Cty. Bd. of Educ.*, Case No. 2006-02 (Ga. State Bd. of Educ. Sept. 2005).
- ⁴⁷ O.C.G.A. § 20-2-754(b)(1).
- ⁴⁸ In *J.G. v. Walton Cty. Bd. of Educ.*, Case No. 1999-56 (Ga. State Bd. of Educ. Nov. 1999), the LBOE failed to identify any provision in the code of conduct that the student violated. Because the school board did not provide the particular provision the student violated, the SBOE reversed the LBOE's decision in part and concluded the LBOE did not have any policies governing the student's behavior in question.
- ⁴⁹ In *E.W. & N.W. v. Henry Cty. Bd. of Educ.*, Case No. 2001-36 (Ga. State Bd. of Educ. June 2001), the LBOE found the students guilty of violating a section of the code of conduct for which they were never specifically charged. The SBOE reversed the decision and concluded that the LBOE had exceeded its authority and that the students could not be found guilty of an offense for which they had not been charged.
- ⁵⁰ In *V.N. v. Pierce Cty. Bd. of Educ.*, Case No. 2003-22 (Ga. State Bd. of Educ. Mar. 2003), the notice of hearing stated the student was charged with battery but did not describe the details of the alleged battery, including when or where the battery occurred, or the alleged victim. The SBOE ruled the notice was sufficient and permitted the student to present a defense to the battery charge.
- ⁵¹ *Roshon E. v. Burke Cty. Bd. of Educ.*, Case No. 1994-54 (Ga. State Bd. of Educ. Nov. 1994) (finding a notice that only listed the rules that the student allegedly violated improper when the LBOE had enacted a policy requiring a description of the acts that allegedly violated the rule and a summary of the evidence expected to be used against the student in support of the charges).
- ⁵² See O.C.G.A. § 20-2-755 (providing that the "disciplinary officer, panel, or tribunal . . . shall determine what, if any, disciplinary action shall be taken," which "may include . . . expulsion").
- ⁵³ O.C.G.A. § 20-2-754(b)(1).
- ⁵⁴ *Brisendine v. Henry Cty. Bd. of Educ.*, Case No. 1978-36 (Ga. State Bd. of Educ. Feb. 1979) (holding that due process only requires notice of right to counsel).
- ⁵⁵ *See C.W. v. DeKalb Cty. Bd. of Educ.*, Case No. 2000-15 (Ga. State Bd. of Educ. Jun 3 2000) (holding that a student's due process rights were violated when a school board prevented the student from conducting a full cross examination of witnesses); *see also B.G. v. Pike Cty. Bd. of Educ.*, Case No. 2001-13 (Ga. State Bd. of Educ. Jan. 2001) (finding that a Local Board denied a student due process when it conducted a hearing of other students before making a decision regarding the student because the student was prevented from having an opportunity to cross examine witnesses that the Local Board considered when ruling on the student's case).
- ⁵⁶ O.C.G.A. § 20-2-754(b)(3); *see also K.S. v. Henry Cty. Bd. of Educ.*, Case No. 2006-42 (Ga. State Bd. of Educ. Mar. 2006) ("Due process requires a notice of...the names of witnesses and their expected testimony.").
- ⁵⁷ *See A.M. v. Forsyth Cty. Bd. of Educ.*, Case No. 2009-64 (Ga. State Bd. of Educ. Sept. 2009) (reversing a decision because the student did not have an opportunity to examine and cross-examine witnesses whose testimony was introduced over the student's objections).
- ⁵⁸ O.C.G.A. § 20-2-754(e).
- ⁵⁹ *L.W. v. Gwinnett Cty. Bd. of Educ.*, Case No. 2000-3 (Ga. State Bd. of Educ. May 2000) (holding that the LBOE did not deny the student's due process rights by withholding statements of other students in the absence of a subpoena); *see also* GaDOE § 160-1-3-.04(3) (codifying the requirement that local boards of education are authorized to sign and issue subpoenas to witnesses).
- ⁶⁰ *McIntosh v. Gordy*, 308 Ga. App. 405, 406, 707 S.E.2d 609 (Ga. Ct. App. 2011).
- ⁶¹ O.C.G.A. § 20-2-754(b)(2). *But see I.F. v. Glynn Cty. Bd. of Educ.*, Case No. 2015-02 (Ga. State Bd. of Educ. Nov. 6, 2014) (finding that O.C.G.A. § 20-2-754(b)(2) was not violated where the student was in the custody of the juvenile justice system and the suspension and hearing took place after the student was released from custody).
- ⁶² *J.P. v. Polk Cty. Bd. of Educ.*, Case No. 2018-06 (Ga. State Bd. of Educ. Feb. 16, 2018).
- ⁶³ *Goss*, 419 U.S. at 582.
- ⁶⁴ *Id.* at 582-83.
- ⁶⁵ *See M.C. v. Peach Cty. Bd. of Educ.*, Case No. 2013-69 (Ga. State Bd. of Educ. Aug. 22, 2013).
- ⁶⁶ O.C.G.A. § 20-2-754(b)(4).
- ⁶⁷ *M.C.*, Ga. State Bd. of Educ. Case No. 2013-69.
- ⁶⁸ In *N.L. v. Brooks Cty. Bd. of Educ.*, Case No. 1999-73 (Ga. State Bd. of Educ. Apr. 2000), the denial of a student's request for a continuance to give the student's attorney time to prepare a defense violated the student's due process rights because "[t]he right to a hearing is meaningless if an adequate defense cannot be prepared because of the shortage of time."

- ⁶⁹ *Id.* (noting that “[t]here is no necessity for a rush to judgment when the accused student . . . has requested a continuance”).
- ⁷⁰ *J.W. v. Henry Cty. Bd. of Educ.*, Ga. State Bd. of Educ. Case No. 1997-47 (Mar. 1998).
- ⁷¹ *Harvey D. v. Rabun Cty. Bd. of Educ.*, Case No. 1989-8 (Ga. State Bd. of Educ. June 1989); GaDOE § 160-1-3-.04(3) (noting that “[t]he strict rules of evidence prevailing in courts of law shall not be applicable to hearings before LBOEs”).
- ⁷² *Harvey D. v. Rabun Cty. Bd. of Educ.*, Case No. 1989-8 (Ga. State Bd. of Educ. June 1989).
- ⁷³ *Z.B. v. Bartow Cty. Bd. of Educ.*, Case No. 2008-44 (Ga. State Bd. of Educ. May 2008) (ruling that a school system did not meet its burden of proof when it only presented hearsay evidence).
- ⁷⁴ *V.F. v. Fulton Cty. Bd. of Educ.*, Case No. 2003-24 (Ga. State Bd. of Educ. Mar. 2003) (“[T]he courts have not held that there is any requirement for a *Miranda* warning in any administrative proceeding.”).
- ⁷⁵ *Owens v. Burke Cty. Bd. of Educ.*, Case No. 1978-6 (Ga. State Bd. of Educ. June 1978).
- ⁷⁶ O.C.G.A. § 20-2-754(b)(3).
- ⁷⁷ GaDOE R. 160-1-3-.04(3).
- ⁷⁸ O.C.G.A. § 20-2-754(b)(4).
- ⁷⁹ *McIntosh*, 308 Ga. App. at 406.
- ⁸⁰ *Z.B. v. Bartow Cty. Bd. of Educ.*, Case No. 2008-44 (Ga. State Bd. of Educ. May 2008); see also *C.M. v. Muscogee Cty. Bd. of Educ.*, Case No. 2002-22 (Ga. State Bd. of Educ. Mar. 2002) (reversing decision of the Tribunal where the only evidence that was presented against the student was hearsay evidence); *A.M. v. Forsyth Cty. Bd. of Educ.*, Case No. 2009-64 (Ga. State Bd. of Educ. Sept. 2009) (reversing LBOE decision and finding that a student’s due process rights were violated because hearsay statements of other students were introduced and the student did not have the opportunity to cross-examine the witnesses who proffered the statements).
- ⁸¹ O.C.G.A. § 20-2-754(b)(1).
- ⁸² See, e.g., *Michael C. v. Houston Cty. Bd. of Educ.*, Case No. 1992-19 (Ga. State Bd. of Educ. Sept. 1992) (noting that expulsion is only “a quick and easy answer to the immediate problem” but “in most cases, it only creates greater societal problems” and thus should only be used in extreme circumstances, such as when weapons are involved); *D.H. v. Brooks Cty. Bd. of Educ.*, Case No. 1994-15 (Ga. State Bd. of Educ. May 1994) (noting that “permanent expulsion is the extreme punishment and should only be used in extreme cases) and holding that a LBOE decision to expel a student was “arbitrary and capricious” when the student’s conduct did not involve weapons or attempting to endanger the teacher).
- ⁸³ O.C.G.A. § 20-2-752 (noting that “[l]ocal boards of education may establish by policy, rule, or regulation disciplinary hearing officers, panels, or tribunals of school officials to impose suspension or expulsion”).
- ⁸⁴ O.C.G.A. § 20-2-752.
- ⁸⁵ O.C.G.A. § 20-2-754(b)(3).
- ⁸⁶ *Id.* at (b)(4).
- ⁸⁷ *Id.* at (b)(3).
- ⁸⁸ *Id.* at (c).
- ⁸⁹ *Id.*
- ⁹⁰ O.C.G.A. § 20-2-1160(e).
- ⁹¹ See *Sharpley v. Hall Cnty. Bd. of Educ.*, 251 Ga. 54, 54, 303 S.E.2d 9, 10 (1983) (noting that the state board’s review “shall be confined to the record”).
- ⁹² O.C.G.A. § 20-2-754(b)(5).
- ⁹³ See, e.g., *B.M. v. Henry Cnty. Bd. of Educ.*, Case No. 2009-16 (Ga. State Bd. of Educ. Jan. 2009) (holding that although there were a number of instances in which the transcript appeared inaudible, the deficiencies in the record did not change the record testimony and therefore did not affect the student’s due process rights).
- ⁹⁴ In *Dax C. v. Floyd Cnty. Bd. of Educ.*, Case No. 1991-12 (Ga. State Bd. of Educ. Aug. 1991), the student asserted that the LBOE violated its rules for the hearing because it did not provide him with a complete copy of the transcript of the hearing. The SBOE found, however, that the appeal does not concern any factual disputes and all the parties agree on the factual background about the incident, thus the omissions did not result in denying the student an effective right of appeal.
- ⁹⁵ O.C.G.A. § 20-2-754(c).
- ⁹⁶ *Id.*
- ⁹⁷ *Id.*
- ⁹⁸ O.C.G.A. § 20-2-754(d).
- ⁹⁹ *Id.*
- ¹⁰⁰ *B.J.D. v. Walker Cnty. Bd. of Educ.*, Case No. 2000-23 (Ga. State Bd. of Educ. Aug. 2000) (quoting *Chauncey Z. v. Cobb Cnty. Bd. of Educ.*, Case No. 1992-42 (Ga. State Bd. of Educ. Mar. 11, 1993)).
- ¹⁰¹ GaDOE R. 160-1-3-.04(4)(d).
- ¹⁰² *Id.* at (4)(l).
- ¹⁰³ O.C.G.A. § 20-2-1160(b).
- ¹⁰⁴ *Id.*
- ¹⁰⁵ GaDOE R. 160-1-3-.04(4)(c).
- ¹⁰⁶ O.C.G.A. § 20-2-1160(b).
- ¹⁰⁷ GaDOE R. 160-1-3-.04(4)(f).
- ¹⁰⁸ GaDOE R. 160-1-3-.03(4)(h).
- ¹⁰⁹ GaDOE R. 160-1-3-.04(4)(g).
- ¹¹⁰ *Id.*
- ¹¹¹ GaDOE R. 160-1-3-.04(4)(i); O.C.G.A. § 20-2-754(d). See *Ransom v. Chattooga Cnty. Bd. of Educ.*, 144 Ga. App. 783, 784, 242 S.E.2d 374, 376 (1978) (internal citation omitted) (“Neither the state board nor the superior court is authorized to consider a matter de novo from the local board.”).
- ¹¹² GaDOE R. 160-1-3-.04(4)(j).
- ¹¹³ *Henry Cnty. Bd. of Educ. v. S.G.*, 301 Ga. 794, 798, 804 S.E.2d 427, 432 (2017).
- ¹¹⁴ O.C.G.A. § 20-2-1160(c).
- ¹¹⁵ *Id.*
- ¹¹⁶ *Ransom*, 144 Ga. App. at 784, 242 S.E.2d at 376 “[b]oth the [SBOE] and the superior court sit as appellate bodies”).
- ¹¹⁷ *Henry Cnty. Bd. of Educ.*, 301 Ga. at 798, 804 S.E.2d at 432.
- ¹¹⁸ O.C.G.A. § 5-6-35(a)(1).
- ¹¹⁹ 20 U.S.C. §§ 1400 *et seq.* See *id.* § 1401(3)(A) (defining “disability” as it applies under IDEA).
- ¹²⁰ GaDOE R. 160-4-7-.06(1).
- ¹²¹ GaDOE R. 160-4-7-.10(1)(b).
- ¹²² 20 U.S.C. § 1415(k)(1)(B); GaDOE R. 160-4-7-.10(2)(b).
- ¹²³ GaDOE R. 160-4-7-.10(3)(a).
- ¹²⁴ 20 U.S.C. § 1415(k)(1)(E); GaDOE R. 160-4-7-.10(3)(b).
- ¹²⁵ 20 U.S.C. § 1415(k)(1)(E)(i)-(ii); GaDOE R. 160-4-7-.10(3)(a).
- ¹²⁶ 20 U.S.C. § 1415(k)(1)(F); GaDOE R. 160-4-7-.10(4)(a)(1).
- ¹²⁷ 20 U.S.C. § 1415(k)(1)(F)(ii); GaDOE R. 160-4-7-.10(4)(a)(2).
- ¹²⁸ 20 U.S.C. § 1415(k)(1)(F)(iii).
- ¹²⁹ 20 U.S.C. § 1415(k)(1)(G); GaDOE R. 160-4-7-.10(5)(a). Importantly, if the student’s conduct involved any one of these three actions, then the school may remove the student for no more than 45 days without regard to whether the student’s behavior was a manifestation of the student’s disability. *Id.*
- ¹³⁰ 20 U.S.C. § 1415(k)(1)(C); GaDOE R. 160-4-7-.10(2)(d).
- ¹³¹ GaDOE R. 160-4-7-.10(6)(a).
- ¹³² GaDOE R. 160-4-7-.09 (establishes procedural safeguards).
- ¹³³ GaDOE R. 160-4-7-.10(8)(a).
- ¹³⁴ *Id.*
- ¹³⁵ GaDOE R. 160-4-7-.10(8)(b).
- ¹³⁶ *Id.* at (b)(1)(i).
- ¹³⁷ *Id.* at (b)(1)(ii).
- ¹³⁸ GaDOE R. 160-4-7-.10(9)(a).

APPENDIX A

Sample Representation Agreement

Dear [Client Name],

This letter confirms your agreement to allow me to represent you in your upcoming school disciplinary hearing (also known as a tribunal hearing), currently scheduled for [Date] at [Location]. As part of this Agreement, I will provide you with legal services at no charge and keep you informed of case developments. As the Client, you agree to be truthful and cooperative, and try to keep me reasonably informed of case updates and your contact information.

Scope

This Agreement is limited in scope, and does not serve as any Agreement to represent you in additional legal matters outside of your school disciplinary hearing. Nor is it an agreement to represent you in any appeal stemming from your tribunal hearing. Unless otherwise mutually agreed upon in writing, your representation will terminate once the school disciplinary hearing is complete. I look forward to representing you in this case.

Please contact me if you have any questions or concerns, by [Contact Method].

Thank you,

[Attorney Name]

Attorney Signature

Date

Client Signature

Date

Client Guardian Signature

Date

APPENDIX B

Sample Subpoena Letter

[Principal Name]
[School]
[School District]
[Address]

PRACTICE POINTER:

Once you are aware that the school has legal counsel, request the attorney's information immediately. Per Georgia's Rules of Professional Conduct, you must communicate with the school's attorney, and cannot communicate with the school directly once you know they are represented.

Re: CONFIDENTIAL: [Client Name]

Dear [Principal Name]:

I will represent [Client Name] in the school discipline hearing scheduled for [Date]. This letter serves to notify you that we wish to subpoena [Witness Name 1] and [Witness Name 2] as witnesses on behalf of [Client Name]. We further request all documents, including written witness statements, and all audio or video recordings relating to the allegations of this case. Please fax, email, or overnight me any documentary evidence in the district's possession at least 24 hours prior to the hearing so that we may have an opportunity to prepare our case. We request that we be permitted to review any video or audio recordings at least 30 minutes prior to the hearing.

If you have any questions, please feel free to call me at [Phone Number]. My email address is [Email]. Thank you in advance for your assistance in this matter.

Sincerely,

[Attorney Name]
Attorney at Law

cc: [TRIBUNAL HEARING OFFICER]

APPENDIX C

Manifestation Meeting Checklist

FAIR

BEFORE Complete *prior* to the manifestation meeting

Fairness
Advocacy
Individualized
Representation

Your first and last name: _____

Your role:

Private Attorney
GAA Referred Attorney
Parent
CASA

DFCS case manager
Education Support Monitor
Foster parent
Other (*please specify*): _____

Child's first and last name: _____ Child's preferred pronouns: _____

Child's System Involvement: None Kinship or Foster Care Placement DJJ or Juvenile Court Other: _____

Scheduled date/time of manifestation meeting: _____

How did you learn of the manifestation meeting? (*Check all that apply*)

I requested it.
A representative of the school contacted me.
A representative from the school contacted another adult involved with the child.
Other (*please specify*): _____

Alleged violation of code of conduct as stated in the notice: (*check all that apply*)

Incivility/defiance
Fighting
Assault/battery
Possession of drugs

Sexual conduct
Terroristic threats
Weapons
Other (*please specify*): _____

Have you reviewed the alleged violation in the school's code of conduct? Yes No

Have you had the opportunity to speak directly to the child about what happened? Yes No
If no, why not? _____

Who have you spoken with to prepare for this manifestation meeting? (*Check all that apply*)

An attorney
Education Support Monitor (ESM)
Child's parent
Child's foster parent

DFCS supervisor
Service provider (*please specify*): _____
Other (*please specify*): _____

What documentation have you collected for the manifestation meeting? (*Check all that apply*)

Documentation of child's past or existing trauma
Child's most recent education records
Child's disciplinary history

Any special education documents (IEP, 504 plan, Behavioral Intervention Plan)
Other (*please specify*): _____

Why is the child entitled to a manifestation meeting? (*Check all that apply*)

The child has an IEP
The child has a 504 Plan
The child has a diagnosed disability

The child has a suspected disability and there has been a request for an evaluation for services.
Other (*please specify*): _____

What is the child's diagnosed disability, if any? (*Check all that apply*)

Attention Deficit Hyperactivity Disorder (ADHD)
Post Traumatic Stress Disorder (PTSD)
Oppositional Defiance Disorder (ODD)

Bipolar Disorder
Other (*please specify*): _____

Did the school provide grade-level instructional materials while the child awaits the tribunal hearing? Yes No

DURINGPlease complete these questions *during* the manifestation meeting

Date/time of manifestation meeting: _____

Who attended the manifestation meeting? (Check all that apply)

School representative(s) (please specify): _____	Foster parent
Child _____	CASA
Child's parent	Guardian ad litem
Child's case manager	Attorney (private)
Another case manager	Attorney (public defender or child advocate attorney)
DFCS supervisor	Attorney assigned by Georgia Appleseed
Education Support Monitor	Other (please specify): _____

Did you have the opportunity to speak during the manifestation meeting?

Yes
No

Did you raise any of the following issues during the manifestation meeting? (Check all that apply)

Inadequate notice of the tribunal hearing
School's failure to have an HB855/Trauma Impact Meeting
School's failure to provide behavior supports to the child before the incident
Other (please specify): _____

Was the behavior determined to be a manifestation of the child's disability?

Yes, the child's behavior was substantially related to the child's disability.
Yes, the child's behavior was due to the school's failure to follow the child's IEP or 504 Plan
No

Please include any additional comments below. _____

FINALPlease submit this form to: FAIR@gaappleseed.org

APPENDIX D

School Tribunal Hearing Checklist

BEFORE

Complete prior to the tribunal hearing

FAIR

Fairness
Advocacy
Individualized
Representation

Your first and last name: _____

Your role: ☐ Private Attorney

☐ GAA Referred Attorney

☐ Parent

☐ CASA

☐ DFCS case manager

☐ Education Support Monitor

☐ Foster parent

☐ Other (please specify): _____

Child's first and last name: _____

Child's preferred pronouns: _____

Child's system involvement: ☐ None

☐ DJJ or Juvenile Court

☐ Foster care or kinship placement

☐ Other (please specify): _____

Scheduled date/time of tribunal hearing as written on the school's notice: _____

Who received the written notice from the school that a tribunal hearing had been scheduled? (Check all that apply)

☐ Parent

☐ Legal Guardian

☐ Foster parent

☐ No one. I intend to raise the issue of "inadequate notice" at the tribunal hearing.

☐ Foster parent

☐ DFCS case manager

☐ Other (please specify): _____

Alleged violation of code of conduct as stated in the notice: (Check all that apply)

☐ Incivility/defiance

☐ Fighting

☐ Assault/battery

☐ Possession of drugs

☐ Sexual conduct

☐ Terroristic threats

☐ Weapons

☐ Other (please specify): _____

Have you reviewed the alleged violation in the school's code of conduct? Yes No

Have you had the opportunity to speak directly to the child about what happened? Yes No

If no, why not? _____

Who have you spoken with to prepare for this tribunal hearing? (Check all that apply)

☐ Georgia Appleseed

☐ Education Support Monitor (ESM)

☐ Child's parent or guardian

☐ DFCS supervisor

☐ Service provider (please specify): _____

☐ Other (please specify): _____

What documentation have you collected for the tribunal hearing? (Check all that apply)

☐ Child's most recent education records

☐ Child's disciplinary history

☐ Any special education documents (IEP, 504 plan, Behavioral Intervention Plan)

☐ Documentation of child's past or existing trauma

☐ Examples of child's good character & achievements

☐ Other (please specify): _____

Have you spoken with the school to negotiate alternatives to suspension/expulsion? Yes No

What discipline is the school recommending?

☐ Less than 1 semester of suspension

☐ 1 semester of suspension

☐ 2 semesters of suspension

☐ 3 semesters of suspension

☐ 4 semesters or more of suspension

☐ Expulsion (permanent removal from school district)

☐ Other (please specify): _____

☐ Unsure - I intend to ask the hearing officer at the tribunal hearing

Prior to the tribunal hearing, was a waiver to the tribunal hearing signed? Yes No

If yes, when was the waiver signed and who signed it? (Date and name) _____

Did the school provide grade-level instructional materials while the child awaits the tribunal hearing? Yes No

DURING

Please complete these questions during the tribunal hearing

Date/time of tribunal hearing: _____

Who attended the tribunal hearing? (Check all that apply)

- ☐ Child
- ☐ Child's parent
- ☐ Education Support Monitor
- ☐ Foster parent
- ☐ CASA
- ☐ Guardian ad litem
- ☐ DFCS case manager
- ☐ DFCS supervisor
- ☐ Attorney (public defender or child advocate attorney)
- ☐ Attorney assigned by Georgia Appleseed
- ☐ Other (please specify): _____

Did the child have the opportunity to speak during the tribunal hearing? Yes No

Did you have the opportunity to speak during the tribunal hearing? Yes No

Did you raise any of the following issues during the tribunal hearing? (Check all that apply)

- ☐ Inadequate notice of the tribunal hearing
- ☐ School's failure to have an HB855/Trauma Impact Meeting
- ☐ School's failure to have a Manifestation Meeting
- ☐ Other (please specify): _____

Did the hearing panel or officer find that the child violated the school's code of conduct? Yes No

What consequence did the hearing panel or officer impose?

- ☐ Less than one semester of suspension
- ☐ One semester of suspension
- ☐ Two semesters of suspension
- ☐ Three semesters of suspension
- ☐ Four semesters or more of suspension
- ☐ Expulsion (permanent removal from school district)
- ☐ Other (please specify): _____

When will the child be permitted to return to school? (Enter date) _____

Do you anticipate the child will have a change of placement because of the discipline imposed? (Check any that apply)

- ☐ Home placement change
- ☐ School placement change
- ☐ Both home and school placement change

AFTER

Please complete these questions immediately after the hearing.

Debrief with the child after the hearing to find out the following:

(1) Does the child feel the tribunal hearing process was fair?

Strongly Disagree Disagree Undecided Agree Strongly Agree

(2) Does the child feel like the hearing officer or panel considered his/her/their side of the story?

Strongly Disagree Disagree Undecided Agree Strongly Agree

(3) Overall, does the child feel treated with respect throughout this process?

Strongly Disagree Disagree Undecided Agree Strongly Agree

FINAL

Please submit this form to: FAIR@gaappleseed.org



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