

CONDUCTING HEARINGS

Georgia Association of Educational Leaders



HEARING FOUNDATIONS

STATE LAW

20-2-752

20-2-754

20-1-1160

50-13-13

HEARING FOUNDATIONS

STATE BOARD RULES

160-1-3-.04

<http://www.gadoe.org/External-Affairs-and-Policy/State-Board-of-Education/Pages/PEABoardRules.aspx>

HEARING FOUNDATIONS

FEDERAL REGS

1. **Manifestation Hearing**
2. **Ten Day Rule**

HEARING FOUNDATIONS

**LOCAL BOARD OF
EDUCATION RULES**

JCDA...

HEARING FOUNDATIONS

CASE LAW

Goss v. Lopez

Tinker v. Des Moines SD

Goldberg v. Kelly

T. O. v. New Jersey

HEARING FOUNDATIONS

DUE PROCESS

1. Notice
2. Opportunity to present and cross examine evidence
3. Decision based on evidence presented in the case

HEARING PROCESS

- 1. Due Process: Fairness**
- 2. Statutory authority**

20-2-572

20-2-752

- O.C.G.A. § 20-2-752 (2012)
- § 20-2-752. Establishment of disciplinary hearing officers, panels, or tribunals for imposition of suspension or expulsion; rules and regulations; appeals

Local boards of education may establish by policy, rule, or regulation disciplinary hearing officers, panels, or tribunals of school officials to impose suspension or expulsion. If such hearing officers, panels, or tribunals are established, such rules and regulations must include the following:

 - (1) Provisions governing the manner of selecting the hearing officers or members of the panels or tribunals and the number of members thereof;
 - (2) Provisions governing procedures to be followed by such hearing officers, panels, or tribunals in fact-finding, hearings, and reporting recommendations to the local board;
 - (3) Provisions granting a right to appeal to the local board when the punishment imposed by hearing officers, panels, or tribunals is long-term suspension or expulsion; and
 - (4) Provisions whereby the local school superintendent may suspend enforcement of the suspension or expulsion ordered by the hearing officers, panels, or tribunals pending the outcome of any appeal to the local board.

HISTORY: Ga. L. 1979, p. 663, § 3.

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HEARING PROCESS

- 1. Due Process: Fairness**
- 2. Statutory authority**
20-2-752
- 3. Order and sequence**
20-2-754

20-2-754

- § 20-2-754. Procedures to be followed by disciplinary officer, panel, or tribunal; review
 - (a) The provisions of Code Section 20-2-1160 shall apply to disciplinary proceedings under this subpart.
 - (b) A disciplinary officer, panel, or tribunal of school officials appointed as required by Code Section 20-2-753 shall, in addition to any other requirements imposed by rules and regulations which may have been promulgated pursuant to Code Section 20-2-752, ensure that:
 - (1) **All parties are afforded an opportunity for a hearing after reasonable notice served personally or by mail.** This notice shall be given to all parties and to the parent or guardian of the student or students involved and shall 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 legal counsel;
 - (2) **The hearing is held no later than ten school days after the beginning of the suspension unless the school system and parents or guardians mutually agree to an extension;**
 - (3) **All parties are afforded an opportunity to present and respond to evidence and to examine and cross-examine witnesses on all issues unresolved;**
 - (4) Any teacher who is called as a witness by the school system shall be given notice **no later than three days prior to the hearing;** and
 - (5) **A verbatim electronic or written record** of the hearing shall be made and shall be available to all parties.
 - (c) If appointed to review an instance pursuant to Code Section 20-2-753, the disciplinary officer, panel, or tribunal shall conduct the hearing and, after receiving all evidence, render its decision, which decision shall be based solely on the evidence received at the hearing. The decision shall be in writing and shall be given to all parties within ten days of the close of the record. Any decision by such disciplinary officer, panel, or tribunal may be appealed to the local board of education by filing a written notice of appeal within 20 days from the date the decision is rendered. Any disciplinary action imposed by such officer, panel, or tribunal may be suspended by the school superintendent pending the outcome of the appeal.
 - (d) The local board of education shall review the record and shall render a decision in writing. **The decision shall be based solely on the record** and shall be given to all parties within ten days, excluding weekends and public and legal holidays provided for in Code Section 1-4-1, from the date the local board of education receives the notice of appeal. The board may take any action it determines appropriate, and any decision of the board shall be final. All parties shall have the right to be represented by legal counsel at any such appeal and during all subsequent proceedings.
 - (e) **Either or both parents or guardians or legal counsel of the student involved may obtain a copy of any documents relating to a disciplinary proceeding conducted pursuant to this Code section.**

HEARING PROCESS

- 1. Due Process: Fairness**
- 2. Statutory authority**
20-2-752
- 3. Order and sequence**
20-2-754
- 4. Appeals**
20-2-1160

20-2-1160

- § 20-2-1160. Local boards to be tribunals to determine school law controversies; appeals; special provisions for disabled children

(a) Every county, city, or other independent board of education shall constitute a tribunal for hearing and determining any matter of local controversy in reference to the construction or administration of the school law, with power to summon witnesses and take testimony if necessary. When such local board has made a decision, it shall be binding on the parties; provided, however, that the board shall notify the parties in writing of the decision and of their right to appeal the decision to the State Board of Education and shall clearly describe the procedure and requirements for such an appeal which are provided in subsection (b) of this Code section.

(b) Any party aggrieved by a decision of the local board rendered on a contested issue after a hearing shall have the right to appeal therefrom to the State Board of Education. The appeal shall be in writing and shall distinctly set forth the question in dispute, the decision of the local board, and a concise statement of the reasons why the decision is complained of; and the party taking the appeal shall also file with the appeal a transcript of testimony certified as true and correct by the local school superintendent. The appeal shall be filed with the superintendent within 30 days of the decision of the local board, and within ten days thereafter it shall be the duty of the superintendent to transmit a copy of the appeal together with the transcript of evidence and proceedings, the decision of the local board, and other matters in the file relating to the appeal to the state board. The state board shall adopt regulations governing the procedure for hearings before the local board and proceedings before it.

(c) Where an appeal is taken to the state board, the state board shall notify the parties in writing of its decision within 25 days after hearing thereon and of their right to appeal the decision to the superior court of the county wherein the local board of education is located and shall clearly describe the procedure and requirements for such an appeal which are provided in this subsection and in subsection (d) of this Code section. Any party aggrieved thereby may appeal to the superior court of the county wherein the local board of education is situated. Such appeal shall be filed in writing within 30 days after the decision of the state board. Within ten days after filing of such appeal, it shall be the duty of the State School Superintendent to transmit to the superior court a copy of the record and transcript sent up from the local board as well as the decision and any order of the state board, certified as true and correct.

(d) **The following form shall be sufficient for an appeal:**

"In re

 hereby appeals to the from the decision of
 rendered in the above-stated matter on .

This day of , ."

(e) Neither the state board nor the superior court shall consider any question in matters before the local board nor consider the matter de novo, and the review by the state board or the superior court shall be confined to the record. In the superior court, the appeal shall be determined by the judge sitting without a jury.

(f) The procedures provided in subsections (a) through (e) of this Code section shall not be applicable to disabled children when a hearing is necessary to decide a complaint made under the federal Education for All Handicapped Children Act of 1975. The state board shall promulgate by rules and regulations an impartial due process procedure for hearing and determining any matter of local controversy in reference to the construction or administration of the school law with respect to disabled children as such term is defined by the state board. Any tribunal which the state board shall empower to hear such cases shall have the power to summon witnesses and take testimony as such tribunal deems it necessary. In promulgating such rules and regulations, the state board shall consult with local boards of education and other local school officials in order to establish procedures required by this subsection which will coordinate, to the extent practicable, with the administrative practices of such local boards.

HISTORY: Ga. L. 1919, p. 288, § 85; Code 1933, § 32-910; Ga. L. 1947, p. 1189, §§ 1, 3a; Ga. L. 1961, p. 39, § 1; Ga. L. 1969, p. 708, § 1; Ga. L. 1977, p. 875, § 1; Ga. L. 1980, p. 1508, § 1; Ga. L. 1986, p. 216, § 1; Ga. L. 1992, p. 6, § 20; Ga. L. 1993, p. 1279, § 13.1; Ga. L. 1995, p. 1302, § 14; Ga. L. 1999, p. 81, § 20.

HEARING PROCESS

- 1. Due Process: Fairness**
- 2. Statutory authority**
20-2-752
- 3. Order and sequence**
20-2-754
- 4. Appeals**
20-2-1160
- 5. Administrative Procedures Act 50-13-13**

50-13-13

- § 50-13-13. Opportunity for hearing in contested cases; notice; counsel; subpoenas; record; enforcement powers; revenue cases

(a) In addition to any other requirements imposed by common law, constitution, statutes, or regulations:

(1) **In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice served personally or by mail;**

(2) **The notice shall include:**

(A) A statement of the time, place, and nature of the hearing;

(B) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) A reference to the particular section of the statutes and rules involved;

(D) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time, the notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished; and

(E) **A statement as to the right of any party to subpoena witnesses and documentary evidence through the agency;**

(3) **Opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence on all issues involved;**

(4) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default;

(5) Unless specifically precluded by statute, in addition to the agency, any contested case may be held before any agency representative who has been selected and appointed by the agency for such purpose. Before appointing a hearing representative, the agency shall determine that the person under consideration is qualified by reason of training, experience, and competence;

(6) The agency, the hearing officer, or any representative of the agency authorized to hold a hearing shall have authority to do the following: administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing briefs; dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground; dispose of motions to amend or to intervene; provide for the taking of testimony by deposition or interrogatory; **and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the agency or the hearing officer;**

(7) Subpoenas shall be issued without discrimination between public and private parties. when a subpoena is disobeyed, any party may apply to the superior court of the county where the contested case is being heard for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court. The costs of securing the attendance of witnesses, including fees and mileage, shall be computed and assessed in the same manner as

50-13-13

- **(8) A record shall be kept in each contested case and shall include:**
 - (A) All pleadings, motions, and intermediate rulings;**
 - (B) A summary of the oral testimony plus all other evidence received or considered except that oral proceedings or any part thereof shall be transcribed or recorded upon request of any party. Upon written request therefor, a transcript of the oral proceeding or any part thereof shall be furnished to any party of the proceeding. The agency shall set a uniform fee for such service;**
 - (C) A statement of matters officially noticed;**
 - (D) Questions and offers of proof and rulings thereon;**
 - (E) Proposed findings and exceptions;**
 - (F) Any decision (including any initial, recommended, or tentative decision), opinion, or report by the officer presiding at the hearing; and**
 - (G) All staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case; and**
- (9) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.**
- (b) In proceedings before the agency, the hearing officer, or any representative of the agency authorized to hold a hearing, if any party or an agent or employee of a party disobeys or resists any lawful order of process; or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document; or refuses to appear after having been subpoenaed; or, upon appearing, refuses to take the oath or affirmation as a witness; or after taking the oath or affirmation, refuses to testify, the agency, hearing officer, or other representative shall have the same rights and powers given the court under Chapter 11 of Title 9, the "Georgia Civil Practice Act." If any person or party refuses as specified in this subsection, the agency, hearing officer, or other representative may certify the facts to the superior court of the county where the offense is committed for appropriate action, including a finding of contempt. The agency, hearing officer, or other representative shall have the power to issue writs of fieri facias in order to collect fines imposed for violation of a lawful order of the agency, hearing officer, or other representative.**
- (c) Except in cases in which a hearing has been demanded under Code Section 50-13-12, subsection (a) of this Code section and the other provisions of this chapter concerning contested cases shall not apply to any case arising in the administration of the revenue laws, which case is subject to a subsequent de novo trial of the law and the facts in the superior court.**

HISTORY: Ga. L. 1964, p. 338, § 14; Ga. L. 1965, p. 283, § 13; Ga. L. 1982, p. 3, § 50; Ga. L. 1994, p. 1270, § 9.

HEARING MECHANICS

1. Notification (Charge) Letter

Notification Letter

- MUSTS:
- Charges and Maximum Penalty
- Witnesses; testimony; opportunity to call their own witnesses
- Time, Date, Place of Hearing
- Opportunity to Reschedule
- Provisions for having an attorney
- Waiver opportunity
- Appeal Rights

HEARING MECHANICS

1. Notification (Charge) Letter
2. Waivers

Waivers

- **Sample Waiver Of Disciplinary Tribunal Hearing**

- I understand that _____ (Student) has admitted to
- the violation(s) in the letter from the Superintendent dated _____.
- After discussing this matter with my son/daughter and _____
- (Administrator), I support my child's decision to admit to the violation, and we voluntarily
- accept the following consequences prescribed by the school:

- _____
- _____
- _____

- We waive the opportunity to participate in a tribunal hearing, present evidence, subpoena
- and cross-examine witnesses, and be represented by an attorney at such a hearing. We
- understand that this decision is final and cannot be appealed by the school or family.

- _____
- Parent(s)/Guardian [*Hearing Officer/Tribunal Chair*]

- _____
- Student Date

- _____
- Principal

- _____
- Witness

- **Legal Resources for Georgia Administrators - Students**

- Harben, Hartley & H a w k i n s , L L P C o p y r i g h t 2 0 1 0 Back to TOC 173

HEARING MECHANICS

- 1. Notification (Charge) Letter**
- 2. Waivers**
- 3. Subpoenas**

Subpoena

• **Subpoena for Disciplinary Tribunal Hearing**

• IN RE: Board of Education * _____

• *SUBPOENA*

• TO: _____

• GREETINGS:

• You are hereby commanded that laying all other business aside, you personally be and appear at _____, Georgia, on the _____ day of _____, 20____, at _____ .m.,

• then and there to testify in the above-stated matter as a witness on behalf of

• _____, and continue in attendance from day to day until properly discharged.

• Herein fail not under penalty of law.

• WITNESS the hand and seal of the Bleckley County Board of Education this _____ day of _____, 20____.

• [SEAL] _____
• Hearing Officer/Tribunal Chair/Superintendent

• I have this day served _____ with the within and foregoing Subpoena by _____ this _____ day of _____, 20____.

• _____

HEARING MECHANICS

1. Notification (Charge) Letter
2. Waivers
3. Subpoenas
4. Script

Script 1

• _____TAPE RECORDER ON

• State Date and Purpose

• ____A. Today's date is _____, _____ and the purpose of this student disciplinary hearing is to hear charges against _____.

• Introduce Participants

• ____A. I am _____ and I am serving as the hearing (OR presiding) officer for today's hearing.

• ____B. The members of the tribunal present are:
1. _____
2. _____
3. _____

• ____C. The following witnesses are present for the school

Name	Position
------	----------

• ____D. The following persons are present on behalf of the students:

Name	Relationship
------	--------------

• ____SWEAR IN ALL PARTICIPANTS

Script 2

•
• x F. The hearing will be closed as required by Georgia Law. If the parents desire to have individuals remain in the room, they may request such at this time. Those who do not have a valid reason for attending must leave.

•
• **Begin the Hearing**

• A. Are the student and/or parents represented by an attorney? No/Yes

• B. All witnesses other than the student, parents, and case administrator should leave the hearing room at this time.

• C. The purpose of this hearing is to hear charges against _____ set forth in a letter from _____ dated _____ . The letter was delivered by certified mail (or the means of communication used in this case).

• D. With regard to the charges detailed in the letter from the superintendent, how do the students plead?

•
• **Charges:**

• **Guilty/Not Guilty:**

•
• **Move to #7, IF GUILTY PLEA IS ENTERED**

•
• **Explain the format of the Hearing**

• **There are two parts to the hearing:**

• A. Phase one deals with whether or not the student committed the violations set forth in the charge letter.

• B. Phase two deals with appropriate punishment if necessary.

• C. The school will present their case first. The parents and students should designate one person who will question witnesses. This designee may ask a witness questions after the school has finished. The school is represented by: _____.

Script 3

• Present the Case

• _____A. Does the school wish to make an opening statement?

• _____B. Please call your witnesses:

• Name

• Sworn
• yes

• _____C. Student may now present his/her case.

• Witness

• yes

• Sworn

• _____F. The school may now call any rebuttal witnesses.

• Name

• Sworn

- 1.
- 2.
- 3.

• _____G. Does either side wish to present additional evidence or statements? Yes/No

• ___x___H. I hereby declare the evidence is closed.

• Determine Whether the Student Committed The Offense

• _____A. I (we) find that the evidence submitted was insufficient to establish that _____ committed any of the violations alleged in the charge letter.

• OR

• B. I find that _____ committed the following violations as alleged in the charge letter:

- 1.
- 2.

Script 4

• End Part # 1

• Determine Appropriate Punishment

• ___A. Does the school wish to present any information or recommendations that bear on the appropriate punishment?

• ___B. Does the student's designee wish to present any information or recommendations from the family perspective that bear on appropriate punishment?

• Recommendation:

• ___C. This hearing is recessed for deliberation. (Optional)

• ___D. The decision of the hearing officer (or tribunal) is:

• End The Hearing

• The decision of this hearing may be appealed by writing a letter to the superintendent within 20 calendar days of this decision. The letter should state the decision made by this officer and why it is being appealed.

• This hearing is adjourned.

• _____
• Hearing Officer or Presiding Officer

HEARING MECHANICS

- 1. Notification (Charge) Letter**
- 2. Waivers**
- 3. Subpoenas**
- 4. Script**
- 5. Closed Hearing Requirements**
- 6. Swearing in of participants**
- 7. Evidence Standards**

EVIDENCE

- 1. Preponderance of the evidence
- 2. Clear and convincing evidence
- 3. Beyond reasonable doubt

Levels of Evidence 1

- **Preponderance of the evidence**
- Preponderance of the evidence, also known as **balance of probabilities** is the standard required in most [civil](#) cases.
- This is also the standard of proof used in Grand Jury indictment proceedings (which, unlike civil proceedings, are procedurally un rebuttable), and in [family court](#) determinations solely involving money, such as [child support](#) under the [Child Support Standards Act](#).
- **The standard is met if the proposition is more [likely](#) to be true than not true. Effectively, the standard is satisfied if there is greater than 50 percent chance that the proposition is true.** [Lord Denning](#), in *Miller v. Minister of Pensions*,^[4] described it simply as "more probable than not." Until 1970, this was also the standard used in juvenile court in the [United States](#).
- This is also the standard of proof used when determining eligibility of unemployment benefits for a former employee accused of losing their job through alleged misconduct. In most US states, the employer must prove this case based on preponderance of the evidence.

Levels of Evidence 2

- **Clear and convincing evidence**
- Clear and convincing evidence is a higher level of burden of persuasion than a "Preponderance of the Evidence". It is employed intra-adjudicatively in Administrative Court determinations, as well as in [civil](#) and certain [criminal procedure](#) in the United States. For example, a prisoner seeking [habeas corpus](#) relief from [capital punishment](#) must prove his factual innocence by clear and convincing evidence.^[5]
- This standard is used in many types of [equity](#) cases, including [paternity](#), [PINS](#), [juvenile delinquency](#), [child custody](#), the [probate](#) of both wills and [living wills](#), petitions to remove a person from [life support](#) ("[right to die](#)" cases),^[6] and many similar cases.
- **Clear and convincing proof means that the evidence presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality. In this standard, a greater degree of believability must be met than the common standard of proof in civil actions, "Preponderance of the Evidence", which requires that the facts as a threshold be more likely than not to prove the issue for which they are asserted.**
- This standard is also known as "Clear and Convincing Evidence"; "Clear, Convincing, and Satisfactory Evidence"; "Clear, Cognizant, and Convincing Evidence"; and "Clear, Unequivocal, Satisfactory, and Convincing Evidence", and is applied in cases or situations involving an equitable remedy or where a presumptive civil liberty interest exists.
- To prove something by "Clear and Convincing Evidence", the party with the burden of proof must convince the [trier of fact](#) that it is substantially more likely than not that the thing is in fact true. This is a lesser requirement than "Proof Beyond a Reasonable Doubt", which requires that the trier of fact be close to certain of the truth of the matter asserted, but a stricter requirement than proof by "Preponderance of the Evidence," which merely requires that the matter asserted pass the 50% threshold of being more likely true than not. In many jurisdictions, fraud, for example, must be shown by clear and convincing evidence.

Levels of Evidence 3

- **Beyond reasonable doubt**
- This is the highest standard used as the burden of proof in Anglo-American jurisprudence and typically only applies in criminal proceedings. It has been described as, in negative terms, as a proof having been met if there is no plausible reason to believe otherwise.
- If there is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence, or lack of evidence, in a case, then the level of proof has not been met.
- **Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. However, it does not mean an absolute certainty.** The standard that must be met by the prosecution's evidence in a criminal prosecution is that no other logical explanation can be derived from the facts except that the defendant committed the crime, thereby overcoming the presumption that a person is innocent until proven guilty.
- If the trier of fact has no doubt as to the defendant's guilt, or if their only doubts are unreasonable doubts, then the prosecutor has proven the defendant's guilt beyond a reasonable doubt and the defendant should be pronounced guilty.
- The term connotes that evidence establishes a particular point to a moral certainty and that it is beyond dispute that any reasonable alternative is possible. It does not mean that no doubt exists as to the accused's guilt, but only that no Reasonable Doubt is possible from the evidence presented.
- The main reason that the high proof standard of reasonable doubt is used in criminal trials is that such proceedings can result in the deprivation of a defendant's liberty or even in his or her death. These outcomes are far more severe than in civil trials, in which monetary damages are the common remedy.
- http://en.wikipedia.org/wiki/Preponderance_of_evidence#Preponderance_of_the_evidence

FEDERAL EVIDENCE RULES

- Written statements
- Testimony of school administrators
- Testimony of students

HEARING MECHANICS

- 1. Notification (Charge) Letter**
- 2. Waivers**
- 3. Subpoenas**
- 4. Script**
- 5. Closed Hearing Requirements**
- 6. Swearing in of participants**
- 7. Evidence Standards**
- 8. Cause**

CAUSE

- Reasonable suspicion

- Probable cause

- Reasonable suspicion

- Hunch

- Probable cause

- Arrest standard, search and seizure

- **Reasonable suspicion** is a [legal standard of proof](#) in [United States law](#) that is less than [probable cause](#), the legal standard for [arrests](#) and [warrants](#), but more than an "inchoate and unparticularized suspicion or 'hunch'";^[1] it must be based on "specific and articulable facts", "taken together with rational inferences from those facts".^[2] Police may briefly detain a person if they have reasonable suspicion that the person has been, is, or is about to be engaged in criminal activity; such a detention is known as a [Terry stop](#). If police additionally have reasonable suspicion that a person so detained may be armed, they may "[frisk](#)" the person for [weapons](#), but not for contraband like drugs. Reasonable suspicion is evaluated using the "[reasonable person](#)" or "reasonable officer" standard,^[3] in which said person in the same circumstances could reasonably believe a person has been, is, or is about to be engaged in criminal activity; it depends upon the totality of circumstances, and can result from a combination of particular facts, even if each is individually innocuous.
- In [United States criminal law](#), **probable cause** is the standard by which an officer or agent of the law has the grounds to make an arrest, to conduct a personal or property search, or to obtain a warrant for arrest, etc. when criminal charges are being considered. It is also used to refer to the standard to which a [grand jury](#) believes that a crime has been committed. This term comes from the [Fourth Amendment](#) of the [United States Constitution](#):
- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizure s, shall not be violated, and no Warrants shall issue, **but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.**
- "Probable" in this case may relate to actual statistical probability, or to a general standard of common behavior and customs. The context of the word "probable" here is not exclusive to community standards and does not predate statistics, as some have suggested.^[1]
- www.wikipedia.org

HEARING TECHNIQUES

1. Handling Evidence

HANDLING EVIDENCE

- Mark as exhibits
- Videos
- Photos
- Recordings
- Pictures of artifacts

HEARING TECHNIQUES

- 1. Handling Evidence**
- 2. Making/Rendering Decision**

DECISION CONSIDERATIONS

- Administrator recommendations
- Age of student (20-2-154)
- Placement, expulsion, expulsion with the opportunity to attend alternative school
- Students expelled from alternative school
- Stipulations for return to home school
- Home school, private school, virtual school

HEARING PROBLEM CASES

1. Chronic Disciplinary Student

20-2-765

Chronic Disciplinary Student

- TITLE 20. EDUCATION
CHAPTER 2. ELEMENTARY AND SECONDARY EDUCATION
ARTICLE 16. STUDENTS
PART 2. DISCIPLINE
SUBPART 3. CHRONIC DISCIPLINARY PROBLEM STUDENTS

•
O.C.G.A. § 20-2-765 (2011)

•
§ 20-2-765. Notification of parent or guardian of chronic disciplinary problem student; observance of child by parent or guardian; attendance of conference with principal or teacher or both

Any time a teacher or principal identifies a student as a chronic disciplinary problem student, the principal shall notify by telephone call and by either certified mail or statutory overnight delivery with return receipt requested or first-class mail the student's parent or guardian of the disciplinary problem, invite such parent or guardian to observe the student in a classroom situation, and request at least one parent or guardian to attend a conference with the principal or the teacher or both to devise a disciplinary and behavioral correction plan.

HISTORY: Code 1981, § 20-2-765, enacted by Ga. L. 1995,

BEHAVIOR CONTRACT

- See sample Behavior Contract on page 40 of Resource Manual.
- Behavior Contract should be administered at the time of the parent conference required in 20-2-765.
- Absence of Behavior Contract creates problems to prove chronic disciplinary charge.

HEARING PROBLEM CASES

1. Chronic Disciplinary Student

20-2-765

2. Weapons AND Intent

Bringing a Weapon to School

- O.C.G.A. § 20-2-751.1 (2011)

- **§ 20-2-751.1. Expulsion and disciplinary policy for students bringing weapons to school**

(a) Each local board of education shall establish a policy requiring the expulsion from school for a period of not less than one calendar year of any student who is determined, pursuant to this subpart, to have brought a weapon to school.

(b) The local board of education shall have the authority to modify such expulsion requirement as provided in subsection (a) of this Code section on a case-by-case basis.

(c) A hearing officer, tribunal, panel, superintendent, or local board of education shall be authorized to place a student determined to have brought a weapon to school in an alternative educational setting.

(d) Nothing in this Code section shall infringe on any right provided to students with Individualized Education Programs pursuant to the federal Individuals with Disabilities Education Act, Section 504 of the federal Rehabilitation Act of 1973, or the federal Americans with Disabilities Act.

HISTORY: Code 1981, § 20-2-751.1, enacted by Ga. L. 1995, p. 1072, § 4.

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16-11-127.1

- (4) "Weapon" means and includes any pistol, revolver, or any weapon designed or intended to propel a missile of any kind, or any dirk, bowie knife, switchblade knife, ballistic knife, any other knife having a blade of two or more inches, straight-edge razor, razor blade, spring stick, knuckles, whether made from metal, thermoplastic, wood, or other similar material, blackjack, any bat, club, or other bludgeon-type weapon, or any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain, or any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, or any weapon of like kind, and any stun gun or taser as defined in subsection (a) of Code Section 16-11-106. This paragraph excludes any of these instruments used for classroom work authorized by the teacher.
- (b) (1) Except as otherwise provided in subsection (c) of this Code section, it shall be unlawful for any person to carry to or to possess or have under such person's control while within a school safety zone or at a school function, or on a bus or other transportation furnished by a school any weapon or explosive compound, other than fireworks the possession of which is regulated by Chapter 10 of Title 25.

WEAPONS OPTIONS

- 1. NO CHANGE—OCGA 16-1-127.1 defines weapons
- 2. Define weapon:
 - A. Any firearm
 - B. Any dangerous object use in a threatening or aggressive manner

HEARING PROBLEM CASES

1. Chronic Disciplinary Student

20-2-765

2. Weapons AND Intent

3. “Moot Cases”—all cases to be heard

4. Cases on less than three days notice

5. Students with felony records

STUDENTS MAY BE CHARGED WITH A FELONY

- **O.C.G.A. § 20-2-768 (2015)**

- § 20-2-768. Expulsion or suspension of students for felonies; alternative educational system; policy

(a) Each local board of education is authorized to refuse to readmit or enroll any student who has been suspended or expelled for being convicted of, being adjudicated to have committed, being indicted for, or having information filed for the commission of any felony or any delinquent act under Code Sections 15-11-602 and 15-11-707 which would be a felony if committed by an adult. If refused readmission or enrollment, the student or the student's parent or legal guardian has the right to request a hearing pursuant to the procedures provided for in Code Section 20-2-754.

(b) A hearing officer, tribunal, panel, superintendent, or local board of education shall be authorized to place a student denied enrollment in a local school system under subsection (a) of this Code section in an alternative educational system as appropriate and in the best interest of the student and the education of other students within the school system.

(c) It is the policy of this state that it is preferable to reassign disruptive students to alternative educational settings rather than to suspend or expel such students from school.

STUDENTS WITH AJUDICATED FELONIES

- **O.C.G.A. § 15-6-36 (2015)**

- § 15-6-36. Notice of student's felony conviction to school superintendent

(a) For the purposes of this Code section, "conviction" means any felony conviction of a person who is at least 17 years of age.

(b) Within 30 days of any proceeding ending in a conviction, the superior court shall provide written notice of the conviction to the school superintendent or the school superintendent's designee of the school in which the convicted defendant was enrolled, or, if the information is known, of the school in which the convicted defendant plans to be enrolled at a future date. Such notice shall include the specific criminal offense for which the defendant was convicted. A local school system to which such a convicted defendant is assigned may request further information from the court's file.

HEARING PROBLEM CASES

1. Chronic Disciplinary Student

20-2-765

2. Weapons AND Intent

3. “Moot Cases”—all cases to be heard

4. Cases on less than three days notice

5. Students with felony records

6. Charging at student with *disruption of school*

7. Bullying 20-2-751.4

BULLYING 1

- **BULLYING**
O.C.G.A. § 20-2-751.4 (2015)
- § 20-2-751.4. Policies prohibiting bullying; assignment to alternative school; notice
 - (a) As used in this Code section, **the term "bullying" means** an act that is:
 - (1) Any willful attempt or threat to inflict injury on another person, when accompanied by an apparent present ability to do so;
 - (2) Any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm; or
 - (3) Any intentional written, verbal, or physical act which a reasonable person would perceive as being intended to threaten, harass, or intimidate, that:
 - (A) Causes another person substantial physical harm within the meaning of Code Section 16-5-23.1 or visible bodily harm as such term is defined in Code Section 16-5-23.1;
 - (B) Has the effect of substantially interfering with a student's education;
 - (C) Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or
 - (D) Has the effect of substantially disrupting the orderly operation of the school.

BULLYING 2

- (1) Each local board of education shall adopt a policy that prohibits bullying of a student by another student and shall require such prohibition to be included in the student code of conduct for schools in that school system;
 - (2) Each local board policy shall require that, upon a finding by the disciplinary hearing officer, panel, or tribunal of school officials provided for in this subpart that a student in grades six through 12 has committed the offense of bullying for the third time in a school year, such student shall be assigned to an alternative school;
 - (3) Each local board of education shall establish and publish in its local board policy a method to notify the parent, guardian, or other person who has control or charge of a student upon a finding by a school administrator that such student has committed an offense of bullying or is a victim of bullying; and
 - (4) Each local board of education shall ensure that students and parents of students are notified of the prohibition against bullying, and the penalties for violating the prohibition, by posting such information at each school and by including such information in student and parent handbooks.

BULLYING 3

- (c) No later than January 1, 2011, the Department of Education shall develop a model policy regarding bullying, that may be revised from time to time, and shall post such policy on its website in order to assist local school systems. Such model policy shall include:
 - (1) A statement prohibiting bullying;
 - (2) A requirement that any teacher or other school employee who has reliable information that would lead a reasonable person to suspect that someone is a target of bullying shall immediately report it to the school principal;
 - (3) A requirement that each school have a procedure for the school administration to promptly investigate in a timely manner and determine whether bullying has occurred;
 - (4) An age-appropriate range of consequences for bullying which shall include, at minimum and without limitation, disciplinary action or counseling as appropriate under the circumstances;
 - (5) A procedure for a teacher or other school employee, student, parent, guardian, or other person who has control or charge of a student, either anonymously or in such person's name, at such person's option, to report or otherwise provide information on bullying activity;
 - (6) A statement prohibiting retaliation following a report of bullying; and
 - (7) Provisions consistent with the requirements of subsection (b) of this Code section.

BULLYING 4

- (d) The Department of Education shall develop and post on its website a list of entities and their contact information which produce antibullying training programs and materials deemed appropriate by the department for use in local school systems.
- (e) Any person who reports an incident of bullying in good faith shall be immune from civil liability for any damages caused by such reporting.
- (f) Nothing in this Code section or in the model policy promulgated by the Department of Education shall be construed to require a local board of education to provide transportation to a student transferred to another school as a result of a bullying incident.
- (g) Any school system which is not in compliance with the requirements of subsection (b) of this Code section shall be ineligible to receive state funding pursuant to Code Sections 20-2-161 and 20-2-260.

THAT WHICH FOLLOWS HEARING

1. **Written Notification**
2. **Availability of hearing artifacts and records**
3. ***De Novo* Appeals**

Report of Findings/Decision

Student Disciplinary Hearing
Report of Findings and Decision
Bleckley County Schools
Cochran, GA 31014

Re: Student Disciplinary Hearing on behalf of _____ County Schools for:

This will serve to officially inform you of the decision the hearing officer rendered at the hearing held on _____, 20__, in accordance with O.C.G.A. § 20-2-754(c). Based upon the evidence, the hearing officer found that the above named student committed the violations alleged in the charge letter.

Violations:

Finding:

The hearing officer's decision:

Pursuant to school board policy, any party aggrieved by a decision of this hearing officer has the right to appeal the decision to the local Board of Education. The appeal must be in writing and distinctly set forth the question in dispute, the decision of the hearing officer, and a concise statement of the reasons why the decision is being appealed. Such an appeal must be filed with the superintendent within twenty days of the decision of the tribunal. The Board of Education will review the decision based solely on the evidence submitted at the hearing and no new evidence or testimony will be considered.

Tribunal Chair/Hearing Officer

PROFESSIONALISM

- National Association of Hearing Officials,
www.naho.org
- National Association of Administrative Law
Judges, www.naalj.org
- Lexis Nexis
<http://www.lexisnexis.com/hottopics/gacode/>

HOMWORK ASSIGNMENT

- Page 50 of Handbook
- DISCIPLINE HANDBOOK CHECKLIST
- Cite location of each item in your Discipline Code or Handbook; SCAN, email to jstokes@gael.org

SB 367 REQUIREMENTS

- Please make sure that you sign in on the forms provided and that you include the following information:
- NAME (please print)
- SCHOOL SYSTEM
- EMAIL ADDRESS
- Meets requirements of

State Board Rule - 160-4-8-.15 STUDENT DISCIPLINE

Contact Information

Jimmy C. Stokes

Certified Hearing Officer

328 E. Washington Street

Madison, GA 30650

770-601-3798

jstokes@gael.org