



HEARING OFFICER RESOURCES

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SOURCES OF REGULATIONS

- State Law
- State Board of Education Rules
- Federal Law
- Local Board of Education Policy
- Case Law

Goss v. Lopez, 1975

Notice, opportunity to present evidence and cross examine witnesses, and Decision based on evidence in hearing

Tinker v. Des Moines SD, 1969

Students have first amendment rights

Goldberg v. Kelley, 1970

Requires full due process hearing to take away rights

New Jersey v. T.L.O., 1985

Sets standard for student search, physical redirection

20-2-752

LEGAL STATUS OF DISCIPLINARY HEARINGS

O.C.G.A. § 20-2-752

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*** Current Through the 2012 Regular Session ***

TITLE 20. EDUCATION
CHAPTER 2. ELEMENTARY AND SECONDARY EDUCATION
ARTICLE 16. STUDENTS
PART 2. DISCIPLINE
SUBPART 2. PUBLIC SCHOOL DISCIPLINARY TRIBUNALS

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.

20-2-1160

HEARING APPEALS

O.C.G.A. § 20-2-1160

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*** Current Through the 2012 Regular Session ***

TITLE 20. EDUCATION
CHAPTER 2. ELEMENTARY AND SECONDARY EDUCATION
ARTICLE 25. SCHOOL LAW TRIBUNALS; APPEALS

O.C.G.A. § 20-2-1160 (2012)

§ 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

20-2-754

PROCEDURES FOR CONDUCTING HEARINGS

O.C.G.A. § 20-2-754

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*** Current Through the 2012 Regular Session ***

TITLE 20. EDUCATION
CHAPTER 2. ELEMENTARY AND SECONDARY EDUCATION
ARTICLE 16. STUDENTS
PART 2. DISCIPLINE
SUBPART 2. PUBLIC SCHOOL DISCIPLINARY TRIBUNALS

O.C.G.A. § 20-2-754 (2012)

§ 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.

HISTORY: Code 1981, § 20-2-754, enacted by Ga. L. 1984, p. 908, § 1; Ga. L. 1985, p. 149, § 20; Ga. L. 1986, p. 10, § 20; Ga. L. 1986, p. 817, § 1; Ga. L. 1997, p. 1436, § 6; Ga. L. 2004, p. 107, § 17.

50-13-13

Administrative Procedures Act

O.C.G.A. § 50-13-13

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*** Current Through the 2012 Regular Session ***

TITLE 50. STATE GOVERNMENT
CHAPTER 13. ADMINISTRATIVE PROCEDURE
ARTICLE 1. GENERAL PROVISIONS

O.C.G.A. § 50-13-13 (2012)

§ 50-13-13. (For effective date, see note.) 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 prescribed by law in civil cases in the superior court;

(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) (For effective date, see note.) 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 or in the Georgia Tax Tribunal in accordance with Chapter 13A of this title.

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; Ga. L. 2012, p. 318, § 13/HB 100.

CHARGE LETTER

NOTIFICATION LETTER

- 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

CHARGE LETTER SAMPLE

Date

Parent Name

Address

City

Dear Mr. and Mrs. -----:

This letter is to notify you that your child, -----, will be brought before a disciplinary hearing officer appointed by the Superintendent of Schools for disciplinary action. The charges against him/her include ----- while on the campus of _____ County ----- School. He/she is accused of the violating the following rules of the ----- County Board of Education Code of Conduct JCDA:

Administrative Rule #-----: -----

Insert full text of the specified rule

A hearing will be held to determine whether or not your son/daughter committed the offenses outlined in this letter and the appropriate disciplinary action. This disciplinary action may include long term suspension or expulsion from the Morgan County Schools. **The hearing will be held at the ----- Board of Education office located at [enter street address] on [enter day, date and time].** The witnesses who may testify at the hearing include [enter name of prosecuting administrator and witnesses].

If you agree that your child is guilty of these charges, and if you are willing to accept punishment assigned by the school principal, you may waive the hearing altogether. Sign and return the enclosed waiver form before the date of the scheduled hearing. The recommended disciplinary action is that [enter the punishment recommended by the principal].

This will advise you that you and your child have a right to attend the hearing and present whatever evidence or argument you wish to make. I assure you the hearing officer will consider any oral testimony or any statements that you or any other person might present which are relevant to this matter.

You have the right to legal counsel if you so desire. Because the board requires that the school board attorney be present at any hearing at which a lawyer is present representing the student, we do request that you notify this office at least 24 hours prior to the hearing if you intend to be represented by an attorney. Failure to give such notice will result in the hearing being postponed so that the board's attorney can be present.

If you have any questions regarding this letter or the procedures I outlined in the letter, feel free to contact this office.

Sincerely,

Superintendent

----- County Schools

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

Subpoena for Disciplinary Hearing

IN RE: Board of Education v.

TO: _____

Greetings:

You are hereby commanded that laying all other business aside, you are personally to 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.

WITNESS the hand and seal of _____ Board of Education this
_____ day of _____, 20_____.

(SEAL) _____

I have this served _____ (name) with the written
foregoing subpoena.

By _____ this _____ day of
_____, 20_____

(SEAL) _____

STUDENT DISCIPLINARY SCRIPT/RECORD

___x___TAPE RECORDER ON

1. State Date and Purpose

___x___A. Today's date is _____ and the purpose of this student disciplinary hearing is to hear charges against: .

2. Introduce Participants

___x___A. I am Dr. Jimmy Stokes and I am serving as the hearing officer for today's hearing.

___X___B. Other Staff Present are:

- 1.
- 2.
- 3.

___x___C. The following witnesses are present for the school

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

- 1.
- 3.
- 4.
- 5.

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

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

1. _____ student
2. _____ Parent

___x___SWEAR IN ALL PARTICIPANTS

☒ E. Other persons present for the hearing:

Name

Interest

1.

2.

3.

☒ 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.

3. Begin the Hearing

☒ A. Are the student and/or parents represented by an attorney?

No/Yes No

☒ 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 the Superintendent dated . The letter was delivered by certified mail.

☒ 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

4. 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:

5. 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

Sworn

Name

_____ 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 .

☒ H. I hereby declare the evidence is closed.

6. Determine Whether the Student Committed The Offense
Yes/No

 x A. I 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.

End Part # 1

7. 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 is:

8. 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.

Jimmy C. Stokes, EdD
Hearing Officer

SPANISH VERSION

Padres: Ésta es la escritura de la audiencia alrededor que se conducirá. Seguiré la escritura tan de cerca como sea posible. Todas las frases se han traducido a español y están en la impresión verde. No vacile por favor pararme si usted es ayuda confusa o de la necesidad.

(Parents:

This is the script of the hearing about to be conducted. I will follow the script as closely as possible. All of the phrases have been translated into spanish and are in green print. Please do not hesitate to stop me if you are confused or need assistance.)

STUDENT DISCIPLINARY SCRIPT/RECORD ESTUDIANTE SCRIPT/RECORD DISCIPLINARIO

___x___ TAPE RECORDER ON
REGISTRADOR DE CINTA ENCENDIDO

9. State Date and Purpose

1. Fecha y propósito del estado

___x___ A. Today's date is ___ and the purpose of this student disciplinary hearing is to hear charges against: ___.

A. La fecha de hoy es _ y el propósito de esta audiencia disciplinaria del estudiante es oír cargas contra: _.

10. Introduce Participants

2. Presente a los participantes

___x___ A. I am Dr. Jimmy Stokes and I am serving as the hearing officer for today's hearing.

A. Soy el Dr. Jimmy Stokes y estoy sirviendo como el oficial de audiencia para la audiencia de hoy.

___X___ B. Other Staff Present are:

B. Otro provee de personal el presente es:

- 1.
- 2.

___x___ C. The following witnesses are present for the school

Name

Position

C. Los testigos siguientes están presentes para la escuela

Nombre

Posición

- 1.
- 2.

___x___ D. The following persons are present on behalf of the students:

D. Las personas siguientes están presentes a nombre de los estudiantes:

Name

Relationship

Nombre

Posición

- 1.
- 2.

___x___ SWEAR IN ALL PARTICIPANTS

JURE ADENTRO A TODOS LOS PARTICIPANTES

(I promise/swear to tell the truth, the whole truth, and nothing but the truth so help me God.)

(Prometo/juro no decir la verdad, la verdad entera, y nada pero la verdad así que me ayuda dios.)

___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.

F. La audiencia será cerrada según los requisitos de la ley de Georgia. Si los padres desean de tener individuos permanecer en el cuarto, pueden pedir tales en este tiempo. Los que no tienen una razón válida de la atender deben irse.

11. Begin the Hearing
Comience la audiencia

☒ A. Are the student and/or parents represented by an attorney? No/Yes
¿A un abogado representan al estudiante y/o a los padres? No/Yes
☒ B. All witnesses other than the student, parents, and case administrator should leave the hearing room at this time.

Todos los testigos con excepción del estudiante, de los padres, y del administrador del caso deben salir del cuarto de la audiencia en este tiempo.

☒ 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.

El propósito de esta audiencia es oír cargas contra el _____ dispuso en una letra del _____ anticuado _____. La letra fue entregada por el correo certificado.

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

Charges:

Guilty/Not Guilty:

¿Con respecto a las cargas detalladas en la letra del superintendente, cómo los estudiantes abogan por?

Cargas:

Culpable/no culpable:

Move to #7 IF GUILTY PLEA IS ENTERED

Muévase a #7 SI SE INCORPORA LA SÚPLICA DE CULPA

12. Explain the format of the Hearing
Explique el formato de la audiencia

There are two parts to the hearing:

Hay dos porciones a la audiencia:

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

La fase una trata de independientemente de si el estudiante confió las violaciones dispuestas en la letra de la carga.

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

Repartos de la fase dos con el castigo apropiado en caso de necesidad.

☒ 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 _____.

La escuela presentará su caso primero. Los padres y los estudiantes deben señalar a una persona que pregunte testigos. Este designee puede hacer a un testigo preguntas después de que la escuela haya acabado. La escuela es representada por el _____.

13. Present the Case

Presente el caso

☒ A. Does the school wish to make an opening statement?

¿La escuela desea hacer una declaración inaugural?

☒ B. Please call your witnesses:

Llame por favor sus testigos:

Nombre

Jurado

Name

Sworn

☐ C. Student may now present its case.

El estudiante puede ahora presentar su caso.

Witness

Sworn

Nombre

Jurado

1.

.

_____ F. The school may now call any rebuttal witnesses.

La escuela puede ahora llamar cualquier testigo de la refutación.

Nombre

Jurado

Name

Sworn

1.

2.

_____ G. Does either side wish to present additional evidence or statements? Yes/No

.

¿Cualquier lado desea presentar evidencia o declaraciones adicional? Sí/no

___x___ H. I hereby declare the evidence is closed.

Declaro por este medio que la evidencia es cerrada.

14. Determine Whether the Student Committed The Offense

Yes/No

Determine si el estudiante confió la ofensa Sí/no

___x___ A. I find that the evidence submitted was insufficient to establish that committed any of the violations alleged in the charge letter.

Encuentro que la evidencia sometida era escasa para establecer que el _____ confió las violaciones unas de los alegadas en la letra de la carga.

OR

O

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

Encuentro eso _____ committed las violaciones siguientes como alegado en la letra de la carga:

1.

2.

End Part # 1

15. Determine Appropriate Punishment
Determine el castigo apropiado

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

¿La escuela desea presentar información o recomendaciones que refieran el castigo apropiado?

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

¿El designee del estudiante desea presentar información o recomendaciones de la perspectiva de la familia que refieran el castigo apropiado?

☐ C. This hearing is recessed for deliberation. (Optional)

Esta audiencia se ahueca para la deliberación. (Opcional)

☐ D. The decision of the hearing officer is:

La decisión del oficial de audiencia es:

16. End The Hearing
Termine la audiencia

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.

La decisión de esta audiencia puede ser apelada escribiendo una letra al superintendente dentro de 20 días naturales de esta decisión. La letra debe indicar la decisión tomada por este oficial y por qué se está apelando.

This hearing is adjourned.

Se aplaza esta audiencia

Jimmy C. Stokes, EdD

Certified Hearing Officer

Oficial de audiencia certificado

EVIDENCE

LEVELS OF EVIDENCE

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*,^[5] 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.

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-judicatively 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.^[6]

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),^[7] 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.

Beyond reasonable doubt

Main article: [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/Legal_burden_of_proof

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 seizures, 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

FEDERAL EVIDENCE RULES

- Written statements not accompanied by a witness capable of being cross examined must be classified as rank evidence .
- School administrators may testify as to statements made to them personally by witnesses. Credibility of evidence is based on administrator's ability to interrogate witnesses.
- School and student (parents and/or lawyer) may stipulate the use of signed statements and waive their right to cross examine the witness.

ADMISSION OF EVIDENCE

- Videos should be included in file on flash drive or disk
- Cell phone videos should be copied via photograph or Xerox type copy
- Photos should be labeled as *Exhibit #* and kept in file
- Artifacts or *pictures with scale* should be kept in file
- Once the hearing is ended, evidence may **NOT** be added to the file

Decision

Issues associated with decision

a. Recommendations

Unless prohibited by local board policy, school and parents should be permitted to offer recommendations or consequences

b. Age of student—issues with students under 16 years of age

Any student under the age of 16 must be provided services if they are expelled. Does NOT apply to special needs students.

c. Legal requirements for some cases, e.g. weapons and chronic disciplinary students

School MUST recommend one calendar year expulsion for possession of a weapon. Hearing officer/tribunal may set whatever punishment is appropriate.

d. Placement, expulsion, expulsion with opportunity to attend alternative school. If student is EXPELLED you may not set standards for return to base school. Placed students may be required to meet certain standards before their home school return.)

e. Home school, private school, virtual school, Youth Challenge are alternatives to expulsion and alternative school.

State Board Rules

a. If student transfers to another school system, penalty and/or placement goes with student

b. If student withdraws prior to hearing, hearing should be held regardless of whether student/family is present.

16-11-127.1 Weapons in School Zone

STATE DEFINITION OF WEAPON

O.C.G.A. § 16-11-127.1

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*** Current Through the 2013 Regular Session ***

TITLE 16. CRIMES AND OFFENSES
CHAPTER 11. OFFENSES AGAINST PUBLIC ORDER AND SAFETY
ARTICLE 4. DANGEROUS INSTRUMENTALITIES AND PRACTICES
PART 3. CARRYING AND POSSESSION OF FIREARMS

O.C.G.A. § 16-11-127.1 (2013)

§ 16-11-127.1. (For effective date, see note.) Carrying weapons within school safety zones, at school functions, or on school property

(a) As used in this Code section, the term:

(1) "School safety zone" means in or on any real property owned by or leased to any public or private elementary school, secondary school, or school board and used for elementary or secondary education and in or on the campus of any public or private technical school, vocational school, college, university, or institution of postsecondary education.

(2) "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 building, school function, or school property or on a bus or other transportation furnished by the school any weapon or explosive compound, other than fireworks the possession of which is regulated by Chapter 10 of Title 25.

(2) Any license holder who violates this subsection shall be guilty of a misdemeanor. Any person who is not a license holder who violates this subsection shall be guilty of a felony

and, upon conviction thereof, be punished by a fine of not more than \$10,000.00, by imprisonment for not less than two nor more than ten years, or both.

(3) Any person convicted of a violation of this subsection involving a dangerous weapon or machine gun, as such terms are defined in Code Section 16-11-121, shall be punished by a fine of not more than \$10,000.00 or by imprisonment for a period of not less than five nor more than ten years, or both.

(4) (For effective date, see note.) A child who violates this subsection may be subject to the provisions of Code Section 15-11-601.

(c) The provisions of this Code section shall not apply to:

(1) Baseball bats, hockey sticks, or other sports equipment possessed by competitors for legitimate athletic purposes;

(2) Participants in organized sport shooting events or firearm training courses;

(3) Persons participating in military training programs conducted by or on behalf of the armed forces of the United States or the Georgia Department of Defense;

(4) Persons participating in law enforcement training conducted by a police academy certified by the Georgia Peace Officer Standards and Training Council or by a law enforcement agency of the state or the United States or any political subdivision thereof;

(5) The following persons, when acting in the performance of their official duties or when en route to or from their official duties:

(A) A peace officer as defined by Code Section 35-8-2;

(B) A law enforcement officer of the United States government;

(C) A prosecuting attorney of this state or of the United States;

(D) An employee of the Georgia Department of Corrections or a correctional facility operated by a political subdivision of this state or the United States who is authorized by the head of such correctional agency or facility to carry a firearm;

(E) A person employed as a campus police officer or school security officer who is authorized to carry a weapon in accordance with Chapter 8 of Title 20; and

(F) Medical examiners, coroners, and their investigators who are employed by the state or any political subdivision thereof;

(6) A person who has been authorized in writing by a duly authorized official of the school to have in such person's possession or use as part of any activity being conducted at a school building, school property, or school function a weapon which would otherwise be prohibited by this Code section. Such authorization shall specify the weapon or weapons which have been authorized and the time period during which the authorization is valid;

(7) A person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10, when such person carries or picks up a student at a school building, school function, or school property or on a bus or other transportation

furnished by the school or a person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10 when he or she has any weapon legally kept within a vehicle when such vehicle is parked at such school property or is in transit through a designated school zone;

(8) A weapon possessed by a license holder which is under the possessor's control in a motor vehicle or which is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle which is being used by an adult over 21 years of age to bring to or pick up a student at a school building, school function, or school property or on a bus or other transportation furnished by the school, or when such vehicle is used to transport someone to an activity being conducted on school property which has been authorized by a duly authorized official of the school; provided, however, that this exception shall not apply to a student attending such school;

(9) Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the weapon is necessary for manufacture, transport, installation, and testing under the requirements of such contract;

(10) Those employees of the State Board of Pardons and Paroles when specifically designated and authorized in writing by the members of the State Board of Pardons and Paroles to carry a weapon;

(11) The Attorney General and those members of his or her staff whom he or she specifically authorizes in writing to carry a weapon;

(12) Probation supervisors employed by and under the authority of the Department of Corrections pursuant to Article 2 of Chapter 8 of Title 42, known as the "State-wide Probation Act," when specifically designated and authorized in writing by the director of the Division of Probation;

(13) Public safety directors of municipal corporations;

(14) State and federal trial and appellate judges;

(15) United States attorneys and assistant United States attorneys;

(16) Clerks of the superior courts;

(17) Teachers and other school personnel who are otherwise authorized to possess or carry weapons, provided that any such weapon is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle; or

(18) Constables of any county of this state.

(d)(1) This Code section shall not prohibit any person who resides or works in a business or is in the ordinary course transacting lawful business or any person who is a visitor of such resident located within a school safety zone from carrying, possessing, or having under such person's control a weapon within a school safety zone; provided, however, it shall be unlawful for any such person to carry, possess, or have under such person's control while at a school building or school function or on school property, a school bus, or other transportation furnished by the school any weapon or explosive compound, other than fireworks the possession of which is regulated by Chapter 10 of Title 25.

(2) Any person who violates this subsection shall be subject to the penalties specified in subsection (b) of this Code section.

(3) This subsection shall not be construed to waive or alter any legal requirement for possession of weapons or firearms otherwise required by law.

(e) It shall be no defense to a prosecution for a violation of this Code section that:

(1) School was or was not in session at the time of the offense;

(2) The real property was being used for other purposes besides school purposes at the time of the offense; or

(3) The offense took place on a school vehicle.

(f) In a prosecution under this Code section, a map produced or reproduced by any municipal or county agency or department for the purpose of depicting the location and boundaries of the area of the real property of a school board or a private or public elementary or secondary school that is used for school purposes or the area of any campus of any public or private technical school, vocational school, college, university, or institution of postsecondary education, or a true copy of the map, shall, if certified as a true copy by the custodian of the record, be admissible and shall constitute prima-facie evidence of the location and boundaries of the area, if the governing body of the municipality or county has approved the map as an official record of the location and boundaries of the area. A map approved under this Code section may be revised from time to time by the governing body of the municipality or county. The original of every map approved or revised under this subsection or a true copy of such original map shall be filed with the municipality or county and shall be maintained as an official record of the municipality or county. This subsection shall not preclude the prosecution from introducing or relying upon any other evidence or testimony to establish any element of this offense. This subsection shall not preclude the use or admissibility of a map or diagram other than the one which has been approved by the municipality or county.

(g) A county school board may adopt regulations requiring the posting of signs designating the areas of school boards and private or public elementary and secondary schools as "Weapon-free and Violence-free School Safety Zones."

20-2-751.1 Student w/weapon **REQUIREMENT FOR GUILTY OF WEAPON POSSESSION**

Pages: 2

TITLE 20. EDUCATION
CHAPTER 2. ELEMENTARY AND SECONDARY EDUCATION
ARTICLE 16. STUDENTS
PART 2. DISCIPLINE
SUBPART 2. PUBLIC SCHOOL DISCIPLINARY TRIBUNALS

O.C.G.A. § 20-2-751.1 (2012)

§ 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.

20-2-765

CHRONIC DISCIPLINARY STUDENT

O.C.G.A. § 20-2-765

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*** Current Through the 2012 Regular Session ***

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 (2012)

§ 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, p. 240, § 2; Ga. L. 2000, p. 618, § 67; Ga. L. 2000, p. 1589, § 3.

Students Charged with Felonies

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.

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.

Sample High School Behavior Plan

The purpose of this plan is to help me be a successful student at Sample County High School. This plan acts as a contract granting me permission to continue as a student. In asking for permission, I agree to make the following commitments:

1. I will obey and follow instructions of any and all Sample County High School staff while at school.
2. I will not cause ANY disturbance in class, on campus, or on the school bus including physical and verbal altercations.
3. I will be prepared at all times with the necessary materials (books, pens, pencils, homework, etc.) for all classes.
4. I will not leave class or campus without permission.
5. I will not use profanity or act disrespectfully to faculty, staff, or my peers.
6. I will obey and follow the dress code at SCHS which includes wearing my pants at the waist.
7. I will be on time every day, to every class, and understand I am not to be excused early for any reason except an emergency.
8. I will abide by and obey all rules and regulations as set forth by Sample County High School and the Sample County Board of Education.
9. I will seek the assistance of my teachers, counselors and administrator should I need help with any of the above commitments.

I fully understand that should I fail on any of the above commitments, I will expect to be recommended for expulsion from Sample County High School for the 2014-2015 school year and I may be referred to the Department of Juvenile Justice.

Student

Date

I am the parent or legal guardian of the above student, and I fully understand and support the content and purpose of this contract. I support the efforts of Sample County High School and understand that my child will be recommended for expulsion should he/she violated this contract. I also understand that attending class with my child is an option that may be exercised by notifying the Principal's office.

Parent/Guardian

Date

Administrator

Date

Student Disciplinary Hearing
Sample Report of Findings and Decision

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/tribunal 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.

Jimmy C. Stokes, EdD
Hearing Officer

De Novo Appeals

Appeal must be made in writing within twenty days of the date of the hearing to the local superintendent. The appeal is *de novo* meaning that NO new evidence or testimony may be made to the Board of Education. (OCGA 20-2-754) The Board of Education may only consider:

- Written records, electronic recordings, physical evidence presented during the hearing, and finding/decision report.
- Evidence, statements, and artifacts may NOT be added once the case is closed.

Should the case be appealed to the State Board of Education, only the items listed above may be forwarded to the State Board. The State Board and/or the parents may request a written transcript of the hearing and if such is the case the parents must pay for the preparation of the transcript.

Professionalism

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

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Legislative staff of the Georgia General Assembly cannot respond to requests for legal advice or the application of the law to specific facts from anyone except members of the Georgia General Assembly. Therefore, to understand and protect your legal rights, you should consult your own private lawyer. Please refer legal questions elsewhere.

OK - Close

<http://www.lexisnexis.com/hottopics/gacode/>

ADDITIONAL STATE LAWS

COMPULSORY ATTENDANCE

O.C.G.A. § 20-2-690.1 (2015)

§ 20-2-690.1. Mandatory education for children between ages six and 16

(a) Mandatory attendance in a public school, private school, or home school program shall be required for children between their sixth and sixteenth birthdays. Such mandatory attendance shall not be required where the child has successfully completed all requirements for a high school diploma.

(b) Every parent, guardian, or other person residing within this state having control or charge of any child or children during the ages of mandatory attendance as required in subsection (a) of this Code section shall enroll and send such child or children to a public school, a private school, or a home study program that meets the requirements for a public school, a private school, or a home study program; and such child shall be responsible for enrolling in and attending a public school, a private school, or a home study program that meets the requirements for a public school, a private school, or a home study program under such penalty for noncompliance with this subsection as is provided in Chapter 11 of Title 15, unless the child's failure to enroll and attend is caused by the child's parent, guardian, or other person, in which case the parent, guardian, or other person alone shall be responsible; provided, however, that tests and physical exams for military service and the National Guard and such other approved absences shall be excused absences. The requirements of this subsection shall apply to a child during the ages of mandatory attendance as required in subsection (a) of this Code section who has been assigned by a local board of education or its delegate to attend an alternative public school program established by that local board of education, including an alternative public school program provided for in Code Section 20-2-154.1, regardless of whether such child has been suspended or expelled from another public school program by that local board of education or its delegate, and to the parent, guardian, or other person residing in this state who has control or charge of such child. Nothing in this Code section shall be construed to require a local board of education or its delegate to assign a child to attend an alternative public school program rather than suspending or expelling the child.

(c) Any parent, guardian, or other person residing in this state who has control or charge of a child or children and who violates this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$25.00 and not greater than \$100.00, imprisonment not to exceed 30 days, community service, or any combination of such penalties, at the discretion of the court having jurisdiction. Each day's absence from school in violation of this part after the child's school system notifies the parent, guardian, or other person who has control or charge of a child of five unexcused days of absence for a child shall constitute a separate offense. After two reasonable attempts to notify the parent, guardian, or other person who has control or charge of a child of five unexcused days of absence without response, the school system shall send a notice to such parent, guardian, or other person by certified mail, return receipt requested, or first-class mail. Prior to any action to commence judicial proceedings to impose a penalty for violating this subsection on a parent, guardian, or other person residing in this state who has control or charge of a child or children, a school system shall send a notice to such parent, guardian, or other

person by certified mail, return receipt requested. Public schools shall provide to the parent, guardian, or other person having control or charge of each child enrolled in public school a written summary of possible consequences and penalties for failing to comply with compulsory attendance under this Code section for children and their parents, guardians, or other persons having control or charge of children. The parent, guardian, or other person who has control or charge of a child or children shall sign a statement indicating receipt of such written statement of possible consequences and penalties; children who are age ten years or older by September 1 shall sign a statement indicating receipt of such written statement of possible consequences and penalties. After two reasonable attempts by the school to secure such signature or signatures, the school shall be considered to be in compliance with this subsection if it sends a copy of the statement, via certified mail, return receipt requested, or first-class mail, to such parent, guardian, or other person who has control or charge of a child or children. Public schools shall retain signed copies of statements through the end of the school year.

(d) Local school superintendents in the case of private schools, the Department of Education in the case of home study programs, and visiting teachers and attendance officers in the case of public schools shall have authority and it shall be their duty to file proceedings in court to enforce this subpart. The Department of Education shall coordinate with local school superintendents with respect to attendance records and notification for students in home study programs.

(e) An unemancipated minor who is older than the age of mandatory attendance as required in subsection (a) of this Code section who has not completed all requirements for a high school diploma who wishes to withdraw from school shall have the written permission of his or her parent or legal guardian prior to withdrawing. Prior to accepting such permission, the school principal or designee shall convene a conference with the child and parent or legal guardian within two school days of receiving notice of the intent of the child to withdraw from school. The principal or designee shall make a reasonable attempt to share with the student and parent or guardian the educational options available, including the opportunity to pursue a general educational development (GED) diploma and the consequences of not having earned a high school diploma, including lower lifetime earnings, fewer jobs for which the student will be qualified, and the inability to avail oneself of higher educational opportunities. Every local board of education shall adopt a policy on the process of voluntary withdrawal of unemancipated minors who are older than the mandatory attendance age. The policy shall be filed with the Department of Education no later than January 1, 2007. The Department of Education shall provide annually to all local school superintendents model forms for the parent or guardian signature requirement contained in this subsection and updated information from reliable sources relating to the consequences of withdrawing from school without completing all requirements for a high school diploma. Such form shall include information relating to the opportunity to pursue a general educational development (GED) diploma and the consequences of not having earned a high school diploma, including lower lifetime earnings, fewer jobs for which the student will be qualified, and the inability to avail oneself of higher educational opportunities. Each local school superintendent shall provide such forms and information to all of its principals of schools serving grades six through twelve for the principals to use during the required conference with the child and parent or legal guardian.

HISTORY: Ga. L. 1945, p. 343, §§ 1, 10; Ga. L. 1969, p. 682, § 1; Ga. L. 1971, p. 264, § 1; Code 1981, § 20-2-690; Ga. L. 1983, p. 3, § 16; Code 1981, § 20-2-690.1, enacted by Ga. L. 1984, p. 1266, § 1; Ga. L. 2000, p. 618, § 62; Ga. L. 2000, p. 1159, § 2; Ga. L. 2004, p. 107, § 10; Ga. L. 2006, p. 851, § 1/SB 413; Ga. L. 2012, p. 358, § 31/HB 706; Ga. L. 2012, p. 648, §§ 2, 3/HB 39.

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.

The term applies to acts which occur on school property, on school vehicles, at designated school bus stops, or at school related functions or activities or by use of data or software that is accessed through a computer, computer system, computer network, or other electronic technology of a local school system. The term also applies to acts of cyberbullying which occur through the use of electronic communication, whether or not such electronic act originated on school property or with school equipment, if the electronic communication (1) is directed specifically at students or school personnel, (2) is maliciously intended for the purpose of threatening the safety of those specified or substantially disrupting the orderly operation of the school, and (3) creates a reasonable fear of harm to the students' or school personnel's person or property or has a high likelihood of succeeding in that purpose. For purposes of this Code Section, electronic communication includes but is not limited to any transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system.

(b) No later than August 1, 2011:

(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.

(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.

(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.

HISTORY: Code 1981, § 20-2-751.4, enacted by Ga. L. 1999, p. 362, § 3; Ga. L. 2000, p. 136, § 20; Ga. L. 2010, p. 516, § 2/SB 250; Ga. L. 2011, p. 752, § 20/HB 142; Ga. L. 2015, p. 1215, § 2/HB 131.

DISCIPLINE HANDBOOK CHECKLIST

- Standards for student behavior during school hours, at school-related functions, on school buses, and at school bus stops designed to create the expectation that students will behave themselves in such a way so as to facilitate a learning environment for themselves and other students, respect each other and school district employees, obey student behavior policies adopted by the local board of education, and obey student behavior rules established by individual schools;
- Verbal assault, including threatening violence, of teachers, administrators, and other school personnel;
- Physical assault or battery of teachers, administrators or other school personnel;
- Disrespectful conduct toward teachers, administrators, other school personnel, persons attending school related functions or other students, including use of vulgar or profane language;
- Verbal assault of other students, including threatening violence or sexual harassment as defined pursuant to Title IX of the Education Amendments of 1972; 160-4-8-.15 (Continued)
- Sexual harassment as defined pursuant to Title IX of the Education Amendments of 1972 or physical assault or battery of other students.
- Guidelines and consequences resulting from failure to comply with compulsory attendance as required under O.C.G.A. § 20-2-690.1;
- Willful or malicious damage to real or personal property of the school or to personal property of any person legitimately at the school;
- Inciting, advising, or counseling of others to engage in prohibited acts;
- Marking, defacing or destroying school property or the property of another student;
- Possession of a weapon, as provided for in O.C.G.A. § 16-11-127.1;
- Unlawful use or possession of illegal drugs or alcohol;
- Willful and persistent violation of student codes of conduct;
- Bullying as defined in O.C.G.A. § 20-2-751.4;
- Any off-campus behavior of a student which could result in the student being criminally charged with a felony and which makes the student's continued presence at school a potential danger to persons or property at the school or which disrupts the educational process;
- Each local board of education shall adopt policies, applicable to students in grades 6 through 12 that prohibit bullying of a student by another student and shall require such prohibition to be included in the student code of conduct in that school system. Local board policies shall require that, upon a finding that a student in grades 6 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.
- Behavior support processes designed to consider, as appropriate in light of the severity of the behavioral problem, support services that may be available through the school, school system, other public entities, or community organizations that may help the

student address behavioral problems; This rule neither mandates nor prohibits the use of student support teams as part of the student support process;

- Progressive discipline processes designed to create the expectation that the degree of discipline will be in proportion to the severity of the behavior, that the previous discipline history of the student and other relevant factors will be taken into account; and that all due process procedures required by federal and state law will be followed; 160-4-8-.15 (Continued) 19. Parental involvement processes designed to create the expectation that parents, guardians, teachers and school administrators will work together to improve and enhance student behavior and academic performance and will communicate freely their concerns about, and actions in response to, student behavior that detracts from the learning environment. Local boards of education shall provide opportunities for parental involvement in developing and updating student codes of conduct.
- A statement that major offenses including, but not limited to, drug and weapon offenses can lead to schools being named as an Unsafe School according to the provisions of State Board of Education Rule 160-4-8-.16 Unsafe School Choice Option.
- (b) Local boards of education shall provide for the distribution of student codes of conduct to each student upon enrollment and to the parents and guardians of each student and may solicit the signatures of students and parents or guardians in acknowledgment of the receipt of such student codes of conduct.
- (c) Student codes of conduct shall be available in each school and classroom.
- (d) Local boards of education shall provide for disciplinary actions against students who violate student codes of conduct;
- (e) Local board policies relating to student codes of conduct shall provide that each local superintendent shall fully support the authority of principals and teachers in the school system to remove a student from the classroom pursuant to O.C.G.A. § 20-2-738, including establishing and disseminating procedures.
- (f) It is the preferred policy of the board that disruptive students are placed in alternative education settings in lieu of being suspended or expelled.
- (g) Local board policies shall require the filing of a report by a teacher documenting a student's violation of the student code of conduct which repeatedly or substantially interferes with the teacher's ability to communicate effectively with the students in his or her class or with the ability of such student's classmates to learn within one school day of the most recent occurrence of such behavior. The report shall be filed with the principal or principal's designee, shall not exceed one page, and shall describe the behavior. The principal or principal's designee shall, within one day of receiving such report, send to the student's parents or guardians a copy of the report, and information regarding how the principal or principal's designee may be contacted.
- (h) The principal or the principal's designee shall send written notification to the teacher and to the student's parents or guardians of the student support services being utilized or the disciplinary action taken within one school day and shall make a reasonable attempt to confirm receipt of such written notification by the student's 160-4-8-.15 (Continued) parents or guardians. Written notification shall include information

regarding how student's parents or guardians may contact the principal or principal's designee.

- Each local board of education shall approve Tribunal Training Provider(s).
- (j) Each local board of education shall make available to all Qualified Student Discipline Hearing Officers and Disciplinary Tribunal or Panel Members the initial and ongoing tribunal training course prior to the individual(s) serving in such capacity. The local board of education shall ensure initially trained student discipline hearing officers and disciplinary tribunal or panel members undergo continuing education so as to continue to serve in such capacity.
- (k) Each local board of education shall observe Georgia law in developing and implementing disciplinary hearings held by a disciplinary hearing officer, disciplinary panel, or disciplinary tribunal pursuant to O.C.G.A. § 20-2-751 through § 20-2-759 including the ability to honor disciplinary orders of private schools and other public schools/school systems pursuant to O.C.G.A. § 20-2-751.2.