

DUE PROCESS AND DISCIPLINE REFORM IN CHICAGO

Dana Tellefsen*

I. INTRODUCTION

The United State Supreme Court found that the Due Process Clause of the Fourteenth Amendment requires that students who are suspended for less than ten days must be provided with some kind of notice and hearing. However, even though students have a minimal procedural due process right, substantive due process standards are much more limited. Additionally, the research suggests that punitive zero tolerance discipline policies can have harmful effects on students and school culture. Increasingly schools have been adopting restorative justice practices instead of punitive discipline policies. In Illinois, restorative justice is reflected in statutes and the CPS Student Code of Conduct. Due process rights are even stricter for students with disabilities under the Individuals with Disabilities Education Act (IDEA 2004). In this article, I will discuss due process rights of students, the development of restorative justice in Chicago, and the relevant law.

II. DUE PROCESS RIGHTS OF STUDENTS

Students do not have a fundamental constitutional right to attend public schools in the United States.¹ However, state statutes and constitutions can create a protectable property and liberty interest in attending a public school.² Therefore, when students are suspended or expelled from public schools, they are deprived from a constitutionally protected liberty or property interest.³ Even though schools may suspend or expel students for broad range of reasons, the

*J.D. Candidate, May 2018, Loyola University Chicago School of Law

¹ Kaufman, Michael J., and Sherelyn R. Kaufman, Education Law, Policy, and Practice: Cases and Materials, New York: Wolters Kluwer Law & Business, 2013.

² *Id.*

³ *Id.*

process in which students are disciplined falls under the Due Process Clause of the Fourteenth Amendment.⁴ The Supreme Court in *Goss v. Lopez*, held that minimal due process protections are provided for students.⁵ However, even though students have a minimal procedural due process right, students' substantive due process standards are far more limited.⁶

The Due Process Clause of the Fourteenth Amendment requires that if a student is facing a suspension of ten days or less, the student must be provided some kind of notice of the charges against him and afforded some kind of hearing.⁷ In *Goss*, nine students were suspended for ten days on account of disruptive or disobedient conduct committed in the presence of a school administrator.⁸ There was no hearing prior to the suspension or within a reasonable time thereafter.⁹ The students brought a class action against the school officials declaring that the Ohio statute permitting such suspensions without a hearing was unconstitutional.¹⁰ The Ohio statute provided for "free education to all children between the ages of six and 21."¹¹ Additionally, the statute empowered "Ohio public school principals to suspend a pupil for misconduct for up to 10 days or to expel him."¹² If a student was suspended or expelled, he or she must have been notified within 24 hours with the reason for the action.¹³ Expelled students could appeal the decision, but there was no provision for appeal for suspended students.¹⁴ The suspended students filed a complaint declaring that the statute was unconstitutional because it deprived the students of a hearing, in violation of the procedural due process component of the

⁴ *Id.*

⁵ *Goss v. Lopez*, 419 U.S. 565, 565 (1975).

⁶ *Dunn & McCullough v. Fairfield Community High School District No. 225*, 158 F.3d 962, 964 (7th Cir. 1998).

⁷ *Goss*, 419 U.S. at 565.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

Fourteenth Amendment.¹⁵ The Supreme Court affirmed the District Court decision and held that the statute was unconstitutional because it permits suspensions without notice or hearing.¹⁶

The Court reasoned that the Fourteenth Amendment forbids states from depriving any person of “life, liberty, or property without due process of law.”¹⁷ On the basis of state law, students had an entitlement to education and states may not withdraw that right on grounds of misconduct, unless there were fundamentally fair procedures in place.¹⁸ The Court cited *Tinker v. Des Moines*, stating students do not shed their constitutional rights at the schoolhouse gate.¹⁹ The Due Process clause forbids any arbitrary deprivations of liberty.²⁰ The minimal requirements of the Due Process clause must be satisfied “where a person’s good name, reputation, honor, or integrity, is at stake because of what the government is doing.”²¹ Since suspensions interfere with a protected property interest there must be some kind of written or oral notice and some kind of hearing.²² The purpose is to avoid unfair or mistaken exclusion from the education process because it gives the student an opportunity to present his or her side of the story.²³ The Court immediately states an exception: “Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, notice and a rudimentary hearing should follow as soon as possible.”²⁴ The Court in *Goss* found that states mandating free public education create a constitutionally protected property interest. Additionally, the Supreme Court created the bright line rule between short-term suspensions (ten days or less, with less procedural requirements)

¹⁵ *Id.* at 569.

¹⁶ *Id.* at 585.

¹⁷ *Id.* at 573.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 577.

²³ *Id.* at 581.

²⁴ *Id.*

and long-term suspensions or expulsions (more than ten days, with more procedural protections).²⁵ In conclusion, suspensions are unconstitutional without notice or hearing.²⁶

Goss is significant because there is a constitutionally protected property right to an education in all states that have similar statutes mandating free public education.²⁷ However, the Supreme Court in *San Antonio Independent School District v. Rodriguez* found that while education is one of the most important services performed by the state, it is not among rights protected under the Constitution.²⁸ Even so, the reasoning in *Goss* indicates that students will have a property right to education if dictated by the state constitution or state statute, therefore putting minimal procedural due process protections in place. If a school district were drafting a policy to comply with *Goss*, they would have to incorporate at least some kind of notice and some kind of hearing, oral or written, when students are suspended from school for any length of time.²⁹ Conversely, if a student is suspended for academic reasons, then the procedural tests might not be necessary.³⁰ The Court in *Board of Curators of Missouri v. Horowitz* found that when a student was dismissed from medical school because of substandard medical performance, the procedural tests in *Goss* were not required and the decision to dismiss can rest on the judgment of school officials and expert evaluation.³¹

However, even though students have a minimal procedural due process right to receive notice and a hearing set forth by the Fourteenth Amendment, students' substantive due process standards are far more limited.³² In *Dunn & McCullough*, a high school prohibited its band

²⁵ *Id.* at 585.

²⁶ *Id.*

²⁷ Kaufman, *supra* note 1.

²⁸ *San Antonio Independent School District v. Rodriguez*, 441 U.S. 1, 35 (1973).

²⁹ Kaufman, *supra* note 1.

³⁰ *Board of Curators of Missouri v. Horowitz*, 435 U.S. 78, 99 (1978)

³¹ *Board of Curators of Missouri*, 435 U.S. at 99.

³² *Dunn & McCullough*, 158 F.3d at 964.

members from departing from the planned musical program.³³ The students disobeyed these explicit orders and played two unauthorized guitar pieces.³⁴ The high school students received failing grades in band class preventing one of the students from graduating with honors.³⁵ The United States District Court for the Southern District of Illinois entered summary judgment for the school district and the Court of Appeals held that the students failed to state a substantive due process claim.³⁶

The court reasoned, that if *Goss* was going to apply to this case requiring a procedural due process claim, the students would have needed to be thrown out of the band class without some kind of notice or hearing, therefore forfeiting the student's property interests.³⁷ Whereas in this case the students are asserting a substantive restriction on the disciplinary measures that the school used.³⁸ The court explained that due process is "protection of the individual against arbitrary action of government, whether the problem is the denial of fundamental procedural fairness or the exercise of governmental power without any reasonable justification."³⁹ The court will look for an abuse of power that "shocks the conscious" and negligent conduct can virtually never meet the constitutional threshold.⁴⁰ The substantive component of the Due Process Clause provides heightened protection against governmental interference of fundamental rights and liberty interests, including the right to marry and have children.⁴¹ Using this standard the school's behavior is not a constitutional violation.⁴² Even though students maintain some

³³ *Id.* at 962.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 963

³⁷ *Id.* at 964

³⁸ *Id.*

³⁹ *Id.* at 965

⁴⁰ *Id.*

⁴¹ *Id.* at 966

⁴² *Id.*

substantive due process rights in school, education itself is not a fundamental right.⁴³ Therefore, failing students in a class is not a constitutional violation unless the decision was wholly arbitrary.⁴⁴ The Constitution does not guarantee students the right not to receive an “F” because they were excluded due to misbehavior.⁴⁵

This case is significant because it demonstrates how courts will hold depending on if it is a procedural due process claim versus a substantive due process claim. For example, the majority of courts have found that students do not have a substantive constitutional right to participate in school athletics.⁴⁶ Courts have reasoned that school athletics are not an entitlement; instead they are a mere expectation.⁴⁷ Although, school districts still may not exercise wholly arbitrary discipline.⁴⁸ Additionally, precedent shows that schools may discipline students for activities outside school hours and not in the presence of a teacher.⁴⁹ For example, students may be disciplined for harassing a school bus on a public highway, attending parties with alcohol, fighting at a school sponsored event, or using a stun gun at a school other than one which the student attended.⁵⁰ Even so, proper procedural due process actions are still required.⁵¹

III. ZERO TOLERANCE

Zero tolerance began in the late 1980s and became policy through the Gun-Free School Act of 1994.⁵² The policy mandated expulsion for one or more academic year if a student brought a weapon to school.⁵³ As time progressed, school districts began expanding zero

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Kaufman, *supra* note 1 at 696.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 967.

⁵¹ *Id.*

⁵² Ashley, Jessica, and Burke, Kimberly, *Implementing Restorative Justice: A guide for schools*, (Last Visited March 12, 2016), <https://www.sccgov.org/sites/pdo/ppw/SESAP/Documents/SCHOOL%20RJP%20GUIDEBOOK.pdf>

⁵³ *Id.*

tolerance to nonviolent student misbehaviors. For example, kindergarteners could be suspended for minor offenses like bringing paperclips or toy guns to school. According to the Illinois State Board of Education, Illinois public school suspension rates increased 56 percent and expulsion rates more than doubled between 1991 and 2007.⁵⁴ From 2008 to 2009, 43,972 students were suspended and in 2010 there were 5,574 juvenile school based arrests in Chicago Public Schools.⁵⁵ Many of these suspensions were low level and minor behavior.⁵⁶

In many school districts zero tolerance policies have been expanded to apply to less severe student behavior that does not impact student safety.⁵⁷ For example, the Noble Network of Charter Schools (Noble) in Chicago often suspends students for minor infractions.⁵⁸ For example, Noble will issue demerits for behaviors such as not sitting up straight, being a minute or less late to school, or having a permanent marker in their possession.⁵⁹ On average, 23 percent of Nobel students have been suspended according to the Illinois State Board of Education.⁶⁰ Noble takes pride in their strict discipline policy because of their academic success and they believe they are holding students to high standards.⁶¹

Many zero tolerance policies are accompanied with an increased police presence in schools.⁶² School police officers increased 38 percent between 1997 and 2007.⁶³ A study found that more than 8,000 students were arrested in Chicago Public schools in 2003, and 40 percent of

⁵⁴ *Id.*

⁵⁵ *From Policy to Standard Practice: Restorative Justice in Chicago Public Schools* (Last Updated Spring 2012), <http://www.suspensionstories.com/wp-content/uploads/2012/03/FromPolicyToStandardPractice.pdf>

⁵⁶ *Id.*

⁵⁷ Kaufman, *supra* note 1 at 352.

⁵⁸ Ahmed-Ullah, Noreen, *Chicago Noble Charter School Network Has Tough Discipline Policy*, Chicago Tribune, 2014, http://articles.chicagotribune.com/2014-04-07/news/ct-charter-noble-discipline-met-20140407_1_noble-students-charter-chicago-public-schools

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Kaufman, *supra* note 1 at 352.

⁶³ *Id.*

the arrests were for assaults or batteries with no serious injuries or weapons.⁶⁴ Yet, despite the increased police presence, there is no clear connection between police in schools and school safety.⁶⁵ In fact, suspensions and expulsions don't make schools safer, but instead negatively affect the school environment.⁶⁶ School law enforcement officers are increasingly asked to respond to incidents that do not threaten school safety.⁶⁷ Suspensions and expulsions have damaging effects on student behavior, academic achievement, contribute to higher dropout rates, and increase violence.⁶⁸ After a student has been arrested once, it doubles the chance that a student will drop out of high school.⁶⁹ Additionally, the first time a student appears in court will increase the chance of the student dropping out by four times.⁷⁰ Therefore, suspensions and expulsions could help facilitate the school-to-prison pipeline.

Throughout the country, zero-tolerance policies and increased police presence are more common at schools with large populations of students of color. African American students are 3.5 times more likely than white students to be suspended despite the fact that they represent only 18 percent of the national public school population.⁷¹ Latino and African American students are also much more likely to be arrested on school grounds. In the United States, 70 percent of students who were arrested on school grounds were Latino or African American.⁷² African American male students represent only 23 percent of CPS students; yet represent over 48 percent of suspensions and 57 percent of expulsions.⁷³ The U.S. Department of Education shows that from 2009 to 2010, CPS African American students were five times more likely to be suspended

⁶⁴ *Education on Lockdown: The Schoolhouse to Jailhouse Track* (2005) The Advancement Project: 8,

<http://www.advancementproject.org/resources/entry/education-on-lockdown-the-schoolhouse-to-jailhouse-track>

⁶⁵ Kaufman, *supra* note 1 at 352

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *From Policy to Standard Practice: Restorative Justice in Chicago Public Schools*, *supra* note 55.

⁶⁹ Kaufman, *supra* note 1 at 352

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *From Policy to Standard Practice: Restorative Justice in Chicago Public Schools*, *supra* note 55.

and/or expelled than white peers.⁷⁴ Zero tolerance policies have a negative effect on students of color who are disproportionately suspended and expelled.

Due to a lack of resources, teachers and administrators often rely on suspensions and expulsions as a quick fix, low cost disciplinary action.⁷⁵ This type of exclusionary policy pushes students out of the classroom, does little to improve behavior, and is not conducive to learning.⁷⁶ Additionally, suspended and expelled students are often left at home with little supervision and may be more apt to socialize with other students who are not in school.⁷⁷ Punitive disciplinary sanctions do not educate students or resolve conflicts, and make schools more apt to future harm.⁷⁸

IV. RESTORATIVE JUSTICE

Restorative justice practices in schools is an alternative to the punitive zero tolerance policies. Restorative justice is a philosophy that guides children's response to conflict and harm through accountability, community safety, and competency development.⁷⁹ First, restorative justice provides opportunities for students to be accountable to those they have harmed and enable the students to repair the harm they caused.⁸⁰ Next, restorative justice fosters community safety through strategies that build relationships and empower the community to take responsibility of its members.⁸¹ Additionally, restorative justice seeks to increase social skills of those who have harmed others and address the underlying factors that led the child to engage in delinquent behavior.⁸² This balanced model was partially developed by the U.S. Department of Justice of Juvenile Justice and Delinquency Prevention as a guide to resolve a wide range of

⁷⁴ *Id.*

⁷⁵ Ashley & Burke, *supra* note 52

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

conflicts that do not involve an actual violation of the law.⁸³ The result is that restorative practices can foster positive feelings of students rather than resentment and alienation. These principles have been successfully implemented in schools since the early 1990s in Australia, Brazil, Canada, Indonesia, New Zealand, and the United Kingdom.⁸⁴

Restorative justice can help to resolve conflicts before they escalate and can be applied formally or informally to improve the overall school environment. For example, in a punitive model misbehavior is defined as breaking school rules or letting the school down.⁸⁵ The restorative model defines misbehavior as harm (emotional, mental, or physical) done to one person by another.⁸⁶ Another example is that the punitive system focuses on what happened and establishing blame or guilt. Whereas, the restorative system focuses on problem solving by expressing feelings and needs, and explores how to address problems in the future.⁸⁷

Restorative justice implementation can be broken down into practices, which include restorative discussion, and programs, which include circles, peer juries, and mediation and conferencing. Peacemaking circles involve a trained facilitator to encourage participants to share information, points of view, and feelings.⁸⁸ This safe and open communication helps to resolve conflicts, and strengthen relationships between participants. Mediation and conferencing is typically used to resolve disputes between two students through a trained mediator. It teaches students to resolve and prevent future conflicts.⁸⁹ Peer jury is a youth centered program which student volunteers hear cases of minor delinquent acts or school offenses, typically overseen by

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

an adult coordinator.⁹⁰ The peer jury should be representative of the student body and is used to respond to student conflicts and class issues.⁹¹ Research has shown that restorative justice improves the school environment, enhances learning and child development, and promotes safety, inclusion, respect, and positive relationships.⁹²

V. DISCIPLINE IN CHICAGO PUBLIC SCHOOLS AND ILLINOIS LAW

In 2006, the Chicago Public Schools stripped the language of zero-tolerance from the CPS Student Code of Conduct and stated that they recognized and embraced the policy of restorative justice.⁹³ However, the statement in 2006 did not completely change the zero-tolerance policies in Chicago Schools. Most CPS schools still routinely suspend, expel, and arrest students and restorative justice methods remain under utilized.⁹⁴ Throughout CPS, teachers, parents, students and community members have experienced various barriers to implementing restorative justice in schools including lack of exposure and training and strategies, confusion about how to implement it, diversion of resources toward zero tolerance strategies (such as security camera installation), and lack of support.⁹⁵

The CPS Student Code of Conduct governs what types of punishment are acceptable for which offenses. School administrators must comply with the Guidelines for Effective Discipline. Therefore, at a minimum a principal or his or her designee has to redirect to correct behavior, intervene, gather information, analyze whether the behavior falls within the Student Code of Conduct, discuss with the student and provide an opportunity to explain, and make a determination and assign interventions or consequences.⁹⁶ Additionally, the principal or designee

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *From Policy to Standard Practice: Restorative Justice in Chicago Public Schools*, *supra* note 55.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Chicago Public Schools. (2015). *Student Code of Conduct*. <http://cps.edu/Pages/StudentCodeofConduct.aspx>

must also complete a report in IMPACT for all inappropriate behaviors under the Student Code of Conduct, inform parents/guardians of their rights to appeal if they believe the consequences are unwarranted or excessive, and restore the student’s participation in the school community (typically in the form of a re-entry meeting).^{97,98} The CPS Student Code of Conduct states, out-of-school suspensions should be used as a last resort, and only when in-school interventions and consequences are insufficient.⁹⁹ The CPS Student Code of Conduct breaks student offenses into six groups. Groups 5 and 6 are described as the “Most Seriously Disruptive Behaviors” and “Illegal and Most Seriously Disruptive Behaviors.”¹⁰⁰ If a student has a Group 5 or Group 6 offense a student may be suspended, but a plan must be created and written justification submitted to IMPACT.¹⁰¹ Additionally, students in pre-K through second grade may not be assigned in-school or out-of-school suspensions, with the exception for an emergency one-day suspension if granted by the Network Chief or designee and after the parent or guardian has been notified.¹⁰² Clearly, CPS is encouraging adoption of restorative justice, but comprehensive restorative justice has yet to be implemented across all schools in the district.

Illinois law states that suspensions must be reported immediately to student’s parents, with a full statement of reasons for the suspension and notice of right to a review.¹⁰³ Additionally, the school board must be given a summary of the notice, including reasons for the suspension and the suspension length.¹⁰⁴ If requested by the parent, school boards must review

⁹⁷ *Id.*

⁹⁸ IMPACT is an online portal for teachers, students, and parents. <http://impact.cps.edu>

⁹⁹ Chicago Public Schools *supra* note 96.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Ill. Rev. Stat. ch. 122, §1—22.6

¹⁰⁴ *Id.*

the action of local school officials.¹⁰⁵ At a school board review, parents may appear and discuss the suspension with the board of its hearing officer.

Illinois Senate Bill 100 (SB 100) recently passed by both the Illinois House and Senate with broad bipartisan support. SB 100 represents the strongest and most comprehensive effort made by a state to address the causes and consequences of the school-to-prison pipeline. SB 100 states that a suspension of three days or less is only allowed if “the student’s continuing presence in the school would pose a threat to school safety or disruption to other students’ learning opportunities.”¹⁰⁶ Additionally, a suspension longer than three days is only allowed if “other appropriate and available behavioral and disciplinary interventions have been exhausted” and the “student’s continued presence in school would pose a threat” to safety or “substantially disrupt, impede, or interfere with the operation of the school.”¹⁰⁷ SB 100 eliminates zero-tolerance policies. While schools will continue to have broad discretion to maintain school safety, they will no longer be able to automatically require suspension or expulsion in response to particular student behaviors.¹⁰⁸

Expulsions are governed by 105 ILCS 5/10/22.6. Students may be expelled for “gross disobedience or misconduct.”¹⁰⁹ Expulsion is the removal of a student from school for eleven or more consecutive days, up to a maximum of two calendar years.¹¹⁰ If a student is expelled, the student and parent must receive notice from the board.¹¹¹ The notice must state the time, place, and purpose of the meeting or hearing and most districts will also advise that the student can

¹⁰⁵ *Id.*

¹⁰⁶ Senate Bill 100, <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=099-0456>

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ 105 ILCS 5/10/22.6

¹¹⁰ *Id.*

¹¹¹ *Id.*

bring representation.¹¹² For a Group 5 expulsion a hearing *may* be requested. However, for a Group 6 expulsion a hearing *must* be requested for a student in sixth through twelfth grade, and *may* be requested for fifth grade and below. In an expulsion hearing the rules of evidence apply partially but not fully.¹¹³ Expansive use of hearsay has been found to violate due process, but limited use is viewed as inevitable.¹¹⁴ Hearsay often takes the form of statements from other students.¹¹⁵ SB 100 made changes to the due process procedures for expulsions in Illinois. If a child is expelled, the school board must determine whether the expulsion is in the “best interest of the school,” written decisions must include the rationale, hearing officers must prepare a written summary of the evidence and recommendation to provide to the board, and the board votes on all expulsion decisions.¹¹⁶

The changes in Illinois law and the CPS Student Code of Conduct are a small step towards adopting comprehensive restorative justice practices in Illinois. Next, there needs to be more training for school administrators, teachers, and community members on how to incorporate these practices into their classrooms and schools.

VI. IDEA 2004 AND DISCIPLINE

The Individuals with Disabilities Education Act (IDEA 2004) prevents schools from suspending or expelling students without considering the effects of the child’s disability.¹¹⁷ These procedures are different depending on the length and type of disciplinary action the school proposes to take, the nature of the conduct that led to the disciplinary action, and whether the conduct is connected to the disability.¹¹⁸ For suspensions of less than ten days, IDEA 2004 still

¹¹² *Id.*

¹¹³ *Colquitt v. Rich Township*, 298 Ill.App.3d 856 (1st Dist. 1998).

¹¹⁴ *Colquitt*, 298 Ill.App.3d 856.

¹¹⁵ *Id.*

¹¹⁶ Senate Bill 100, *supra* note 103.

¹¹⁷ 20 U.S.C. §1415

¹¹⁸ *Id.*

applies in that schools are still required to provide all services in the Individualized Education Plan (IEP).¹¹⁹ Importantly, a school system cannot impose long-term suspensions for students with special education needs if the behavior for which he or she is being disciplined was a “manifestation” of his or her disability.¹²⁰ IDEA 2004 provides that the IEP team must find that behavior was a manifestation of the child's disability if the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability, or the conduct in question was the direct result of the school’s failure to implement the IEP.¹²¹ IDEA 2004 also provides school personnel with the authority to consider any unique circumstances on a case-by-case basis when making a determination to discipline a student with a disability.¹²² This provision provides flexibility for school personnel who are operating within a “zero-tolerance” policy. Schools in the United States must comply with the due process rights of students imposed by IDEA 2004.

VII. CONCLUSION

In conclusion, students who are suspended or expelled from school should be provided with at least some form of notice and hearing to comply with the Due Process Clause of the Fourteenth Amendment under *Goss*. However, even though students maintain minimal procedural due process rights, their substantive due process rights are much more limited. After the enactment of the Gun-Free School Act of 1994, zero tolerance policies became much more prevalent in schools. However, across the country schools are realizing that the punitive zero tolerance practices are contributing to the school-to-prison pipeline and have negative impacts on school culture and achievement. One major alternative is the enactment of restorative justice practices. Currently, the CPS Student Code of Conduct and Illinois statutes are phasing out the

¹¹⁹ *Id.*

¹²⁰ 20 U.S.C. §1415(k)(4)(B),(C)

¹²¹ 20 U.S.C. §1415

¹²² *Id.*

zero tolerance language in favor of more restorative measures. Additionally, it is important to recognize that across the United State students with special needs are provided additional due process protections regarding suspensions and expulsions under IDEA 2004. In conclusion, this article provides a brief introduction to due process rights of students, the relevant Illinois law, and the trend towards restorative justice practices.