20th Annual School Law Conference

February 24-25, 2005
Austin, TX

# The 30th Anniversary of *Goss v. Lopez*

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*In 1975, the U.S. Supreme Court outlined the due process standards that apply when schools suspend students. For the last 30 years, the courts of appeals have applied Goss v. Lopez, 419 U.S. 565 (1975) to a wide variety of ever-changing scenarios confronting today's schools.*

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## Back in the day

The legal concept of procedural due process finds its roots in western law in the Magna Carta of England, 1215 "*No freeman shall be seized or imprisoned or dispossessed, or outlawed, or in any way destroyed; nor will we condemn him, nor will we commit him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the law of the land*". The Magna Carta required due process and the common law has long required a fair hearing by an impartial tribunal as a fundamental principle of justice. Procedural due process, as a concept of natural justice, encompasses two basic standards of fairness: 1) the rule against bias, and 2) the right to a hearing, *audi alteram partem,* no person shall be condemned unheard. The right to a hearing requires that the accused know the case against him/her and have an opportunity to state his or her case. Each party must have the chance to present his or her version of the facts and to make submissions relevant to the case. Fairness is the hallmark of this process, and though the extent of process required is sometimes in question, the principle that "no person should be condemned unheard" prevails.

However, this doctrine was not applied in public school discipline, at least not to minimal discipline, including short term suspensions. Historically the prevailing legal theory in student discipline was one of *in loco parentis*. The Wisconsin Supreme Court set out the common law relationship between school and student as

> While the principal or teacher in charge of public school is subordinate to the school board or board of education of his district or city, and must enforce rules and regulations adopted by the board for the government of the school, and execute all its lawful orders in that behalf, he does not derive all his power and authority in the school and over his pupils from the affirmative action of the board. He stands for the time being in loco parentis to his pupils, and because of that relation, he must necessarily exercise authority over them in many things concerning which the board may have remained silent. *State ex rel Burpee v. Burton,* 45 Wis. 150 (1878).

The limitations of the common law doctrine were explained by another court as

> General education and control of pupils who attend public schools are in the hands of school boards, superintendents, principals, and teachers. This control extends to health, proper surroundings, necessary discipline, promotion of morality and other wholesome influences, while parental authority is temporarily superseded. *Richardson v. Braham,* 249 N.W. 557 (Neb 1933).

In this earlier era, the disciplinary powers of school were clear and broader. A seamless line existed between parents and schools – the latter serving as *in loco parentis.* The teacher's authority extended from the time the student left home in the morning until the moment he stepped in the front door at night. In fact, the authority of the teacher under the doctrine of *in loco parentis* extended past the foundations of the school. In *Lander v. Seaver,* the Supreme Court of Vermont upheld the schoolmaster's authority to punish a student for the use *"of saucy and disrespectful language … after the close of school"*. The student *"while he was driving his father's cow past the teacher's house… in the presence of some fellow-pupils … called the [schoolmaster] 'old Jack Seaver.'"* The court upheld the teacher's right to discipline the student upon his return to school. *Lander v. Seaver,* 32 Vt. 114 (Vt. 1859). Clearly the law has changed since 1859.

### *Tinker* and the development of student rights

During the period of the 1960s and 1970s courts recognized a number of individual liberties grounded in the federal constitution. To protect those rights, students could bring a lawsuit under the federal due process clause. In 1969 the Supreme Court recognized constitutional rights for students within the public schools. *Tinker v. Des Moines Independent Community School District,* 393 U.S. 503 (1969) involved three students who wore black arm bands as a gesture of protest against the Vietnam War. They were suspended in accordance with a school policy of which they had been warned. The Supreme Court reversed the decision of the school, Justice Fortas issuing, that now famous phrase: *"It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the school house gate: This has been the unmistakable holding of this Court for almost fifty years"* Although I personally question whether this was something that we had actually known for the fifty years previous to this decision. But that's a discussion for the anniversary of *Tinker* not the anniversary of *Goss*. Justice Fortas continued: *"In our system … state-operated schools may not be enclaves of totalitarianism… School officials do not possess absolute authority over their students."*

In 1975, the Supreme Court took students' rights one step further in *Goss v. Lopez,* defining the relationship between education and due process. (The due process at issue here is procedural. Substantive due process may be significant in evaluating the validity of the particular rule and punishment.) *Goss* involved several students suspended for fighting in the school lunchroom. The court concluded that the principal had failed to give the students an adequate hearing before making his decision to suspend them. The Court found that students have a property right to their education. To deny that right requires, at the least, an informal hearing with notice, and a decision based on the evidence; and suspensions for longer than ten days would require even more formal procedures. In explaining that the individual's interest in education falls within the substantive scope of "liberty and property" the Court said, *"neither the property interest in education benefits temporarily denied nor the liberty interest in reputation, which is also implicated, is so insubstantial that suspensions may constitutionally be imposed by any procedure one school chooses, no matter how arbitrary. *** A ten-day suspension from school is not de minimus in our view and may not be imposed in complete disregard of the Due Process Clause. *** The fundamental requisite of due process of law is the opportunity to be heard … At the very minimum, therefore, students facing suspensions*

# Title search: The 30th Anniversary of *Goss v. Lopez*

First appeared as part of the conference materials for the
2005 School Law Conference session
"The 30th Anniversary of *Goss v. Lopez*"