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Constitutional Law - Procedural Due Process - Notice and Hearing Required for Short Term Suspensions from High School - Goss v. Lopez

Gary L. Shockey

CONSTITUTIONAL LAW—PROCEDURAL DUE PROCESS—Notice and Hearing Required for Short Term Suspensions from High School. Goss v. Lopez, ——— U.S.———, 95 S. Ct. 729 (1975).

Rights and privileges protected by the United States Constitution are broad and expansive. However, in the area of minors' rights and students' rights, the courts have been reluctant to extend the same protections as those afforded to adults. Certain high points stand out, such as the decision in *Brown v. Board of Education,*[1] beginning the end of an era of school racial segregation; *In re Gault,*[2] requiring due process protections for determination of delinquency proceedings; and *Tinker v. Des Moines Independent School District,*[3] extending limited first amendment protections to student expression.

However, students in public schools definitely possess fewer rights than their adult counterparts in everyday life.[4] The necessity and propriety of some restrictions on student conduct is apparent from the very nature of orderly education. Nevertheless, as has been argued,[5] students are severely restricted in freedom by compulsory attendance laws and further restricted by a multitude of rules regulating conduct once they are in school.

Whether or not specific school rules and regulations are excessively restrictive is not the concern of this discussion. But the fact remains that a student's punishment for violation of school rules is often a deprivation of his education in the form of expulsion, suspension, or exclusion from other school-related activities. In today's America, few people would regard anything more important to the pursuit of life, liberty, and happiness than an education. So while local school boards may still possess relatively unfettered authority to promulgate rules and regulations to control student conduct, their power to deprive a student of attendance at and

1. 347 U.S. 483 (1954).
2. 387 U.S. 1 (1966).
3. 393 U.S. 503 (1969).
4. The area of protection against search and seizure is illustrative. Apparently without exception, courts have declined to extend fourth amendment protections to students. *See* Buss, *The Fourth Amendment and Searches of Students in Public Schools,* 59 IOWA L. REV. 739 (1974).
5. *See* Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline,* 119 U. PENN. L. REV. 545 (1971).

participation in school has been questioned more successfully. This case note highlights a recent United States Supreme Court decision which limits the power of schools to exclude students from participation in school without first providing minimal procedural due process protections.

THE CASE

In February and March of 1971, the public school system of Columbus, Ohio, experienced widespread student unrest. As a result, many students were suspended from school. Nine students sought relief in the courts by instituting a class action on behalf of themselves and others similarly situated challenging the Ohio statute[6] which granted authority to school officials to suspend students. They argued that the statute was unconstitutional in that it permitted a deprivation of their right to public education without a hearing of any kind.

All the students had been suspended for ten days or less. None of the named plaintiffs had been given a hearing to determine the facts underlying the suspensions. Each of the students and their parents were offered the opportunity to attend a conference with school officials after the effective date of the suspensions. A three judge federal court[7] declared that plaintiffs were denied due process of law because they were suspended without hearing prior to or within a reasonable time after the suspensions.

Various Columbus public school system administrators appealed to the United States Supreme Court. The Supreme Court upheld the lower court decision, declaring that students facing temporary suspension have sufficient interests in their education to qualify them for protection of the due process clause of the fourteenth amendment. The Court said that due

6. OHIO REV. CODE § 3313.66 (Baldwin's 1973) authorizes the superintendent of schools, the executive head of a local school district, or the principal of a public school to suspend a student for not more than 10 days. Expulsion is also authorized. For either suspension or expulsion, the student's parents must be notified within 24 hours. Provisions for hearing and appeal are made for expulsion, but there is no such procedure delineated for suspension.

7. Lopez v. Williams, 372 F. Supp. 1279 (S.D. Ohio 1973).

process requires, for a suspension of ten days or less, that the student be given oral or written notice of the charges against him and that if he denies the charges he should be given an explanation of the evidence the authorities have and an opportunity to present his side of the story. This procedural protection is limited, in that students whose presence at school poses "a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school."[8]

THE SUPREME COURT'S REASONING

The fourteenth amendment protections forbid the state from depriving any person of life, liberty, or property without due process of law. Not all interests are protected.[9] The Court first addressed the question of whether the students' claim to public education was a protected interest.

Ohio's statutes require school officials to provide free education to all residents between six and twenty-one years of age,[10] and provide for compulsory attendance.[11] On the basis of the state's decision to extend such an education to people, the Court declared that the state must recognize the educational entitlement as a property interest which may not be taken away without adherence to minimum procedural protection.

In addition to a protected property interest in his education, the Court also declared that a student has an important liberty interest in his education. This liberty component is created by the fact that any state action which affects a person's good name, honor, reputation, or integrity[12] may have an effect on the individual's community standing or reputation. Charges by the school leading to a student's suspension, if sustained and recorded, according to the Court, are capable

8. Goss v. Lopez, 95 S. Ct. 729, 740 (1975).

9. Board of Regents v. Roth, 408 U.S. 564 (1972).

10. OHIO REV. CODE §§ 3313.48, 3313.64 (Baldwin's 1973).

11. OHIO REV. CODE § 3321.04 (Baldwin's 1973).

12. These criteria come from Wisconsin v. Constantineau, 400 U.S. 433 (1971), and Board of Regents v. Roth, 408 U.S. 564 (1972).

of damaging a student's standing with fellow pupils and teachers, as well as affecting future opportunities for higher education and employment.[13]

It was argued that even if the due process clause protects the right to a public education generally, a ten day (or less) suspension is not so serious as to require due process protections, since such a suspension does not subject the student to a "severe detriment or grievous loss."[14] But the Court reasoned that it is not the weight, but the nature of the interest involved which initially triggers the right to procedural due process.[15] The inherent nature of a right, such as the importance of education in and of itself, (without comparing education's importance with another recognized right), will initially determine whether procedural due process protections should be extended. After that decision has been made, then the weight of the interest threatened will determine what process is required. Unless a deprivation is classified as de minimus,[16] the deprivation cannot be imposed in disregard of due process requirements. The Court decided that a ten day or less suspension is not a de minimus property deprivation and should therefore be given due process protection.

Having decided that a high school student is entitled to due process procedural protections before he can be suspended, the Court then addressed the question of what process must be given. Recognizing the inherently flexible nature of due process,[17] the Court decided that at a minimum the student must be afforded an opportunity to be heard.[18] The opportunity to be heard must be preceded by some type of notice in order to be meaningful. For the student facing a short suspension, the Court concluded that the procedure

13. Goss v. Lopez, 95 S. Ct. 729, 736 (1975).
14. Such a standard was suggested by Morrissey v. Brewer, 408 U.S. 471 (1972).
15. This standard comes from Board of Regents v. Roth, 408 U.S. 564 (1972).
16. This standard was suggested by Sniadach v. Family Finance Corp., 395 U.S. 337 (1969), Boddie v. Connecticut, 401 U.S. 371 (1971), and Board of Regents v. Roth, 408 U.S. 564 (1972).
17. Cafeteria Workers v. McElroy, 367 U.S. 886 (1961).
18. The Court relied mainly on Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950), and Grannis v. Ordean, 234 U.S. 385 (1914).

should generally be of the following nature:[19] The disciplinarian, once informed of a student's misconduct, should informally discuss the problem with the student. This will satisfy both the notice and hearing requirements in most instances, and there need not be a time lapse between the notice and hearing. Generally, the hearing should precede removal from school. However, when a student's continued presence is dangerous or disruptive, he may be removed immediately.[20] A hearing should then be had as soon as practically possible. In any event, for a suspension of ten days or less, the Court did not require that the student be afforded the opportunity to secure counsel, to confront and cross-examine witnesses against him, or to call witnesses in his favor.

Two significant points emerge from the decision in *Goss v. Lopez*. The first is that the procedure outlined by the Court for short-term suspensions is a minimal protection. All that is required is an informal discussion between the disciplinarian and the student, generally before the student is removed from school. At best, this affords the student an opportunity to tell the disciplinarian of gross errors, such as mistaken identity. However, it is likely that the student would have little chance in the informal discussion to prove the charges against him are false, or the result of a personal conflict between him and his teacher, or the result of a multitude of other factors not likely to be accounted for in such an informal process.

The second significant facet of the decision in *Goss v. Lopez* is not as minor as the first. For the first time, the Supreme Court has firmly recognized that a public school student possesses both property and liberty rights in his education which will be protected by the Constitution and the courts. The potential implications of this "constitutional-

19. Goss v. Lopez, 95 S. Ct. 729, 740 (1975).

20. This qualification in itself may constitute a rather large "loophole" which would result in suspensions without *prior* notice and hearing. What constitutes disruptive behavior, in addition to violent demonstrations and the like? In the past, courts have found long hair, pregnancy, marriage, and student newspapers to be disruptive. It is likely that courts will continue to be reluctant to second-guess the discretion of school authorities as to what constitutes threatening behavior.

ization" of a public school student's right to be educated are exciting prospects for anyone interested in the much-litigated area of students' rights. The balance of this note will be directed at examining some of the potential changes made possible by the decision in *Goss v. Lopez.*

PRIOR LOWER COURT DECISIONS

In order to understand the importance of a constitutional recognition of a student's right to an education, it is instructive to survey the approach of prior decisions on the topic. In the broad area of student expulsion and suspension, the courts have not been overly reluctant to protect students. They have, however, been reluctant to specify exactly what rights were being protected.

The landmark case with regard to procedural due process for students facing suspension or expulsion is *Dixon v. Alabama State Board of Education,*[21] decided in 1961. In that case, a decision to expel certain students was made by a college board without any notice to the students or any hearing. The college officials argued that there was no constitutionally-protected right to secure an education at a publicly-supported educational institution. The court, without accepting or rejecting this argument, said that standing alone it was not decisive of the issue of whether due process protections applied to expulsion from the university. Rather, the court preferred to resolve the question by balancing interests of the students and the state. The court noted that while the state has a valid interest in maintaining order and safety at a university, students have interests in their schooling in order to secure a future livelihood, enjoyment of life, and to be good citizens generally. The court then held that since expulsion would deprive students of these interests, both prior notice and hearing must be made available to them before expulsion. Although this decision implicitly recognized students' interests analogous to the property and liberty interests delineated in *Goss v. Lopez,* the court in *Dixon* failed

21. 294 F.2d 150 (5th Cir. 1961), *cert. denied,* 368 U.S. 930 (1961).

to go so far as to say specifically that there is a constitutionally-protected right to secure an education.

Since *Dixon,* the courts have universally afforded procedural due process protections to students facing expulsion.[22] Most cases involving expulsion recognize the gravity of harm to the student that may result from expulsion. Some courts, on the assertion that due process is flexible, grant procedural protection on the basis that the harm to the student is so grave.[23] One judge in the Western District of Wisconsin repeatedly took judicial notice of the social, psychological, and economic importance of education in today's society and reasoned that deprivation of something so important must be afforded procedural protection.[24] But in all these cases, even though they involved complete expulsion from the educational process, no court asserted that it was protecting a constitutional right of education. The courts protected the students' rights, but never explicitly defined what rights were being protected.

The courts have been less unanimous in their protection of students facing suspensions. The courts have in every instance required procedural protection for suspensions of long duration.[25] The reasoning of the courts in these long-term suspension cases as to what interests they were protecting is as vague as the reasoning in the expulsion cases. One court

22. Wasson v. Trowbridge, 382 F.2d 807 (2d Cir. 1967); Soglin v. Kauffman, 295 F. Supp. 978 (W.D. Wisc. 1968); Breen v. Kahl, 296 F. Supp. 702 (W.D. Wisc. 1969); Stricklin v. Regents of Univ. of Wisconsin, 297 F. Supp. 416 (W.D. Wisc. 1969); Vought v. Van Buren Pub. Schools, 306 F. Supp. 1388 (E.D. Mich. 1969); Whitfield v. Simpson, 312 F. Supp. 889 (E.D. Ill. 1970); DeJesus v. Penberthy, 344 F. Supp. 70 (D. Conn. 1972); Fielder v. Bd. of Educ. of the School Dist. of Winnebago County, 346 F. Supp. 722 (D. Neb. 1972); Hagopian v. Knowlton, 470 F.2d 201 (2d Cir. 1972); Black Coalition v. Portland School Dist., 484 F.2d 1040 (9th Cir. 1973).

23. Wasson v. Trowbridge, 382 F.2d 807 (2d Cir. 1967); Hagopian v. Knowlton, 470 F.2d 201 (2d Cir. 1972); Vought v. Van Buren Pub. Schools, 306 F. Supp. 1388 (E.D. Mich. 1969).

24. Soglin v. Kauffman, 295 F. Supp. 978 (W.D. Wisc. 1967); Breen v. Kahl, 296 F. Supp. 702 (W.D. Wisc. 1969); Stricklin v. Regents of Univ. of Wisconsin, 297 F. Supp. 416 (W.D. Wisc. 1969).

25. Esteban v. Cent. Missouri State College, 415 F.2d 1077 (8th Cir. 1969), *cert. denied,* 398 U.S. 965 (1970), (two semester suspension); Pervis v. LaMarque Independent School Dist., 466 F.2d 1054 (5th Cir. 1972), (suspension in February for remainder of semester ending in May); Murray v. West Baton Rouge Parish School Bd., 472 F.2d 438 (5th Cir. 1973); Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972), (suspension followed by expulsion); Williams v. Dade County School Bd., 441 F.2d 299 (5th Cir. 1971) (30 day suspension added to a 10 day suspension).

remarked that it was not sure of the purpose of the student's argument that he had a right to an education,[26] although the court did recognize the importance of education in today's society. The potential harm to the student faced with a long suspension was the foundation for the requirement for procedural due process in some cases.[27] Only one court reasoned that since state statutes created educational opportunities, "Extended suspension or exclusion from school deprives a student of important rights and liberties,"[28] though the court did not specify what rights and liberties were denied.

Short-term suspensions have not always been afforded procedural protection by the courts. Two courts have held that due process protections must be extended to suspensions of 3 days[29] and 5 days.[30] However, other courts have denied procedural protection for suspensions of 5 days,[31] 7 days,[32] and 8 days.[33] In other cases, courts have indicated that procedural protection might be necessary for short suspensions, but that process requirements were met by later hearings,[34] or that potential disruption negated process requirements,[35] or that circumstances surrounding the suspension in question satisfied procedural requirements.[36]

Most of the short-term suspension cases did not directly address the issue of exactly what rights were at issue. Some assumed *arguendo* that the same interests involved in long suspensions and expulsions were involved.[37] Only one court

26. Esteban v. Cent. Missouri State College, 415 F.2d 1077, 1089 (8th Cir. 1969).
27. Williams v. Dade County School Bd., 441 F.2d 299 (5th Cir. 1971); Pervis v. LaMarque Independent School Dist., 466 F.2d 1054 (5th Cir. 1972).
28. Givens v. Poe, 346 F. Supp. 202, 208 (W.D.N.C. 1972).
29. Shanley v. Northeast Independent School Dist., 462 F.2d 960 (5th Cir. 1972).
30. Vail v. Bd. of Educ., 354 F. Supp. 592 (D.N.H. 1973).
31. Hernandez v. School Dist. No. 1, 315 F. Supp. 289 (D. Colo. 1970); Tate v. Bd. of Educ., 453 F.2d 975 (8th Cir. 1972).
32. Linwood v. Bd. of Educ., 463 F.2d 763 (7th Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).
33. Hatter v. Los Angeles City High School Dist., 310 F. Supp. 1309 (C.D. Calif. 1970).
34. Sullivan v. Houston Independent School Dist., 475 F.2d 1071 (5th Cir. 1973).
35. Black Students of North Fort Meyers Jr.-Sr. High School v. Williams, 470 F.2d 957 (5th Cir. 1972); Dunn v. Tyler Independent School Dist., 460 F.2d 137 (5th Cir. 1972).
36. Farrell v. Joel, 437 F.2d 160 (2d Cir. 1971).
37. Farrell v. Joel, 437 F.2d 160 (2d Cir. 1971); Tate v. Bd. of Educ., 453 F.2d 975 (8th Cir. 1972).

explicitly reasoned that the right to an education is a protected right.[38]

Thus, in all prior lower court decisions concerning procedural due process and exclusion from public schools, only one court explicitly declared that the student's interest in his education is a constitutionally-protected interest. That interest, whether classified as a right or privilege,[39] now deserves constitutional protection under the decision in *Goss v. Lopez*. The explicit recognition of the interest in education as a protected property and liberty right is an important step in students' rights litigation.

EFFECT OF *Goss v. Lopez* IN WYOMING

Wyoming has statutory provisions substantially similar to those in Ohio which were involved in *Goss v. Lopez*. Wyoming's statutes direct that a free education should be made available for all residents between the age of six and twenty-one,[40] and provide for compulsory attendance.[41] Like the Ohio statutes, it is evident that Wyoming's statutes create an entitlement to an education.

Wyoming also has a statute on suspension and expulsion[42] which conceivably allows for suspensions of up to ten days without notice and hearing. Under the statute, the board of trustees of any school district may suspend or expel a student for cause. Authority to suspend for a period of up to ten days may be delegated to school administrative or supervisory personnel. In all suspensions or expulsions, notice must be given to the student's parents within 24 hours stating the reasons for the exclusion from school. If the suspension is for more than 10 days, a hearing must be provided in accordance with the Wyoming Administrative Procedure Act. However, there is no explicit provision in the statute which

38. Vail v. Bd. of Educ., 354 F. Supp. 592 (D.N.H. 1973).

39. A distinction which is no longer recognized. *See* Bd. of Regents v. Roth, 408 U.S. 564 (1972).

40. WYO. STAT. § 21.1-57 (Supp. 1973).

41. WYO. STAT. §§ 21.1-47 to -53 (Supp. 1973).

42. WYO. STAT. § 21.1-61 (Supp. 1973).

addresses itself to notice and hearing possibilities for suspensions of less than 10 days.

Interpreted literally, Wyoming's statute on suspensions, like its Ohio counterpart declared unconstitutional in *Goss v. Lopez,* would allow suspensions for up to 10 days without notice or hearing. Apparently recognizing the potential for suspensions in violation of the rules set out in *Goss v. Lopez,* the Wyoming State Department of Education has formulated a new position.[43] The Department of Education takes the position that Wyo. Stat. § 21.1-26(a) (Supp. 1973), directs local boards of trustees to prescribe and enforce rules and regulations for the operation of schools in their districts. The State Department of Education has advised local boards to formulate regulations which would satisfy the requirements of *Goss v. Lopez* for procedural protections for suspension of ten days or less.

If local school boards follow the advice of the State Department of Education and formulate new rules related to short suspensions, and if the rules are adequately protective and followed, then the question of the constitutionality of Wyo. Stat. § 21.1-61 (Supp. 1973) will probably never ripen. However, a failure of a local board to provide for the procedural protection delineated in *Goss v. Lopez* might be cause for a constitutional challenge of the statute.

POTENTIAL EXPANSION OF *Goss v. Lopez*

The traditional method to challenge school regulations or actions has been on the basis of the reasonableness of the regulations.[44] More recently, judicial intervention on behalf of students has been grounded on three additional theories.[45] First, the student can allege a violation of a substantive constitutional right, such as the freedom of speech issue in

43. Letter from State Department of Education, to Gary L. Shockey, Feb. 20, 1975, on file at Land and Water Law Review office, University of Wyoming, College of Law.

44. This standard originated with Pugsley v. Sellmeyer, 158 Ark. 247, 250 S.W. 538 (1923).

45. *See* Flygare, *Administrative and Judicial Remedies of Students,* THE NATIONAL ORGANIZATION ON LEGAL PROBLEMS OF EDUCATION, CURRENT TRENDS IN SCHOOL LAW 271 (1974).

Tinker v. Des Moines Independent Community School District.[46] Second, the student may allege a violation of a right created by federal or state statute. Finally, the student can allege a violation of procedural due process, as was done in *Goss v. Lopez.*

There is no doubt that the availability of this last type of challenge is significantly enhanced by the decision in *Goss v. Lopez.* But the question remains of whether the Court's recognition of constitutionally-protected property and liberty rights in an education might be expanded somewhat to allow students to challenge rules on the basis of a violation of a substantive constitutional right.

There are indications from some courts that the question of whether students possess a right to an education would be determinative of certain issues. The area of married students' participation in extracurricular activities is illustrative of this point. Traditionally analyzed on the basis of reasonableness,[47] rules excluding married students from participation in extracurricular activities have recently been challenged on other grounds. Some courts have overturned such regulations as violative of equal protection and the protected right to marry.[48] However, other courts have reasoned that since extracurricular activities are an important part of the entire educational process, the right of married students to participate in such activities should be protected.[49]

46. 393 U.S. 503 (1969).

47. *See* Kissick v. Garland Independent School Dist., 330 S.W.2d 708 (Tex. 1959); Starkey v. Bd. of Educ. of Davis County School Dist., 14 Utah 2d 27, 381 P.2d 718 (1963); Estay v. Lafourche Parish School Bd., 230 So. 2d 443 (La. App. 1969); Bd. of Directors of the Independent School Dist. v. Green, 259 Iowa 1260, 147 N.W.2d 854 (1967); State *ex rel.* Baker v. Stevenson, 27 Ohio Op. 2d 223, 189 N.E.2d 181 (1962); Cochrane v. Bd of Educ., 360 Mich. 390, 103 N.W.2d 569 (1960).

48. *See* Davis v. Meek, 344 F. Supp. 298 (N.D. Ohio 1972); O'Neill v. Dent, 364 F. Supp. 565 (E.D.N.Y. 1973); Holt v. Shelton, 341 F. Supp. 821 (M.D. Tenn. 1972).

49. *See* Moran v. School Dist. No. 7, 350 F. Supp. 821 (M.D. Tenn. 1972); Bell v. Lone Oak Independent School Dist., 507 S.W.2d 636 (Tex. 1974). *See also* Warren v. Nat'l Ass'n of Secondary School Principals, 375 F. Supp. 1043 (N.D Tex. 1974), which held a student's membership in the National Honor Society is a protected liberty interest deserving procedural due process protections.

The right of married students to participate in extracurricular activities may be posed as a two-pronged question. Is education a protected right, and should extracurricular activities be protected similarly?[50] *Goss v. Lopez* may answer the first inquiry, thereby making it easier to argue that the second inquiry be answered affirmatively. Certainly, this type of expansion of the *Goss v. Lopez* rationale from a procedural to a substantive type analysis is not entirely implausible. It is also not limited to the area of married students in extracurricular activities.

IS EDUCATION A FUNDAMENTAL RIGHT?

The right to a public education is certainly not to be regarded as fundamental. But the decision in *Goss v. Lopez* may be as important a stepping stone to that conclusion as *Brown v. Board of Education*[51] and *Tinker v. Des Moines Independent Community School District.*[52]

It is true that in *San Antonio School District v. Rodriquez*[53] the Supreme Court refused to regard the right to an education as fundamental. The Court did not apply the "strict scrutiny" and "compelling interest" tests to legislation involving educational financing in applying the equal protection clause of the fourteenth amendment. The Court expressed concern that it did not want to "create a substantive constitutional rights in the name of guaranteeing equal protection of the laws."[54]

Rodriquez reiterated the Court's historical dedication to the importance of education.[55] But the Court said that

50. *See* Berwick & Oppenheimer, *Marriage, Pregnancy, and the Right to Go to School*, 50 TEX. L. REV. 1196, 1203-05 (1972), for an analysis of the interests of a student in extracurricular participation. It is there argued that extracurricular activities are as important as regular classroom work, since colleges examine a student's extracurricular record in order to make a decision relating to admission and scholarships, credit is often given for extracurricular participation, and public funds are used to pay coaches and other extracurricular sponsors.
51. 347 U.S. 483 (1954).
52. 393 U.S. 503 (1969).
53. 411 U.S. 1 (1973).
54. *Id.* at 33.
55. *Id.* at 30.

deciding whether education is a fundamental right does not involve a comparison of the importance of education with other fundamental rights such as the freedom to travel. "Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution."[56] Though *Rodriquez* found that the Constitution does not explicitly or implicitly guarantee the right to an education, *Goss v. Lopez* held that for limited purposes an individual does have constitutionally protected rights in his education. These rights, once recognized, may be expanded.

Rodriquez set out a limitation in its analysis that is important in this argument. In *Rodriquez,* the decision was partially based on the fact that the legislation challenged was positive in nature—that it was designed to extend rather than deprive educational opportunities.[57] The "thrust" of the Texas financing scheme was "affirmative and reformatory,"[58] rather than negative. The Court might be more inclined to view negative legislation or regulations, (such as suspension and expulsion guidelines) which allow deprivation of educational opportunities, differently.

Of course, the decision in *Goss v. Lopez* was quite limited and certainly did not go so far as to declare that education is a fundamental right for equal protection purposes. The case simply said that for the purposes of due process, certain liberty and property rights in an education would be recognized. But the next step may well be to accord education an even stronger constitutional position.

CONCLUSION

Goss v. Lopez decided that because he possesses a property and liberty interest in his education, a public school student is entitled to procedural due process protections before he may be excluded from school, even for a period of less than ten days. The decision may form the foundation to extend stu-

56. *Id.* at 33.
57. *Id.* at 38-39.
58. *Id.*

dent's rights even further. But even if the courts were to reject further expansion of the *Goss* rationale in manners suggested by this note, it stands as a vital decision.

One of the functions of our schools is to acquaint the student with our social and legal processes. Without the procedural protections afforded by *Goss,* the student could easily learn that under our American system discipline and "justice" are meted out without regard to procedural fairness. This is not the process followed by our courts. After *Goss,* it is also not the process to be followed in our public schools.

GARY L. SHOCKEY