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Constitutional Law: *Goss v. Lopez*: Much Ado About Nothing or the Tempest

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CONSTITUTIONAL LAW: Goss v. Lopez: Much Ado About Nothing or The Tempest

INTRODUCTION

On January 22, 1975, the Supreme Court ruled in Goss v. Lopez that except in situations where the student’s presence “poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process,” a school could not temporarily suspend a student without affording him “some kind of notice and . . . some kind of hearing.” Goss is the first student suspension case the Supreme Court has taken. As such, it joins the small number of cases in which the Court has been willing to abandon its traditional

2. 419 U.S. at 582.
3. Id. at 579.

The number of suspensions which occur each year is significant. See Goss v. Lopez, 419 U.S. 565, 592 n.10 (Powell, J., dissenting). The statistics for Evanston Township High School, a school with about 5000 students, are set out below.

<table>
<thead>
<tr>
<th>ETHS SUSPENSIONS, 1973-74</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of suspensions</td>
</tr>
<tr>
<td>Total number of students suspended</td>
</tr>
<tr>
<td>Total number of students suspended more than once</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reason for Suspension (3 schools)**</th>
<th>Number</th>
<th>No. of Students Suspended More than Once/same offense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hall violations and/or unauthorized absence from the building</td>
<td>626</td>
<td>142</td>
</tr>
<tr>
<td>Gambling</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>Smoking</td>
<td>149</td>
<td>19</td>
</tr>
<tr>
<td>Drug abuse (incl. alcohol)</td>
<td>24</td>
<td>2</td>
</tr>
<tr>
<td>Defiance of authority</td>
<td>76</td>
<td>17</td>
</tr>
<tr>
<td>Fighting</td>
<td>59</td>
<td>9</td>
</tr>
<tr>
<td>Verbal abuse</td>
<td>26</td>
<td>2</td>
</tr>
<tr>
<td>Excessive tardiness</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>Theft</td>
<td>11</td>
<td>1</td>
</tr>
<tr>
<td>Threats</td>
<td>11</td>
<td>1</td>
</tr>
<tr>
<td>Miscellaneous (assault, extortion, disruption of class, et al)</td>
<td>45</td>
<td>0</td>
</tr>
</tbody>
</table>

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role of non-interference in school affairs.\textsuperscript{5}

The purpose of this article is fourfold: to review \textit{Goss} for its effect on future due process adjudication; to examine the procedures required by \textit{Goss} for their potential impact on school officials and students; to consider recent cases citing \textit{Goss} to see whether the fears of the \textit{Goss} dissenters have materialized; and to consider briefly the impact of \textit{Goss} on Illinois schools.

\textbf{FACTS}

In 1971 students in various Columbus, Ohio, public schools clashed with school administrators over which community leaders should speak at school assemblies during Black History Week.\textsuperscript{6} Disturbances followed, then mass suspensions. The nine named plaintiffs were among students suspended for periods of up to ten days pursuant to an Ohio statute which authorized principals to impose suspensions without notice or a hearing.\textsuperscript{7} None of the students was given a hearing although in some cases the school offered the opportunity for a parent-student-administrator conference at a later date to discuss the student's educational future.\textsuperscript{8} The involvement of individuals varied; at least one student claimed to have been an

\*This number does not include instances of "inside suspension," which action confines the student to a restricted area for all or a portion of a school day; no systemic records are kept for "inside suspension."

\**The tabulation excludes one school in which statistics were not maintained in this particular form.

Evanston Township High School Report of the Committee on Student Suspension, December, 1974.

5. \textit{See Student Rights, supra} note 1, at 571-73; \textit{See also Hearing, supra} note 1, at 584-85, in which the author suggests that Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969), \textit{Goss}, and Wood v. Strickland, 420 U.S. 308 (1975) can be viewed as a trilogy of progressive decisions which extend constitutional rights to students.

6. \textsc{National Association of Secondary School Principals, A Legal Memorandum, June 1975}, p. 1 [hereinafter cited as \textsc{Memo}].

7. \textsc{Ohio Rev. Code Ann.} \S 3313.66 (1974) provides in pertinent part:

\begin{quote}
The superintendent of schools of a city . . . , the executive head of a local school district, or the principal of a public school may suspend a pupil from school for not more than ten days. Such superintendent or executive head may expel a pupil from school. Such superintendent, executive head, or principal shall within twenty-four hours after the time of expulsion or suspension, notify the parent or guardian of the child, and the clerk of the board of education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent, or guardian, or custodian of a pupil so expelled may appeal such action to the board of education at any meeting of the board and shall be permitted to be heard against the expulsion.
\end{quote}

Thus, although under the statute an expelled student could appeal the decision, a suspended student had no right to appeal a principal's decision to suspend. Neither student had a right to a prior hearing. \textit{Compare} Ill. \textsc{Rev. Stat.} ch. 122, \S 10-22.6 (a) (b), the full text of which is set out in note 119 \textit{infra}.

8. 419 U.S. at 570.
innocent bystander; another had been suspended immediately after assaulting a police officer.9

The students brought suit in the federal district court under 42
U.S.C. § 1983,10 asking both declaratory and injunctive relief.11 The
three judge court,12 having found education a protected interest,13
ruled that since no hearing had been provided the students, either
prior to suspension or within a reasonable time thereafter, they had
been denied due process. The defendant school administrators ap-
pealed;14 the Supreme Court affirmed.

MAJORITY OPINION

Justice White’s opinion, in which Justice Douglas, Brennan,
Stewart and Marshall joined, first confronted appellants’ conten-
tion that since students had no constitutional right to education at
public expense,15 the due process clause was not at issue. The major-
ity found this position erroneous. Using the due process analysis

9. Id.
   Every person who, under color of any statute, ordinance, regulation, custom, or
   usage, of any State or Territory, subjects, or causes to be subjected, any citizen of
   the United States or other person within the jurisdiction thereof to the deprivation
   of any rights, privileges, or immunities secured by the Constitution and laws, shall
   be liable to the party injured in an action at law, suit in equity, or other proper
   proceeding for redress.
11. The students asked for a declaration that the Ohio statute was unconstitutional in
   allowing public administrators to deprive them of their right to an education without
due process. Further, they asked that school officials be enjoined from imposing suspensions
   pursuant to the statute and that references to their suspensions be removed from their
   records. 419 U.S. at 568-69.
12. The three judge court was convened pursuant to 28 U.S.C. § 2281 (1970).
   the “[s]tate created entitlement to an education.” He seems to have confused a property
   interest with a liberty interest. See note 18 infra.
   Except as otherwise provided by law, any party may appeal to the Supreme Court
   from an order granting or denying, after notice and hearing, an interlocutory or
   permanent injunction in any civil action, suit or proceeding required by any Act of
   Congress to be heard and determined by a district court of three judges.
15. Prior to 1973 courts seem to have assumed education was a protected right. See, e.g.,
   Ordway v. Hargraves, 323 F. Supp. 1155, 1158 (D. Mass. 1971) (“Education is a basic
   personal right or liberty.”). See also, Williams v. Dade County School Bd., 441 F.2d 299, 302
   (5th Cir. 1971); Dixon v. Alabama State Bd. of Educ., 294 F.2d 150, 157 (5th Cir.),
   1149, 1172 (S.D. Tex. 1971). However, the Supreme Court’s decision in San Antonio Indepen-
dent School Dist. v. Rodriguez, 411 U.S. 1 (1973), which held education is not a constitution-
ally guaranteed fundamental right, required the district court in Goss to distinguish between
fundamental rights and interests protected by due process. Prologue, supra note 4, at 372.
   Even the dissent in Goss recognized that Rodriguez was not dispositive of the issues. 419 U.S.
at 586.

Although a public school pupil’s interest in education will be protected by the due process
enunciated by Justice Stewart in Board of Regents v. Roth, the Court found that on the basis of the Ohio statutes, which granted free education to residents five to twenty-one years old and compelled attendance, the students' entitlement to a public education constituted a property interest. Furthermore, the damage caused a student's reputation if the misconduct charges and suspension were recorded in student files could adversely affect his standing in the school community and interfere with future education and employment opportunities. Thus, the Court reasoned, not only had the students' property interests been infringed, but also their liberty interests.

The school administrators' alternative argument was that even if the student's right to education constituted a protected interest, the loss of ten days was "neither severe nor grievous," and thus the due process clause did not apply. The suggestion that a grievous loss to the protected interest must be inflicted before the due process clause applies was refuted by the first step of the Roth analysis: "[w]e must look not to the 'weight' but to the nature of the interest at stake." Since the Court did not consider a ten day suspension de minimis, a student's property and liberty interests could not be denied without due process.

Having determined that the students' interests entitled them to due process protection, the Court considered the second step stated in Roth: what due process protection is required? This step involved

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16. 408 U.S. 564 (1972). For further discussion, see text accompanying notes 39 through 59 supra.
18. 419 U.S. at 573-74. The Roth court defined a property interest as one created not by the Constitution but by an independent source, such as state law. To have a property interest, one must have "a legitimate claim of entitlement to it." 408 U.S. at 577. See generally Reich, The New Property, 73 YALE L.J. 733 (1964). See also Hearing, supra note 1, at 571-74.
19. 419 U.S. at 574-75. The liberty interest of a student involves "the right to . . . acquire useful knowledge" . . . an interest in one's "good name, reputation, honor or integrity;" . . . [and an] interest in being free of a "stigma or other disability" imposed by the state. Flygare, supra note 4, at 533.
A student's liberty interest could be crucial in a state where no property interest has been created by statute. See Student Rights, supra note 1, at 579.
20. 419 U.S. at 575. This argument is based on previous cases which held the due process clause applies only when the infringement of a protected interest is "severe," "grievous," "serious," "important," or "significant." See 419 U.S. at 588 (Powell, J., dissenting).
22. 419 U.S. at 576.
balancing the interests of the student in avoiding "unfair or mistaken exclusion from the educational process, with all of its unfortunate consequences" against the school's need for discipline and order so that it could perform its educational function. The Court contended that schools could operate efficiently and still provide some due process protection to students. Thus, it held that for suspensions of ten days or less, the school must give oral or written notice to the student of the charges against him; explain the evidence behind the charges, if the student denies them; and give the student a chance to explain his side of the story. The Court did recognize that in some situations an immediate removal of the student from school would be necessary, but stated that generally "notice and hearing should precede removal ...".

THE DISSENT

Justice Powell's dissent also followed the two-step analysis of Roth, but arrived at different conclusions. In examining the students' statutory entitlement to education, Justice Powell emphasized that property interests "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." Since the Ohio statute which created the student's property right also defined its dimensions by giving the principal power to suspend students, the right was not unqualified. Thus, the dissent reasoned, the Ohio legislature had made the student's right and the principal's right inseparable. To ignore the limitation placed upon the student's right was to disregard the clear intent of the legislature.

Regardless of how one defined the student's property interest, the dissenters thought any infringement of it by a ten day suspension

23. Id. at 579.
24. Id. at 581. The prejudicial effect of the potential accuser being the administrator who holds the conference with the student was not considered by the Court. See Suspension, supra note 1, at 308.
25. See text accompanying note 2 supra.
26. 419 U.S. at 582. However, the Court made clear that it was not requiring that a student be given a full trial-type procedure with the right to counsel, to confront and cross-examine witnesses, or to call his own witnesses for verification of his story. 419 U.S. at 583. For suspensions longer than ten days, expulsions or "unusual situations," the Court stated it would require "more than the rudimentary procedures." 419 U.S. at 584. For a discussion of what procedures might be required in these latter situations, see Developments, supra note 1, at 1019-25.
27. 419 U.S. at 586, quoting Board of Regents v. Roth, 408 U.S. 564, 577.
28. 419 U.S. at 587 n.4. See Hearing, supra note 1, at 583, where the author suggests that the Court, by adopting the Roth two-part test, may have "strait-jacketed itself with an approach that generates the kinds of artificial formalisms which characterized the right-privilege distinction."
did not constitute a "grievous loss." The fact that the student-appellees' grades had not suffered from their ten day absence indicated there had been no serious deprivation of the students' entitlement to education.

In considering the students' liberty interest, Justice Powell was concerned with the lack of proof of damage, as it applied to appellees. Since the Court had found in \textit{Roth} that a "nontenured teacher who is not rehired by a public university could not claim to suffer sufficient reputational injury to require constitutional protections," the dissent found "untenable" the students' argument that a ten day suspension seriously damaged their reputations.

Justice Powell's treatment of the second step in due process analysis, the balancing of interests, differed sharply from the majority's. Rather than the adversary relationship between student and school which the majority described, he stressed the "commonality of interest of the State and pupils in the public school system." Since the State's interest lay in maintaining an orderly atmosphere so that the schools could function properly and thus benefit all pupils and since the student's interest lay in obtaining an education, part of which includes an understanding of the necessity for discipline in one's life, the two interests were not "incompatible." The dissent viewed the majority's requirement of due process for suspended students as an extensive interference with the State's interest. The chance of a student's interest being infringed by mistaken or unfair discipline was minor and easily rectifiable by informal means.

As well as finding the Court's decision an unnecessary and "unprecedented intrusion into the process of elementary and secondary education," Justice Powell viewed with alarm the "new 'thicket' the Court now enters." If, he reasoned, a brief suspension causes
sufficient harm to trigger due process protection, what will happen
when administrators and teachers make such discretionary deci-
sions as to give a student a failing grade, exclude him from extracur-
ricular activities, or place him in a vocational rather than college
preparatory track?

One can only speculate as to the extent to which public education
will be disrupted by giving every school child the power to contest
in court any decision made by his teacher which arguably infringes
the state-conferred right to education.38

DUE PROCESS ADJUDICATION

Since both the majority and dissenting opinions of the Goss court
purported to rely upon the two-step analytical process announced
in Board of Regents v. Roth,39 it is important to consider this process
and what impact continued reliance upon it could have. Roth, a
non-tenured teacher at a state university, whose one year contract
was not renewed, claimed inter alia that his due process right had
been infringed by the university’s refusal to give him a statement
of reasons for his nonrenewal and to provide him a hearing on the
decision. In reversing the lower courts’ decisions for Roth, the Court
made clear that the balancing of interests approach employed
by the district court was appropriate only to determine the second step
in due process adjudication: how much process is due. The thresh-
old question, the first step in the analytical process, must be: is one
of the interests encompassed by the due process clause - life, liberty
or property - involved? If the plaintiff cannot prove he has a pro-
tected interest, then the second step is unnecessary since the state
can act summarily. Only when a protected interest is involved is
“the right to some kind of prior hearing . . . paramount.”40

There is a basic disagreement between the majority and dissent
in Goss in their approach to the first step of due process adjudica-
tion. While both recognize that state laws may create a “legitimate
claim of entitlement”41 to education and thus constitute a property
interest,42 they differ on whether deprivation of that interest must
be considered in determining the application of due process. The
majority view, that “deprivation, while another factor to weigh in
determining the appropriate form of hearing, ‘is not decisive of the

38. 419 U.S. at 600 n.22.
40. 408 U.S. at 570-71.
41. 419 U.S. at 573, 586.
42. For further discussion, see note 18 supra.
basic right' to a hearing," follows recent Court attempts to move away from the pre-1972 judicial use of interest balancing in a determination of whether due process applies. "As long as a property deprivation is not de minimis, its gravity is irrelevant." It is this view which the dissenters in Goss were unwilling to follow. They argued that precedent dictates that the Court look to "the significance of the state-created or state-enforced right and to the substantive of the alleged deprivation." This position necessitates a judgment that the deprivation is sufficiently weighty to trigger due process. To follow this view would return the Court to pre-Roth interest balancing analysis, a process by which the Court "expanded the applicability of the due process clause to deprivations of several types of interests not previously understood as protected by the right." It is this expansion that Roth sought to limit.

In determining whether a liberty interest has been infringed, it is particularly difficult to ignore the weight of the deprivation. The dissent in Goss recognized this difficulty when it tried to reconcile the finding of a student's liberty interest with the Roth decision. In

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44. See Note, Specifying the Procedures Required by Due Process: Toward Limits on the Use of Interest Balancing, 88 HARV. L. REV. 1510, 1511-14 (1975) [hereinafter cited as Interest Balancing].
45. 419 U.S. at 576.
46. As well as disagreeing with the majority about the gravity of the deprivation, Justice Powell argued that the students' statutory right to education, their property interest, was limited by the principal's statutory power to suspend. For further discussion, see text accompanying notes 27 and 28 supra. This view seems in conflict with his concurring opinion in Arnett v. Kennedy, 416 U.S. 134, 167 (1974):

While the legislature may elect not to confer a property interest in federal employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards [footnote omitted].

However, as his footnote in Goss makes clear, the difference between the two cases lies in the seriousness of the deprivation. 419 U.S. at 587 n.4.
47. 419 U.S. at 599-600.
48. Interest Balancing, supra note 44, at 1511 n.5.
49. See Note, "Liberty," "Property," and Procedural Due Process, 5 CONN. L. REV. 685, 696-97 (1973) [hereinafter cited as Liberty], where the author argues in his analysis of Roth that the Court's reliance on Slochower v. Bd. of Educ., 350 U.S. 551 (1956), Wieman v. Updegraff, 344 U.S. 183 (1952), and Connell v. Higginbotham, 403 U.S. 207 (1971), as precedent for illustrating when a teacher has a property interest, was misplaced. Since these cases dealt with infringement of substantive rights, the issue of whether a property interest existed was not met. The author's conclusion is that the Court, by relying on these cases, was attempting to limit interests protected by due process.
50. For a liberty, however, "weight" cannot be entirely excluded from the first-phase analysis. Some valuing is inevitably necessary to determine if a particular limitation of freedom rises to the level of a fourteenth amendment deprivation of liberty.

Prologue, supra note 4 at 370.
Roth the Court, while granting that the meaning of liberty was broad, found no state infringement of the teacher's liberty interest. The university has made no "change against him that might seriously damage his standing and associations in his community" and had not imposed on Roth "a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities." Although the lack of evidence that Roth's academic career might be damaged by nonrenewal of his contract accounted in part for the adverse decision, Justice Stewart indicated that even proof that future employers would find Roth "somewhat less attractive . . . would hardly establish the kind of foreclosure of opportunities amounting to a deprivation of 'liberty.'" The Goss Court's acceptance of "generalized opinion evidence" that suspension might cause psychological harm and that colleges and future employers might inquire whether a student had ever been suspended may lead to a renewed fight by non-tenured teachers to avoid summary dismissals. As one lawyer has noted,  

51. 408 U.S. at 573.  
52. Id.  
53. Id. at 574 n.13.  
54. Id. Justice Stewart's citation to Schware v. Bd. of Bar Examiners, 353 U.S. 232 (1957), implies that only by depriving an individual of the chance to practice his chosen profession or by denying him a wide field of employment has the state infringed a liberty interest.

Since the teacher in Roth was dismissed with no stated reasons, it is at least arguable that in a market glutted with teachers, any school or university will refuse to hire a teacher whose dismissal will be speculated upon by future employers. See Comment, Termination and Due Process, 2 J. Law-Ed. 305, 308 n.10 (1973); Liberty, supra note 49 at 692-94; Time, September 22, 1975, at 18 states that one-half of last spring's 300,000 college graduates with teaching degrees are looking for jobs.

55. 419 U.S. at 597 (Powell, J., dissenting).

56. The psychological harm consisted of the following:
   1. The suspension is a blow to the student's self-esteem.
   2. The student feels powerless and helpless.
   3. The student views school authorities and teachers with resentment, suspicion and fear.
   4. The student learns withdrawal as a mode of problem solving.
   5. The student has little perception of the reasons for the suspension. He does not know what offending acts he committed.
   6. The student is stigmatized by his teachers and school administrators as a deviant. They expect the student to be a troublemaker in the future.

419 U.S. at 598 n.18, quoting Lopez v. Williams, 372 F. Supp. at 1292.

57. The issue of whether a non-tenured teacher has a property or liberty interest protected by due process has been heavily litigated since Roth and its companion case, Perry v. Sindermann, 408 U.S. 593 (1972). For a non-tenured teacher to prove a property interest, he must show that either state rules or regulations or a contractual agreement give him a legitimate claim of entitlement to his job; or that there exists some well-established "joint understanding amounting to a 'de facto tenure program.'" Simard v Bd. of Educ. of Town of Groton, 473 F.2d 988, 992 (2d Cir. 1973). The usual issue present in cases where a non-tenured teacher asserts a property interest is whether or not the court finds a de facto tenure. See, e.g., Roane
"[a]fter Goss, students have more rights than non-tenured teachers."

It appears that Goss has done little to clarify what constitutes deprivation of a liberty interest. Inevitably, then, the courts will continue, despite Supreme Court pronouncements, to weigh the liberty interest in due process adjudications.

v. Callisburg Independent School Dist., 511 F.2d 633 (5th Cir. 1975) (common law of institution provided de facto tenure); Cusumano v. Ratchford, 507 F.2d 980, 984 (8th Cir. 1974) (no property interest found because college regulations were specifically worded to "avoid the de facto tenure hypothesized in Sindermann"); Hostrop v. Board of Junior College Dist. No. 511, 471 F.2d 488 (7th Cir. 1972), cert. denied, 411 U.S. 967 (1973) (property interest found); Weathers v. West Yuma County School Dist. R-J-1, 387 F. Supp. 552 (D. Col. 1974) (no property interest).

To prove a liberty interest a non-tenured teacher must show his standing and associations in the community have been seriously damaged or that his freedom to find employment opportunities has been foreclosed. Teachers have been very unsuccessful in proving an infringement of their liberty interests. See, e.g., Ortwein v. Mackey, 511 F.2d 696 (5th Cir. 1975) (no infringement of liberty interest if charges are true and kept in confidential files); Buhr v. Buffalo Public School Dist. No. 38, 509 F.2d 1196 (8th Cir. 1974) (liberty interest not infringed if reasons for dismissal are not announced publicly or put into record for prospective employers); Weathers v. West Yuma County School Dist. R-J-1, 387 F. Supp. 552 (D. Col. 1974) (damage to liberty interest not sufficient to merit due process protection). But see Wilderman v. Nelson, 467 F.2d 1173, 1176 (8th Cir. 1972); Johnson v. Fraley, 470 F.2d 179 (4th Cir. 1972).

Will Goss affect the manner in which courts analyze non-tenured teacher dismissals? Arguably it should, but probably it will not. As long as the school administrators do not make public charges or put damaging information into public files, the courts seem unwilling to find an infringement of a teacher's liberty interest. Furthermore, at least one court has determined that although there was some damage to plaintiff's reputation, it was not serious enough to merit protection. Weathers v. West Yuma County School Dist. R-J-1, 387 F. Supp. at 560. In general, the courts appear unwilling to look beyond the lack of specific charges to the real harm suffered by a teacher who is given no reason for dismissal. Although the Goss Court may have ventured into school affairs, other courts clearly have a hands-off policy:

It would be intolerable for the courts to interject themselves and to require an educational institution to hire or to maintain on its staff a professor . . . whom it deemed undesirable and did not wish to employ.


9. See, e.g., Sims v. Fox, 505 F.2d 857 (5th Cir. 1974), where a reserve officer sought a hearing prior to a discharge, precipitated by his having pleaded nolo contendere to charges of indecent exposure. The Fifth Circuit, at a rehearing en banc, held, inter alia, that the officer's liberty interest had not been infringed by "the mere presence of derogatory information in confidential files and the government had not infringed 'liberty' unless it perpetuates untrue charges." Id. at 864. The dissent took strong issue not only with whether the files were truly confidential, but also as to what the real purpose of a due process hearing should be. Although this latter aspect is frequently not mentioned in court opinions, it can be important. See the discussion of functional appropriateness of procedures in Interest Balancing, supra note 44, at 1514-22.
INTEREST BALANCING

The second step of the Roth analysis involves balancing the interest of the individual against that of the state in order to decide what process is due. Since Goss makes clear that every government deprivation of a liberty or property interest which is not de minimis triggers due process protection, this second step may become crucial as courts and governments struggle to comply with due process requirements. The problem with interest balancing, as illustrated in Goss, is that "the concept of 'weight' employed in the interest-balancing doctrine is of such a subjective and ambiguous nature that use of interest balancing necessarily occasions great uncertainty." The weight which Justice Powell gave the students' interest in avoiding an unfair suspension was obviously minimal; however, the majority found suspension could be "a serious event in the life of the suspended child." The gap between the majority and dissenting opinions reflects society's ambivalence toward the role of schools, the place of a child, and the importance of discipline. Given the fact that strongly held beliefs come into conflict during the process of interest balancing, it is not surprising that the procedures required by the Goss Court are vague enough to cause problems.

DUE PROCESS PROCEDURES REQUIRED BY GOSS

The Goss Court failed to specify the mildest form of suspension which would invoke due process and only generally described the type of notice and hearing required. This lack of specificity should not generate major problems. However, the Court's statement of

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60. For a thorough discussion of problems raised by the judicial use of interest balancing, see generally Interest Balancing, supra note 44.
61. Id. at 1520-21.
62. Id. at 1519. Uncertainty, in turn, leads to litigation.
63. 419 U.S. at 598 n.19. Justice Powell's view of suspension may well have been occasioned by his experience as a school board member. See Heckinger, Due Process for the Unruly Student, SATURDAY REVIEW (April 5, 1975) [hereinafter cited as Heckinger].
64. 419 U.S. at 576.
65. See generally Heckinger, supra note 63; C. Silberman, Crisis In The Classroom 10 (1970).
66. 419 U.S. at 585 n.3.
67. Id. at 582. However, the fact that the Court does not require notification of parents seems to devalue the role parents could play in alleviating discipline problems in schools. If more parents were concerned about their child's activities, schools and society might have fewer problems. See EVANSTON REVIEW, August 28, 1975, at 32. See also Developments, supra note 1 at 1016-19, where the author discusses the possible problems in meeting the Goss Court's requirements of effective notice and meaningful hearing.
68. See supra note 24; see also Developments, supra note 1.
the situations where immediate removal without prior notice and hearing will be sanctioned may prove troublesome. In *Hubel v. West Virginia Racing Commission*, the court employed the *Goss* Court's phrase “continuing danger” to justify a forty-seven day suspension of a racetrack owner-trainer's license. The Racing Commission did not deny that the license was a protected property interest. The issue rather was whether the suspension without prior hearing was justified. “We think it is,” the court concluded “because an owner-trainer in Hubel's position presents the same kind of ‘continuing danger’ which concerned . . . the Supreme Court in *Goss*.”

The “continuing danger” was that unless the owner-trainer was suspended until the investigative board made a decision on the alleged charges, he might repeat his alleged offense, the intentional or negligent drugging of a horse. It is doubtful that the Supreme Court would accept the rationale in this case to justify a long delay between suspension and hearing, particularly since the owner disputed the charges. Although *Goss* did state that in cases of immediate suspension, a hearing should follow “as soon as practicable,” the Court also referred to the district court's ruling in *Goss*, which allowed seventy-two hours after suspension.

The *Goss* Court's phrase “ongoing threat of disrupting the academic process” may also create problems. The difficulty is that all teachers and administrators do not view the same behavior as disruptive. In *Hawkins v. Coleman*, black student plaintiffs alleged, *inter alia*, that the school's suspension policy was being administered in a racially discriminatory manner. Two experts testified. One found that “there was a substantial reliance upon non-violent ‘offenses’ as a justification for suspension when, in fact, such conduct may be a pivotal ethnic characteristic.” The second expert

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69. See text accompanying note 2 supra.
70. 513 F.2d 240
71. Id. at 243.
72. Id.
73. 419 U.S. at 583.
75. 419 U.S. at 582.
78. Id. at 1336.
concluded that in schools where there is institutional racism toward Blacks,

conduct by black students that would not be "unusual" or "offensive" in a black environment becomes to many teachers "disruptive" or "suspendable conduct." To teachers unfamiliar with Blacks, this conduct, that is non-violent and characteristic of the black race, stands out and becomes thereby subject to selective prosecution. 80

The qualification that the disruption constitute an "ongoing threat" may not provide much protection to the student suspended without a hearing. If some form of racism is responsible for the teacher's view that certain behavior is disruptive, then that same racism may trigger a feeling that the disruption presents an "ongoing threat." Furthermore, the phrase is susceptible to the same kind of judicial reasoning as "continuing danger." 81

Students whose behavior is viewed as so disruptive as to constitute an "ongoing threat" may be subject not only to immediate suspension, but also to removal from the school environment to some sort of "Extension School." 82 The possibility that such a transfer will stigmatize the student and result in an inferior education, "thus leading to more limited life choices," 83 cannot be disregarded. The Goss Court's choice of phrasing is particularly unfortunate, given the disagreement among educators as to what constitutes and

79. "Institutional racism" exists . . . when the standard operating procedures of an institution are prejudiced against, derogatory to, or unresponsive to the needs of a particular racial group.

Id.

80. Id.

81. See text accompanying notes 70 through 74 supra. However, one commentator has suggested that Laine v. Dittman, 125 Ill. App. 2d 136, 259 N.E.2d 824 (1970), may provide authority for the proposition that the determination of whether a student's behavior is disruptive "must be made objectively, not by an excitable dean of discipline." Current Issues, supra note 57, at 417. Laine involved the suspension of a male student because the length of his hair did not conform to standards set out in a Grooming Code.

82. One way to reduce the number of suspensions is to remove problem-prone students from the school environment which, for some students, contains too many temptations that lead to suspension-causing difficulties. One successful alternative environment is our Extension School.

causes disruptive behavior. 84

INTO THE THICKET

Justice Powell gloomily predicted: "[n]o one can foresee the ultimate frontiers of the new 'thicket' the Court now enters." 85 While Goss has been cited in several decisions since it came down, 86 these decisions give no clear signals that a tempest is brewing. 87 Yet,

84. See note 76 supra.
85. 419 U.S. at 597.
86. See note 87 infra.
87. In United States v. Watts, 513 F.2d 5, 8 (10th Cir. 1975), Goss was cited for the proposition that due process is a flexible concept and must be administered in a manner applicable to the particular situation. This is hardly a novel or immoderate statement. The Watts case involved a juvenile who sought appeal of a decision finding him guilty of involuntary manslaughter and adjudging him a delinquent. He argued that because the express provisions of In Re Gault, 387 U.S. 1 (1967), had not been met, he had been denied due process. The court held that although there had been a "technical" violation, the fact that the youth had himself had notice, had been represented by counsel, and had been aided by his parents in his defense and at trial showed he had been accorded due process.

In Ammond v. McGahn, 390 F. Supp. 655 (D.N.J. 1975), a member of the New Jersey Senate sued because she had been excluded from her party's caucus for making public critical remarks. The court held that such exclusion, done without a prior hearing, violated due process. Although the court did not discuss whether the plaintiff had a property or liberty interest, it could be assumed that both were present. Plaintiff would have a property interest in her entitlement to her job as state senator for a specified term. The exclusion from her party's caucus, which decides the course of legislation before it reaches the Senate floor, could arguably infringe her liberty interest in her reputation by stigmatizing her in the community of senate members.

Goss has also been cited in Rolles v. Civil Service Commission, 512 F.2d 1319, 1326 (D.C. Cir. 1975), to support the proposition that when a person's liberty interest is infringed by charges of dishonesty, a hearing prior to dismissal must be held to afford the alleged offender a chance to refute the charges. The infringement of plaintiff's liberty interest seems clear in this case. He had been charged with falsifying a voucher and diverting an Air Force plane to Andrews Air Force Base for his personal use. Furthermore, he had a property interest in his civil service job, an interest recognized by six justices in Arnett v. Kennedy, 416 U.S. 134 (1974).

In Eley v. Morris, 390 F. Supp. 913, 924 (N.D. Ga. 1975), the court, in dealing with the second step of due process adjudication, the balancing of interests, followed Goss in finding that except in unusual cases, the interest of the individual in preventing a termination based on unfair or mistaken reasons outweighed any administrative burden placed on the government. Two former government employees were terminated according to regulations which provided for notice of dismissal and a post-termination hearing, but gave no right to a list of specific charges or an opportunity to refute the charges. After reviewing Goss, the court found: "the implication of the public employee cases and the express holding of Goss v. Lopez is that some due process protections should be deemed applicable to the initial stages of the discharge procedure." 390 F. Supp. at 923. The pre-termination procedures required by the court were a list of charges and an opportunity to refute the charges, in writing and supported by affidavits, before a state official with authority over the employee's supervisor. Id. at 924. These procedures illustrate what the Goss court had indicated: that the seriousness of the deprivation is a factor in determining what process is due. That more formal procedures were required in Eley than in Goss comports with the seriousness of the deprivation, the termination of employment.
however moderate these few post-\textit{Goss} decisions appear, the thicket has been entered. In a recent case, \textit{Dallam v. Cumberland Valley School District},\textsuperscript{88} the issue before the district court was "whether the constitutional protection afforded public school students in \textit{Goss v. Lopez} — extends to the extra-curricular activity of interscholastic athletics."\textsuperscript{89} The court recognized that this issue was one anticipated by Justice Powell's dissent; however, the court was able to distinguish the interests recognized in \textit{Goss} from that claimed by the plaintiff. The analysis the \textit{Dallam} court employed to distinguish \textit{Goss} may indicate how other courts will attempt to avoid entanglement in the thicket. Although apparently confused by the \textit{Goss} Court's analysis of protected interest,\textsuperscript{90} the court concluded:

\begin{quote}
Despite the duality of \textit{Goss}'s language, this court views the case to stand for the proposition that once the state transforms a privilege into a property interest, no matter what its weight, due process attaches.\textsuperscript{91}
\end{quote}

The court then reasoned that the companion case to \textit{Goss}, \textit{Wood v. Strickland},\textsuperscript{92} "dictates that the plaintiff have a 'specific' property interest in interscholastic high school competition."\textsuperscript{93} \textit{Goss} had spoken of the "property interest in educational benefits,"\textsuperscript{94} and the court conceded that interscholastic athletics could be a benefit of education. However, since \textit{Goss} also spoke in terms of a "total exclusion from the educational process,"\textsuperscript{95} the court reasoned that a property interest was created only in "participation in the entire process."\textsuperscript{96} All activities "combine to form that educa-

\textsuperscript{89} Id. at 359. The plaintiff sought to enjoin a rule which automatically barred for one year any student who transferred school districts from participating in interscholastic athletics. The rule allowed no hearing in which the student might prove that he transferred school districts not for athletic purposes but for scholastic reasons.
\textsuperscript{90} 391 F. Supp. at 360; see text accompanying notes 41 through 49 \textit{supra}.
\textsuperscript{91} 419 U.S. at 576.
\textsuperscript{92} 391 F. Supp. at 361.
\textsuperscript{93} 391 F. Supp. at 361. The court reaches this conclusion from the following language in \textit{Wood}:

\begin{quote}
§ 1983 was not intended to be a vehicle for federal court correction of errors in the exercise of that discretion which do not rise to the level of violations of specific constitutional guarantees.
\end{quote}

\textsuperscript{94} 420 U.S. at 328.
tional process." Therefore, since the plaintiff did not have a property interest, he did not have a right, privilege, or immunity that had been deprived by state action. Finding itself without subject matter jurisdiction, the court dismissed the case.

The decision in Dallam will not prevent future litigation based on Goss. First, it is significant that the plaintiff in Dallam did not argue his liberty interest. The psychological evidence which Justice Powell found particularly speculative, related to the students' liberty interest. Therefore, it is arguable that the plaintiff in Dallam might have prevailed had he shown that by denying him a year of interscholastic athletics, his opportunity to attend college was hampered, his self-esteem was damaged, or the unfair treatment afforded him led to suspicion and resentment. Furthermore, there is pre-Goss precedent that interscholastic athletics is such a valuable interest that it deserves due process protection. Such precedent argues against the court's statement that even if a property interest did exist, it would be de minimis.

There are other conceivable ramifications of Goss. Justice Powell's dissent in Wood v. Strickland, the companion case to Goss, raises a serious question. Wood held:

"[I]n the specific context of school discipline . . . a school board member is not immune from liability for damages under § 1983 if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the consti-

97. Id.
98. It appears plaintiff did not argue a liberty interest.
99. 391 F. Supp. at 359. Defendants had moved for dismissal for lack of federal jurisdiction. 28 U.S.C. §1983 requires a plaintiff to show that the defendant has deprived him of a right, privilege or immunity guaranteed by the Constitution or laws of the United States. See note 10 supra.
100. 419 U.S. at 589.
101. This argument might depend upon whether plaintiff's skills could qualify him for an athletic scholarship.
102. See note 56 supra.
103. See Kelley v. Metropolitan County Bd. of Ed. of Nashville and Davidson County, Tenn., 293 F. Supp. 485, 492-93 (M.D. Tenn. 1968). Although this case is pre-Roth and therefore was decided on the basis of the significance of the interest, the case relied on by the Dallam court is also pre-Roth. See 391 F. Supp. at 361.
104. 391 F. Supp. at 362 n.5.
105. 420 U.S. 308 (1975). In Wood three sixteen year old girls admitted mixing three bottles of 3.2 beer into a punch to be served at a school function. The girls admitted spiking the punch. The board initially held, at a meeting to which neither the students nor their parents were invited, that the students would be suspended for the remainder of the year, a period of three months. At a later meeting, at which the students were represented, the board affirmed its decision. The district court held the school board was immune from damages, but the appellate court reversed, finding the board's failure to present evidence that the punch was "intoxicating" violated the students' constitutional rights."
tutional rights of the student affected.\textsuperscript{108}

The board member is held responsible for knowing only "settled indisputable law" and "unquestioned constitutional rights."\textsuperscript{107} As Justice Powell recognized, such vague requirements could mean that school officials, who acted in good faith, only to have it judicially determined later that they had violated some student's "unquestioned constitutional right" would be liable for damages.\textsuperscript{108}

Furthermore, when \textit{Wood} is read in conjunction with \textit{Goss}, one must ask whether such school official's decisions as the immediate suspension of a student deemed disruptive,\textsuperscript{109} or the placement of a student in a non-honors track, without providing him a hearing, would make the official liable for damages.\textsuperscript{110}

One aspect seemingly overlooked by \textit{Goss} is whether suspension, as a disciplinary tool, works. The majority opinion found it a "valuable educational device;"\textsuperscript{111} the dissent found suspension a routine tool of discipline, which "is an integral and important part of training our children to be good citizens."\textsuperscript{112} School committees may find suspension "an effective corrective measure for misconduct."\textsuperscript{113} Yet

\textsuperscript{106} 420 U.S. at 322. \textit{Wood} thus appears to limit the qualified immunity for officials acting in good faith which it recognized last term in Scheuer v. Rhodes, 416 U.S. 232, 247-48 (1974). \textit{See also} McLaughlin v. Tilendis, 398 F.2d 287, 290-91 (7th Cir. 1968) in which the court held that the Illinois Tort Immunity Act gives only qualified immunity, dependent upon good faith action, to school superintendent and board members sued under 28 U.S.C. \textsection{} 1983.

\textsuperscript{107} 420 U.S. at 329. (Powell, J., dissenting).

\textsuperscript{108} 420 U.S. at 328.

\textsuperscript{109} See text accompanying notes 75 through 84 supra.

\textsuperscript{110} 420 U.S. 329 n.3. One commentator has noted a possible beneficial aspect of \textit{Wood}:

[T]he liability for damages assigned to board members by \textit{Wood} has already been held to apply to principals and teachers, who are never accorded immunity as public officials. To the extent, therefore, that the \textit{Wood} case makes school boards more cautious in the adoption of regulations which principals must administer—it may help keep principals out of court.

\textit{Memo, supra} note 6, at 6. Furthermore, the commentator noted that the Supreme Court ruled unanimously that the court of appeals should not have interfered with the school board's interpretation of the applicable school rule. That the Supreme Court intends to limit the scope of judicial review is clear from Justice White's opinion:

It is not the rule of the federal courts to set aside decision of school administrators which the court may view as lacking a basis in wisdom or compassion. . . . The system of public education that has evolved in this Nation relies necessarily upon the discretion and judgment of school administrators and school board members, and \textsection{} 1983 was not intended to be a vehicle for federal court correction of errors in the exercise of that discretion which do not rise to the level of violations of specific constitutional guarantees.

\textsuperscript{420 U.S. at 326.}

\textsuperscript{111} 419 U.S. at 580.

\textsuperscript{112} \textit{Id.} at 593, quoting Tinker v. Des Moines Community School Dist., 393 U.S. 503, 524 (1969).

\textsuperscript{113} Evanston Township High School, Report of the Committee on Student Suspensions, December, 1974, at 3.
some critics suggest that rarely does suspension help a student in any positive way.\textsuperscript{114} For the Court to do more than give some settled platitudes about the need for discipline would force it to confront the really difficult question: why do schools have so many discipline problems?

Finally, one of the most intriguing aspects of \textit{Goss} is whether it can be expanded to support a student's right to an \textit{effective} education.\textsuperscript{115} Does a student have a right not only to attend school, but also to be taught certain skills there? Are schools accountable for the product they turn out? If \textit{Goss} can support the student's right to an effective education, then the case will indeed create a tempest. To read Charles Silberman's description of a typical school\textsuperscript{116} makes one ponder whether the \textit{Goss} Court's intrusion into school affairs is the first step toward a more difficult decision that the Court will one day face.

\textbf{THE IMPACT OF Goss IN ILLINOIS}\textsuperscript{117}

\textit{Goss} has led to some changes in Illinois school administration and is likely to cause more.\textsuperscript{118} The Illinois School Code, which authorizes school boards to suspend or expel students guilty of "gross disobedience or misconduct,"\textsuperscript{119} is very similar to the Ohio statute found

\textsuperscript{114} See McClung, \textit{supra} note 76, at 516-27.
\textsuperscript{115} Comment, \textit{Tort Liability for Failure to Educate}, 6 \textit{LOYOLA U. CHI. L. REV.} 462, 481 (1975).
\textsuperscript{116} C. SILBERMAN, \textit{CRISIS IN THE CLASSROOM} 10 (1970):

"The most deadly of all possible sins. . . . is the mutilation of a child's spirit."
It is not possible to spend any prolonged period visiting public school classrooms without being appalled by the mutilation visible everywhere - mutilation of spontaneity, of joy in learning, of pleasure in creating, of sense of self. . . . Because adults take
the schools so much for granted, they fail to appreciate what grim, joyless places most American schools are, how oppressive and petty are the rules . . . , how intellectually sterile and esthetically barren the atmosphere, what an appalling lack of civility obtains on the part of teachers and principals, what contempt they unconsciously display for children as children.

\textsuperscript{117} For a thorough discussion of Illinois school law, see \textit{Current Issues}, \textit{supra} note 57.
\textsuperscript{118} See note 127 \textit{infra}.
\textsuperscript{119} \textit{ILL. REV. STAT.} ch. 122, § 10-22.6 (a)(b)(c) (1973), reads:

Suspension or expulsion of pupils. (a) To expel pupils guilty of gross disobedience or misconduct, and no action shall lie against them for such expulsion. Expulsion shall take place only after the parents have been requested to appear at a meeting of the board, or with a hearing officer appointed by it, to discuss their child's behavior. Such request shall be made by registered or certified mail and shall state the time, place and purpose of the meeting. The board, or a hearing officer appointed by it, at such meeting shall state the reasons for dismissal and the date on which the expulsion is to become effective. If a hearing officer is appointed by the board he shall report to the board a written summary of the evidence heard at the meeting and the board may take such action thereon as it finds appropriate.
unconstitutional in *Goss*. The three years before *Goss* a student had challenged the provisions of section 10-22.6 of the Illinois School Code, which allowed his suspension for seven days without affording him a prior hearing or giving him a chance to speak in his own behalf. In *Linwood v. Board of Education*, the court found that a seven day suspension was a "minor disciplinary penalty which the legislature may elect to treat differently from expulsion or prolonged suspension without violating a constitutional right of the student." The classification of a seven day suspension as a minor penalty which requires no due process will no longer be tolerated.

Since the Illinois School Code mandates no notice or hearing prior to suspension, it is fatally flawed. Furthermore, the notice following suspension for which the Code does provide is directed to the par-

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(b) To suspend or by regulation to authorize the superintendent of the district or the principal or dean of students of any school to suspend pupils guilty of gross disobedience or misconduct and no action shall lie against them for such suspension. The board may by regulation authorize the superintendent of the district or the principal of any school to suspend pupils guilty of such acts for a period not to exceed 10 school days. Any such suspension shall be reported immediately to the parents or guardian of such pupil along with a full statement of the reasons for such suspension and a notice of their right to a review, a copy of which shall be given to the school board. Upon request of the parents or guardian of the school board or a hearing officer appointed by it shall review such action of the superintendent or principal. At such review the parents or guardian of the pupil may appear and discuss the suspension with the board or its hearing officer. If a hearing officer is appointed by the board he shall report to the board a written summary of the evidence heard at the meeting. After its hearing or upon receipt of the written report of its hearing officer, the board may take such action as it finds appropriate.

(c) To suspend or by regulation to authorize the superintendent of the district or the principal of any school to suspend pupils guilty of gross disobedience or misconduct on the school bus from riding the school bus and no action shall lie against them for such suspension. Such suspension shall continue until it has been reviewed by the school board, or a hearing officer appointed by it. At such review the parents or guardian of the child may appear and discuss such suspension with the board or its hearing officer. If a hearing officer is appointed by the board he shall report to the board a written summary of the evidence heard at the meeting. The board may take such action thereon as it finds appropriate upon the board's hearing or the written report of its hearing officer.

Subsection (d) of Ill. Rev. Stat. ch. 122 § 10-22.6 (1973) provides:

(d) The Department of Mental Health shall be invited to send a representative to consult with the board at such meeting whenever there is evidence that mental illness may be the cause for expulsion or suspension.

As one commentator has noted, "To date no student has ever invited a DMH representative to his expulsion proceeding on the theory that there is evidence that the cause for the expulsion or suspension is the mental illness of the school administrators or board members."

*Current Issues*, supra note 57, at 422 n.106.

120. See note 7 supra.


122. *Id.* at 768-69.
ents or guardians of the pupil, not to the student himself, as Goss dictates. Whether or not local school boards will adopt procedures in conformity with Goss remains to be seen.

Students in the Chicago public schools seem, at the moment, to be the true beneficiaries of the Goss decision. The Chicago Board of Education is governed by a special section of the School Code. This section gives the Board enormous power over the student, including, in the past, the power to suspend for one month, expel, or transfer without providing for notice or hearing of any kind. However, the procedures governing suspension and expulsion from Chi-

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123. 419 U.S. at 581.
124. The National Association of Secondary School Principals recommends the following for short-term suspensions:
   If nothing more is prescribed by statute or regulation, the Goss decision requires before actual suspension:
   a) oral or written notification of the nature of the violation and the intended punishment
   b) “discussion” with the disciplinarian providing the pupil with an opportunity to tell his side of the story
   c) if the student denies the violation, an explanation of the evidence of the violation upon which the disciplinarian is relying. (The interview may follow by minutes the act which caused the reaction on the part of the school official.) Memo, supra note 6, at 7.

Prior to Goss, the school board of Evanston Township High School directed the school administration to revise suspension procedures, which had been criticized because the provision for appeal caused the appeal to follow, rather than precede, the suspension. Report of the Committee on Student Suspension, supra note 4. The Committee recommended a revised “Notification of Student Suspension” form, which provides, in most instances, for a delay in the effective date of suspension, during which time a student’s parent may appeal. The form is set out in Appendix A infra. Although the new form employed at Evanston High School is an improvement, it still has problems. There is no mention of any notice or hearing prior to the decision to suspend. Further, it is the parent, not the student, who appears to have the right to appeal. Finally, the school’s assumption that the parent waives his right to a hearing if he does not return the form within ten days may not meet due process requirements. See Washington Students, supra note 1, at 678 n.19.

125. ILL. REV. STAT., ch. 122, § 34-1 et seq. (1973).
126. Rules of the Board of Education of the City of Chicago § 6.9. (1972) provided:
   Suspension of Pupils-Cause. For gross disobedience or misconduct a pupil may be suspended temporarily by the principal for a period not exceeding one school month for each offense. Every such suspension shall be reported immediately to the District Superintendent and also to the parent or guardian of the pupil, with a full statement of the reasons for such suspension. The District Superintendent shall have authority to review the action of the principal and to return the suspended pupil.
   Id. § 6.8:
   Expulsion of Pupils-Cause. Whenever a pupil in any school is found by the school authorities to be a distinct detrimental influence to the conduct of the school, or to be unable to profit or benefit from further experience in his school, he may be transferred to special educational facilities in the school system or may be excused from further attendance, or excluded from school by the General Superintendent of Schools.
Chicago public schools have been radically altered since Goss.\textsuperscript{127} Hopefully, the new procedures will provide Chicago public school students with sufficient protection against the attitudes of some school officials.\textsuperscript{128}

**CONCLUSION**

The Supreme Court's decision in \textit{Goss v. Lopez}, although an unprecedented step into school affairs, is a baby step. Practically, the kind of "truncated"\textsuperscript{129} due process required by the Court should prove a minor burden on school administrators. However, the Court's unwillingness to view realistically the infringement of a liberty interest in \textit{Roth}, while finding a deprivation of a student's liberty interest in \textit{Goss}, leads to confusion. If the Court is going to continue to follow the \textit{Roth} analysis for due process adjudication, it needs to clarify its treatment of the liberty interest and admit that some balancing may be inevitable.

\textit{Goss} has clarified the status of a student's right to a public education. It should end the conflict in the lower courts as to whether short term suspensions qualify for due process protection. Nevertheless, the decision has raised questions. How those questions will be answered may ultimately depend upon whether the Court retracts after \textit{Goss} or whether it continues to move cautiously into the thicket of school affairs.

\textsc{Brannon Heath}

\textsuperscript{127} See new procedures listed in Appendix B \textit{infra}. Since the procedures are taken almost verbatim from \textit{Goss}, they should prove satisfactory. Furthermore, provision 5 under the rules for suspension goes a step beyond \textit{Goss}.

\textsuperscript{128} See \textit{Current Issues supra} note 57, at 423-25.

\textsuperscript{129} 419 U.S. at 596.

**APPENDIX A**

**SAMPLE SUSPENSION FORM**

\textsc{Evanston Township High School}

1600 Dodge Avenue, Evanston, Illinois 60204

TO: THE PARENT/GUARDIAN OF \hfill (student) \hfill (school)

The Illinois School Code provides that a student may be suspended from school attendance for up to ten school days; the Code further provides that the parents of a suspended student shall be notified immediately of the suspension, shall be informed of the reasons for the action and of their right to a review before the Board of Education or its appointed hearing officer. Pursuant to these statutory provisions, ETHS has adopted the following procedures:

1. Within 24 hours (one school day) of the decision to suspend, the suspending officer attempts telephone notification to the student's home. Regardless of whether tele-
phone contact is made, written notification is sent to the parent by certified mail or by personal messenger within 48 hours (two school days).

2. Ordinarily, the period of suspension begins on the third day following the decision to suspend. The period of suspension may begin immediately if, in the informed judgment of the suspending officer, the removal of the student from the campus is necessary to the safety of persons or property or the reasonable orderliness of normal school operations.

3. The parent may, upon request within ten days of the date of the suspension, arrange to have the suspension reviewed. To arrange for a review, the parent or the student returns the appeal form (below) to the school office. Any remaining days of the suspension are, upon school receipt of the form, held in abeyance.

4. If a review is requested, a review hearing is scheduled by the Board of Education within thirty (30) days of the school’s receipt of the form.

5. If a review is conducted, up to five witnesses may be called by either party; either party may record the proceedings at its own expense; the hearing is held in executive (private) session; absence from the hearing by parent or student constitutes a waiver of review; a written decision is issued within forty-eight (48) hours by the Board, which decision is final; and, should the hearing result in the rescinding of the suspension, all references to the suspension are expunged from the student’s record; in addition, the school assumes the initiative in arranging make-up work for the student.

NOTIFICATION OF STUDENT SUSPENSION

[Name of student], [school], is to be suspended for [number] days because of the following behavior: [description]. The suspension is to be in force during the inclusive dates of [date]; the student is not to return to the school campus during this period for any reason other than for specific appointments with school officials pursuant to this suspension. The student’s presence on the school campus for any other reason during this period renders the student liable to the charge of criminal trespass.

[date of notice] [signature of school official]

APPEAL FORM

If the parent wishes to appeal this suspension, the parent is urged to contact the student’s principal. If the parent desires a Board of Education hearing about this suspension, the parent is requested to sign the signature blank (below) and return, or have the student return the form to the student’s school office within ten school days of the date of notice. If the form is not returned within ten days, the school assumes a waiver of hearing. Should a hearing be requested, the parent will be advised of the scheduled date.

I hereby request a Board hearing about this suspension.

[Signature of parent]

Date of request ____________________________

Copy 1 to parent: copy 2 to school office: copy 3 to Central Office: copy 4 to Board.

form rev. 12/74
APPENDIX B

PROCEDURES FOR SUSPENSION AND
EXPULSION OF PUPILS FROM CHICAGO PUBLIC SCHOOLS

RECOMMENDATION:
The following guidelines establish administrative procedures
for the suspension and expulsion of pupils.

Section A: Guidelines for the suspension of pupils from school.
Principals are to follow the guidelines below when suspending students from school.

1. No student shall be suspended from school without using the authorized procedures. Every suspension shall be reported immediately to the District Superintendent using the appropriate forms and also reported to the parent or guardian of the pupil with a full statement of the reasons for the suspension.

2. A student facing suspension of ten days or less shall be given oral or written notice of the charges against him and an informal hearing arranged by the principal. At the hearing, the student will be given an explanation of the basis of the charges as well as an opportunity to present his version of the facts.

3. A student facing suspension may request that a third party —such as a parent, school staff member or another student be present during the informal hearing.

4. In those cases where a student’s presence poses a continuing danger to persons or property or is an ongoing threat of disrupting the academic process, the student may be immediately removed from school. In such cases the necessary notice and informal hearing should follow as soon as practicable.

5. Every effort should be made to ensure the student’s receipt of class assignments for the period of the suspension. The academic grade of a suspended student will not be affected when class assignments are completed satisfactorily in keeping with standards applicable to all students set by the student’s teacher. Teachers have the further option of testing pupils upon their return to class on the work submitted.

Section B: Guidelines for the expulsion of students from school.

1. Before a student is expelled from school the principal shall submit a written request to the District Superintendent for an expulsion hearing. The District Superintendent shall refer the matter to the Hearing Officer assigned to his Area.

2. The Hearing Officer will notify the parent or guardian of a student facing expulsion, using registered or certified mail, of a hearing to discuss their child’s behavior. The notification shall state time, place and purpose of the meeting.

3. The Hearing Officer shall also inform the parent or guardian of the student’s right to secure counsel, to confront and cross examine witnesses and to call his own witnesses. Said hearings will be as private as possible, therefore, only those persons directly involved may be present.
4. Within three weeks after the conclusion of the hearing, the Hearing Officer shall present a written summary of the evidence together with his findings and recommendations and a tape recording of the hearing to the District Superintendent. If the Hearing Officer recommends that the pupil be expelled, he shall state the reasons for his decision and the date upon which the expulsion is to become effective.

5. The District Superintendent will review the record of the Hearing Officer and promptly notify the parent of his determination.

SUPPORTIVE DATA: Amendments to Sections 6-8 and 6-9 of the Rules of the Board of Education dealing respectively with expulsion and suspension of students will be most effectively implemented with the adoption of these guidelines.

FINANCIAL: Additional cost will be reflected in the Board Report Establishing Hearing Officer Position.