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SCHOOLS AND SCHOOL DISTRICTS—DUE PROCESS—RIGHTS OF
CONFRONTATION AND CROSS-EXAMINATION ACCORDED TO STUDENTS
AT EXPULSION HEARINGS—*Tibbs v. Board of Education*, 114 N.J.
Super. 287, 276 A.2d 165 (App. Div.), *aff'd*, 59 N.J. 506, 284 A.2d
179 (1971).

On October 7, 1970, two high school students were assaulted and injured by a group of other students as they walked home from Franklin Township High School. Although they could not or would not identify their assailants, student witnesses later named Tanya Tibbs and nine other pupils as the attackers. Tanya was questioned by school authorities¹ and later was suspended² while an informal investigation of the incident was conducted. A full hearing before the Franklin Township Board of Education was arranged and Tanya's parents were notified that they could be represented by counsel.³ Subsequently, the principal and vice-principal testified concerning the results of their investigation at the formal hearing⁴ before the local board of education, and both concluded Tanya was guilty of the assault. The local board accepted student witnesses' unsigned and unidentified statements into evidence (over the objection of Tanya's attorney), voted Tanya guilty, and directed her expulsion. Tanya filed an appeal with the Commis-

¹ *Tibbs v. Board of Educ.*, 114 N.J. Super. 287, 289, 276 A.2d 165, 166 (App. Div.), *aff'd*, 59 N.J. 506, 284 A.2d 179 (1971).

² N.J. STAT. ANN. § 18A:37-4 (Supp. 1971-72) provides in part:

[T]he principal . . . may suspend any pupil from school for good cause but such suspension shall be reported forthwith by the . . . principal so doing to the superintendent of schools of the district if there be one. The superintendent to whom a suspension is reported . . . shall report the suspension to the board of education of the district at its next regular meeting. Such . . . principal or superintendent may reinstate the pupil prior to the second regular meeting of the board of education of the district held after such suspension unless the board shall reinstate the pupil at such first regular meeting.

³ 114 N.J. Super. at 290, 276 A.2d at 167; Letter from Franklin Twp. Superintendent of Schools, Robert Shaffner, to Tanya's parents, Mr. and Mrs. Harold Diggs, Oct. 27, 1970.

⁴ There is no New Jersey statutory provision mandating a hearing prior to a student's temporary suspension. See N.J. STAT. ANN. § 18A:37-4 (Supp. 1971-72). Lengthy suspensions may be continued and expulsions may be effectuated only by action of the local school board, but statutory provisions require no hearing. See N.J. STAT. ANN. § 18A:37-5 (1968), which states:

No suspension of a pupil by a teacher or a principal shall be continued longer than the second regular meeting of the board of education . . . unless the same is continued by action of the board, and the power to reinstate, continue any suspension reported to it or expel a pupil shall be vested in each board.

However, since 1968, the Commissioner of Education has found a hearing necessary to satisfy due process in cases of prolonged suspension or expulsion. *Scher v. Board of Educ.*, 1968 S.L.D. 92, 95 (N.J. Comm'r of Educ. 1968).

sioner of Education⁵ and requested *ad interim* relief from the Board's decision on the grounds that the accusing students were not only unavailable for cross-examination, but had not even been identified.⁶ At this hearing the principal reiterated the position he had taken at the local board hearing, namely, that suppression of the names of student witnesses was justified because of the students' fear of retaliation, evidenced by a telephone call threatening the life of a prospective student witness, and because of the school's history of racial tension.⁷ The Commissioner found the hearing procedures valid and approved the withholding of names from Tanya's attorney.⁸

Upon appeal to the Superior Court, Appellate Division,⁹ the Commissioner's decision was reversed in a *per curiam* opinion "for failure to produce the accusing witnesses for testimony and cross-examination."¹⁰ Separate opinions were filed by each of the three judges. Judge Conford reasoned that since procedural due process mandated by prior cases requires the identification of adverse witnesses, there was no reason why these witnesses should not also be confronted and cross-examined by the accused student.¹¹ Judge Kolovsky wrote that there is a constitutional right to cross-examination in a school expulsion hearing on the local board level.¹² Judge Carton, although substantially agreeing with Judge Kolovsky, felt that this right to confront and cross-examine witnesses accrued only when the local board's decision was appealed to the Commissioner of Education for *de novo* review.¹³ The school board appealed to the New Jersey Supreme Court, which affirmed the lower court's result in a *per curiam* opinion "substantially for the reasons expressed in the opinion of Judge Kolovsky."¹⁴ On remand, the formal expulsion hearing was to take place before the Commissioner of Education, for the appellate division felt that the local board was at this

⁵ N.J. STAT. ANN. § 18A:6-9 (1968) provides:

The commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the state board or of the commissioner.

⁶ 114 N.J. Super. at 291, 276 A.2d at 167.

⁷ *Id.* at 291-92, 276 A.2d at 167-68.

⁸ *Id.* at 292, 276 A.2d at 168.

⁹ N.J.R. 2:2-3 (1971) provides in part:

(a) As of Right. Except as otherwise provided . . . appeals may be taken to the Appellate Division as of right . . . (2) to review final decisions or actions of any state administrative agency or officer

¹⁰ 114 N.J. Super. at 288, 276 A.2d at 166.

¹¹ *Id.* at 295, 276 A.2d at 169-70.

¹² *Id.* at 300, 276 A.2d at 172.

¹³ *Id.* at 304-05, 276 A.2d at 174-75.

¹⁴ 59 N.J. at 507, 284 A.2d at 180.

time too embroiled in the controversy to give the students a fair hearing.¹⁵

Tibbs v. Board of Education is thus the latest in a series of cases expanding the rights of high school students threatened with either expulsion or indefinite suspension.¹⁶ Although in most states a hearing is not explicitly required for student expulsion,¹⁷ recent cases have held that high school students are entitled to at least those "rudimentary elements of fair play"¹⁸ inherent in due process.¹⁹ In *Dixon v. Alabama State Board of Education*,²⁰ the Court of Appeals for the Fifth Circuit thought that due process required a formal notification of charges, identification of adverse witnesses, and an opportunity to be heard.²¹

¹⁵ 114 N.J. Super. at 304, 276 A.2d at 174.

¹⁶ This is to be distinguished from definite or temporary suspension, limited by statute to the period preceding the second regular meeting of the school board. N.J. STAT. ANN. § 18A:37-5 (1968).

¹⁷ Comment, *The Rights of Public School Students* (Part II), 13 WELFARE L. BULL. 17, 18 (1968).

¹⁸ *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150, 159 (5th Cir.), cert. denied, 368 U.S. 930 (1961).

¹⁹ U.S. CONST. amend. XIV, § 1, provides in part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law

See, e.g., *R.R. v. Board of Educ.*, 109 N.J. Super. 337, 346, 263 A.2d 180, 185-86 (Ch. 1970), wherein the court stated:

It is generally recognized that with respect to discipline of students in public educational institutions, involving the possible imposition of serious sanction such as suspension or expulsion, the requirements of procedural due process under the Fourteenth Amendment are applicable.

For material specifically dealing with the application of the due process clause of the fourteenth amendment to school and college expulsions, see Abbott, *Due Process and Secondary School Dismissals*, 20 CASE W. RES. L. REV. 378 (1969); Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline*, 119 U. PA. L. REV. 545 (1971); Seavey, *Dismissal of Students: "Due Process,"* 70 HARV. L. REV. 1406 (1957); Van Alstyne, *The Judicial Trend Toward Student Academic Freedom*, 20 U. FLA. L. REV. 290 (1968); Van Alstyne, *Procedural Due Process and State University Students*, 10 U.C.L.A.L. REV. 368 (1963); Comment, *School Expulsions and Due Process*, 14 KAN. L. REV. 108 (1965); Comment, *The Fourteenth Amendment and University Disciplinary Procedures*, 34 MO. L. REV. 236 (1969); Comment, *Procedural Limitations on the Expulsion of College and University Students*, 10 ST. LOUIS U.L.J. 542 (1966); Note, *Due Process in Public Colleges and Universities—Need for Trial-Type Hearings*, 13 HOW. L.J. 414 (1967); Note, *Due Process Does Not Require That a Student Be Afforded the Right to Counsel at a Public School Suspension Hearing*, 22 RUTGERS L. REV. 342 (1968); Note, *Student Rights—Dismissal and Due Process*, 38 TENN. L. REV. 112 (1970).

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

²¹ *Id.* at 158-59. The following cases follow the procedures outlined in *Dixon*: *Wasson v. Trowbridge*, 382 F.2d 807 (2d Cir. 1967); *Scoggin v. Lincoln Univ.*, 291 F. Supp. 161 (W.D. Mo. 1968); *Barker v. Hardway*, 283 F. Supp. 228 (S.D.W. Va.), *aff'd*, 399 F.2d 638 (4th Cir. 1968), cert. denied, 394 U.S. 905 (1969); *Schiff v. Hannah*, 282 F. Supp. 381 (W.D. Mich. 1966); *Knight v. State Bd. of Educ.*, 200 F. Supp. 174 (M.D. Tenn. 1961); *Goldberg*

Originally, although children between the ages of five and eighteen were guaranteed free education in New Jersey,²² and parents with children between the ages of six and sixteen were required to send their children to school,²³ no adversary proceedings were required to divest a student of his public education, by expulsion, for destructive or insolent behavior.²⁴ The teacher was considered *in loco parentis*,²⁵ and was free to discipline an unruly child in any way a parent might.²⁶

Although a university education was formerly considered a privilege rather than a right,²⁷ the gradual extension of procedural safeguards has made clear that no matter which it is,²⁸ it can only be denied through procedures comporting with due process of law.²⁹ Likewise, courts now recognize the importance of a secondary school education, and in proceedings to deprive a student of his education, courts

v. Regents of Univ. of Calif. 248 Cal. App. 2d 867, 57 Cal. Rptr. 463 (Ct. App. 1967). See also Order on Student Discipline, 45 F.R.D. 133, 147 (W.D. Mo. 1968). In addition, New Jersey has explicitly sanctioned the presence of counsel at suspension or expulsion hearings. *R.R. v. Board of Educ.*, 109 N.J. Super. 337, 349, 263 A.2d 180, 187 (Ch. 1970).

²² N.J. CONST. art. VIII, § 4, par. 1 provides:

The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.

²³ N.J. Stat. Ann. § 18A:38-25 (1968) provides:

Every parent, guardian or other person having custody and control of a child between the ages of six and 16 years shall cause such child regularly to attend the public schools of the district or a day school in which there is given instruction equivalent to that provided in the public schools for children of similar grades and attainments or to receive equivalent instruction elsewhere than at school.

²⁴ See authorities cited note 4 *supra*.

²⁵ For a discussion of the concept of *in loco parentis*, see 1 W. BLACKSTONE, COMMENTARIES 453 (5th ed. 1773):

He may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis*, and has such a portion of the power of the parent committed to his charge, *viz.*, that of restraint and correction, as may be necessary to answer the purposes for which he is employed.

²⁶ *Boyd v. State*, 88 Ala. 169, 7 So. 268 (1890) (court held since teacher is the substitute for the parent, he possesses the same discretion as a parent in administering moderate corporal punishment). This doctrine also provides justification for regulation of student conduct. See the following cases where courts have found university regulations reasonable: *Gott v. Berea College*, 156 Ky. 376, 161 S.W. 204 (1913) (prohibition against entering public eating houses); *State ex. rel. Ingersoll v. Clapp*, 81 Mont. 200, 263 P. 433, *cert. denied*, 277 U.S. 591 (1928) (rule forbidding consumption of intoxicating liquor by students); *Anthony v. Syracuse Univ.*, 224 App. Div. 487, 231 N.Y.S. 435 (1928) (regulation permitting university to dismiss student for any reason deemed sufficient to it).

²⁷ *Board of Trustees v. Waugh*, 105 Miss. 623, 62 So. 827 (1913), *aff'd*, 237 U.S. 589 (1915). See Note, *The Student-School Legal Relationship: Toward a Unitary Theory*, 5 SUFFOLK U.L. REV. 468, 470 (1971).

²⁸ *Esteban v. Central Mo. State College*, 415 F.2d 1077, 1089 (8th Cir. 1969), *cert. denied*, 398 U.S. 965 (1970).

²⁹ *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150, 158 (5th Cir. 1961).

demand "fundamental fairness in the light of the total circumstances."³⁰ One reason for this change from the *in loco parentis* philosophy is that a free public education is often afforded youngsters by state constitutions.³¹ An additional consideration is the severe consequences attending expulsions, such as the inability to pursue the career of one's choice.³² Finally, courts reason that any privilege, once granted by the government, may only be taken away from the recipient through compliance with due process of law.³³

In New Jersey, the first significant decision advancing procedural due process for secondary school students was *Scher v. Board of Education*.³⁴ There, the Commissioner of Education outlined the general requirements of procedural due process which must be afforded to pupils facing suspension or expulsion.³⁵ He reasoned on the basis of *Dixon* that students may not be deprived of their education except through procedures conforming to those standards mentioned earlier—notice of charges, identification of adverse witnesses, and an opportunity to be heard.³⁶ In 1970, the chancery division specifically held that a *Dixon*-type hearing is mandatory as a condition precedent to indefinite suspension of a high school student charged with an assault on another child.³⁷ *Tibbs* provides an additional procedural safeguard, mandating the cross-examination of and confrontation with adverse witnesses before a local board of education may indefinitely suspend or expel a student.³⁸

Judge Kolovsky's opinion, upon which the supreme court based its per curiam affirmance,³⁹ stated that the action to be reviewed, specifically the Commissioner's decision approving the procedures employed by the local board,⁴⁰ was that of a governmental agency,⁴¹ an agency having the power to compel the attendance of witnesses.⁴² It

³⁰ *Davis v. Ann Arbor Pub. Schools*, 313 F. Supp. 1217, 1225 (E.D. Mich. 1970).

³¹ See, e.g., N.J. CONST. art. VIII, § 4, par. 1; N.Y. CONST. art. XI, § 1; OHIO CONST. art. VI, § 3; PA. CONST. art. 3, § 14.

³² *Goldwyn v. Allen*, 54 Misc. 2d 94, 99, 281 N.Y.S.2d 899, 905 (Sup. Ct. 1967).

³³ *Goldberg v. Kelly*, 397 U.S. 254 (1970) (procedural due process required for termination of welfare benefits).

³⁴ *Scher v. Board of Educ.*, 1968 S.L.D. 92 (N.J. Comm'r of Educ. 1968).

³⁵ *Id.* at 95-96.

³⁶ 294 F.2d at 158-59.

³⁷ *R.R. v. Board of Educ.*, 109 N.J. Super. 337, 263 A.2d 180 (Ch. 1970).

³⁸ 114 N.J. Super. at 288, 276 A.2d at 166.

³⁹ 59 N.J. at 507, 284 A.2d at 180.

⁴⁰ 114 N.J. Super. at 303, 276 A.2d at 174.

⁴¹ *Id.* at 301, 276 A.2d at 172.

⁴² See N.J. STAT. ANN. § 18A:6-20 (1968), which provides:

Any party to any dispute or controversy . . . shall have the right . . . to have compulsory process by subpoena to compel the attendance of witnesses to

was further stated that "what is of *controlling significance* is the constitutional rule" mandating that one charged with misconduct "be given the opportunity to confront and cross-examine adverse witnesses where the decision of the governmental agency will turn on questions of fact."⁴³ In support of this constitutional proposition, Judge Kolovsky quoted at length⁴⁴ from *Goldberg v. Kelly*⁴⁵ and *Greene v. McElroy*,⁴⁶ two cases involving the deprivation of welfare assistance and the revocation of a security clearance, respectively, by administrative agencies. In *Greene*, the United States Supreme Court enunciated the constitutionally required procedural safeguards that must be employed when one is threatened with serious injury by governmental action.

[W]here governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases . . . but also in all types of cases where administrative . . . actions were under scrutiny.⁴⁷

The point about which the three appellate division judges seemed to differ was at what stage of the expulsion process the requirements of due process adhere: whether at the local board level,⁴⁸ or only when an appeal is taken to the Commissioner.⁴⁹ The opinion of Judge Kolovsky, adopted by the supreme court, held that the Constitution mandated due process standards, including the right to demand that adverse witnesses

testify and to produce books and documents in such hearing when issued by (a) the president of the board of education, if the hearing is to be held before such board, or (b) the commissioner, if the hearing is to be held before him or on his behalf

⁴³ 114 N.J. Super. at 301, 276 A.2d at 173 (emphasis added). N.J.R. Evid. 63 (1971) defines hearsay:

Evidence of a statement offered to prove the truth of the matter stated which is made other than by a witness while testifying at the hearing is hearsay evidence and is inadmissible

⁴⁴ 114 N.J. Super. at 301-02, 276 A.2d at 173.

⁴⁵ 397 U.S. 254 (1970).

⁴⁶ 360 U.S. 474 (1959).

⁴⁷ *Id.* at 496-97.

⁴⁸ 114 N.J. Super. at 300, 276 A.2d at 172.

⁴⁹ *Id.* at 305, 276 A.2d at 175.

"appear in person to answer questions."⁵⁰ Thus any period of suspension lasting longer than the statutory "preliminary period" which a principal may impose without a hearing⁵¹ would be a "severe term of suspension"⁵² at which the right to cross-examination must be guaranteed.

The reason for the careful treatment of severe suspension and expulsion at the secondary school level was discussed by Judge Conford.⁵³ Expulsion, he wrote, was a "deprivation of a most drastic and potentially irreparable kind,"⁵⁴ for

"[t]he stigma of compulsory withdrawal may follow even a high school student for many years after the institution has considered the incident closed. Expulsion or suspension always involves a permanent notation on the student's record which may have long term effects on his ability to achieve entry into college or the job market. Moreover, if the child is unable to return to school, the economics of a premature withdrawal are startling and more tangible evidence of the burden that he must shoulder."⁵⁵

Additionally, Judge Conford felt that petitioners might be unable to return to school in the future, for "it is apparent that admission to schools in other districts, if obtainable at all, would entail payment of a substantial non-resident fee these students could probably ill afford."⁵⁶

Given the serious nature of school expulsions, a thus far unanswered problem is whether the state must *provide* counsel at suspension or expulsion hearings. In *Madera v. Board of Education*,⁵⁷ the United States Court of Appeals for the Second Circuit distinguished between a guidance conference and an actual expulsion proceeding, holding that counsel was not necessary to fulfill due process at this purely advisory guidance hearing.⁵⁸ Since that time, possibly because of the outcry following *Madera*,⁵⁹ the New York Education Law has been amended to allow counsel to be present at suspension and expulsion

⁵⁰ *Id.* at 300, 276 A.2d at 172.

⁵¹ See authorities cited note 4 *supra*.

⁵² 114 N.J. Super. at 302, 276 A.2d at 173.

⁵³ *Id.* at 296-97, 276 A.2d at 170.

⁵⁴ *Id.* at 296, 276 A.2d at 170.

⁵⁵ *Id.* at 297, 276 A.2d at 170 (quoting from Abbott, *supra* note 19, at 382).

⁵⁶ 114 N.J. Super. at 297, 276 A.2d at 170. See Brief for Respondents at 3, *Tibbs v. Board of Educ.*, 59 N.J. 506, 284 A.2d 179 (1971), wherein respondents contended:

To deprive a child of his education can be as serious and lasting a deprivation as to incarcerate him in a juvenile detention facility. . . . The juvenile facility, at least, offers the child a chance to continue his education, but the expelled child who cannot afford private schooling is denied an education forever.

⁵⁷ 386 F.2d 778 (2d Cir. 1967), *cert. denied*, 390 U.S. 1028 (1968).

⁵⁸ *Id.* at 788.

⁵⁹ Note, 22 RUTGERS L. REV. *supra* note 19, at 360.

proceedings.⁶⁰ Likewise in New Jersey, counsel has been *permitted* by the State Board of Education to represent students at such hearings,⁶¹ although no case or statute specifically requires that counsel be provided. A possible rationale for the extension of the right to appointed counsel⁶² can be found by analogizing juvenile proceedings, where courts have already guaranteed this right,⁶³ to suspension or expulsion proceedings. Since the consequences of severe suspension or expulsion have already been compared to the severity of sanctions in juvenile delinquency proceedings,⁶⁴ predictably the next case in the area will deal with the right to appointed counsel.

One of the interesting questions raised by *Tibbs* involves the application of portions of the New Jersey Education Act⁶⁵ to secondary school expulsion hearings at the local school board level. The Act was originally designed to provide hearing procedures for teachers and other employees of boards of education.⁶⁶ But one section, N.J. STAT. ANN. § 18A:6-9 (1968), has been construed broadly, and has been used to give the Commissioner of Education appellate jurisdiction over "all controversies and disputes arising under the school laws," including student appeals from local board decisions.⁶⁷ Judge Kolovsky also cited N.J. STAT. ANN. § 18A:6-20 (1968), which grants the local board power to subpoena witnesses.⁶⁸ Until now this power was used only in teacher-based controversies, but now its application is seemingly expanded to students as well. Why did the court apply only this part of the statute, while failing to extend the other rights granted by it—the right to be represented by counsel, the right to confront adverse witnesses and to cross-examine them, and the right to call witnesses in one's behalf?

A final question is that of "interim suspension." This temporary deprivation of scholastic privileges, imposed without a hearing pending

⁶⁰ N.Y. EDUC. LAW § 3214(6)(3)(c) (McKinney 1970).

⁶¹ *R.R. v. Board of Educ.*, 109 N.J. Super. 337, 349, 263 A.2d 180, 187 (Ch. 1970).

⁶² *Gideon v. Wainwright*, 372 U.S. 335 (1963), interprets the fourteenth amendment as requiring the states to furnish indigent defendants with counsel in criminal cases.

⁶³ *In re Gault*, 387 U.S. 1, 41 (1967).

⁶⁴ See *Goldwyn v. Allen*, 54 Misc. 2d 94, 98-99, 281 N.Y.S.2d 899, 904-05 (Sup. Ct. 1967).

⁶⁵ N.J. STAT. ANN. §§ 18A:6-1 *et seq.* (1968).

⁶⁶ Law of April 23, 1946, ch. 124, §§ 1-5, [1946] N.J. Laws 599-602. Section 2 of the Act provided that no "instructor . . . or other person employed in a teaching capacity . . . shall be dismissed" without compliance with the procedures outlined in the Act. *Id.* at 600. On the other hand, the present Act, N.J. STAT. ANN. § 18A:6-20 (1968), governs "[a]ny party to any dispute or controversy." Note the omission of the word teacher in the present statute.

⁶⁷ 114 N.J. Super. at 303, 276 A.2d at 174.

⁶⁸ *Id.* at 301, 276 A.2d at 172.

final action, is sanctioned by statute⁶⁹ so long as the suspension is reported to the school superintendent and the pupil is given a hearing or reinstated before the second regular meeting of the school board.⁷⁰ Seemingly, the reason for such drastic action is that the accused pupil, although his guilt has not yet been formally determined, may pose a threat to school property or to the physical safety of teachers or fellow students.⁷¹

Tanya Tibbs was not allowed to return to school until the supreme court granted her *ad interim* relief in late January, 1971, a period of more than three months.⁷² Injury to a pupil's education might well result from a protracted absence from school routine, the problem becoming more acute as the student approaches graduation. A definite time limit and a full hearing as soon as practicable after suspension should be provided for a student who is even temporarily suspended.

The safeguards now guaranteed by the decision in *Tibbs* are significant mainly because so few procedural rights were afforded secondary school pupils in the recent past. In the areas of appointed counsel and limitation of interim suspension, however, there must be further action before students are truly guaranteed procedural due process.

Margaret F. Mills

⁶⁹ N.J. STAT. ANN. § 18A:37-4 (Supp. 1971-72).

⁷⁰ See authorities cited note 4 *supra*.

⁷¹ See *Buck v. Carter*, 308 F. Supp. 1246, 1248 (W.D. Wis. 1970); *Stricklin v. Regents*, 297 F. Supp. 416, 420 (W.D. Wis. 1969), appeal dismissed, 420 F.2d 1257 (7th Cir. 1970).

⁷² 114 N.J. Super. at 290, 276 A.2d at 167.