Steps in Conducting Fair and Equitable Disciplinary Hearings

Presenters: Cindy Antrim, Jimmy Stokes, Colleen Ulrich
Nationally Certified Hearing Officers, Georgia

Certification

- STATE: *Required*
  - Georgia State Board Rule 160-4-8-.15 requires that all persons who participate in a disciplinary hearing as a hearing officer, tribunal chair, or tribunal hearing member must be trained per the rule
  - Five-hour training course
  - Annual updates
  - Conducted by the Georgia Bar Association or by individuals that have completed the training and have significant experience in the conduct of disciplinary hearings

- COUNTY: *Required*
  - Fall and Spring professional development by Local Board Attorneys

- NATIONAL: *Preferred*
  - Annual Conference
  - Webinars/ Virtual Mini-Conferences

Ten-Day Rule

- If a school is going to “suspend/expel” a student from the school environment for more than 10 school days, an opportunity for a due process hearing must be provided within 10 school days for the student a required by law (20-2-753).

- Exception: A parent can request a continuance *in writing*, going beyond the 10 days, for a mutually-agreed upon alternate date.
  - Work conflict
  - Student hospitalization
  - Student incarceration
  - Funeral attendance

Formal Written Notice Required

- Date/ Time/ Place of the hearing
- Brief statement of the reason for the hearing
- A list of the alleged rule violations from the Student Code of Conduct
- Student's right to bring legal counsel
- Student's right to present evidence
- Sent via mail* or delivered in person*

NOTIFICATION TO PARENT FROM PRINCIPAL OF SUSPENSION PENDING A TRIBUNAL

August 30, 2022

John & Elizabeth Doe
123 Main Street
Suwanee, GA 30024

RE: Junior Doe (Grade 9)
Gwinnett High School

Dear Mr. & Mrs. Doe:

This letter is to notify you that student **Junior Doe** has been suspended pending a tribunal for violation of the following rule(s) of the Gwinnett County Board of Education:

RULE 5 - ABUSE, THREATS, INTIMIDATION, ASSAULT OR BATTERY BY A STUDENT ON ANOTHER STUDENT OR TO ANY OTHER PERSON NOT EMPLOYED BY THE SCHOOL

SECTION B A student shall not:

Cause or attempt to cause physical injury or behave in such a way as could reasonably cause bodily injury to any student/person. A student shall not engage in any behavior that threatens the safety or well-being of another person or has the likelihood of provoking a fight.
The prohibited behaviors include, but are not limited to, the following:

5BB. Fighting
5BE. Behavior that caused physical injury to another student

SECTION A Regardless of intent, a student shall not:

Make oral or written communication, create a document, or make a symbolic gesture or contact of a threatening, distracting, or provoking nature to or about a person/student or in the presence of a person/student. This includes, but is not limited to, bullying, disrespectful conduct, insult, use of profanity; ethnic, racial, sexual, disability, or religious slur; or harassment and includes the development of a "hit list", "people to kill", "people to shoot", or a statement about bringing a weapon to school and injuring people.

Student Name

Rule Violations

The prohibited behaviors below include, but are not limited to, the following:

5AA. Oral threat/verbal assault (oral speech that creates, or is intended to create, a fear of physical harm)

RULE 12 - REPEATED VIOLATIONS/MISBEHAVIOR/CHRONIC DISCIPLINARY PROBLEM STUDENTS

Students who chronically disrupt or repeatedly violate other school rules may be charged with repeated violations of school rules or misbehavior. This rule applies after remediation attempts, including the development and implementation of a student disciplinary and behavioral correction plan.

12A. Chronically disrupt or repeatedly violate other school rules

The basis of this charge is that on or about August 30, 2022, Junior Doe got into a physical altercation with student, David Smith, and then threatened to harm at a later time.

The names of the witnesses and a summary of the evidence expected to be used in support of the charge are as follows:

Assistant Principal James Austin and/or Principal's designee are expected to present physical, oral, written, audio, video, and/or photographic evidence that on or about August 30, 2022 student, Junior Doe, got up from the lunch table and began fighting with student, David Smith (5BB). After staff members pulled the students apart, it was discovered that David Smith had a laceration above his left eye (5BE). Junior then threatened David by saying he would "get him later" (5AA).

Assistant Principals, James Austin and Matthew Jones; Teacher, Brittany Fitts; and students, Junior Doe and David Smith, are expected to present oral and/or written testimony in support of the charges.

This incident places Junior Doe in violation of his Behavior Correction Plan and Rule 12 Notice (12A).

SRO William Hilton and/or a designee of the Office of Safety and Security may provide oral and/or written testimony in support of the charges.

The charge(s) will be brought before a Gwinnett County Public Schools Tribunal on **September 12, 2022**, at **8:30 a.m.** at the Office of Student Discipline, 723 Hi Hope Road, Lawrenceville, GA., 30043 (see enclosure: Map Tribunal). Your tribunal room location will be provided at time of check in.

Rule Violations

Basis of the Charge

Brief Statement

Witnesses

Date, Time, Place of tribunal

The minimum penalty which may be imposed for the alleged misconduct is ten (10) school days;[1] the maximum penalty which may be administered for the alleged misconduct is permanent expulsion.

You are further notified that before long-term suspension or expulsion of a student can be imposed by the Board, the student has a right to have the tribunal as scheduled above. However, student and parent attendance at this tribunal may be waived if the student and parent agree to waive same by furnishing the Superintendent with a signed statement to that effect (see enclosure: Waiver of Tribunal).

For your information, a copy of the rules of the Board governing the procedures at the tribunal is enclosed herewith. This notice is given to you so that you may be present and submit your defense to the charges.

During the term of suspension **Junior Doe** is not allowed on any Gwinnett County Public School campus or at any school activity or school-sponsored event. If **Junior Doe** is on campus, Junior can be arrested for criminal trespassing.

You are further notified that upon timely request made to the Office of Student Discipline (770-513-6607), you are entitled to have subpoenas issued to you for your disbursement for the appearance of witnesses and the production of other evidence on your behalf. The school system cannot supply you with student and parent names and addresses.

Please be advised that if the student would like to present any written, audio, video, and/or photographic evidence at the tribunal, he/she must provide the tribunal officer with the originals or copies to be retained as part of the official record. All video or audio evidence must be submitted on a CD and/or DVD. Audio, video, photographic, or documentary evidence presented on a cell phone or electronic device will not be considered unless the tribunal officer is provided a copy of the evidence to retain as part of the record.

You are entitled to be represented by legal counsel at your expense. A twenty-four hour notice prior to the date and time of the tribunal must be provided to the Office of Student Discipline so arrangements can be made to have the school board attorney present.

Unless the Office of Student Discipline has been notified twenty-four hours in advance that counsel will be present, the tribunal will convene at the scheduled time stated in the charge letter.

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[1] The minimum penalty for any student found in violation of Rule 4BC, which prohibits intentional physical contact of an insulting or provoking nature to employee, is suspension/expulsion through the end of the school year. The minimum penalty for any student found in violation of Rule 4BI, which prohibits intentional physical contact that caused physical harm to an employee, is permanent expulsion, subject to limited exceptions solely within the discretion of the Gwinnett County Board of Education. The minimum penalty for any student in grades six (6) through twelve (12) found in violation of Rule 5AD, which prohibits bullying, for the third time in a school year, shall be assignment to the alternative school.

Student Right to a tribunal

Rights to Subpoenas, Evidence, Legal Counsel

Non-Attorney Information

Students and their parents may be assisted by non-attorney advocates at student disciplinary tribunals. If the student or parents choose to have an advocate present, the Office of Student Discipline shall be notified by the student or parents at least one school day in advance of the tribunal. Unless the Office of Student Discipline has been notified one school day in advance that an advocate will be present, the tribunal will convene at the scheduled time stated in the tribunal notice letter, and the advocate will not be allowed to attend.

Advocates shall not be allowed to participate in a student disciplinary tribunal unless the parent of the student or the eligible student provides written authorization on the District's forms authorizing the advocate to assist the parent and/or student.

Advocates shall be required to sign acknowledge and agree to abide by applicable confidentiality and privacy laws.

At the tribunal, the parent and/or eligible student may designate the Advocate as the individual to examine and cross examine witness and speak on behalf of the student.

If you have questions or concerns regarding the tribunal process, you may contact Dr. Byron Howard, Community Engagement Coordinator, in the Office of Student Discipline at 678-407-8885. His email address is byron.howard@gcpsk12.org.

Due to the sensitive nature of disciplinary tribunals and the use of audio recorders, please be advised that babies, children, friends and non-guardian family members will not be allowed in the tribunal rooms. GCPS employees are not authorized to provide childcare during the proceedings; therefore, please plan accordingly.

If GCPS schools are closed for one day due to inclement weather, or for any other reason, the tribunal will take place on the next school day at the same scheduled location and time. If the schools are closed for multiple days, please await further instructions from the school.

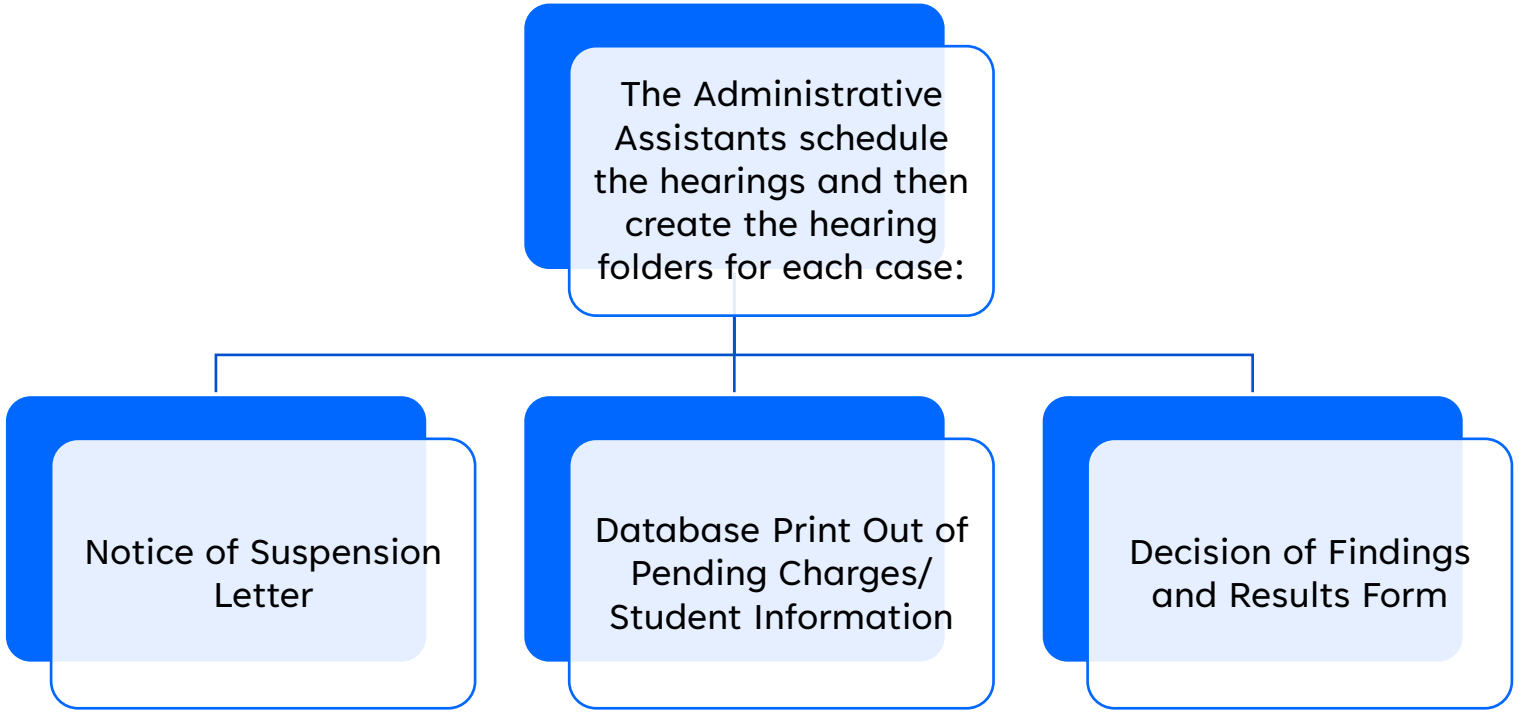
Sincerely,

Principal Signature

Gwen Nett, Principal
Gwinnett High School

Enclosures: Procedures for Conducting Disciplinary Tribunals
Copy of Student Conduct Behavior Code
Map to Tribunal
Waiver of Tribunal Form
A Guide to Disciplinary Tribunals for Parents and Guardians

Hearing Folder Preparation

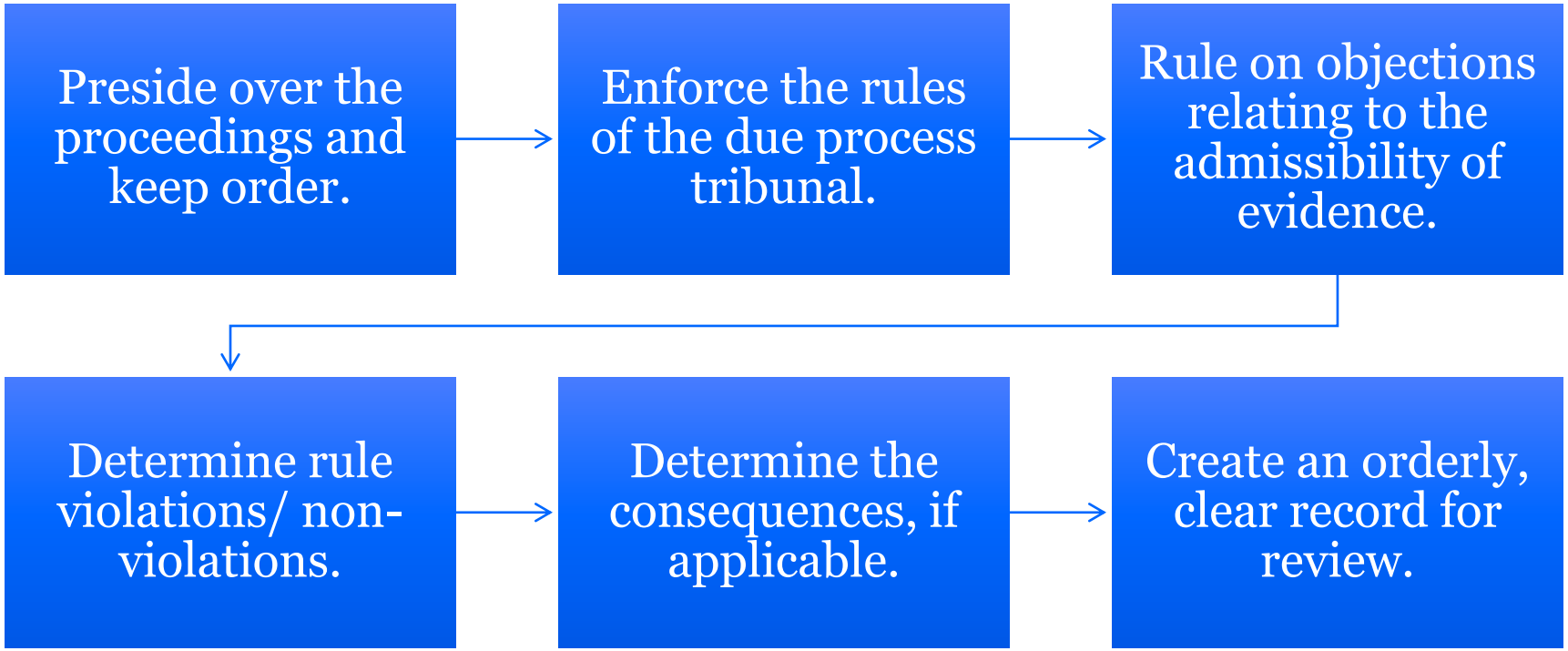


Access to Hearing Information

- Unlike other various types of administrative hearings, school disciplinary hearing officers do not receive any evidence or records prior to the actual hearing.
- All documentation is revealed to the hearing officers during the course of the various phases of the proceedings.

Hearing Rooms

Role of the Hearing Officer



Creating the Record

- It is imperative that the hearing officer creates a “clean” recording of the hearing, as the audio recording is the official record in case of an appeal.

Audio Recording

Perfecting the Record

- One person speaks at a time, audible responses only
- Label and identify all evidence (School/Student Exhibit 1, etc.)
- Make an informed ruling on each objection (sustained/ overruled)
- Witnesses should state their names and occupation for the record
- Impose a structure and constantly give verbal cues as needed to keep order and a clear record

Promote and Protect Ethics, Neutrality, and Fairness

01

Avoid being friendly with school employees

02

Do not use first names

03

Do not converse about unrelated matters during breaks

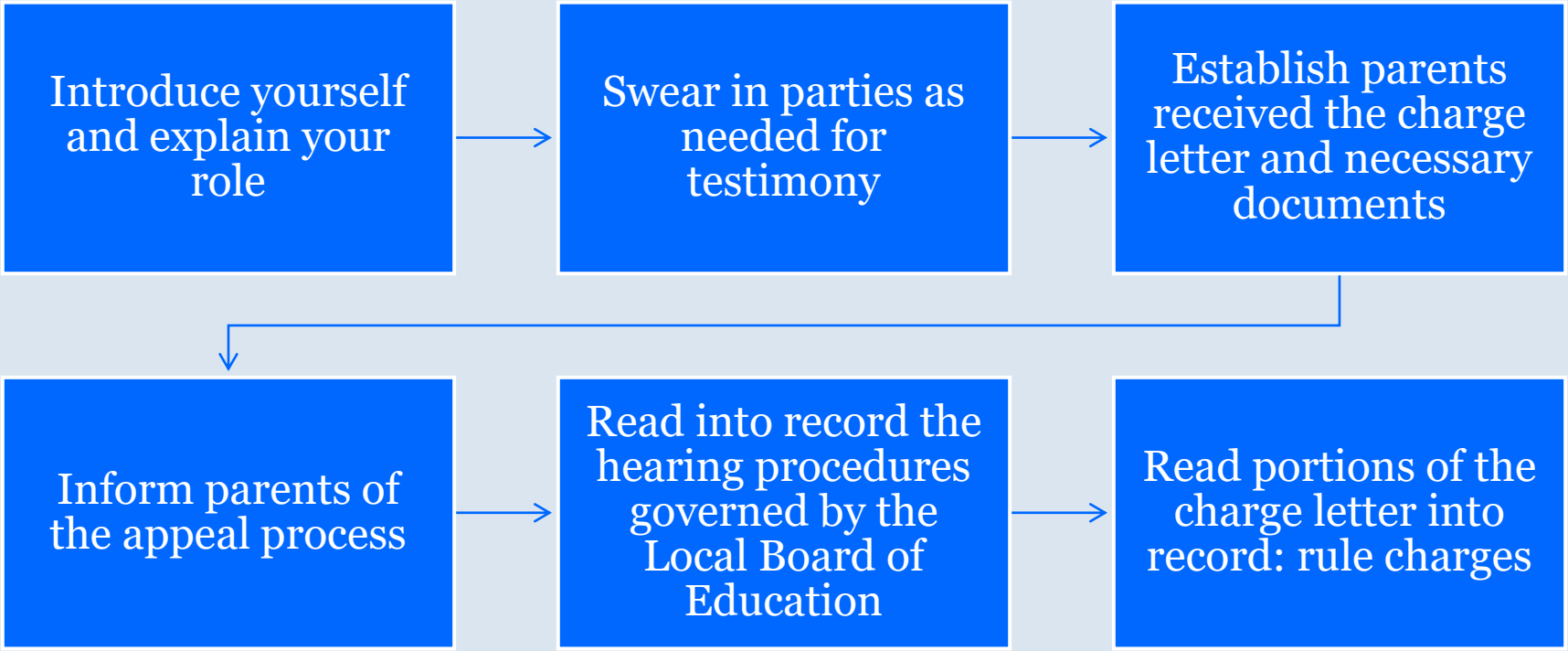
04

Do not consult with the school during the hearing without the presences of the student, parent, attorney, etc.

Preconference

- Best practices include having a person who thoroughly explains the hearing process to students/parents prior to the hearing:
  - School official (at the time of the referral to a hearing)
  - District official (check in conference on the day of the hearing)
    - Check packet receipt
    - Check correct address/ phone number

Phase I: Evidentiary Phase



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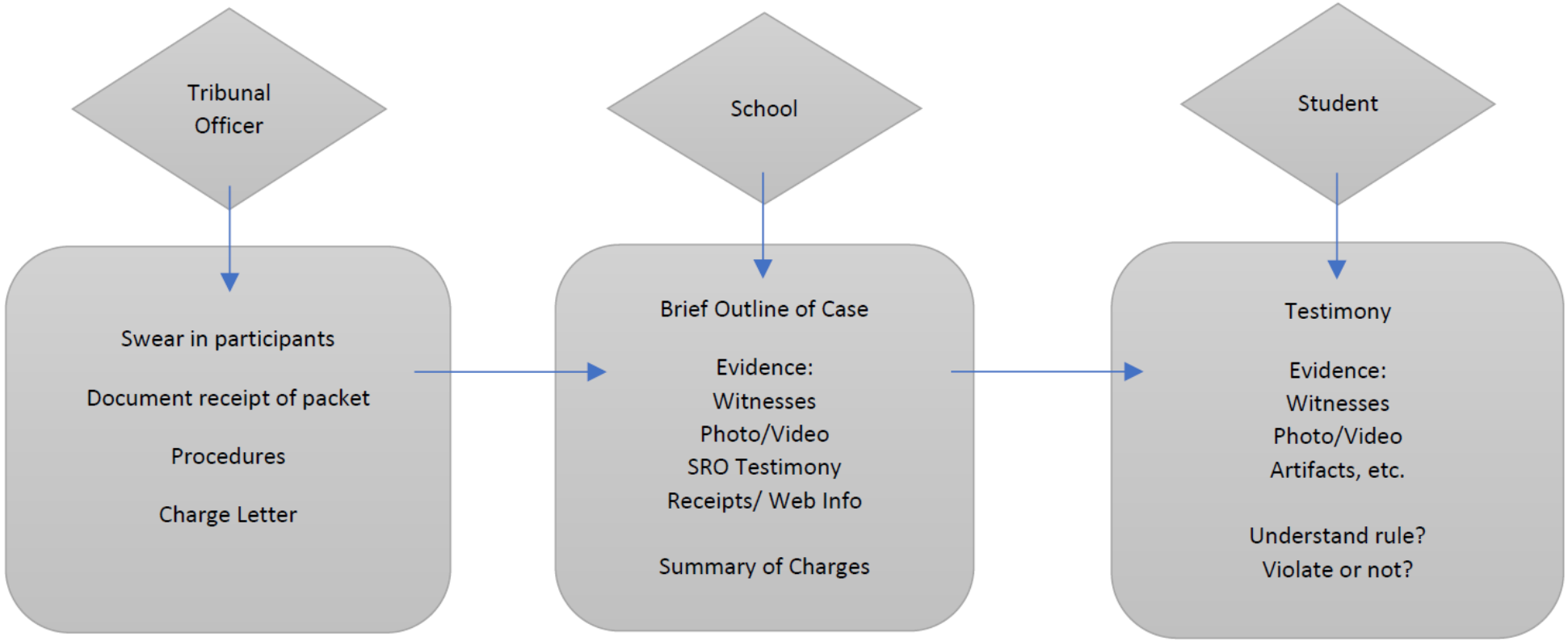

Types of Evidence

- Sworn testimony from witnesses who are present
- Photographs (injuries, weapons, drugs/paraphernalia, etc.)
- Videos (school surveillance, cell phone videos) with authentication
- Documents such as drug field tests, diagrams, written statements**

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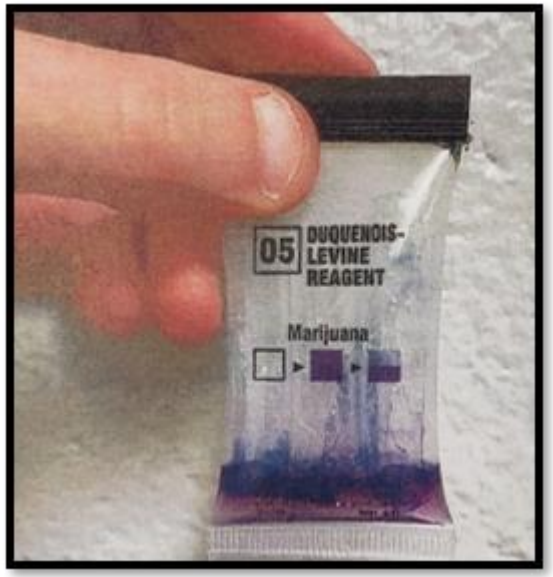
DIAMOND DG
WHITE PRIMO

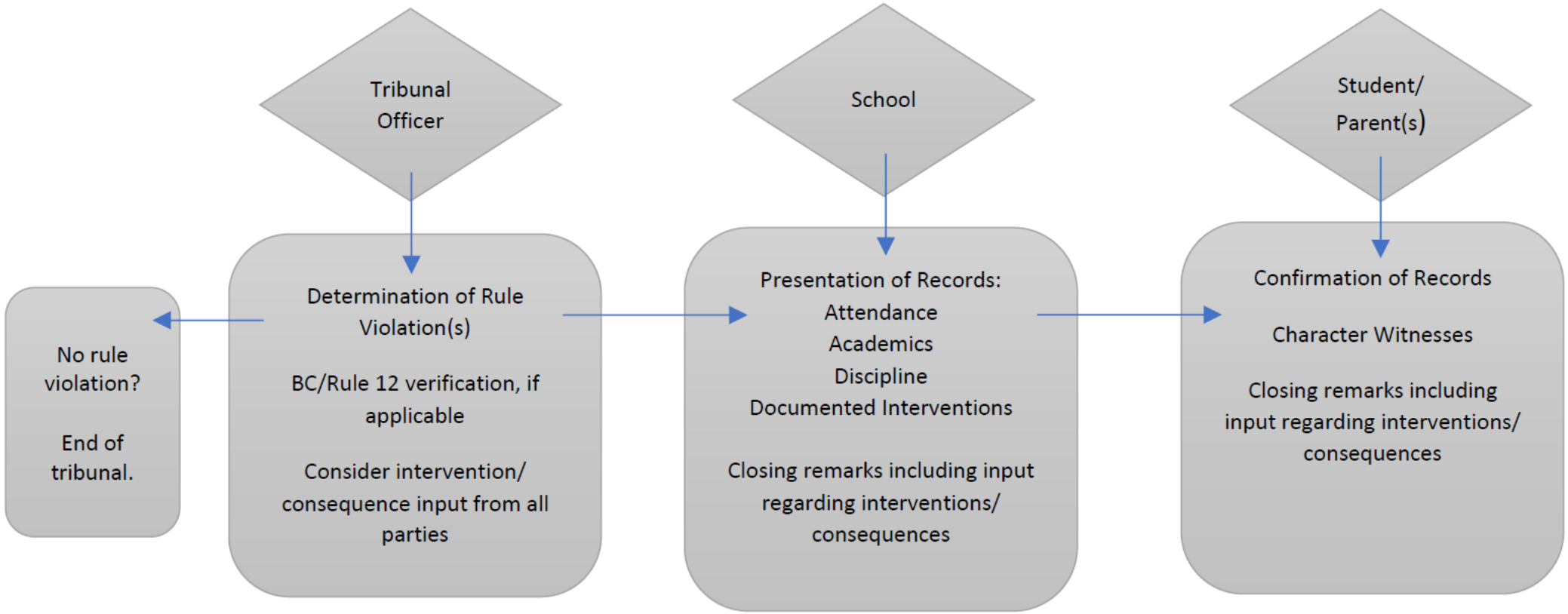

05 DUQUENOIS-LEVINE REAGENT
Marijuana

Phase I: Evidentiary Phase

Be mindful of:

- Single vs. Group Hearings
- Cross Examination
- Objections
- Invoking the 5th Amendment
- Burden of Proof
- Unruly Participants
- What is “TRUTH”?

Phase II: Records Phase



Phase II: Records Phase

Be mindful of:

- Special Education vs. General Education
- Group Tribunals

Phase III: Consequence Phase

1

Announce the results with both sides present.

2

Issue a Trespass Warning from all school property, if applicable.

3

Warn against retaliation, if appropriate.

4

Issue the written decision, collect signatures, make copies for all parties.

General Education: Hearing officer determines the duration of suspension, alternative options.

Special Education: Hearing officer determines the duration of suspension. IEP staffing team determines the provision of FAPE during the period of suspension.

Student Tribunal Report of Findings and Decision

Student Tribunal on behalf of Gwinnett County Public Schools for student:

_____	_____	_____
Student Name *(Print)*	**Student ID**	**School**

This will serve to officially inform you of the decision the tribunal officer rendered at the tribunal held on _____/_____/_____ in accordance with O.C.G.A. § 20-2-754(c). Based on the evidence, the tribunal officer found that the above-named student was/was not found in violation of the following rules alleged in the charge letter:

Violation of rule(s): _____ Not in violation of rule(s): _____

Suspended thru _____/_____/_____ Recommended for Permanent Expulsion YES NO

GIVE Center Option (SASC) YES NO Setting Determined by IEP Team YES NO

CLFC Program (OS1) to be completed by _____/_____/_____ Early return date _____/_____/_____

Community Service (OVCS) Hours _____ to be completed by _____/_____/_____ Early return date _____/_____/_____

Restitution (NRST) Amount _____ to be paid by _____/_____/_____ Early return date _____/_____/_____

GIVE Early Return Agreement Contract to be completed by _____/_____/_____ Early return date _____/_____/_____

Behavior Contract (NBEH) / Rule 12 (NR12) ☐ Additional ISS (SISS) / OSS (SSTO) ☐ # of days _____

Comments or other information:

_____

_____

This student is subsequently suspended from Gwinnett County Public Schools. During the term of suspension this student is:

- ☐ not allowed on any school property or at any school sponsored event
- ☐ not allowed on any Gwinnett County Public Schools property or at any school sponsored event except the GIVE Center
- ☐ exceptions (please describe): _____

Georgia Code Section 16-7-21(b)(2) states that a person commits the offense of Criminal Trespass when, "…he or she knowingly and without authority enters upon the land or premises of another… after receiving, prior to such entry, notice from the owner, rightful occupant, or, upon proper identification, an authorized representative of the owner or rightful occupant that such entry is forbidden." Please be aware that during the term of suspension, O.C.G.A. § 20-2-690.1 requires that students under the age of 16 to be enrolled in school and provides for consequences for failure to comply. It is the parent's responsibility to ensure that their child is enrolled in the appropriate educational setting.

_____	_____	____/____/____
Tribunal Officer's Signature	**Tribunal Officer's Name (Print)**	**Date**
_____	_____	____/____/____
Student's Signature	**Parent's Signature**	**Date**
_____	_____	____/____/____
Administrator's Signature	**Special Education Representative (if applicable)**	**Date**

Randolph A. Irvin, Director

Office of Student Discipline School Parent/Student GIVE Center

7/12/2022

Student Tribunal Report of Findings and Decision

Georgia law (O.C.G.A. 20-2-690.1) requires that students under the age of sixteen be enrolled in school and provides consequences for failure to comply. However, GCPS is concerned about the education of all students regardless of age. As such, GCPS tracks the educational choices of students who are serving suspensions. It is the parent's responsibility to ensure that their child is enrolled in the appropriate educational setting. Please indicate below what educational opportunity you intend to utilize during your child's term of suspension. (Phoenix HS and the Gwinnett Online Campus are not options for students serving a suspension.)

- ☐ GIVE Center (if given GIVE Center option)
- ☐ Transfer to another public school system
- ☐ Transfer to a private school
- ☐ Homebased (Special Education Only)
- ☐ Homeschooling
- ☐ GED Program
- ☐ Other (list) _____
- ☐ No decision at this time; contact the school within 5 calendar days.

Parent intent regarding future educational options may change at any time. Please contact the local school registrar if you change the educational option chosen here.

Withdrawal Codes

T = Transfer to non-GCPS school
X = Transfer to private school/out of state/out of country
H = Attend home school
W= Transfer to school in GCPS (including GIVE)
O = Adult Education (GED)
U = Unknown
E = Expulsion (permanent expulsion after Board approval)

Withdrawal code entered by: _____ Date: _____

If you would like to meet with Randolph A. Irvin, Director of Student Discipline, please call for an appointment at 770-513-6607. Pursuant to school board policy, any party aggrieved by a decision of this tribunal officer has the right to appeal the decision. The appeal must be in writing and distinctly set forth a concise statement of the reason(s) for the appeal. Notice of appeal must be filed in the Office of Student Discipline, 723 Hi Hope Road, Lawrenceville, GA 30043, no later than twenty (20) calendar days following the decision of the tribunal. The Board of Education will review the decision based solely on the evidence submitted at the tribunal and no new evidence of testimony will be considered. The decision of the Board of Education will be final. Please know that the Board of Education reserves the right to amend the decision, including but not limited to, upholding, reducing, and/or increasing the tribunal officer's consequences.

Office of Student Discipline School Parent/Student GIVE Center

7/12/2022

Appeal Process

Parent/student who disagrees with the decision of the tribunal may appeal in writing to the Local Board of Education within 20 calendar days.

Upon receipt, the Board of Education has ten days to rule on the appeal, excluding weekends and public/legal holidays.

The appeal review must be based on the record only, no new evidence or testimony may be entered.

The Board may affirm or deny the ruling and may make any legal change that it deems appropriate.

Parent/student must be notified and then advised of their right to appeal to the State Board of Education.

State Board Standard of Review

A review of a student disciplinary decision by the State Board "shall be confined to the record" and shall not be a de novo review. See O.C.G.A. §20-2-1160(e).

The Georgia Supreme Court has provided the following standard of review for student disciplinary appeals:

> On appeal of a student disciplinary decision, the [State Board] reviews whether the record supports the initial decision of the local school board. The [State Board] applies the any evidence standard of review to the local board's decision as to any factual issue. It is the role of the [fact finder] to weigh the evidence and determine the credibility of witnesses, and not the [State Board]. Under the any evidence standard of review, so long as evidence exists that supports the local board's decision, it should not be reversed on appeal unless the record shows the local board grossly abused its discretion or acted arbitrarily or contrary to law... An abuse of discretion would be present if the local board misapplied the relevant law or if its rulings are not supported by the evidence. Henry Cnty. Bd. Of Educ. v. S.G., 301 Ga. 794 at 798 (2017) (adapted for the State Board and omitted citations of authority).

Scenarios

Choose 2 or 3 cases for review.