The *Goss* Progeny: A Follow-Up Outcomes Analysis

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ABSTRACT

As the follow up to a recently published study on the frequency and outcomes of the lower court progeny of Goss v. Lopez for the 20-year period 1986 to 2005, this empirical analysis divides these procedural due process rulings into successive groupings—1) those based on the Fourteenth Amendment due process analysis in Goss (labeled "Federal") compared to those based on state laws that extended, and expanded, the procedural protections for suspensions and expulsions; 2) those concerned with suspensions compared to those concerned with expulsions; and 3) the two subgroups of suspension rulings—Federal versus State Law. Based on the nonparametric, chi-square statistic, this analysis found that the skew in outcomes in favor of district-defendants was significantly more pronounced for these successive comparisons, thus adding further evidence to the original study's cautious conclusion that the purported crippling effect on school discipline appears to be attributable to state law expansions of Goss rather than to the Supreme Court's interpretation of constitutional due process in the case.

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Various organizations and commentators have engaged in concerted criticism of the purportedly paralyzing effects of law, particularly litigation, on K-12 education.[1] The theme of a recent American Enterprise Institute (AEI) conference, for example, was judicial intervention in school operations.[2] One of the primary targets of such criticism is the Supreme Court's 1975 decision in *Goss v. Lopez*,[3] which held:

> [D]ue process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.[4]

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[1] For a summary and assessment of such criticism in general, see, e.g., Perry A. Zirkel, *Paralyzing Fear? Avoiding Distorted Assessments of the Effect of Law on Education*, 35 J.L. & EDUC. 461 (2006); Perry A. Zirkel, *The Coverdell Teacher Protection Act: Immunization of Illusion?*, 179 ED.LAW REP. [547] (2003). These commentaries show the current connection of the "paralysis" metaphor to an organization called Common Good and the previous, periodic expressions of the same overall view.

[2] Co-sponsored by two conservative organizations, the American Enterprise Institute and the Fordham Institute, the premise of the conference was as follows: "From *Brown v. Board of Education* to 'Bong Hits 4 Jesus,' the past fifty years have seen a striking rise in judicial supervision of education." *See* American Enterprise Institute, http://www.aei.org/events/eventID.1746/event_detail.asp (last visited on Feb. 9, 2009).

[3] *See, e.g.*, RICHARD ARUM, JUDGING SCHOOL DISCIPLINE: THE CRISIS OF MORAL AUTHORITY 38, 63 (2003); RICHARD ARUM & DOREET PREISS, FROM THE SCHOOLHOUSE TO THE COURTHOUSE: SCHOOL DISCIPLINE AND THE LAW, IN FROM *BROWN* TO BONG HITS: ASSESSING A HALF CENTURY OF JUDICIAL INVOLVEMENT IN EDUCATION (Joshua Dunn & Martin West eds. forthcoming 2009); Richard Arum, *For Their Own Good: Limit Students' Rights*, WASH. POST, Dec. 29, 2003, at A17; Julie Underwood, Commentary, *The 30th Anniversary of* Goss v. Lopez, 198 ED.LAW REP. [795] (2005); George F. Will, *Schools Beset by Lawyers and Shrinks*, WASH. POST, June 15, 2000, at A33.

[4] *Goss v. Lopez*, 419 U.S. 565, 581 (1975). The Court only addressed the application of Fourteenth Amendment procedural due process to exclusions of more than 10 days with this brief dictum: "Longer

Professor Richard Arum, for instance, claimed at the AEI conference that school discipline has been "fundamentally undermined since *Goss*."[5] The procedural protections of *Goss* and its progeny have purportedly constrained school officials from issuing suspensions and expulsions, thus crippling their ability to maintain effective order for the teaching-learning process.

In a recent study of the frequency and outcomes[6] of the lower court "progeny"[7] of *Goss v. Lopez* from 1986 through

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suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures." *Id*. at 584. The criticism started with Justice Powell's dissent in *Goss*, which characterized the majority's holding as constituting an "unprecedented" and "unnecessary" judicial oversight. *Id*. at 585, 595.

[5] Mark Walsh, *Scholars Weigh Court Influence Over School Practices, Climate: Judicial Decisions on Schools Are Subject of Critical Analyses at Conference*, EDUC. WK., Oct. 22, 2008, at 9.

[6] Here, "frequency" refers to the number, or volume, whereas "outcomes" refers to the direction and magnitude of the court's ultimate ruling. To limit the analysis specifically to procedural due process, since multiple issues arise in some of the cases, the units of analysis were issue rulings (referred to as "rulings") rather than decisions. Youssef Chouhoud & Perry A. Zirkel, *The* Goss *Progeny: An Empirical Analysis*, 45 SAN DIEGO L. REV. 353, 366-68 (2008). The added advantage of this approach was that it eliminated the need for the "predominant" conclusive categories of the seven-point outcomes scale used when the units are decisions. *See, e.g.*, William H. Lupini & Perry A. Zirkel, *An Outcomes Analysis of Educational Litigation*, 17 EDUC. POL'Y 257 (2003). As a result, we used the following five-point outcomes scale:

1 = conclusive decision in favor of the student
2 = inconclusive decision in favor of the student
3 = inconclusive for both parties
4 = inconclusive decision in favor of the school district
5 = conclusive decision in favor of the school district

An example of an "inconclusive" decision is the denial of a motion for dismissal or summary judgment.

[7] Specifically, the scope was limited to published court rulings based on procedural due process as applied to the suspension or expulsion of a K-12 public school student. "Published" was broadly defined to solely exclude those cases available only in electronic databases. Among the various other carefully established exclusions were decisions where the court did not find the requisite property or liberty interest. Additionally, for decisions published at more than one court level, we used the "ultimate" ruling,

2005, we found that the frequency of the rulings increased steadily before leveling off, while the outcomes clearly and consistently favored the district-defendants for the entire period.[8] This study is at least partially[9] in line with earlier studies that were not as precisely limited to *Goss* progeny.[10] Noting that the district dominance in the outcomes was less pronounced for the State Law rulings[11] than the Federal rulings,[12] we concluded that the effect was not only far from paralyzing but any existing effect was apparently attributable to state legislation and regulations that expanded the procedural protections of *Goss*.

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meaning the one at the highest court for the pertinent issue. After a relatively exhaustive search and careful sorting, we found a total of 165 decisions yielding 191 issue rulings. Chouhoud & Zirkel, *supra* note 6, at 364-69.

[8] The overall outcomes results for the entire 20-year period were as follows:

22 (12%) = conclusive decision in favor of the student
13 (7%) = inconclusive decision in favor of the student
0 (0%) = inconclusive for both parties
13 (7%) = inconclusive decision in favor of the school district
143 (74%) = conclusive decision in favor of the school district

Chouhoud & Zirkel, *supra* note 6, at 369-70. Since we found no instances of an inconclusive ruling for both parties, the corresponding middle point in the scale did not appear in the resulting bar-graph analyses. *Id*. at 372-73.

[9] The alignment was much more pronounced for outcomes than frequency. *Id*. at 374 and 378.

[10] ARUM 2003, *supra* note 3, at 53, 88 (appellate court decisions "directly involved individuals or organizations contesting a school's right to discipline and control students" from 1960 to 1992); Henry S. Lufler, Jr., *Courts and School Discipline Policies, in* STUDENT DISCIPLINE STRATEGIES 197 (Oliver C. Moles ed., 1990)(suspension and expulsion decisions from 1979 to 1987); Henry Lufler, Jr., The School Law Litigation Explosion: A Specious Generalization 1-2 (Nov. 1988) (suspension and expulsion decisions from 1965 to 1987).

[11] We used "State Law rulings" to refer to those where the court relied on state statutes or regulations that expanded the notice and hearing requirements of *Goss*.

[12] We defined "Federal rulings" as those in which the court either relied strictly on or applied its extrapolated interpretation of the *Goss* holding for suspensions or its dicta for expulsions. *See supra* note 4 and accompanying text.

Careful consideration suggests the value of three successively refined analyses of the outcomes in the *Goss* progeny. First, statistical analysis is warranted as one way of re-examining, or testing, the seeming difference in Federal and State Law rulings. More specifically, based on nonparametric[13] inferential statistics,[14] is the seeming difference between the Federal and State Law rulings statistically significant? Second, is there a statistically significant difference between the issue rulings for 1-10 day exclusions, here for the sake of simplicity termed "suspensions," and the corresponding rulings for exclusions of more than ten days, here termed "expulsions?" This juxtaposition thus addresses the original study's empirical extension beyond the *Goss* holding's explicit focus on removals of up to 10 days; specifically, by extrapolation based on the *Goss* dicta,[15] the analysis included procedural due process rulings pertaining to expulsions. Finally, as the purest refinement, is there a statistically significant difference between the Federal rulings for suspensions, which are the direct descendants of *Goss*, and the State Law rulings for suspensions, which are more distant relatives?

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[13] For a comparable use of the chi-square statistic, see, e.g., Anastasia D'Angelo & Perry A. Zirkel, *An Outcomes Analysis of Student-Initiated Litigation*. 226 ED.LAW REP. [539] (2008).

[14] The use of such statistics recognizes the "iceberg" effect, which is that published court decisions are only the visible sample that does not include the remaining part of the population of judicial rulings, which are unpublished. Inevitably, due to cost considerations and record keeping, the sample's representativeness is an unproven assumption. However, the limited available evidence is supportive. *See* Michael Imber & David Gayler, *A Statistical Analysis of Trends in Education-Related Litigation Since 1960*, 24 EDUC. ADMIN. Q 55, 57-58 (1988).

[15] Specifically, the *Goss* Court commented: "Longer [than 10-day exclusions] … may require more formal procedures." *Goss v. Lopez*, 419 U.S. 584 (1975).. The Court presenting its rationale in terms balancing the competing interests reinforced the strength of this conclusion. *Id*. at 579-80. Earlier, in a decision cited in *Goss*, the Court had clarified that the extent of the deprivation of "liberty" or "property" was a fundamental factor in the individual's side of the balance. *Morrissey v. Brewer*, 408 U.S. 471, 481-82 (1972).

I. Method

As explained in much more detail for replication and evaluation in the original study,[16] the sample was limited to published court decisions in the context of K-12 public schools where the disputed disciplinary action was suspension or expulsion and where at least one basis of the court's decision was Fourteenth Amendment procedural due process or state law procedural due process that expanded upon the *Goss* procedural protections. The analysis was limited to the ultimate judicial outcomes for these specific issues, thus representing what we referred to as Federal and State Law rulings, according to a five-point scale ranging from conclusively in favor of the student to completely in favor of the district.[17]

Here, we disaggregated the results of the original study in terms of 1) Federal and State Law rulings, and 2) suspensions and expulsions,[18] for the entire 20-year period

[16] *See* Chouhoud & Zirkel, *supra* note 6, at 363-368.

[17] Thus, for the sake of systematic specificity in relation to *Goss*, the analysis was neither for the entire court decision nor on a simplistic win-loss outcome scale. "Ultimate" here refers to the final reported decision for this case after tracking it to any appeals or other further proceedings. *See supra* note 7. For the descriptors for the five-category scale, Chouhoud & Zirkel, *supra* note 6, at 369-70.

[18] Although the vast majority of rulings were easily classifiable as either a suspension or an expulsion, several cases featured disputes over the effective level of disciplinary exclusion and required additional scrutiny. Specifically, in cases where the plaintiff-student and the school district disagreed on the degree of process due—not simply on whether the amount of process was sufficient—we classified the rulings based on the court's ultimate determination. *See, e.g.*, *Cole v. Newton Special Mun. Separate Sch. Dist.*, 676 F. Supp. 749 (S.D. Miss. 1987), *aff'd mem*., 853 F.2d 924 (5th Cir. 1988) (inconclusive ruling wherein the district asserted than an in-school suspension did not merit procedural protection, but the court concluded that *Goss* procedural due process might apply); *Rinker v. Sipler*, 264 F. Supp. 2d 181 (M.D. Pa. 2003) (conclusive ruling where the student claimed that the school official had expelled him, but the court concluded that he was only entitled to suspension-level procedural protection).

from 1986 to 2005. Per the original results,[19] the middle level of the five-point scale does not appear in the resulting analyses. "Federal" here refers to 1) rulings for suspensions based on the *Goss* holding,[20] and 2) rulings for expulsions—although *Goss* addressed removals for more than 10 consecutive school days only in terms of unspecific dicta[21]—based on Fourteenth Amendment procedural due process and the precedents interpreting it.[22] In contrast, "State Law" here refers to 1) rulings for suspensions based on state legislation or regulations that expanded upon and not merely codified,[23] the elements of the *Goss* holding, and 2) rulings for expulsions—for the same *Goss*-dicta reason that federal expulsions are included[24]—based on state legislation or regulations.[25] The disaggregation into suspensions and expulsions ultimately provided for comparison of the Federal

[19] Chouhoud & Zirkel, *supra* note 6, at 369-70. A table listing the citation and various entries, including ruling outcomes, for all of the cases is available upon request from the second author.

[20] *See supra* text accompanying note 4. Thus, rulings based on state laws that merely codified *Goss* were categorized under this "Federal" designation.

[21] *See supra* note 15.

[22] The most commonly cited precedent in addition or alternative to *Goss* and its lower court progeny was *Mathews v. Eldridge*, 424 U.S. 319 (1976), which crystallized the three-factor rationale of *Goss* for Fourteenth Amendment procedural due process. These factors are 1) the gravity of the student's individual property or liberty interest, 2) the gravity of the school's institutional interest (e.g., safety), and the risk of error. *Id*. at 334-335. For the application of this multi-factor test, the Matthews Court emphasized that procedural due process is a flexible concept. *Id*. at 334. The *Goss* Court similarly stressed this ad hoc flexibility. *Goss v. Lopez*, 419 U.S. 578.

[23] *See supra* notes 15 and 20. However, despite our extensive efforts, the sample may be under-representative in terms of state open records and open meetings laws, which are more generic than education codes in the institutional coverage and which only affect student discipline proceedings to a limited extent. *See, e.g*., *Stratton v. Wenona Cmty Unit Sch. Dist. No. 1*, 551 N.E.2d 640 (Ill. 1990).

[24] *See supra* text accompanying note 21. For this reason, the line between *Goss* codification and expansion was much more blurry for removals of more than 10 days. Because such state laws add comparatively rigid specificity, we regarded them as an expansion unless they merely used broad flexible terms equivalent to the *Goss* dicta.

[25] See *supra* note 11.

rulings for suspensions (i.e., "pure" *Goss* based on its 10-day limitation) and the corresponding State Law rulings for suspensions.

II. Results

The separate results for Federal and State Law rulings, along with the resulting chi-square statistic,[26] appear in Table 1. The entry in each cell represents the number of rulings for each respective level of the outcome scale. For example, the "8" in the first cell represents, among the 191 rulings in toto, the 8 rulings based on federal procedural due process where the student conclusively won on this issue, whereas the "11" in the cell below it represents the 11 Federal rulings where the student only survived the district's motion for dismissal or summary judgment.

Table 1: Distribution of Federal and State Law Outcomes, with Chi-Square Result

	Federal Rulings	**State Law Rulings**	
Conclusive for Student	8 (6%)	14 (27%)	$\chi^2 =$ 17.00***
Inconclusive for Student	11 (8%)	2 (4%)	
Inconclusive for District	10 (7%)	3 (6%)	
Conclusive for District	110 (79%)	33 (63%)	

*** $p < .001$

Table 1 reveals that the difference between these two distributions was statistically significant at the .001 level, with

[26] We used the Pearson chi-square, with significance determined in terms of a two-sided asymptomatic analysis. For each analysis, the first column served as expected, and the second as observed.

the district-favorable predominance more pronounced for the Federal rulings, i.e., those with the closer connection to *Goss*.[27]

Table 2 presents the corresponding combined Federal and State Law rulings for specifically *Goss* exclusions, i.e., suspensions, and for longer exclusions, i.e., expulsions.

Table 2: Distribution of Suspension and Expulsion Outcomes, with Chi-Square Result

	Suspensions	**Expulsions**	
Conclusive for Student	3 (3%)	19 (19%)	$\chi^2 = 11.73^{***}$
Inconclusive for Student	7 (8%)	6 (6%)	
Inconclusive for District	6 (7%)	7 (7%)	
Conclusive for District	75 (82%)	68 (68%)	

*** $p < .001$

The difference between these two distributions appears to be statistically significant at the .001 level,[28] with the

[27] The closer connection is because the legal basis for these rulings was Fourteenth Amendment procedural due process. *See supra* notes 11-12.

[28] The cautious qualifier is attributable to one cell (specifically, Conclusive for Student) having an expected count less than 5. See, e.g., DAVID C. HOWELL, FUNDAMENTAL STATISTICS FOR THE BEHAVIORAL SCIENCES 475-476 (Erik Evans ed., Thomson Wadsworth sixth edition) (2008). Reanalysis by collapsing the paired rows for student and district outcomes (thus avoiding any such suspect cells), the chi square value was 6.25, which is significant at the .01 level.

district-favorable predominance more pronounced for suspensions, i.e., those with the closer connection to *Goss*.[29]

Table 3 presents the separate Federal and State Law rulings for the specific sub-sample of suspensions. This narrowed statistical analysis necessitated the collapsing of pro-student and pro-district rulings due to insufficient cell sizes.[30]

Table 3: Distribution of Federal and State Law Outcomes for Suspensions, with Chi-Square Result

	Federal Rulings	**State Law Rulings**	
Conclusive for Student	0 (0%)	3 (16%)	$\chi^2 = 12.62^{***}$
Inconclusive for Student	6 (8%)	1 (6%)	
Inconclusive for District	5 (7%)	1 (6%)	
Conclusive for District	62 (85%)	13 (72%)	

*** $p < .001$

An examination of Table 3 reveals that the difference between Federal rulings for suspensions and State Law rulings for suspensions appears to be statistically significant,[31] with

[29] The closer connection is because the factual foundation of these rulings was what we refer to here, by way of shorthand, as a "suspension," i.e., an exclusion of 10 days or less. *See supra* notes 11-12.

[30] The weighted chi-square procedure used in D'Angelo & Zirkel, *supra* note 13, was not feasible here because the inconclusive category was not amenable to estimated quantification.

[31] The cautious qualifier is attributable to the same one-cell limitation. *See supra* note 28. Moreover, the re-analysis with collapsed pairs of outcomes

the district-defendants' predominance pronounced for both the Federal and State Law rulings for suspensions.

III. Discussion

The results of this follow-up study add further evidence[32] to the conclusion that the purported paralyzing[33] effect of *Goss* is a gross overstatement. Thus, to be constructive, commentators who cyclically decry the over-legalization of our society in general and our schools[34] in particular need to be much more specific and precise. Although the Supreme Court's decision in *Goss* signaled the high point in student's rights jurisprudence based on the Federal Constitution,[35] its progeny do not fit the paralysis, or disabling discipline, metaphor when examined systematically and objectively.[36]

At the aforementioned conference on judicial intervention in the public schools, Arum and Preiss pointed to the increasing frequency of court decisions concerning school discipline,[37] which our original study found also to be the pattern for *Goss* rulings.[38] However, significant segments of

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for students and districts, respectively, yielded a chi-square value of 2.89, which was not statistically significant.

[32] Such added weight does not amount to definitiveness, due to limitations in the state of the art of both legal and empirical analysis and in the resulting scholarly interpretations, which are all part of our evolving search for knowledge.

[33] *See supra* notes 1-2, 5 and accompanying text.

[34] *See supra* notes 2-5 and accompanying text.

[35] *See, e.g.*, Perry A. Zirkel, *National Trends in Education Litigation: Supreme Court Decisions Concerning Students*, 27 J.L. & EDUC. 235 (1998).

[36] *See supra* note 1.

[37] *See* ARUM & PREISS, *supra* note 3. (arguing that as a result of the increased frequency "the likelihood of a school facing a legal environment where a student has recently been successful in a court challenge over school discipline has not significantly diminished").

[38] *See* Chouhoud & Zirkel, *supra* note 6, at 370. Our scope was carefully limited to *Goss*-type procedural due process rulings, whereas Arum and Preiss's data were for a rather wide variety of student discipline issues, including substantive First Amendment expression claims, limited to appellate courts. Indeed, for their cases, as illustrated by Figure 2 in their chapter, the five categories of student discipline cases were not consistently

the upward slope are accounted for by the concomitant rise in public school enrollments, administrators, and suspensions during the same period.[39] The odds of a particular administrator being subject to a suit based on *Goss* remain miniscule.[40] The problem, as revealed by a long line of research, is lack of accurate, systematic knowledge by the parties and their attorneys.[41] This prevailing perception is fostered by the misinformation or even disinformation from various sources, including the mass media and special interest groups.[42] This study contributes to the requisite knowledge by systematically and objectively examining a significant and largely neglected variable—the outcomes when students carry the threat of litigation to an ultimate *Goss* ruling.[43]

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or dramatically upward, and the downward slope of overall outcomes, labeled "pro-student decisions," had a counterbalancing effect.

[39] For example, public school enrollments increased approximately 21% from 1986-89 to 2002-05. *See* U.S. Department of Education Institute of Education Sciences.

[40] ARUM & PREISS, *supra* note 3, present some data from a national telephone survey of 600 high school teachers and administrators concerning pertinent perceptions and experiences, but they do not provide sufficient information about their methodology (e.g., response rate and item wording) to assess their limited reported results. Moreover, even if their aforementioned (*supra* note 37) conclusions are correct, the "not significantly diminished" odds of experiencing a student-successful procedural due process claim within the context of a *Goss* 1-10 day suspension—as our findings reveal—are the opposite of overwhelming. Furthermore, our findings contradict Arum's earlier proposal to strictly limit procedural due process protections "solely to cases involving major penalties or student' First Amendment rights," which he premised on "the effects of [judicial] expansion of student rights in recent decades." Richard Arum, *For Their Own Good: Limit Student Rights*, WASH. POST, Dec. 29, 2003, at A17.

[41] For the citations of these studies, *Mathews v. Eldridge*, 424 U.S. 357 (1976),. For the latest such research, see David Schimmel & Matthew Militello, *Legal Literacy for Teachers: A Neglected Responsibility*, 77 HARV. EDUC. REV. 257 (2007).

[42] For examples, see Chouhoud & Zirkel, *supra* note 6, at 356 n.19-21. Schimmel and Militello, *supra* note 41.

[43] In addition to the outcomes discussed below, we incidentally found in arriving at our original empirical analysis of the court decisions that the courts exhibited a school-friendly, or district deferential, application of the *Goss* standards and principles and that the student victories were not only

First, Table 1 reveals that Federal rulings, i.e., those based on Fourteenth Amendment procedural due process, which was the fulcrum for *Goss*, were significantly more skewed toward districts than State Law rulings. The most likely reason is the wide latitude afforded in the constitutional holding in *Goss*, along with its flexible multi-factor test,[44] as opposed to the relatively straight strictures of the pertinent state laws.

Second, as Table 2 shows, the relevant rulings for suspensions, which are also more closely connected to *Goss*, were significantly more skewed toward districts than those for expulsions. The most likely explanation is that *Goss* only provided a clear-cut baseline for suspensions and expulsions represented a blurred mix of Federal and State Law rulings, thus providing courts with a more flexible framework for the general pro-student trend in education litigation.[45]

Third, although Table 3 less strongly suggests a statistically significant difference in favor of school districts,[46] both distributions strongly favored districts. Additionally, none of the 73 "pure" *Goss* decisions—i.e., those court decisions specific to applying Fourteenth Amendment procedural due process to suspensions of 10 days or less—was conclusively in the plaintiff-student's favor.[47] The more tempered distinction between the pure *Goss* rulings and the suspension rulings based on state law extensions of *Goss* may be attributable to the relatively small numbers for that

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rare, thus leaving their parents with the substantial attorneys fees for litigation to an ultimate ruling, but also yielded largely token remedies, such as a remand for a new hearing, rather than the substantial money damages that district personnel fear in terms of liability. *See* Chouhoud & Zirkel, *supra* note 6, at 369 n.102.

[44] *See supra* notes 4 and 22 and accompanying text.

[45] *See supra* note 9. For education litigation extending beyond student discipline, see Lupini & Zirkel, *supra* note 6; D'Angelo & Zirkel, *supra* note 13. For Supreme Court case law, Zirkel, *supra* note 35.

[46] *See supra* note 31 and accompanying text.

[47] *See supra* Table 3.

comparison[48] and to the relative ambiguity for classifying some of these cases.[49]

Finally, all three tables together disconfirm the hypothesis that *Goss* has spawned a modern trend of judicial intervention that has hampered public school discipline. In all three tables, the "inconclusive" decisions were relatively infrequent and largely balanced between the student and district sides. When limited to just the conclusive decisions, the adjusted percentages accentuate the skew in favor of districts. Although, computed with and without the inconclusive categories, the rulings based on 1) state law extensions of *Goss*,[50] and the 2) combination of Federal and State Law procedural due process applications to longer school exclusions[51] have been less favorable to school-defendants than the pure *Goss* rulings. Even these outcomes, based on their overall balance still disfavoring the plaintiff-student, have not had a crippling effect on administrators' issuance of suspensions and expulsions. Indeed, knowledge of these outcomes would more likely have a disabling effect on students' parents and attorneys who are considering litigation than on the administrators charged with discipline. Moreover, these data suggest that within this form of discipline, the probabilities of students prevailing are better in challenging 1) expulsions rather than suspensions and 2) exclusions based on state law rather than on Fourteenth Amendment procedural due process. Thus, intervention, whether seen as protecting students or disabling disciplinarians, has been more a matter

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[48] *See supra* Table 3 in comparison to Tables 1 and 2.

[49] *See, e.g.*, *Hardesty v. River View Local Sch. Dist.*, 620 N.E.2d 272 (Ohio 1993). (outcome of conclusive student win was based on state sunshine law, which is only an extension of *Goss* procedural due process indirectly or remotely, while the district conclusively won on the issues of the state law for suspension procedural due process); *Wayne County Bd. of Educ. v. Tyre*, 404 S.E.2d 809 (Ga. Ct. App. 1991); *Baxter v. Round Lake Area Sch*., 856 F. Supp. 438 (N.D. Ill. 1994) (student procedural due process claim was based on state law for expulsions, not suspensions). For overlapping sources of ambiguity, *see supra* notes 23 and 24.

[50] *See supra* Table 1. However, this characterization is blurred by the difficulty of separating Federal and State Law rulings. *See supra* notes 20-25 and accompanying text.

[51] *See supra* Table 2.

for state legislators and their education agencies than *Goss* and its progeny.

Follow-up research to provide systematic data as to which state laws merely codify the *Goss* holding for suspensions and the extent to which the others expand *Goss* is recommended.[52] We also invite replication of our research with methodological refinements. Additional analyses and interpretations, including qualitative and sociological research as to the practices and policies at the local level, would also be welcome. In the meanwhile, caution, objectivity, and precision remain the watchwords in examining the effect of law on education, as illustrated by the comparison between the rhetorical accusations and the empirical analysis of the *Goss* progeny. Broad-brushed scape-goating is all too easy and, ultimately, does not advance a proper balance between the overlapping—only partially competing—interests of students and public schools.

[52] Indeed, based tentatively on the results of this study, it may be hypothesized that administrators' training and knowledge are more deficient in terms of the pertinent procedural requirements in state legislation and regulations than in the *Goss* case law.