automatically controlled by *Sniadach*. *Sniadach*, as has been noted, concerned and reeks of wages. North Georgia Finishing is no wage earner. It is a corporation engaged in business. It was protected (a) by the fact that the garnishment procedure may be instituted in Georgia only after the primary suit has been filed or judgment obtained by the creditor, thus placing on the creditor the obligation to initiate the proceedings and the burden of proof, and assuring a full hearing to the debtor; (b) by the respondent's statutorily required and deposited double bond; and (c) by the requirement of the respondent's affidavit of apprehension of loss. It was in a position to dissolve the garnishment by the filing of a single bond. These are transactions of a day-to-day type in the commercial world. They are not situations involving contracts of adhesion or basic unfairness, imbalance, or inequality. See D. H. Overmyer Co. v. Frick Co., 405 U.S. 174, 92 S.Ct. 775, 31 L.Ed. 2d 124 (1972); Swarb v. Lennox, 405 U.S. 191, 92 S.Ct. 767, 31 L.Ed.2d 138 (1972). The clerk-judge distinction, relied on by the Court, surely is of little significance so long as the court officer is not an agent of the creditor. The Georgia system, for me, affords com-
1626 mercial entities all the protection that is required by the Due Process Clause of the Fourteenth Amendment.

6. Despite its apparent disclaimer, the Court now has embarked on a case-by-case analysis (weighted heavily in favor of *Fuentes* and with little hope under *Mitchell*) of the respective state statutes in this area. That road is a long and unrewarding one, and provides no satisfactory answers to issues of constitutional magnitude.

I would affirm the judgment of the Supreme Court of Georgia.

Mr. Chief Justice BURGER dissents for the reasons stated in numbered paragraph 5 of the opinion of Mr. Justice BLACKMUN.

419 U.S. 565, 42 L.Ed.2d 725

Norval GOSS et al., Appellants,

v.

Eileen LOPEZ et al.

No. 73-898.

Argued Oct. 16, 1974.

Decided Jan. 22, 1975.

Class action was brought by a number of Columbus, Ohio public school system students to review their suspensions without hearing, either prior to or within reasonable time thereafter, under authority of Ohio statute permitting suspension of pupils for misconduct for up to ten days. A Three-Judge United States District Court for the Southern District of Ohio, Eastern Division, 372 F.Supp. 1279, held that the students were denied due process and the statute was unconstitutional and an appeal was taken. The Supreme Court, Mr. Justice White, J., held that students facing temporary suspension from public school were entitled to protection under the due process clause and that due process required, in connection with suspensions of up to ten days, that such a student be given notice of charges and an opportunity to present his version to authorities preferably prior to removal from school, but there were instances in which prior notice and hearing were not feasible and the immediately removed student should be given necessary notice of hearing as soon as practicable.

Affirmed.

Mr. Justice Powell filed a dissenting opinion in which the Chief Justice and Mr. Justice Blackmun and Mr. Justice Rehnquist joined.

1. Constitutional Law ⇐277(1)

Protected interests in property within Fourteenth Amendment are normally not created by Constitution but rather they are created and their dimensions are defined by an independent

source such as state statutes or rules entitling citizen to certain benefits. U.S.C.A.Const. Amend. 14.

2. Constitutional Law ⇐318(2)

State employee who under state law or rules promulgated by state officials has a legitimate claim of entitlement to continued employment absent sufficient cause for discharge may demand the procedural protections of due process as may welfare recipients who have a statutory right to welfare as long as they maintain specified qualifications. U.S.C.A.Const. Amend. 14.

3. Schools and School Districts ⇐148

Where Ohio statutes directed local authorities to provide free education to all residents between six and 21 years of age and a compulsory attendance law required attendance for school year of not less than 32 weeks, Ohio, having chosen to extend right of education to people, could not withdraw that right on grounds of misconduct absent fundamentally fair procedures to determine whether the misconduct has occurred. U.S.C.A.Const. Amend. 14; R.C.Ohio §§ 3313.48, 3313.64, 3321.04.

4. Constitutional Law ⇐82

Young people, who under the Ohio statutes, are required to attend school, do not shed their constitutional rights at the schoolhouse door. U.S.C.A.Const. Amend. 14; R.C.Ohio §§ 3313.48, 3313.64, 3313.66.

5. Constitutional Law ⇐277(1)
Schools and School Districts ⇐169

Authority possessed by state to prescribe and enforce standards of conduct in its schools, although concededly very broad, must be exercised consistently with constitutional safeguards; state is constrained to recognize student's legitimate entitlement to public education as a property interest which is protected by the due process clause and which may not be taken away for misconduct without adherence to minimum procedures required by that clause. U.S.C.A.Const. Amend. 14.

6. Constitutional Law ⇐255(1)

Due process clause forbids arbitrary deprivations of liberty. U.S.C.A.Const. Amend. 14.

7. Constitutional Law ⇐318(2)

Since if sustained and recorded the misconduct charges could seriously damage public school students' standing with fellow pupils and teachers as well as interfering with later opportunities for higher education and employment, claimed right of Ohio under statute to determine unilaterally and without due process whether that misconduct has occurred and to suspend students for periods of up to ten days based on charges of misconduct collides with requirements of the Constitution protecting interests in liberty. R.C.Ohio §§ 3313.66, 3321.04; U.S.C.A.Const. Amend. 14.

8. Constitutional Law ⇐318(2)
Schools and School Districts ⇐177

A ten-day suspension of students from school could not be considered de minimis and therefore imposed without a hearing in complete disregard of due process; neither property interest in educational benefits temporarily denied nor liberty interest in reputation was so insubstantial that suspensions might be constitutionally imposed by any procedures school chose no matter how arbitrary. U.S.C.A.Const. Amend. 14; R.C. Ohio §§ 3313.48, 3313.64.

9. Schools and School Districts ⇐177

Length and consequent severity of deprivation of right to public education because of suspension, while a factor to be weighed in determining appropriate form of hearing, was not conclusive of the basic right to a hearing of some kind. U.S.C.A.Const. Amend. 14.

10. Constitutional Law ⇐253(1)

Interpretation and application of due process clause are intensely practical matters and the very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation. U.S.C.A. Const. Amend. 14.

11. Schools and School Districts ⇐11

Judicial interposition in operation of public school system of nation raises problems requiring care and restraint since by and large public education in our nation is committed to the control of state and local authorities.

12. Constitutional Law ⇐305(2), 309(1)

Cryptic and abstract words of the due process clause at a minimum require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case. U.S.C.A.Const. Amend. 14.

13. Schools and School Districts ⇐177

At minimum, public school students facing suspension and its consequent interference with protected property interest must be given some kind of notice and afforded some kind of hearing; timing and content of notice and nature of hearing will depend on appropriate accommodation of competing interests involved. U.S.C.A.Const. Amend. 14.

14. Constitutional Law ⇐318(2)

Due process requires in connection with suspension of public school student for ten days or less that the student be given oral or written notice of charge against him and, if he denies it, an explanation of evidence the authorities have and opportunity to present his side of the story; and there need be no delay between time notice is given and time of hearing since in the great majority of the cases the disciplinarian may discuss the alleged misconduct with the student minutes after it has occurred; students whose presence imposes a continuing danger to persons or property or an ongoing threat of disrupting academic process may be immediately removed from school and in such cases the necessary notice and rudimentary hearing should follow as soon as practicable. U.S.C.A.Const. Amend. 14.

15. Schools and School Districts ⇐177

Even if it were assumed that Ohio statute dealing with general administrative review could be used to appeal from disciplinary decision by school officials suspending public school student without notice or hearing, it would be insufficient in that the proceeding offered by review statute is not de novo and because it must be assumed that delay would attend any such statutory proceeding, that the suspension would not be stayed pending hearing and that student meanwhile would irreparably lose education benefits. R.C.Ohio §§ 2506.01, 3313.66.

Syllabus *

Appellee Ohio public high school students, who had been suspended from school for misconduct for up to 10 days without a hearing, brought a class action against appellant school officials seeking a declaration that the Ohio statute permitting such suspensions was unconstitutional and an order enjoining the officials to remove the references to the suspensions from the students' records. A three-judge District Court declared that appellees were denied due process of law in violation of the Fourteenth Amendment because they were "suspended without hearing prior to suspension or within a reasonable time thereafter," and that the statute and implementing regulations were unconstitutional, and granted the requested injunction. *Held:*

1. Students facing temporary suspension from a public school have property and liberty interests that qualify for protection under the Due Process Clause of the Fourteenth Amendment. Pp. 735–737.

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

(a) Having chosen to extend the right to an education to people of appellees' class generally, Ohio may not withdraw that right on grounds of misconduct, absent fundamentally fair procedures to determine whether the misconduct has occurred, and must recognize a student's legitimate entitlement to a public education as a property interest that is protected by the Due Process Clause, and that may not be taken away for misconduct without observing minimum procedures required by that Clause. Pp. 735–736.

(b) Since misconduct charges if sustained and recorded could seriously damage the students' reputation as well as interfere with later educational and employment opportunities, the State's claimed right to determine unilaterally and without process whether that misconduct has occurred immediately collides with the Due Process Clause's prohibition against arbitrary deprivation of liberty. P. 736.

(c) A 10-day suspension from school is not *de minimis* and may not be imposed in complete disregard of the
566 Due Process Clause. Neither the property interest in educational benefits temporarily denied nor the liberty interest in reputation is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary. Pp. 736–737.

2. Due 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 version. Generally, notice and hearing should precede the student's removal from school, since the hearing may almost immediately follow the misconduct, but if prior notice and hearing are not feasible, as where the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school, the necessary notice and hearing should follow as soon as practicable. Pp. 738–741.

372 F.Supp. 1279, affirmed.

Thomas A. Bustin, Columbus, Ohio, for appellants.

Peter D. Roos, Cambridge, Mass., for appellees.

Mr. Justice WHITE delivered the 567
opinion of the Court.

This appeal by various administrators of the Columbus, Ohio, Public School System (CPSS) challenges the judgment of a three-judge federal court, declaring that appellees—various high school students in the CPSS—were denied due process of law contrary to the command of the Fourteenth Amendment in that they were temporarily suspended from their high schools without a hearing either prior to suspension or within a reasonable time thereafter, and enjoining the administrators to remove all references to such suspensions from the students' records.

I

Ohio law, Rev.Code Ann. § 3313.64 (1972), provides for free education to all children between the ages of six and 21. Section 3313.66 of the Code empowers the principal of an Ohio public school to suspend a pupil for misconduct for up to 10 days or to expel him. In either case, he must notify the student's parents within 24 hours and state the reasons for his action. A pupil who is expelled, or his parents, may appeal the decision to the Board of Education and in connection therewith shall be permitted to be heard at the board meeting. The Board may reinstate the pupil following the hearing. No similar procedure is provided in § 3313.66 or any other provision of state law for a suspended student. Aside from a regulation tracking the statute, at the time of the imposition of the suspensions in this case the CPSS

itself had not issued any written procedure applicable to suspensions.[1] Nor, so
568 far as the record reflects, had any of the individual high schools involved in this case.[2] Each, however, had formally or informally described the conduct for which suspension could be imposed.

The nine named appellees, each of whom alleged that he or she had been suspended from public high school in Columbus for up to 10 days without a hearing pursuant to § 3313.66, filed an action under 42 U.S.C. § 1983 against the Columbus Board of Education and various administrators of the CPSS.
569 The complaint sought a declaration that § 3313.66 was unconstitutional in that it permitted public school administrators to deprive plaintiffs of their rights to an education without a hearing of any kind, in violation of the procedural due process component of the Fourteenth Amendment. It also sought to enjoin the public school officials from issuing future suspensions pursuant to § 3313.66 and to require them to remove references to the past suspensions from the records of the students in question.[3]

The proof below established that the suspensions arose out of a period of widespread student unrest in the CPSS during February and March 1971. Six of the named plaintiffs, Rudolph Sutton, Tyrone Washington, Susan Cooper, Deborah Fox, Clarence Byars, and Bruce Harris, were students at the Marion-Franklin High School and were each suspended for 10 days [4] on ac-

1. At the time of the events involved in this case, the only administrative regulation on this subject was § 1010.04 of the Administrative Guide of the Columbus Public Schools which provided: "Pupils may be suspended or expelled from school in accordance with the provisions of Section 3313.66 of the Revised Code." Subsequent to the events involved in this lawsuit, the Department of Pupil Personnel of the CPSS issued three memoranda relating to suspension procedures, dated August 16, 1971, February 21, 1973, and July 10, 1973, respectively. The first two are substantially similar to each other and require no factfinding hearing at any time in connection with a suspension. The third, which was apparently in effect when this case was argued, places upon the principal the obligation to "investigate" "before commencing suspension procedures"; and provides as part of the procedures that the principal shall discuss the case with the pupil, so that the pupil may "be heard with respect to the alleged offense," unless the pupil is "unavailable" for such a discussion or "unwilling" to participate in it. The suspensions involved in this case occurred, and records thereof were made, prior to the effective date of these memoranda. The District Court's judgment, including its expunction order, turns on the propriety of the procedures existing at the time the suspensions were ordered and by which they were imposed.

2. According to the testimony of Phillip Fulton, the principal of one of the high schools involved in this case, there was an informal procedure applicable at the Marion-Franklin High School. It provided that in the routine case of misconduct, occurring in the presence of a teacher, the teacher would describe the misconduct on a form provided for that purpose and would send the student, with the form, to the principal's office. There, the principal would obtain the student's version of the story, and, if it conflicted with the teacher's written version, would send for the teacher to obtain the teacher's oral version—apparently in the presence of the student. Mr. Fulton testified that, if a discrepancy still existed, the teacher's version would be believed and the principal would arrive at a disciplinary decision based on it.

3. The plaintiffs sought to bring the action on behalf of all students of the Columbus Public Schools suspended on or after February 1971, and a class action was declared accordingly. Since the complaint sought to restrain the "enforcement" and "operation" of a state statute "by restraining the action of any officer of such State in the enforcement or execution of such statute," a three-judge court was requested pursuant to 28 U.S.C. § 2281 and convened. The students also alleged that the conduct for which they could be suspended was not adequately defined by Ohio law. This vagueness and overbreadth argument was rejected by the court below and the students have not appealed from this part of the court's decision.

4. Fox was given two separate 10-day suspensions for misconduct occurring on two separate occasions—the second following immediately upon her return to school. In addition to his suspension, Sutton was transferred to another school.

count of disruptive or disobedient conduct committed in the presence of the school administrator who ordered the suspension. One of these, Tyrone Washington, was among a group of students demonstrating in the school auditorium while a class was being conducted there. He was ordered by the school principal
570 to leave, refused to do so, and was suspended. Rudolph Sutton, in the presence of the principal, physically attacked a police officer who was attempting to remove Tyrone Washington from the auditorium. He was immediately suspended. The other four Marion-Franklin students were suspended for similar conduct. None was given a hearing to determine the operative facts underlying the suspension, but each, together with his or her parents, was offered the opportunity to attend a conference, subsequent to the effective date of the suspension, to discuss the student's future.

Two named plaintiffs, Dwight Lopez and Betty Crome, were students at the Central High School and McGuffey Junior High School, respectively. The former was suspended in connection with a disturbance in the lunchroom which involved some physical damage to school property.[5] Lopez testified that at least 75 other students were suspended from his school on the same day. He also testified below that he was not a party to the destructive conduct but was instead an innocent bystander. Because no one from the school testified with regard to this incident, there is no evidence in the record indicating the official basis for concluding otherwise. Lopez never had a hearing.

Betty Crome was present at a demonstration at a high school other than the one she was attending. There she was arrested together with others, taken to the police station, and released without being formally charged. Before she went to school on the following day, she was notified that she had been suspend- 571
ed for a 10-day period. Because no one from the school testified with respect to this incident, the record does not disclose how the McGuffey Junior High School principal went about making the decision to suspend Crome, nor does it disclose on what information the decision was based. It is clear from the record that no hearing was ever held.

There was no testimony with respect to the suspension of the ninth named plaintiff, Carl Smith. The school files were also silent as to his suspension, although as to some, but not all, of the other named plaintiffs the files contained either direct references to their suspensions or copies of letters sent to their parents advising them of the suspension.

On the basis of this evidence, the three-judge court declared that plaintiffs were denied due process of law because they were "suspended without hearing prior to suspension or within a reasonable time thereafter," and that Ohio Rev.Code Ann. § 3313.66 (1972) and regulations issued pursuant thereto were unconstitutional in permitting such suspensions.[6] It was ordered that all references to plaintiffs' suspensions be removed from school files.

Although not imposing upon the Ohio school administrators any particular disciplinary procedures and leaving them "free to adopt regulations providing for fair suspension procedures which are consonant with the educational goals of their schools and reflective of the char-

5. Lopez was actually absent from school, following his suspension, for over 20 days. This seems to have occurred because of a misunderstanding as to the length of the suspension. A letter sent to Lopez after he had been out for over 10 days purports to assume that, being over compulsory school age, he was voluntarily staying away. Upon asserting that this was not the case, Lopez was transferred to another school.

6. In its judgment, the court stated that the statute is unconstitutional in that it provides "for suspension . . . without *first* affording the student due process of law." (Emphasis supplied.) However, the language of the judgment must be read in light of the language in the opinion which expressly contemplates that under some circumstances students may properly be removed from school before a hearing is held, so long as the hearing follows promptly.

acteristics of their school and locality,"
1572 the District Court declared that there were "minimum requirements of notice and a hearing prior to suspension, except in emergency situations." In explication, the court stated that relevant case authority would: (1) permit "[i]mmediate removal of a student whose conduct disrupts the academic atmosphere of the school, endangers fellow students, teachers or school officials, or damages property"; (2) require notice of suspension proceedings to be sent to the students' parents within 24 hours of the decision to conduct them; and (3) require a hearing to be held, with the student present, within 72 hours of his removal. Finally, the court stated that, with respect to the nature of the hearing, the relevant cases required that statements in support of the charge be produced, that the student and others be permitted to make statements in defense or mitigation, and that the school need not permit attendance by counsel.

The defendant school administrators have appealed the three-judge court's decision. Because the order below granted plaintiffs' request for an injunction—ordering defendants to expunge their records—this Court has jurisdiction of the appeal pursuant to 28 U.S.C. § 1253. We affirm.

II

[1] At the outset, appellants contend that because there is no constitutional right to an education at public expense, the Due Process Clause does not protect against expulsions from the public school system. This position misconceives the nature of the issue and is refuted by prior decisions. The Fourteenth Amendment forbids the State to deprive any person of life, liberty, or property without due process of law. Protected interests in property are normally "not created by the Constitution. Rather, they are created and their dimensions are defined" by an independent source such as state statutes or
1573 rules entitling the citizen to certain benefits. Board of Regents v. Roth, 408 U. S. 564, 577, 92 S.Ct. 2701, 2709, 33 L. Ed.2d 548 (1972).

[2] Accordingly, a state employee who under state law, or rules promulgated by state officials, has a legitimate claim of entitlement to continued employment absent sufficient cause for discharge may demand the procedural protections of due process. Connell v. Higginbotham, 403 U.S. 207, 91 S.Ct. 1772, 29 L.Ed.2d 418 (1971); Wieman v. Updegraff, 344 U.S. 183, 191–192, 73 S.Ct. 215, 218–219, 97 L.Ed. 216 (1952); Arnett v. Kennedy, 416 U.S. 134, 164, 94 S.Ct. 1633, 1649, 40 L.Ed.2d 15 (Powell, J., concurring); 171, 94 S.Ct. 1652 (White, J., concurring and dissenting) (1974). So may welfare recipients who have statutory rights to welfare as long as they maintain the specified qualifications. Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972), applied the limitations of the Due Process Clause to governmental decisions to revoke parole, although a parolee has no constitutional right to that status. In like vein was Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), where the procedural protections of the Due Process Clause were triggered by official cancellation of a prisoner's good-time credits accumulated under state law, although those benefits were not mandated by the Constitution.

[3] Here, on the basis of state law, appellees plainly had legitimate claims of entitlement to a public education. Ohio Rev.Code Ann. §§ 3313.48 and 3313.64 (1972 and Supp.1973) direct local authorities to provide a free education to all residents between five and 21 years of age, and a compulsory-attendance law requires attendance for a school year of not less than 32 weeks. Ohio Rev.Code Ann. § 3321.04 (1972). It is true that § 3313.66 of the Code permits school principals to suspend students for up to 10 days; but suspensions may not be imposed without any grounds whatsoever. All

of the schools had their own rules
574 specifying the grounds for expulsion or suspension. Having chosen to extend the right to an education to people of appellees' class generally, Ohio may not withdraw that right on grounds of misconduct absent, fundamentally fair procedures to determine whether the misconduct has occurred. Arnett v. Kennedy, *supra*, at 164, 94 S.Ct. at 1649 (Powell, J., concurring), 171, 94 S.Ct. 1652 (White, J., concurring and dissenting), 206, 94 S.Ct. 1670 (Marshall, J., dissenting).

[4, 5] Although Ohio may not be constitutionally obligated to establish and maintain a public school system, it has nevertheless done so and has required its children to attend. Those young people do not "shed their constitutional rights" at the schoolhouse door. Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 506, 89 S.Ct. 733, 736, 21 L.Ed.2d 731 (1969). "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted." West Virginia Board of Education v. Barnette, 319 U.S. 624, 637, 63 S.Ct. 1178, 1185, 87 L.Ed. 1628 (1943). The authority possessed by the State to prescribe and enforce standards of conduct in its schools, although concededly very broad, must be exercised consistently with constitutional safeguards. Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause.

[6, 7] The Due Process Clause also forbids arbitrary deprivations of liberty. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him," the minimal requirements of the Clause must be satisfied. Wisconsin v. Constantineau, 400 U.S. 433, 437, 91 S.Ct. 507, 510, 27 L.Ed.2d 515 (1971); Board of Regents v. Roth, *supra*, 408 U. S. at 573, 92 S.Ct. at 2707. School authorities here suspended appellees from school for periods of up to 10 days based 575
on charges of misconuct. If sustained and recorded, those charges could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment.[7] It is apparent that the claimed right of the State to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution.

[8, 9] Appellants proceed to argue that even if there is a right to a public education protected by the Due Process Clause generally, the Clause comes into play only when the State subjects a student to a "severe detriment or grievous loss." The loss of 10 days, it is said, is neither severe nor grievous and the Due

7. Appellees assert in their brief that four of 12 randomly selected Ohio colleges specifically inquire of the high school of every applicant for admission whether the applicant has ever been suspended. Brief for Appellees 34–35 and n. 40. Appellees also contend that many employers request similar information. *Ibid.*

Congress has recently enacted legislation limiting access to information contained in the files of a school receiving federal funds. Section 513 of the Education Amendments of 1974, Pub.L. 93–380, 88 Stat. 571, 20 U.S.C. § 1232g (1970 ed., Supp. IV), adding § 438 to the General Education Provisions Act. That section would preclude release of "verified reports of serious or recurrent behavior patterns" to employers without written consent of the student's parents. While subsection 513(b)(1)(B) permits release of such information to "other schools . . . in which the student intends to enroll," it does so only upon condition that the parent be advised of the release of the information and be given an opportunity at a hearing to challenge the content of the information to insure against inclusion of inaccurate or misleading information. The statute does not expressly state whether the parent can contest the underlying basis for a suspension, the fact of which is contained in the student's school record.

Process Clause is therefore of no relevance. Appellants' argument is again refuted by our prior decisions; for in determining "whether due process requirements apply in the first place, we must look not to the 'weight' but to the *nature* 576 of the interest at stake." Board of Regents v. Roth, *supra*, at 570–571, 92 S. Ct. at 2705–2706. Appellees were excluded from school only temporarily, it is true, but the length and consequent severity of a deprivation, while another factor to weigh in determining the appropriate form of hearing, "is not decisive of the basic right" to a hearing of some kind. Fuentes v. Shevin, 407 U.S. 67, 86, 92 S.Ct. 1983, 1997, 32 L.Ed.2d 556 (1972). The Court's view has been that as long as a property deprivation is not *de minimis*, its gravity is irrelevant to the question whether account must be taken of the Due Process Clause. Sniadach v. Family Finance Corp., 395 U.S. 337, 342, 89 S.Ct. 1820, 1823, 23 L.Ed. 2d 349 (1969) (Harlan, J., concurring); Boddie v. Connecticut, 401 U.S. 371, 378–379, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 (1971); Board of Regents v. Roth, *supra*, 408 U.S., at 570 n. 8, 92 S.Ct., at 2705. A 10-day suspension from school is not *de minimis* in our view and may not be imposed in complete disregard of the Due Process Clause.

A short suspension is, of course, a far milder deprivation than expulsion. But, "education is perhaps the most important function of state and local governments," Brown v. Board of Education, 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873 (1954), and the total exclusion from the educational process for more than a trivial period, and certainly if the suspension is for 10 days, is a serious event in the life of the suspended child. Neither the property interest in educational benefits temporarily denied nor the liberty interest in reputation, which is also implicated, is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary.[8]

8. Since the landmark decision of the Court of Appeals for the Fifth Circuit in Dixon v. Alabama State Board of Education, 294 F.2d 150, cert. denied, 368 U.S. 930, 82 S. Ct. 368, 7 L.Ed.2d 193 (1961), the lower federal courts have uniformly held the Due Process Clause applicable to decisions made by tax-supported educational institutions to remove a student from the institution long enough for the removal to be classified as an expulsion. Hagopian v. Knowlton, 470 F.2d 201, 211 (CA2 1972); Wasson v. Trowbridge, 382 F.2d 807, 812 (CA2 1967); Esteban v. Central Missouri State College, 415 F.2d 1077, 1089 (CA8 1969), cert. denied, 398 U.S. 965, 90 S.Ct. 2169, 26 L.Ed.2d 548 (1970); Vought v. Van Buren Public Schools, 306 F.Supp. 1388 (ED Mich. 1969); Whitfield v. Simpson, 312 F.Supp. 889 (ED Ill.1970); Fielder v. Board of Education of School District of Winnebago, Neb., 346 F. Supp. 722, 729 (D.C.Neb.1972); DeJesus v. Penberthy, 344 F.Supp. 70, 74 (D.C.Conn. 1972); Soglin v. Kauffman, 295 F.Supp. 978, 994 (WD Wis.1968), aff'd, 418 F.2d 163 (CA7 1969); Stricklin v. Regents of University of Wisconsin, 297 F.Supp. 416, 420 (WD Wis.1969), appeal dismissed, 420 F.2d 1257 (CA7 1970); Buck v. Carter, 308 F.Supp. 1246 (WD Wis.1970); General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education, 45 F.R.D. 133, 147–148 (W.D. Mo. 1968) (en banc). The lower courts have been less uniform, however, on the question whether removal from school for some shorter period may ever be so trivial a deprivation as to require no process, and, if so, how short the removal must be to qualify. Courts of Appeals have held or assumed the Due Process Clause applicable to long suspensions, Pervis v. LaMarque Ind. School Dist., 466 F.2d 1054 (CA5 1972); to indefinite suspensions, Sullivan v. Houston Ind. School Dist., 475 F.2d 1071 (CA5), cert. denied, 414 U.S. 1032, 94 S.Ct. 461, 38 L.Ed.2d 323 (1973); to the addition of a 30-day suspension to a 10-day suspension, Williams v. Dade County School Board, 441 F.2d 299 (CA5 1971); to a 10-day suspension, Black Students of North Fort Meyers Jr.-Sr. High School v. Williams, 470 F.2d 957 (CA5 1972); to "mild" suspensions, Farrell v. Joel, 437 F.2d 160 (CA2 1971), and Tate v. Board of Education, 453 F.2d 975 (CA8 1972); and to a three-day suspension, Shanley v. Northeast Ind. School Dist., Bexar County, Texas, 462 F.2d 960, 967 n. 4 (CA5 1972); but inapplicable to a seven-day suspension, Linwood v. Board of Ed. of City of Peoria, 463 F.2d 763 (CA7), cert. denied, 409 U.S. 1027, 93 S.Ct. 475, 34 L.Ed.2d 320 (1972); to a three-day suspension,

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III

[10] "Once it is determined that due process applies, the question remains what process is due." Morrissey v. Brewer, 408 U.S., at 481, 92 S.Ct., at 2600. We turn to that question, fully
578 realizing as our cases regularly do that the interpretation and application of the Due Process Clause are intensely practical matters and that "[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." Cafeteria Workers v. McElroy, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230 (1961). We are also mindful of our own admonition:

> [11] "Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint. . . . By and large, public education in our Nation is committed to the control of state and local authorities." Epperson v. Arkansas, 393 U.S. 97, 104, 89 S.Ct. 266, 270, 21 L.Ed.2d 228 (1968).

[12, 13] There are certain bench marks to guide us, however. Mullane v. Central Hanover Trust Co., 339 U.S.
579 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), a case often invoked by later opinions, said that "[m]any controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Id.*, at 313, 70 S.Ct. at 657. "The fundamental requisite of due process of law is the opportunity to be heard," Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363 (1914), a right that "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to . . . contest." Mullane v. Central Hanover Trust Co., *supra*, 339 U.S. at 314, 70 S.Ct. at 657. See also Armstrong v. Manzo, 380 U.S. 545, 550, 85 S.Ct. 1187, 1190, 14 L.Ed.2d 62 (1965); Joint Anti-Fascist Committee v. McGrath, 341 U.S. 123, 168–169, 71 S.Ct. 624, 646–647, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring). At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given *some* kind of notice and afforded *some* kind of hearing. "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." Baldwin v. Hale, 1 Wall. 223, 233, 17 L.Ed. 531 (1864).

It also appears from our cases that the timing and content of the notice and the nature of the hearing will depend on

Dunn v. Tyler Ind. School Dist., 460 F.2d 137 (CA5 1972); to a suspension for not "more than a few days," Murray v. West Baton Rouge Parish School Board, 472 F.2d 438 (CA5 1973); and to all suspensions no matter how short, Black Coalition v. Portland School District No. 1, 484 F.2d 1040 (CA9 1973). The Federal District Courts have held the Due Process Clause applicable to an interim suspension pending expulsion proceedings in Stricklin v. Regents of University of Wisconsin, *supra*, and Buck v. Carter, *supra*; to a 10-day suspension, Banks v. Board of Public Instruction of Dade County, 314 F. Supp. 285 (SD Fla.1970), vacated, 401 U.S. 988, 91 S.Ct. 1223, 28 L.Ed.2d 526 (1971) (for entry of a fresh decree so that a timely appeal might be taken to the Court of Appeals), aff'd, 450 F.2d 1103 (CA5 1971); to suspensions of under five days, Vail v. Board of Education of Portsmouth School Dist., 354 F.Supp. 592 (NH 1973); and to all suspensions, Mills v. Board of Education of the District of Columbia, 348 F.Supp. 866 (DC 1972), and Givens v. Poe, 346 F. Supp. 202 (WDNC 1972); and inapplicable to suspensions of 25 days, Hernadez v. School District Number One, Denver, Colorado, 315 F.Supp. 289 (D.C.Colo.1970); to suspensions of 10 days, Baker v. Downey City Board of Education, 307 F.Supp. 517 (CD Cal.1969); and to suspension of eight days, Hatter v. Los Angeles City High School District, 310 F.Supp. 1309 (CD Cal.1970), rev'd on other grounds, 452 F.2d 673 (CA9 1971). In the cases holding no process necessary in connection with short suspensions, it is not always clear whether the court viewed the Due Process Clause as inapplicable, or simply felt that the process received was "due" even in the absence of some kind of hearing procedure.

appropriate accommodation of the competing interests involved. Cafeteria Workers v. McElroy, *supra*, 367 U.S. at 895, 81 S.Ct. at 1748; Morrissey v. Brewer, *supra*, 408 U.S. at 481, 92 S.Ct. at 2600. The student's interest is to avoid unfair or mistaken exclusion from the educational process, with all of its unfortunate consequences. The Due Process Clause will not shield him from suspensions properly imposed, but it disserves both his interest and the interest of the State if his suspension is in fact unwarranted. The concern would be mostly academic if the disciplinary process were a totally accurate, unerring
580 process, never mistaken and never unfair. Unfortunately, that is not the case, and no one suggests that it is. Disciplinarians, although proceeding in utmost good faith, frequently act on the reports and advice of others; and the controlling facts and the nature of the conduct under challenge are often disputed. The risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process.

The difficulty is that our schools are vast and complex. Some modicum of discipline and order is essential if the educational function is to be performed. Events calling for discipline are frequent occurrences and sometimes require immediate, effective action. Suspension is considered not only to be a necessary tool to maintain order but a valuable educational device. The prospect of imposing elaborate hearing requirements in every suspension case is viewed with great concern, and many school authorities may well prefer the untrammeled power to act unilaterally, unhampered by rules about notice and hearing. But it would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his dereliction and to let him tell his side of the story in order to make sure that an injustice is not done. "[F]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . ." "Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." Joint Anti-Fascist Committee v. McGrath, *supra*, 341 U.S., at 170, 171–172, 71 S.Ct., at 647–649 (Frankfurter, J., concurring).[9]

[14, 15] We do not believe that 581
school authorities must be totally free from notice and hearing requirements if their schools are to operate with accept-

9. The facts involved in this case illustrate the point. Betty Crome was suspended for conduct which did not occur on school grounds, and for which mass arrests were made—hardly guaranteeing careful individualized factfinding by the police or by the school principal. She claims to have been involved in no misconduct. However, she was suspended for 10 days without ever being told what she was accused of doing or being given an opportunity to explain her presence among those arrested. Similarly, Dwight Lopez was suspended, along with many others, in connection with a disturbance in the lunchroom. Lopez says he was not one of those in the lunchroom who was involved. However, he was never told the basis for the principal's belief that he was involved, nor was he ever given an opportunity to explain his presence in the lunchroom. The school principals who suspended Crome and Lopez may have been correct on the merits, but it is inconsistent with the Due Process Clause to have made the decision that misconduct had occurred without at some meaningful time giving Crome or Lopez an opportunity to persuade the principals otherwise.

We recognize that both suspensions were imposed during a time of great difficulty for the school administrations involved. At least in Lopez' case there may have been an immediate need to send home everyone in the lunchroom in order to preserve school order and property; and the administrative burden of providing 75 "hearings" of any kind is considerable. However, neither factor justifies a disciplinary suspension without *at any time* gathering facts relating to Lopez specifically, confronting him with them, and giving him an opportunity to explain.

able efficiency. Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due 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. The Clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school.[10]

582 There need be no delay between the time "notice" is given and the time of the hearing. In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred. We hold only that, in being given an opportunity to explain his version of the facts at this discussion, the student first be told what he is accused of doing and what the basis of the accusation is. Lower courts which have addressed the question of the *nature* of the procedures required in short suspension cases have reached the same conclusion. Tate v. Board of Education, 453 F.2d 975, 979 (CA8 1972); Vail v. Board of Education, 354 F.Supp. 592, 603 (NH 1973). Since the hearing may occur almost immediately following the misconduct, it follows that as a general rule notice and hearing should precede removal of the student from school. We agree with the District Court, however, that there are recurring situations in which prior notice and hearing cannot be insisted upon. Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as 583 soon as practicable, as the District Court indicated.

In holding as we do, we do not believe that we have imposed procedures on school disciplinarians which are inappropriate in a classroom setting. Instead we have imposed requirements which are, if anything, less than a fair-minded school principal would impose upon himself in order to avoid unfair suspensions. Indeed, according to the testimony of the principal of Marion-Franklin High School, that school had an informal procedure, remarkably similar to that which we now require, applicable to suspensions generally but which was not followed in this case. Similarly, according to the most recent memorandum applicable to the entire CPSS, see n. 1, *supra*, school principals in the CPSS are now required by local rule to provide at least as much as the constitutional minimum which we have described.

We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident. Brief disciplinary suspensions are almost countless. To impose in each such case even truncated trial-type procedures might well overwhelm administrative facilities in many places and, by

10. Appellants point to the fact that some process is provided under Ohio law by way of judicial review. Ohio Rev.Code Ann. § 2506.01 (Supp.1973). Appellants do not cite any case in which this general administrative review statute has been used to appeal from a disciplinary decision by a school official. If it be assumed that it could be so used, it is for two reasons insufficient to save inadequate procedures at the school level. First, although new proof may be offered in a § 2506.01 proceeding, Shaker Coventry Corp. v. Shaker Heights Planning Comm'n, 18 Ohio Op. 2d 272, 176 N.E.2d 332 (1961), the proceeding is not *de novo*. In re Locke, 33 Ohio App.2d 177, 294 N.E.2d 230 (1972). Thus the decision by the school—even if made upon inadequate procedures—is entitled to weight in the court proceeding. Second, without a demonstration to the contrary, we must assume that delay will attend any § 2506.01 proceeding, that the suspension will not be stayed pending hearing, and that the student meanwhile will irreparably lose his educational benefits.

diverting resources, cost more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process.

On the other hand, requiring effective notice and informal hearing permitting the student to give his version of the events will provide a meaningful hedge against erroneous action. At least the disciplinarian will be alerted to the existence of disputes about facts and arguments about cause and effect. He may [584] then determine himself to summon the accuser, permit cross-examination, and allow the student to present his own witnesses. In more difficult cases, he may permit counsel. In any event, his discretion will be more informed and we think the risk of error substantially reduced.

Requiring that there be at least an informal give-and-take between student and disciplinarian, preferably prior to the suspension, will add little to the factfinding function where the disciplinarian himself has witnessed the conduct forming the basis for the charge. But things are not always as they seem to be, and the student will at least have the opportunity to characterize his conduct and put it in what he deems the proper context.

We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures. Nor do we put aside the possibility that in unusual situations, although involving only a short suspension, something more than the rudimentary procedures will be required.

IV

The District Court found each of the suspensions involved here to have occurred without a hearing, either before or after the suspension, and that each suspension was therefore invalid and the statute unconstitutional insofar as it permits such suspensions without notice or hearing. Accordingly, the judgment is

Affirmed.

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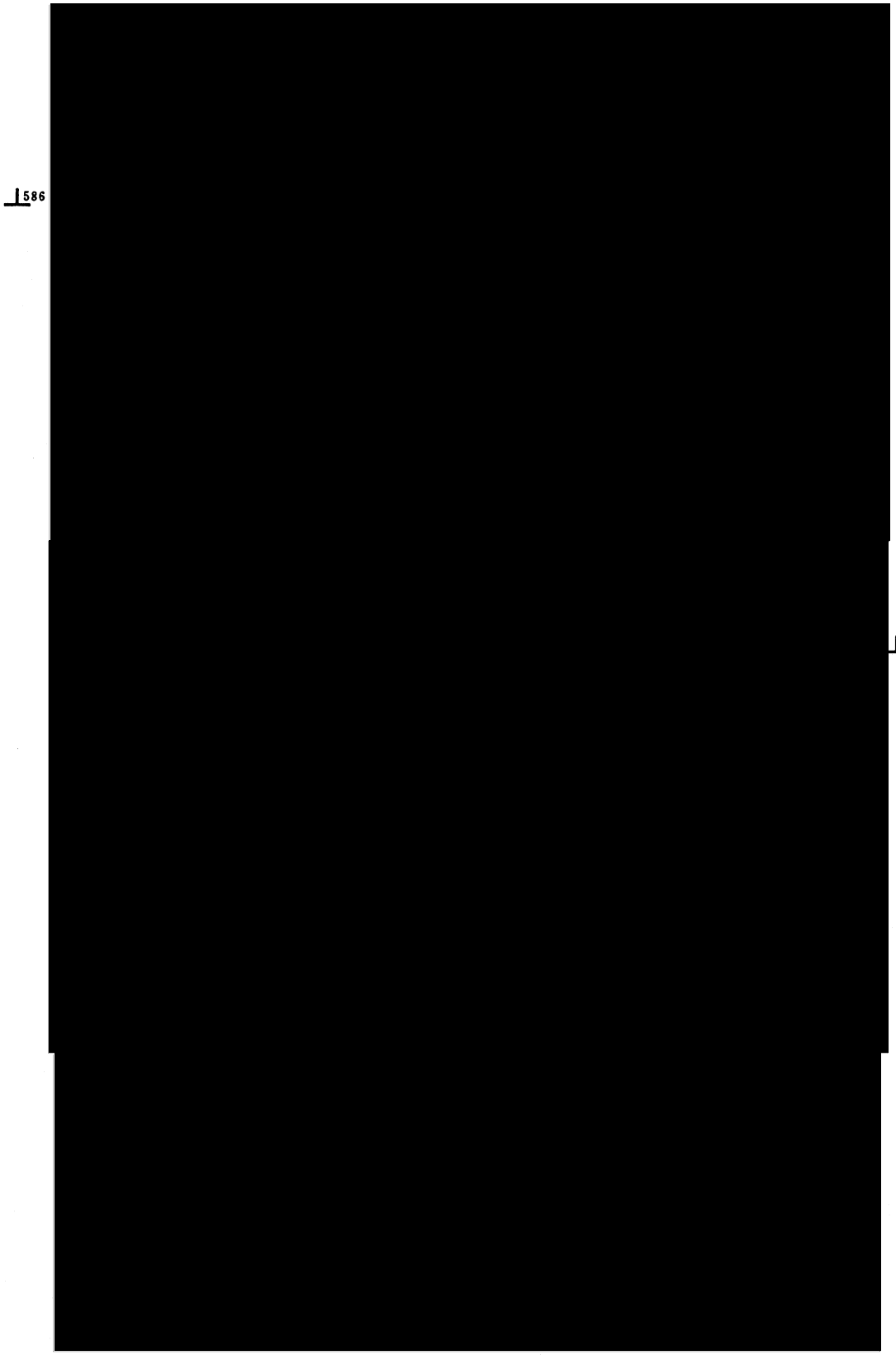
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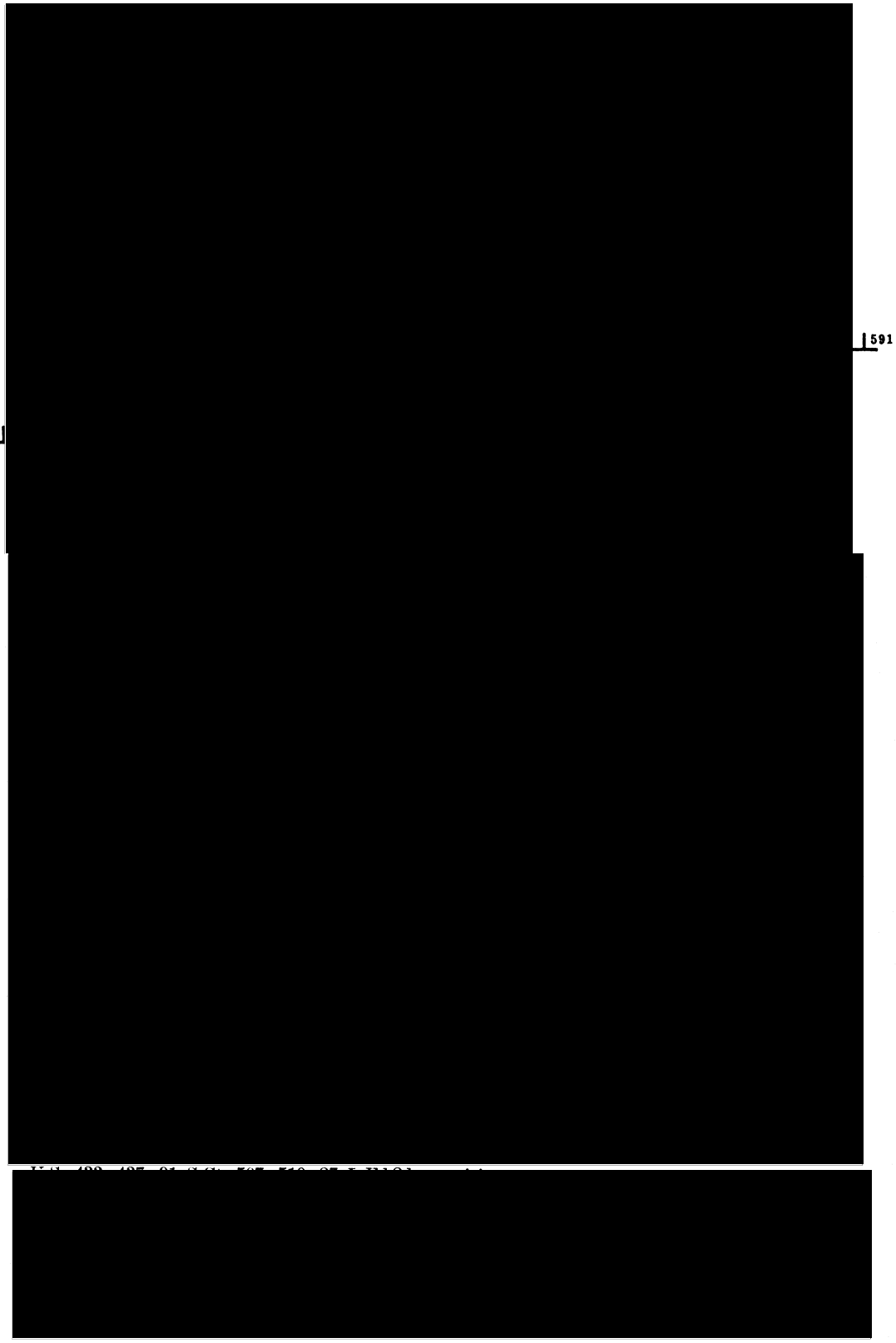
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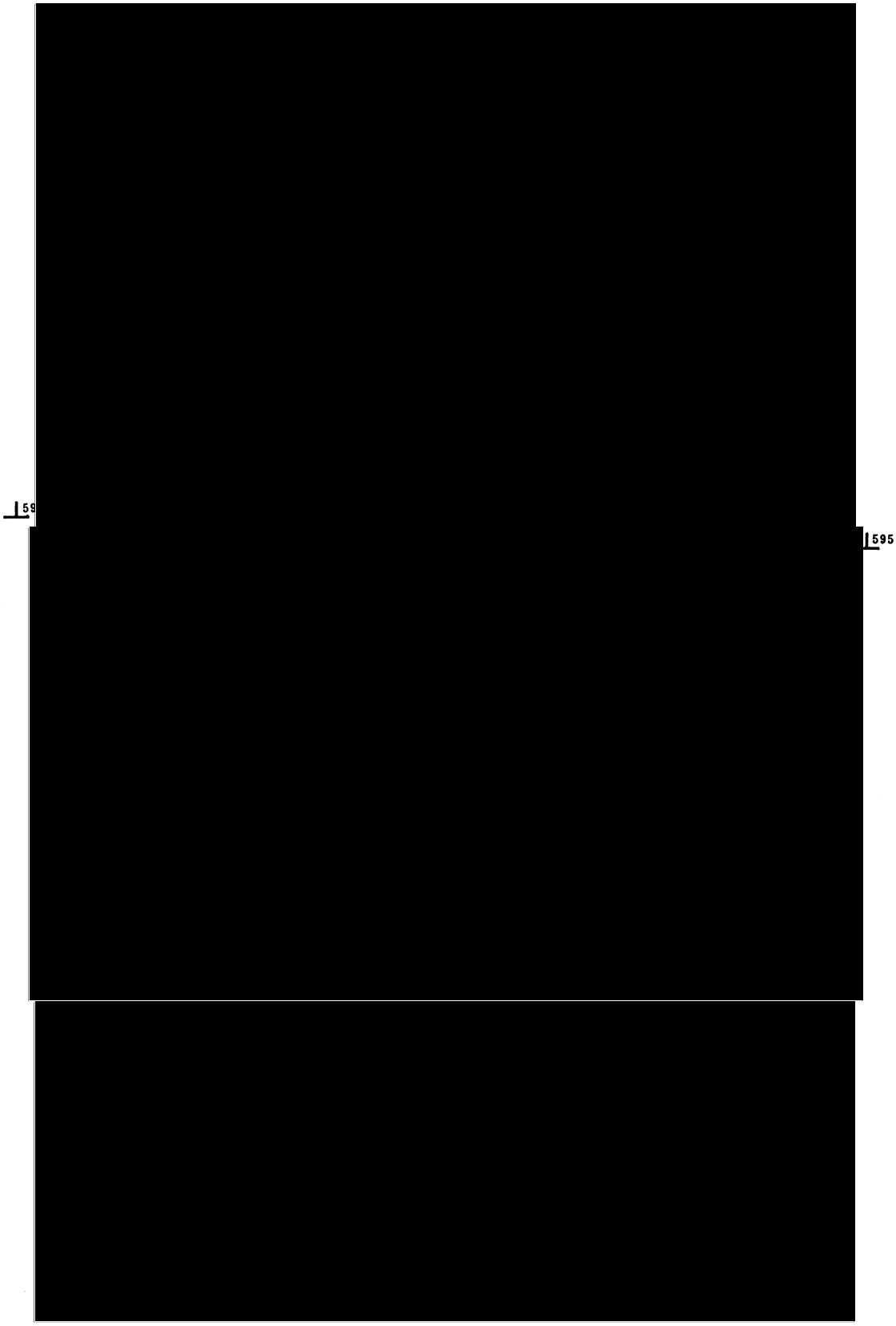

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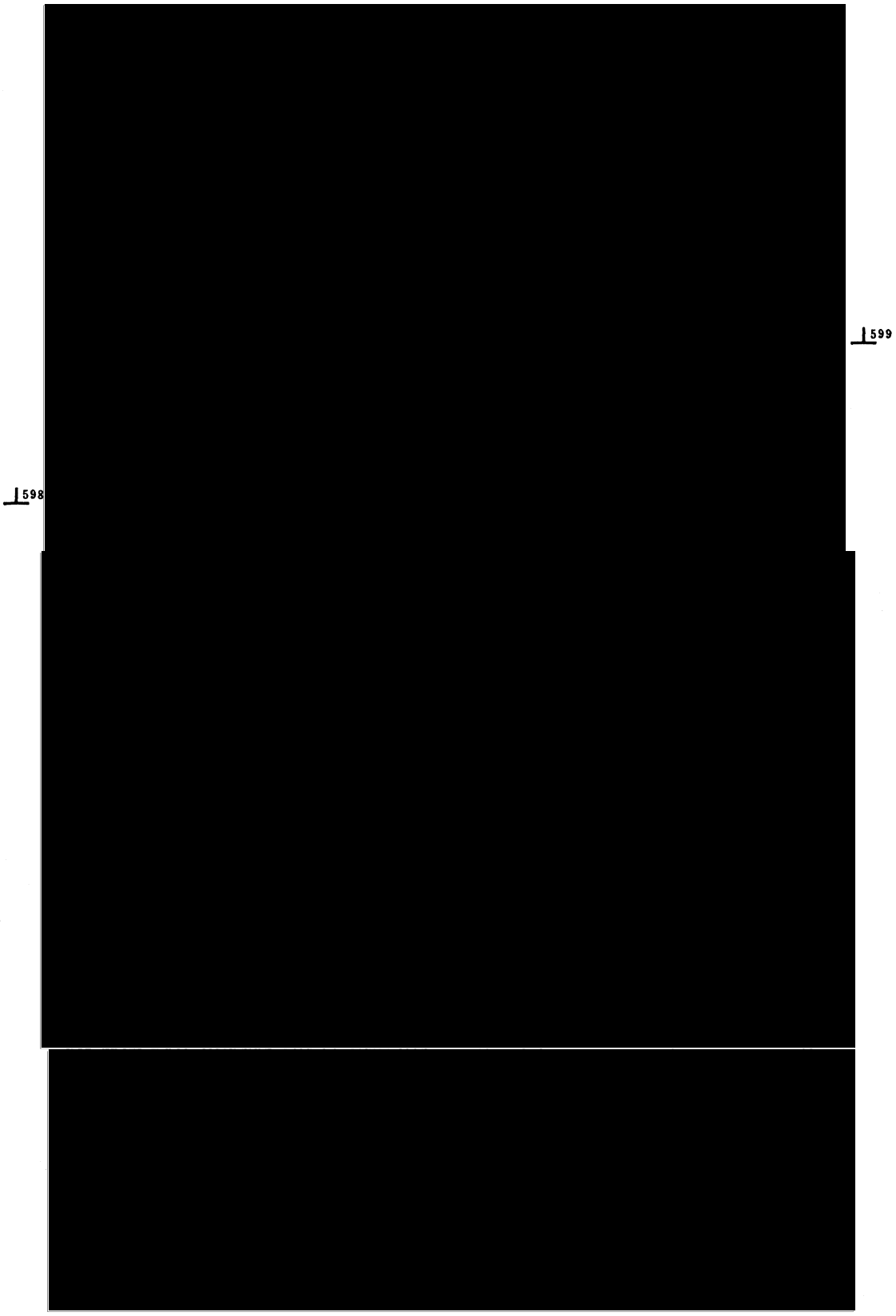

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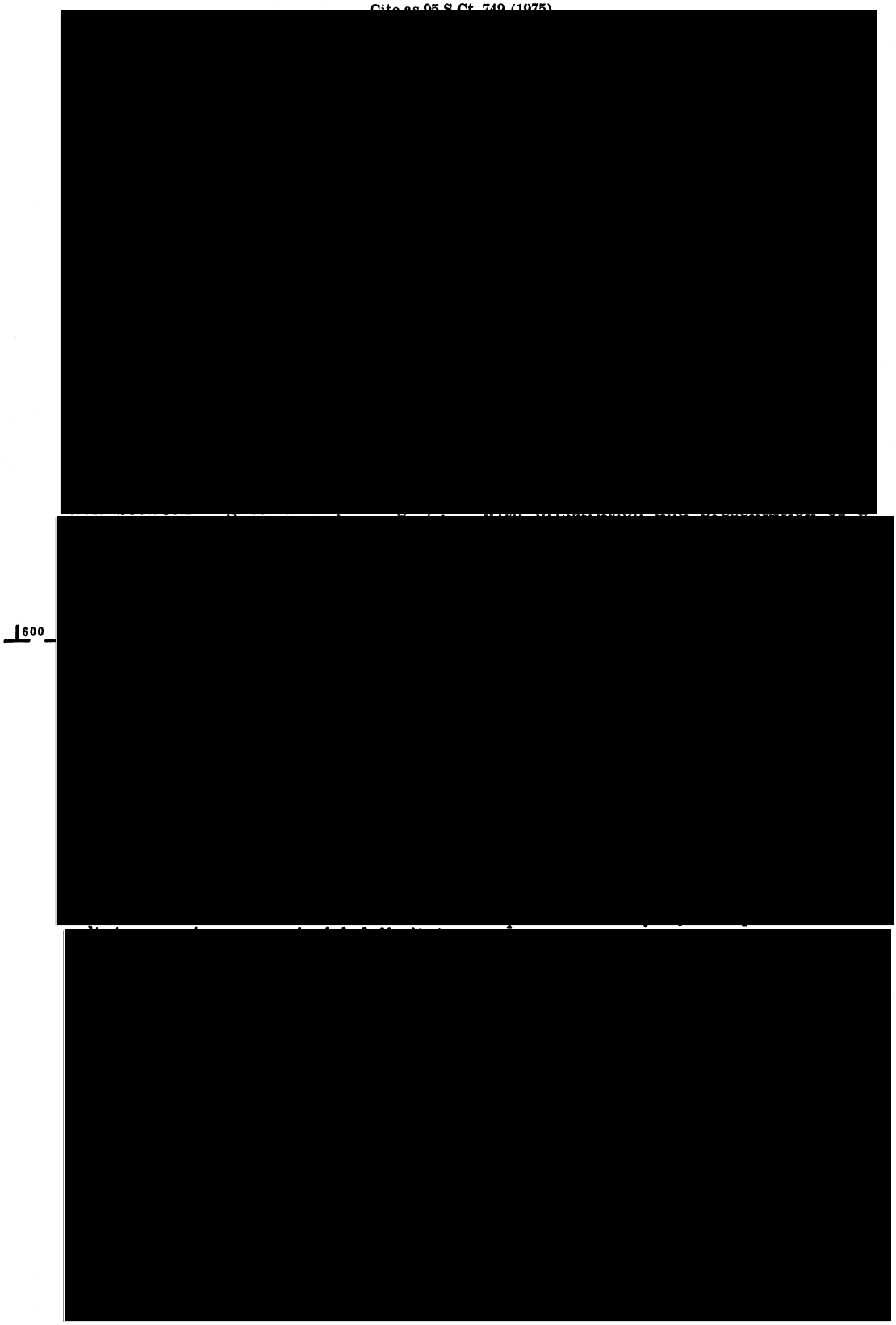
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