

Reforming Discipline in Georgia Schools



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Introduction

This report addresses two troubling trends in Georgia elementary and secondary schools: (1) Discrimination in school discipline based on race, and (2) excessive and exclusionary discipline of all students. This report also makes considerations for change in curbing these trends.

The Georgia discipline statistics outlined in this report were calculated using discipline data from the Georgia Department of Education and enrollment data from the National Center for Education Statistics (NCES).¹ As the most recent and available data, the 2011-2012 school year was used in this report.

Pursuant to Georgia Code Section 20-2-740, each local board of education must file an annual report to the Georgia Department of Education regarding disciplinary and placement actions taken during the prior school year. In response to an Open Records Act request, the Georgia Department of Education provided discipline data for each individual school and each district. Any category consisting of less than 10 students did not show a

¹ “The National Center for Education Statistics is the primary federal entity for collecting and analyzing data related to education in the U.S. and other nations.” NCES, <http://www.nces.ed.gov>.

number due to privacy concerns. Thus, this report uses the district-wide data, rather than totals from each individual school, in order to ensure accuracy. The racial statistics were calculated within the same disciplinary action (punishment) in order to prevent the potential of recounting a student who had received more than one type of disciplinary action in the same school year. The statistics in this report are based on all reported discipline data in the state of Georgia for the 2011-2012 school year, rather than based just on a statistical sample.

The information regarding disciplinary hearings is comprised of events from hearing transcripts, school disciplinary handbooks and policies, and personal experiences from Georgia Legal Services Program attorneys.

Different Treatment for Students of Color

Nationally, racial and minority ethnic groups are disciplined more often and more severely than their peers.² African-American students are three times more likely to be expelled or suspended than white students.³ Although they represent only 15% of the country's students, "they make up 35% of students suspended once, 44% of those suspended more than once, and 36% of students expelled."⁴ Hispanic and African-American students made up 50% of those involved in school-related arrests or referrals to law enforcement.⁵

In Georgia, the statistics are even more alarming. For the 2011-2012 school year, African-American

In Georgia, black students were 50% of all students expelled.

students represented 37% of all the students enrolled in Georgia but made up 54% of students who received in-school suspension, 66% of students who received out-of-school suspension, and 50% of students expelled. In

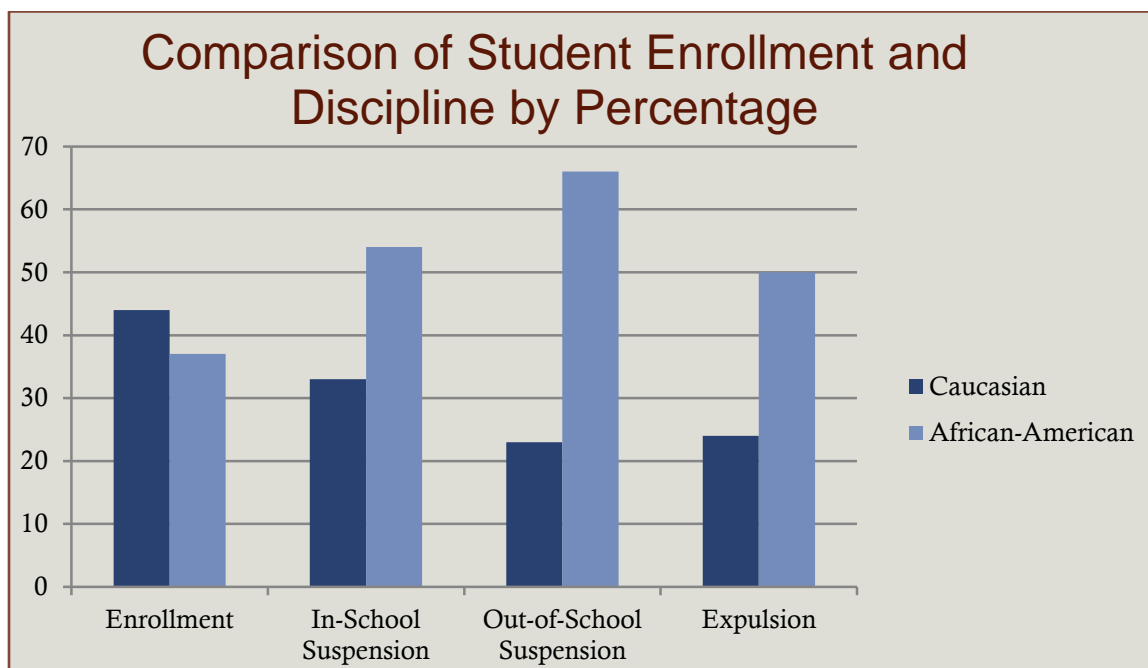
² U.S. DEP'T OF JUSTICE & U.S. DEP'T OF EDUC., DEAR COLLEAGUE LETTER: NONDISCRIMINATORY ADMINISTRATION OF SCHOOL DISCIPLINE 3 (2014) [hereinafter DEAR COLLEAGUE LETTER], *available at* <http://www2.ed.gov/policy/gen/guid/school-discipline/index.html>.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 3-4.

contrast, Caucasian students in Georgia represented 44% of all students enrolled; yet, they made up only 33% of students who received in-school suspensions, 23% of students who received out-of-school suspensions, and 24% of students expelled.⁶



Enrollment data from the National Center for Education Statistics. Discipline data from Georgia Department of Education.

Titles IV and VI protect students from discrimination based on race in school programs and activities, including student discipline.⁷ The Department of Education and the Department of Justice have noted that “the

⁶ The Georgia statistics incorporate data from the Georgia Department of Education and the National Center for Education Statistics.

⁷ Title IV of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000c *et seq.*; Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.*

initial referral of a student to the principal’s office for misconduct is a decision point that can raise concerns, to the extent that it entails the subjective exercise of unguided discretion in which racial biases or stereotypes may be manifested.”⁸ Discrimination commonly occurs when there is a discipline policy that is neutral on its face, but administered in a discriminatory manner, or “when a school permits the *ad hoc* and discriminatory discipline of students in areas that its policy does not fully address.”⁹

In Georgia, the infraction, “Other Discipline Incident,” is just one of the 29 separate reported categories of infractions. However, “Other Discipline

Schools classified 1 in 5 disciplinary actions as “other” discipline incidents.

Incident” made up one-fifth of all disciplinary actions for 2011-2012 school year.¹⁰ Uniform and well-defined terms of student infractions would eliminate the “subjective exercise of unguided discretion” and “*ad hoc*”

⁸ DEAR COLLEAGUE LETTER 6.

⁹ *Id.* at 7.

¹⁰ “Other Discipline Incident” is not defined in the *FY 2012 Student Record Data Collection Data Element Detail*; however, “Other” is defined, “Any other incident for which a student is administered corporal punishment, in-school or out-of-school suspension, expelled, suspended from riding the bus, assigned to an alternative school, referred to court or juvenile system authorities, or removed from class at the teacher’s request (pursuant to O.C.G.A. 20-2-738).” GA. DEP’T OF EDUC., *FY 2012 STUDENT RECORD DATA COLLECTION DATA ELEMENT DETAIL* (2012).

policies.¹¹ Such guidance would reduce arbitrary or subjective discretion and provide clear, appropriate, and consistently applied expectations and consequences. Terms such as “Disorderly Conduct,” “Student Incivility,” and “Possession of Unapproved Items” often require subjective judgment on the part of the referring authority, which can lead to discriminatory discretion based on perceptions, stereotypes, labeling¹² and disparate treatment.¹³

Another possible consideration is to have more transparency in the reporting requirements. Currently, schools are not required to provide racial statistics for every type of infraction.¹⁴ Access to this information would allow for the identification of potential disparities regarding specific infractions and allow school administrators to better address these issues. Better reporting requirements, however, are not enough; there must also be policies that outline clear steps to achieve equity and accountability.

¹¹ See DEAR COLLEAGUE LETTER 7.

¹² Inconsistent referrals based on race can lead to different disciplinary records of similarly situated students, and as a result, certain students can be labeled as problem students when compared to their peers of another race.

¹³ Data suggest that discriminatory discretion may also play a role in selecting students for gifted or advanced student programs.

¹⁴ O.C.G.A. § 20-2-740.

Excessive and Exclusionary Discipline

In addition to the disparities based on race, discipline procedures and policies, or lack thereof, can lead to an unwarranted loss of important instructional time for students, which leads to negative life consequences for students. The Joint DOJ/DOE Dear Colleague Letter warns,

The increasing use of disciplinary sanctions such as in-school and out-of-school suspensions, expulsions, or referrals to law enforcement authorities creates the potential for significant, negative educational and long-term outcomes, and can contribute to what has been termed the “school to prison pipeline.” Studies have suggested a correlation between exclusionary discipline policies and practices and an array of serious educational, economic, and social problems, including school avoidance and diminished educational engagement; decreased academic achievement; increased behavioral problems; increased likelihood of dropping out; substance abuse; and involvement with juvenile justice systems.¹⁵

In Georgia, one in four students enrolled in the 2011-2012 school year was disciplined. One in eight students received in-school suspension, one in twelve students

1 in 4 Georgia students receive some formal discipline.

received out-of-school suspension, and one in 524 students was expelled. A possible cause for Georgia’s trend of excessive exclusionary discipline is the student tribunal process.

¹⁵ DEAR COLLEAGUE LETTER 4. (citations omitted).

Students, parents and attorneys for students often cite to a lack of procedural due process and biased disciplinary hearing officers in discipline hearings. Lack of disciplinary hearing officers qualification standards,¹⁶ evidence standards, and burden of proof are among the problems that account for inadequate student due process. Local boards of education may establish their own policies, rules and regulations for hearing officers, panels, or tribunals to impose suspensions or expulsions, including the manner of selecting hearing officers and procedures to be followed by such hearing officers.¹⁷ Thus, there is no uniformity in how disciplinary hearing officers are selected and what procedures the disciplinary hearing officers must follow.¹⁸

Disciplinary Hearing Officers often defer to school representatives or school attorneys, hold themselves out as personal representatives of the school rather than independent fact-finders, and participate in private

¹⁶ An appointed disciplinary hearing officer determines what, if any, disciplinary action shall be taken. O.C.G.A. § 20-2-755.

¹⁷ O.C.G.A. §§ 20-2-752 to 753.

¹⁸ Students are afforded a disciplinary hearing for alleged violations of the student code of conduct where the principal recommends suspension or expulsion of longer than ten days, O.C.G.A. § 20-2-753(a), a right to be represented by counsel, O.C.G.A. § 20-2-754(b)(1), and an opportunity to present evidence and examine and cross-examine witnesses, O.C.G.A. § 20-2-754(b)(3).

communication with school representatives during the hearing.¹⁹ Specific examples of disciplinary hearing officer statements showing bias for the school include²⁰:

- The hearing officer deferring to the school’s attorney when ruling on an objection: **“Objection noted. Let’s [] continue back for the school because she’s representing us.”**
- In response to an attorney’s question, the hearing officer stated, **“I don’t know. I’m going to have to ask our, the school attorney, if you’re able to do that. I’m not sure.”**
- In overruling a line of inquiry, the hearing officer stated, **“We don’t need to go into that. We the school . . .,”** before catching herself.
- An attorney asked a hearing officer, “So, are you testifying on behalf of the school?” and the hearing officer responded, **“Excuse me. Yes, I am!”**

In the instant cases, the disciplinary hearing officer exhibited little concern about showing bias toward the school, even when on the record. Other disciplinary hearing officers are not as overt in showing their bias for the school; however, their actions and the circumstances surrounding their position leave little doubt that they are essentially agents of the school.

¹⁹ Nothing in the education code specifically requires that a disciplinary hearing officer be impartial. *But see* 20 U.S.C. § 1415(f)(3) (limiting persons who can be hearing officers to ensure impartiality for hearings regarding students with disabilities).

²⁰ These statements are quotes from actual disciplinary hearings held in Georgia within the past two years.

In many school districts, the school’s attorney acts as an “advisor” to the disciplinary hearing officer or tribunal in addition to representing the school’s position in hearings. Following the hearings, the disciplinary hearing officer will ask the student and the student’s attorney to leave the room so that the disciplinary hearing officer and school’s attorney can consult on judgment and punishment among themselves. Additionally, in some school districts, the school’s attorney will even act as the disciplinary hearing officer. This presents concerns beyond impartiality. Usually the school’s

“When the local board’s attorney... serves as advisor, judge, and advocate, the proceeding no longer has the appearance of being a fair proceeding.”

attorney and the student’s attorney will try to negotiate a settlement prior to a hearing. However, when the school’s attorney will also act as the disciplinary hearing officer, there is little reason for the school’s attorney to settle because he or she will ultimately decide the outcome. Furthermore, when a settlement cannot be reached, it makes little sense for a student’s attorney to make the same arguments at the hearing to the same person who initially rejected a settlement. “When the local board’s attorney combines all the roles and serves in as advisor, judge, and advocate, the proceeding no

longer has the appearance of being a fair proceeding.”²¹ Additionally, “[u]nder our system of jurisprudence, a judge simply does not retire with the jury while the jury deliberates, regardless whether the judge advises the jury during its deliberations.”²² Yet, these practices continue.

Even if a biased disciplinary hearing officer does not overtly show partiality in favor of the school by simply stating it, or referring to the school’s attorney behind closed doors, there are several other ways that a disciplinary hearing officer can unfairly skew a hearing to ensure a finding of guilt. One such way is through determinations of admissible and inadmissible evidence. The Georgia Department of Education (DOE) rules provide that the “strict rules of evidence prevailing in courts of law shall not be applicable to hearings before [local boards of education].”²³ This suggests that some form of evidence standard should exist, just not the strict rules of evidence used by the courts of law. However, without a standard, disciplinary hearing officers have made arbitrary rulings regarding objections, limitations of cross-examination, and the admissibility of evidence. Some disciplinary hearing officers will allow or disallow evidence

²¹ *S.R. v. Wheeler Cnty. Bd. Of Educ.*, Case No. 1997-26 (Ga. SBE, Sept. 11, 1997).

²² *Id.*

²³ Ga. Comp. R. & Regs. 160-1-3-.04(3)(a)(5).

or a line of questioning without a stated reason, while other disciplinary hearing officers, as shown above, will rule on these issues based on what the school's attorney wants.

With fundamental rights at stake, there should be at least a minimal standard regarding these important determinations in discipline hearings. One consideration might be to adopt language which specifically prohibits hearsay evidence in disciplinary hearings²⁴ or to prohibit a judgment made solely on inadmissible hearsay.²⁵ This is especially important because school administrators often present hearsay statements of other students as their sole proof in prosecuting students. Although disciplinary hearing officers are required by law to allow a student to cross-examine all witnesses,²⁶ some disciplinary hearing officers still rely on hearsay evidence to establish student guilt.²⁷

²⁴ See *A.M. v. Forsyth Cnty.* BOE, Case No. SBE 2009-64 (Sept. 2009); *Z.B. v. Bartow Cnty. BOE*, Case No. SBE 2008-44 (May 2008); see also *McGahee v. Yamaha Motor Mfg. Corp.*, 214 Ga. App 473, 474 (1994) (holding that hearsay statements should not be considered, even in administrative hearings).

²⁵ See *Robinson v. Butler*, 319 Ga. App. 633, 636 (2013); see, e.g., Ga. Comp. R. & Regs. 300-2-5-.02(3)(a) ("No testimony shall be taken that does not permit the parties of interest an opportunity to cross-examination.").

²⁶ O.C.G.A. § 20-2-754(b)(3).

²⁷ The SBOE rules provide that the local board "shall sign and issue subpoenas"; however, there is no method of enforcing the compliance with the subpoena. See Ga. Comp. R. & Regs. 160-1-
(footnote continued)

Additional considerations to improve fair discipline hearings include establishing a burden and standard of proof, requiring a pre-hearing conference prior to long-term exclusionary discipline, and exhausting all alternatives before removing a student from his or her normal classroom environment. Currently, some districts define the burden of proof that schools must meet to convict a student; other districts do not. The overall understanding is that the school has the burden of proof.²⁸ However, without a defined burden or standard, many disciplinary hearing officers make determinations and conduct hearings as if the burden lies on the student to show why the student should not be suspended or expelled.

Rather than immediately charging a student and pushing for long-term suspension or expulsion, schools should be required to meet with the parents or guardian of the child and seriously look into whether an alternative to exclusionary discipline exists.²⁹ Before the school pushes for exclusionary

3-.04(3)(a)(2). One consideration is to provide a mechanism for enforcement of subpoenas such as seeking an order from a superior court. *See, e.g.*, O.C.G.A. § 34-8-89.

²⁸ *See* O.C.G.A. § 24-14-1.

²⁹ The current rules do not specifically require the school or local board of education to hear the concerns of individual parents before a discipline hearing. *See* Ga. Comp. R. & Regs. 160-4-8-.15(2)(a)(19) (requiring local boards of education to provide opportunities and expectations for parental involvement); *see also* Ga. Dep't of Educ., *Procedures for Formal Hearing & Appeals to the State Board of Education*, <http://www.gadoe.org/External-Affairs-and-Policy/State-Board-of-Education/Pages/Procedures-for-Formal-Hearings-and->

(footnote continued)

discipline, the past disciplinary record and academic achievements of the student should be considered, and any underlying issues, facts, concerns and alternatives to exclusionary discipline should be discussed with parents.³⁰ This meeting occurs in some districts, but in others, these issues and facts only become a factor after the suspension or expulsion proceedings are initiated. Past academic achievements or a lack of past disciplinary records are often brought up as mitigating factors for punishment after a student has already been convicted. Every possible alternative to exclusionary discipline should be seriously examined and exhausted before the school initiates proceedings to ban a student from the classroom.

Georgia's current school disciplinary system provides schools with the vehicle to expel "problem" children with little or no evidence of student infractions or for minor infractions. Rather than exploring what might be best for the student, some schools immediately turn the process into an adversarial battle with the end goal of removing the student. No attempt is

Appeals.aspx. Parents can attempt to resolve the problem at a scheduled board meeting. *Id.* If the board refuses to hear your concerns, a formal hearing can be requested. *Id.*

³⁰ *See, e.g.*, 20 U.S.C. § 1415(f)(1)(B) (requiring a "Resolution Session" before an impartial due process hearing regarding students with disabilities).

made to address the root cause of the behavior or to mediate a workable alternative to expulsion.

Some local boards of education are so programmed to be adversarial that they keep a step-by-step guide for school administrators to use as an aid in ensuring that these students are expelled. In one local board of education handbook, administrators are called “Prosecuting Administrators.” Tips for Prosecuting Administrators include:

- “Don’t be lazy at the hearing and think the Hearing Officer will automatically find the charged student guilty”;
- “Anticipate what defenses/arguments the charged student and his parents will argue. Develop a scheme for poking holes in their defense/argument. Do not be afraid to cross-examine the charged student and his witnesses. The charged student’s testimony should not go unchallenged.”

The handbook goes on to say that common mistakes made by Prosecuting Administrators are:

- “Not being prepared to serve as the prosecutor or understanding the defense team. For example, not being prepared to cross-examine the charged student or his/her witnesses and/or refuting his or her theory of defense. In this form, an administrator has to act as the prosecutor and advocate for the school”;
- “Allowing a parent and/or an attorney intimidate an administrator, so that they do not call all their witnesses, ask tough questions, or introduce evidence that established guilt.”

Certain schools are all but guaranteed to have their referred students convicted and punished through their disciplinary hearing officer. When a

school does not get the full extent of the punishment that they pushed for, the School's Resource Officer can refer the student to law enforcement or juvenile court for most charged infractions. Under these conditions, students are pressured to sign a confession, sign a hearing waiver, or sign a plea deal regardless of the evidence or the infraction. The unfair and adversarial environment of this process has also lead to a high rate of appeals. The obvious consequence is a lack of trust between school officials and students, parents, and the community.

Conclusion

The data evidences a vast disparity between the number of black students disciplined compared to white students. This problem exists throughout Georgia regardless of the racial makeup of the county, the rural, urban or suburban settings, or the socio-economic background of the students. The statistics reveal the obstacles faced by black children in Georgia and show the existing bias and propensity for excessive discipline at all levels.³¹ Black students face severe short and long-term effects as a result.

In the short-term, students subjected to exclusionary discipline will suffer academically and may fall behind in their studies. In the long-term, students are at a greater risk of dropping out of school and being incarcerated. There is no evidence that frequently excluding children from the classroom for extended periods of time improves school safety, student behavior, or academic performance. In fact, “emerging data indicates that schools with higher rates of school suspension and expulsion have poorer outcomes on standardized achievement tests, regardless of the economic level or

³¹ See DANIEL J. LOSEN & RUSSELL J. SKIBA, *SUSPENDED EDUCATION: URBAN MIDDLE SCHOOLS IN Crisis* 10 (2010) (“Research on student behavior, race, and discipline has found no evidence that African-American overrepresentation in school suspension is due to higher rates of misbehavior.”).

demographics of their students. It is difficult to argue that disciplinary removals result in improvements to the school learning climate when schools with higher suspension and expulsion rates average lower test scores than do schools with lower suspension and expulsion rates.”³²

It is irrefutable that black students in Georgia are more likely to be disciplined than white students. These facts are uncontroverted and the effects undermine the very premise of education: to produce a more learned and productive citizenry. Therefore, action must be taken to stop this disturbing, harmful, and unjust trend.

³² *Id.* at 12.

As a recap, this report suggests the following Considerations for Change:

1. Implement uniform student disciplinary policies with well-defined terms for student infractions.
2. Require more transparency in data reporting requirements of schools, such as including the racial breakdown of students punished for each particular infraction.
3. Adopt language prohibiting hearsay evidence in disciplinary hearings, or at the very least, prohibit judgments made solely on hearsay.
4. Provide a mechanism of enforcing compliance with a subpoena.
5. Establish that the school has the burden of proof and what that burden is.
6. Require impartial hearing officers who are not affiliated with the school district or its counsel.
7. Require a pre-hearing conference with parents and students prior to long-term exclusionary discipline to review the student record and to exhaust all alternatives before removing a student from the classroom environment. This collaboration encourages a less adversarial process.

2012 Georgia's Disciplinary Index

Number of black students expelled for every one white student expelled: 2

Ratio of white to black students who receive out-of-school suspension: 1:3

Of white to black students who receive in-school suspension: 3:5

For every 5 white students, there are 8 black students who are referred to juvenile court.

In 2012, black students made up 37% of students enrolled in public schools.

Forty-four percent of students enrolled were white.

Of those who receive in-school suspension, black students make up: 54%

White students make up: 33%

Of those who receive out-of-school suspension, black students make up: 66%

White students make up: 23%

For every white student disciplined, there are 2 black students disciplined.

Ratio of black students enrolled to black students disciplined: 5:2

One of every 6 black students receive in-school suspension.

One of every 7 black students receive out-of-school suspension.

Discipline Timeline for a Georgia Student

Action	Days Allotted	Total Timeline
Suspension		Day 1
Disciplinary Hearing	10 days from suspension ³³	Day 10
Disciplinary Hearing Officer's Written Decision to the Parties	10 days from hearing ³⁴	Day 20
Student Appeal Due	20 days from decision ³⁵	Day 40
Local Board of Education Decision Due	10 business days from notice of appeal ³⁶	Day 54
Student Appeal Due to the GABOE	30 days from decision ³⁷	Day 84
Superintendent Submits Appeal and Record to the GABOE	10 days from receipt of appeal ³⁸	Day 94
GABOE required to docket case	"earliest practical time" ³⁹	Day 102 (if docketed in 8 days)
Student Oral Argument Request Due	10 days from docketing ⁴⁰	Day 112
Student Brief Due	20 days from docketing ⁴¹	Day 122
Local Board Brief Due	40 days from docketing ⁴²	Day 142
Oral Arguments	No concrete timeline	Day 150 (if oral arguments scheduled within 8 days)
GABOE Decision Due	25 days from oral arguments ⁴³	Day 175

³³ O.C.G.A § 20-2-754 (b) (2).

³⁴ O.C.G.A § 20-2-754 (c).

³⁵ O.C.G.A § 20-2-754 (c).

³⁶ O.C.G.A § 20-2-754 (d).

³⁷ O.C.G.A § 20-2-1160 (b).

³⁸ O.C.G.A § 20-2-1160 (b).

³⁹ GaDOE Rule 160-1-3-.04 (f).

⁴⁰ GaDOE Rule 160-1-3-.04 (h).

⁴¹ GaDOE Rule 160-1-3-.04 (g).

⁴² GaDOE Rule 160-1-3-.04 (g).

⁴³ GaDOE Rule 160-1-3-.04 (j).

Discipline Infographic

