

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In this Box

FILED

OCT 24 PM 3:04

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

CITE AUTHORITY: WV Code 18-2-5

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

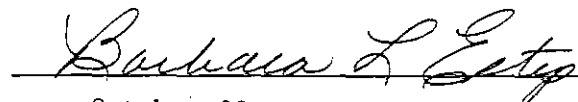
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 98 (Policy 4372)

TITLE OF RULE BEING AMENDED: Student Handbook - Rights and
Responsibilities

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS December 5, 1990


October 23, 1990

FISCAL NOTE WORKSHEET

HD NO _____ DRAFT NO _____ BILL NO _____ RESOLUTION NO _____

SUBJECT Student Rights, Responsibilities, and Discipline Handbook FUND _____

SOURCE OF REVENUE: GENERAL SPECIAL OTHER (SPECIFY) _____

COST ESTIMATE BASED ON: AN ORIGINAL ESTIMATE BUDGET BILL OTHER (SPECIFY) _____

INCOME ESTIMATE BASED ON: AN ORIGINAL ESTIMATE BUDGET BILL OTHER (SPECIFY) NA

SHOW OVER-ALL EFFECT IN ITEMS 1 AND 2 AND ITEM 3 GIVE EXPLANATION OF BREAKDOWN BY FISCAL YEAR INCLUDING LONG-RANGE EFFECT

EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
1. ESTIMATED TOTAL COST	\$	\$	\$24,375.00*	\$	\$24,375.00**
PERSONAL SERVICES	\$	\$	\$ -0-	\$	\$
CURRENT EXPENSE			-0-		
REPAIRS AND ALTERATIONS			24,375.00		
EQUIPMENT			-0-		
OTHER			-0-		
2. ESTIMATED TOTAL REVENUES	\$	\$	\$24,375.00	\$	\$24,375.00

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

*Assuming that every student in grades K-12 will receive the Handbook, this cost reflects printing one booklet per student once every five years. Each year between revision of the Handbook the local board of education is responsible for printing the Handbook for incoming students.

**The \$24,375.00 plus inflation increases over five years is the cost of printing the Handbook every fifth year.

IMPACTS

FISCAL: \$24,375.00

STATE STAFF: None

DATE

AGENCY

AUTHORIZED REPRESENTATIVE

TITLE
INTERPRETIVE RULE
WEST VIRGINIA BOARD OF EDUCATION
CHAPTER 18-2
SERIES 98
POLICY 4372

FILED
ISSN JAN -9 AM 9 04
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: Student Handbook - Rights and Responsibilities

Section 1. General

1.1 Scope - This policy establishes regulations for developing and distributing the Students Handbook - Rights and Responsibilities.

1.2 Authority - W. VA Code 18-2-5

1.3 Filing Date - October 23, 1990

1.4 Effective Date - December 5, 1990

1.5 Repeal of Former Rule - West Virginia Board of Education § 4371

Section 2. Rationale

2.1 Students need appraised of their rights and responsibilities within the framework of their education programs, and of discipline guidelines in the school setting.

Section 3. Procedures

3.1 The Students Handbook - Rights and Responsibilities shall be developed by the State Department of Education with input from school personnel.

3.2 The Handbook will be reviewed and revised as necessary at least every three years for the purpose of keeping it current.

3.3 The State Department of Education will provide copies of the Handbook to all grade 9-12 students and to all K-8 schools.

WEST VIRGINIA DEPARTMENT OF EDUCATION
PROPOSED IMPROVEMENTS - 1989-90

TITLE:

Student Rights, Responsibilities, and Discipline Handbook

PURPOSE:

The proposed policy and regulations specify requirements for the development of the Student Rights, Responsibilities, and Discipline Handbook and its distribution to West Virginia's students.

BACKGROUND:

The West Virginia Code, §18-5-13, clearly assigns to county boards of education the right to control and manage the schools for all school activities. The code, §18-5-1, states, "the teacher shall stand in the place of the parent or guardian in exercising authority over the school and shall have control of all pupils enrolled in the school from the time they reach the school until they have returned to their respective homes. " The code further states that when transportation is provided, the bus driver shall have control over the students while they are riding the school bus.

The United States Constitution, the West Virginia Constitution and state and federal laws guarantee certain rights to individual citizens, including students. Sometimes individual rights appear to conflict with the rights of groups or society in general. When this happens, a judgment must be made as to whether or not the individual's rights interfere with the right of a group.

The Student Rights, Responsibilities, and Discipline Handbook was first developed in 1976 and has been revised to reflect current rules and regulations. The Handbook, which is included in this policy by reference, helps the student determine his/her rights and responsibilities while attending West Virginia public schools and helps to ensure the orderly and business-like operation of the educational process by providing disciplinary guidelines for schools.

TARGET POPULATION:

Students K-12 will receive this document.

BENEFITS/RESULTS:

Students must be appraised to their rights and responsibilities. This document will provide that information.

CONSEQUENCES IF NOT FUNDED:

The document required by the policy will not be reprinted, consequently students will not receive the information. The possibility of litigation may be increased because students will not receive the necessary information regarding their rights.

STATE FUNDS REQUESTED: \$24,375.00



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

TO: Barbara Estep

AGENCY: Education

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 6, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 98 TITLE: 126 Education

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Barbara L. Estep

TITLE OF PERSON SIGNING: Exec Sec. WV Board of Ed.

DATE: July 31, 1992

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

126-97
Policy 4391



A Handbook for Students
in the Public Schools
of
West Virginia

101-1-101

**STUDENT RIGHTS
AND
RESPONSIBILITIES HANDBOOK**

Revised

A Handbook for Students
in the Public Schools

Approved by
West Virginia Board of Education
December 11, 1981



Roy Truby
State Superintendent of Schools

**WEST VIRGINIA BOARD OF EDUCATION
EXECUTIVE OFFICES
Charleston, West Virginia 25305**

Dr. Charles H. Wagoner, President
Weston, 1984

James P. Clark, Vice President
St. Albans, 1986

Richard N. Schnacke, Secretary
New Martinsville, 1988

Duke A. McDaniel, Member
Petersburg, 1987

Mrs. Mary Martha Merritt, Member
Beckley, 1983

Paul J. Morris, Member
Dunbar, 1989

Bob E. Myers, Member
Huntington, 1985

Dr. Carl J. Roncaglione, Member
South Charleston, 1981

William M. Smith, Member
Follansbee, 1982

EX OFFICIO MEMBER

Dr. Roy Truby
Superintendent, Department of Education

EX OFFICIO MEMBER

Dr. Robert Ramsey
Chancellor, Board of Regents

Preface

In West Virginia, boards of education and teachers are given rather broad authority to control the schools and insure that the educational program proceeds without disruption. The West Virginia Code, § 18-5-13, clearly assigns to county boards of education the right to control and manage the schools for all school activities. The code, § 18A-5-1, states that "the teacher shall stand in the place of the parent or guardian in exercising authority over the school and shall have control of all pupils enrolled in the school from the time they reach the school until they have returned to their respective homes..." The code further states that when transportation is provided, the bus driver shall have control over the students while they are riding the school bus.

The United States Constitution, the West Virginia Constitution and state and federal laws guarantee certain rights to individual citizens, including students. Sometimes individual rights appear to conflict with the rights of groups or society in general. When this happens, a judgment must be made as to whether or not the individual's rights interfere with the right of a group.

This handbook is a guide for students concerning their rights and responsibilities and the rights and responsibilities of the school. Court decisions, legislation and West Virginia Board of Education policies which deal with these rights and responsibilities are included in this handbook.

Roy Truby

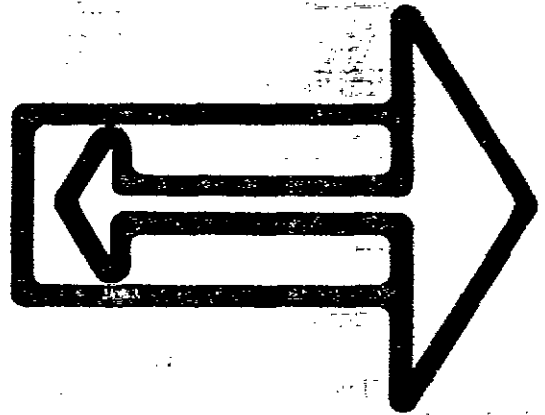
TABLE OF CONTENTS

SECTION I: Rights and Responsibilities of Students . . .	1
SECTION II: A Thorough and Efficient Education	2
SECTION III: Student Inquiry and Expression	4
A. Freedom of Religion	4
B. Freedom of Speech	4
C. Freedom of the Press	4
D. Freedom to Assemble Peaceably and to Petition to Government	5
SECTION IV: Extra-Curricular Activities	6
SECTION V: Personal Appearance	7
SECTION VI: Privacy	8
SECTION VII: Controlled Substances and Contraband .	9
SECTION VIII: Protection from unreasonable Searches and Seizures	10
SECTION IX: Police in the Schools	12
SECTION X: Discipline	13
A. Corporal Punishment	13
B. Suspension and Expulsion	13
1. Suspension	13
2. Expulsion	15
Definitions	18
Footnotes	19

SECTION I: RIGHTS AND RESPONSIBILITIES OF STUDENTS

Rights and responsibilities go hand in hand. As students in West Virginia, you have the same basic rights and responsibilities as other citizens: life, liberty and property.¹ Other rights, of which you should be aware, are your right to the equal protection of the laws and your right to the privileges and immunities of United States citizenship.² Your enjoyment of these rights is governed by due process of law.

School officials have responsibility for your safety and welfare from the time you board the school bus or arrive at school until you return home or your designated bus stop.³ To meet this responsibility they have the right to adopt rules and regulations for the purpose of maintaining order and discipline and for creating a positive learning environment.⁴ As students, it is your responsibility to obey these rules and regulations and to cooperate with school authorities who enforce these rules and regulations, not only while you are on school property, but also enroute to and from school.



SECTION II: A THOROUGH AND EFFICIENT EDUCATION

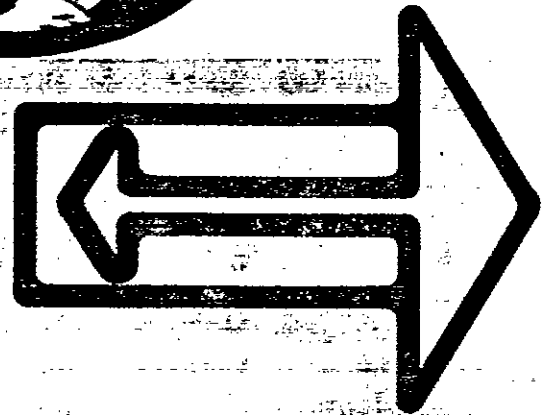
All students, regardless of race, color, national origin, religion, language, sex or handicapping condition have the right to an equal educational opportunity. As students, you are required by law to attend school regularly until your sixteenth birthday.⁵ If you have not graduated, you may attend school until you are twenty-one⁶ or until you are twenty-three if entitled to special education.⁷ Since education is a state constitutionally guaranteed right, individuals who are eligible to attend school cannot be denied placement, within reason, into appropriate classes or other school activities if they are fulfilling their responsibilities as students.

Marriage, parenthood or pregnancy does not deny you the right to a thorough and efficient education. A pregnant student has the right to attend school unless she voluntarily requests to participate in a separate portion of the program or activity because of temporary disability. Such a program or activity must be comparable to those offered to other students.⁸

Handicapped students have a right to an education, including necessary special instruction and services. If handicapped students cannot attend classes, they are entitled to the service of a homebound teacher or to an alternative educational program.⁹ To provide handicapped children with the best service, the parent(s) (as defined in the Appendix) should confer with school officials.

As students, you may be expected to pay certain school fees. However, if you are unable to pay, school officials may not withhold your grades, refuse to promote you, withhold your diploma or transcripts or deny you an education.¹⁰ In addition you have the right to attend public school, including summer

school, " provided that any deserving pupil whose parents, in the judgment of the board are unable to pay such tuition, may attend without charge"¹¹ except when attending post secondary, community education or adult preparatory programs. Public schooling is tuition-free for all eligible students.



SECTION III: STUDENT INQUIRY AND EXPRESSION

A. Freedom of Religion

The United States and West Virginia Constitutions guarantee freedom of religion.¹² You have the right to be absent from school, on a reasonable basis, for religious instruction and/or for participation in religious activities.¹³ An opportunity shall be provided to make up any work missed, however, it is your responsibility to make up such work pursuant to the rules established by the school or county.

B. Freedom of Speech

Both constitutions also guarantee freedom of speech.¹⁴ You are entitled to exercise freedom of speech while at school. Freedom of speech includes forms of expression other than vocal. The United States Supreme Court has ruled that you have the right to display or wear buttons, armbands, flags, decals or other badges of symbolic speech or expression, provided these activities do not interfere with the orderly process of the school or with the rights of others.¹⁵ It is your responsibility to conduct yourself in a manner that will not interfere with the orderly conduct of classes or the normal operation of the school and will not invite others to harm individuals or property.

C. Freedom of the Press

The United States and West Virginia Constitutions guarantee freedom of the press.¹⁶ A student-run press has freedom similar to the freedom enjoyed by the press at large. This freedom includes the responsibility not to publish obscene, libelous or false information and not to interfere with the orderly process and normal operation of the school.

School officials may prohibit the publication of school papers and the distribution of materials when the written materials should clearly interrupt the educational process or infringe upon the rights of others. In order to distribute any literature on school grounds, you must follow the school's guidelines for distribution.¹⁷

D. Freedom to Assemble Peaceably and to Petition the Government

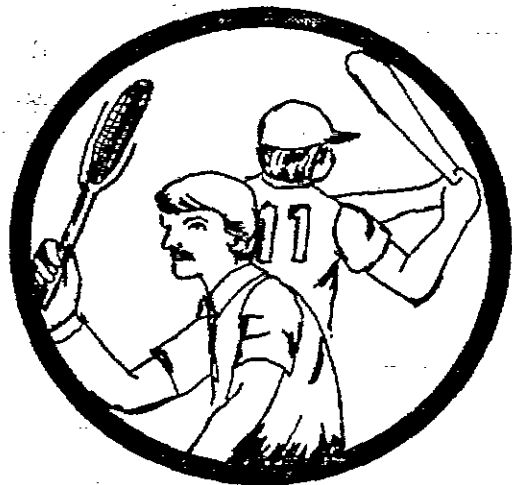
Both constitutions guarantee freedom to assemble peaceably and freedom of consultation. These rights include student assembly, although school officials may designate the time and the place of assemblies; and free conversation except when this would interfere with class or the normal operation of the school.

Along with the right to assemble peaceably, you have the right to circulate petitions to be presented to school officials. However, it is your responsibility in circulating petitions to respect the orderly process of the school and to respect the rights of others.¹⁸

You also have the right to recite the Pledge of Allegiance and to salute the flag if you so desire. However, if you are opposed for any reason to the pledge or salute, you have the right to abstain from these ceremonies in your school.¹⁹ Students who choose not to participate in these ceremonies have the responsibility to respect the rights of those who do participate and must remain respectfully silent.

SECTION IV: EXTRACURRICULAR ACTIVITIES

Extracurricular activities are offered to students so that skills and knowledge may be developed in areas that supplement the school curriculum. As a student, you may not be denied the right to participate in extracurricular activities because of your race, color, religion, national origin, sex, handicapping condition, marital status, parenthood or pregnancy.²⁰ However, participation may be denied if it is considered detrimental to the health or safety of yourself or others.²¹ Fees may be required to help support the cost of the activity; however, the fees should be kept to a minimum in order to further equal opportunity for student participation regardless of economic status. If you cannot afford to participate, talk with a school official concerning alternatives that will allow you to participate.



SECTION V: PERSONAL APPEARANCE

As a student, you have the right to choose your own styles of dress and hair unless they clearly disrupt the learning process or constitute a health or safety hazard.²² For example, proper attire is required when participating in athletics and working around or with food, machinery or chemicals. Your health, safety, morals and welfare should be considered when rules are made regarding styles of dress and hair.



SECTION VI: PRIVACY

As students, your school records are confidential.²³ To insure this privacy, the West Virginia Board of Education has adopted a policy which provides regulations for your school to follow regarding your right to privacy.²⁴

If you are under eighteen years of age, your parent(s) is entitled by law to inspect and review your school records. You have these same rights if you are eighteen years of age or older. A guidance counselor or other school official may be needed to assist you or your parent(s) in interpreting the information in your permanent record file but their assistance is not required.

"The parent of a student or an eligible student who believes that information contained in the education record of the student is inaccurate or misleading or violates the privacy or other rights of the student, may request that the educational agency or institution which maintains the records amend them."²⁵ If the educational agency does not amend the records, the parent(s) or eligible student may have a hearing to challenge the records.

Except in certain instances, school officials may not release information from your records without your parent's consent, or your consent if you are eighteen years of age or older. However, under certain conditions, authorized persons or agencies may receive information without consent.²⁶ School officials must release any information if served with a subpoena for that information.

SECTION VII: CONTROLLED SUBSTANCES AND CONTRABAND

The terms "controlled substances" and "contraband" refer to alcohol, drugs, cigarettes, and weapons. The use of any of these is controlled by state and federal laws. Penalties are provided for the violation of these laws. Examples of controlled substances are alcohol, prescription medicines and nonprescription medicines; and examples of contraband are weapons, drugs of no medicinal value and tobacco.²⁷ The board of education and/or the school shall have rules and regulations affecting the use of the above substances.

In the interest of health and safety for all citizens, state law decrees that no person under age eighteen may possess or consume alcoholic beverages. State and federal laws declare that no person may legally have a "controlled substance" (that is, a narcotic drug), in his or her possession unless obtained by prescription. Penalties are provided for the violation of these laws.

School law declares that any person who smokes in school buildings or on school grounds while school is in session or during school functions shall be guilty of a misdemeanor.²⁸

SECTION VIII: PROTECTION FROM UNREASONABLE SEARCHES AND SEIZURES

The United States and West Virginia Constitutions guarantee protection for all citizens from unreasonable searches and seizures. State and federal laws strictly limit searches and seizures by police officers.²⁹

Although school personnel are less restricted in this regard, searches and seizures must be reasonable. School officials who conduct reasonable searches do not need search warrants.³⁰

Your locker and desk are held secure from everyone but school officials or their designees who have the right to search them. The person who conducts any search must have another adult present as a witness and must tell the witness why the search is being conducted. School officials must be careful not to abuse this right. As students, you have the right to privacy and may reasonably expect that your lockers will not be searched unless appropriate school officials consider a search necessary to maintain the proper school environment and to protect other students.

Searches of personal property are subject to stricter, legal safeguards because these things are owned by you rather than by the county board of education. Personal property may, however, be searched by those authorized where there is "reasonable suspicion" or "probable cause" to believe that your property contains stolen articles or illegal items.

The guarantee of the Fourth Amendment applies more strictly to personal search and seizure. If a school official plans to search your person, she/he must have "probable

cause" as justification for an immediate search, such as to obtain stolen articles or illegal items. The Fourth Amendment protects you from arbitrary or random searches not only from the police but also from school officials as well.



SECTION IX: POLICE IN THE SCHOOLS

Police have the responsibility to enforce laws in order to protect all citizens. Police can enter schools if they suspect a crime has been committed, if they have a warrant for an arrest or search, or if their assistance has been requested by school officials. It is the duty of the police, school officials, teachers and students to cooperate with each other in order to insure that the rights of all involved persons are respected.

If you are to be questioned by the police or by school officials in the presence of the police, the school administration should see that the interrogation takes place privately in the presence of the principal or her/his representative and that every effort is made to give your parent(s) the opportunity to be present. When police are present you must be given the same rights as citizens outside of schools. You must be advised of your rights to remain silent; that anything you say can be held against you in a court of law; that if you cannot afford an attorney, one will be appointed for you. You must be informed of these rights before any questions are asked of you. You must also be protected from coercion (the using of force or threat to obtain information) and illegal restraint.³¹



SECTION X: DISCIPLINE

Disciplinary action may be taken against you for violation of school rules and regulations.³²

A. Corporal Punishment

The use of excessive physical force by school officials on students is illegal. Moderate corporal punishment used to enforce discipline is permitted by law. However, such punishment must not be wanton or malicious and must not be in excess of the offense. As students, you have the right to know what type of misconduct will result in corporal punishment. If the local school board has a written policy pertaining to corporal punishment, the student must be informed of such policy. In all cases, corporal punishment must be administered in the presence of a witness.³³

B. Suspension and Expulsion

To retain the right to a free education, you are responsible for complying with the regulations and requirements of the school. Denying students school attendance, either through suspension or expulsion, is an extremely serious matter and must be for just cause and in accordance with due process of law. Reasons for suspension or expulsion are limited to: disorderly, refractory, indecent and immoral conduct, including assault on a school employee and possession or misuse of contraband and controlled substances.³⁴

1. Suspension

As students, you may be suspended from attending class by a teacher, from school by the principal or from riding a bus

by the driver. Additionally, the West Virginia School Transportation Regulations have authorized the county superintendent of schools and the county director of transportation to suspend any passenger from riding a school bus. Your parent is entitled to participate in the settlement of the problem causing your suspension from riding the bus.³⁵

Suspension is intended as a temporary solution until the problem which has caused the student to be suspended is corrected. A suspension should be short, usually one to three days, but may extend to ten days.³⁶ While you are under the conditions of a suspension, you can be expected to continue your studies either at home or in an in-school suspension setting.³⁷ The purpose of suspension is to protect school personnel and property, the student body and the orderly process of the school.

When faced with suspension you are entitled to an informal hearing if you are to be suspended from school for a period of ten (10) days or less. At this hearing, the principal must tell you why you are being suspended and you must be given the opportunity to present your reasons why you should not be suspended. In other words, you have a right to present your side of the case. However, if your conduct is detrimental to the progress and the general conduct of the school, you may be suspended immediately and a hearing held as soon as practicable after the suspension.³⁸ Other procedures to be followed when dealing with suspensions are:

- a. Your parent(s) must be notified promptly in all cases of suspension.
- b. The county superintendent of schools must be notified immediately and preferably in writing of the time and conditions pertaining to the suspension.

- c. Students who are suspended from school may not participate in any school-sponsored activities, and they are not permitted on school grounds during the period of suspension without permission of school officials.
- d. No reprisals may be taken by anyone involved in the suspension.³⁹

In the event of a suspension of more than ten days, a more detailed procedure must be provided:

- a. The student/parent must be informed, in writing of the charges against her/him, including a summary of the evidence upon which the charges are based.
- b. The student must be given a formal trial-like hearing upon request.
- c. The student is entitled to be represented or advised during the proceedings by a person or persons of his/her choosing; including legal counsel.
- d. The student is entitled to be given reasonable time to prepare a case.

2. Expulsion

Only the county board of education can expel you from school. If your conduct is judged to be detrimental to the progress and general conduct of the school, school officials may recommend that the county board of education expel you from school. In all cases involving expulsion, you are entitled

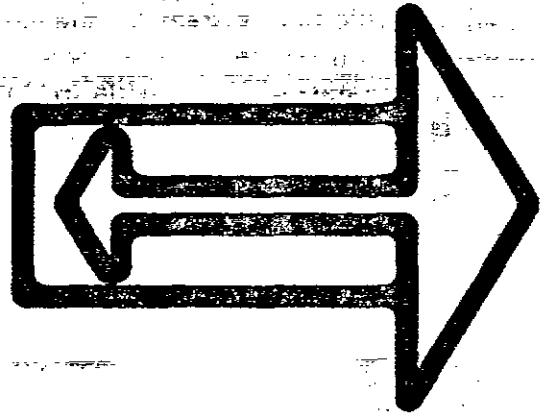
to formal due process procedures; therefore, you have the following rights if the county board of education agrees to act upon the recommendations to expel you from school:

- a. You and/or your parent(s) must be given a written statement of the specific charges against you.
- b. The county board of education must hold a hearing on your expulsion.
- c. You and your parent(s) must be given a written notice of the time and place of the board of education hearing at which your expulsion will be considered. This notice must be given far enough in advance for you to have time to prepare an adequate defense against the charges.
- d. You and your parent(s) have a right to be present at the board hearing and to defend yourself against the charges.
- e. If you so desire, you have the right to be represented at your own expense by an attorney at the board meeting.
- f. You have a right to present witnesses in your behalf, to hear the testimony of witnesses against you and to question the witnesses against you.

- g. You have a right to remain in school prior to the hearing unless your presence poses a clear danger to the integrity of the learning process or the safety of the faculty or the students.
- h. If the board of education decides that the charges against you do not warrant your expulsion from school, you may remain in school or return to school without being subject to punishment or harassment.⁴⁰

As in court the burden of proof rests upon the person making the charges; in other words, you are entitled to a presumption of innocence until proven guilty.

Expulsion by the board of education is final. However, if you believe that you were not given procedural due process or that your substantive due process rights were violated, you may appeal to the State Superintendent of schools. If the State Superintendent finds that the board's decision to expel you was properly made, then your expulsion will stand unless overturned by a court.⁴¹



DEFINITIONS

Corporal Punishment - (Black's Law Dictionary, 5th Ed., July, 1979) "Physical punishment as distinguished from pecuniary punishment of a fine; any kind of punishment of or inflicted on body."

Due Process of Law - (Michie's WV Code, Vol. 1, p. 68, Code 2, footnotes to Art. III., § 10, WV Constitution, C. F. McHenry vs. Humes, 112 WVa 432, 164 S.E. 2nd., 611, 1971)

"...means in the due course of legal proceedings according to those rules and forms which have been established for the protection of private rights securing to every person a judicial trial before he can be deprived of life, liberty or property."

Parent - (W. Va. Dept. of Educ. Procedures for the Collection, Maintenance and Disclosure of Student Data, August, 1978)

"Includes a parent, guardian, or an individual acting as a parent of a student in the absence of a parent or guardian."

School Officials - (Words & Phrases, Vol. 38)

Are agents of state government "employed in administration of school system and are part of state school system and perform state function, whether their authority and duties are statewide or are limited to smaller administrative units."

FOOTNOTES

¹United States Constitution, Fourteenth Amendment; West Virginia Constitution, Article III, §10.

²Ibid.

³West Virginia Code, §18A-5-1.

⁴West Virginia Code, §18-2-5, §18-5-13.

⁵West Virginia Code, §18-8-1.

⁶West Virginia Code, §18-5-15.

⁷West Virginia Code, §18-20-1.

⁸Title IX of the Education Amendments of 1972, §86.40.

⁹West Virginia Code, §18-20-1 et seq. CF WVa. Code 18-8-1 (Exemptions B & E).

¹⁰West Virginia Constitution, Article 12, §1; *In re Distribution of Educational Books and Materials to Underprivileged Students in the State of West Virginia*. (Unreported case decided June 17, 1977 by U.S.D.C., S.D.W.V.).

¹¹West Virginia Code, §18-5-39.

¹²United States Constitution, First and Fourteenth Amendments; Constitution of West Virginia, Article III, §15.

¹³Ibid; West Virginia Code, §18-8-1 (Exemption J.)

¹⁴United States Constitution, First and Fourteenth Amendments; Constitution of West Virginia, Article III, §7.

¹⁵United States Supreme Court. *Tinker v. Board of Education of Des Moines, Iowa*. 393 U.S. 503, 21 L. Ed. 2d 781; 89 S. Ct. 733 (1969).

¹⁶United State Constitution, First and Fourteenth Amendments; Constitution of West Virginia, Article III, §7.

¹⁷United States Supreme Court. *Tinker v. Board of Education*.

¹⁸United States Constitution, First and Fourteenth Amendments; Constitution of West Virginia, Article III, §16.

¹⁹United States Supreme Court. *West Virginia Board of Education versus Barnette*, 391 U.S. 624, 87 L. Ed. 1628, 63 Sup. Ct. 1178 (1943).

²⁰Policies, Rules and Regulations of the West Virginia Board of Education, §4200; Title IX of the Education Amendments of 1972; The Rehabilitation Act of 1973 and Title VI of the Civil Rights Act of 1964.

²¹West Virginia Code, §18-5-9.

²²*Lambert versus Marushi*, 322 F. Sup. 326 (1971); Title IX of the Education Amendments of 1972, §6.31 (b).

²³U.S. Family Education Rights and Privacy Act of 1974; West Virginia Code 29B-1-4.

²⁴Policies, Rules and Regulations of the West Virginia Board of Education, §4350. "Procedures for the Collection, Maintenance and Disclosure of Student Data".

²⁵Ibid, §13 (1)

²⁶Ibid.

²⁷West Virginia Code, Chapters 60, 60A, and 61; §16-9-7.

²⁸West Virginia Code, §16-9-7.

²⁹United States Constitution, Fourth Amendment; Constitution of West Virginia, Article III, §6.

³⁰United States Supreme Court. *Overton v New York*, 393 U.S. 85 and 992, 21 L. Ed. 2d 218 and 457, 89 S. Ct. 252 and 441 (1968).

³¹United States Supreme Court. *Miranda v Arizona*, 384 U.S. 436, 16 L. Ed. 2d, 694, 86 S. Ct. 1602 (1966), 10 ALR3d 974.

³²Policies, Rules and Regulations of the West Virginia Board of Education, §4370. West Virginia Code §18-8-8, §18A-5-1, §18A-5-1a.

³³West Virginia Code, §18A-5-1, *Baker v. Owen*, 423 U.S. 907 (1976) original case at 395 L.2d 294 (1975); *Ingraham v. Wright*, 430 U.S. 651 (1971).

³⁴West Virginia Code, §18A-5-1.

³⁵West Virginia School Transportation Regulations; note also §4336 of the Policies, Rules and Regulations of the West Virginia Board of Education; West Virginia Code, §18A-5-1.

³⁶*Goss v Lopez*, 419 U.S. 565, 958 S.Ct. 729, 42 L. Ed. 2d 725 (1975).

³⁷West Virginia Code, §18-8-8.

³⁸Goss v. Lopez, supra.

³⁹WV Code §18-8-8.

⁴⁰Goss v. Lopez, supra.; West Virginia code, §18A-5-1 and 1a.

⁴¹Policies, Rules and Regulations of the West Virginia Board of Education, §1340.