



**EXECUTIVE SUMMARY**  
**WEST VIRGINIA BOARD OF EDUCATION**

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**POLICY NUMBER AND TITLE:** Policy 4372  
*Student Handbook - Student Rights and Responsibilities*

**PUBLIC COMMENT PERIOD ENDS:** July 12, 1998

**BACKGROUND:**

The *Student Handbook - Student Rights and Responsibilities* was first developed in 1975 and has been revised to reflect current laws and regulations. The United States Constitution, the West Virginia Constitution, and state and federal laws guarantee certain rights to individuals, including students. Nonetheless, students continue to be responsible for their actions.

The Handbook describes the rights and responsibilities of students attending West Virginia public schools. It includes specific references to: thorough and efficient education; student inquiry; contraband, (alcohol, drugs, tobacco, and deadly weapons); search and seizure; police in the school; discipline (suspension and expulsion); attendance; prevention of child abuse; and, harassment.

**PURPOSE:**

Policy 4372 provides guidance to staff and students to ensure their understanding and observation of the rights and responsibilities of students in the public schools of West Virginia. The policy also stipulates printing and distribution requirements for a student handbook detailing this information.

FILED

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Title 126

LEGISLATIVE INTERPRETIVE RULE  
WEST VIRGINIA BOARD OF EDUCATION OFFICE OF WEST VIRGINIA  
CHAPTER 18-2 SECRETARY OF STATE  
SERIES 98

STUDENT HANDBOOK - STUDENT RIGHTS AND RESPONSIBILITIES (4372)

**§126-98-1. General.**

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

1.2. Authority -- West Virginia Constitution, Article XII, §2, West Virginia Code §§18-2-5, 18-5-1, and 18-5-13.

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~~

**§126-98-2. Rationale.**

2.1. Students need to ~~be informed of~~ understand their rights and responsibilities within the ~~framework of their education programs and of discipline guidelines in the school setting.~~

**§126-98-3. Procedures.**

3.1. The *Student Handbook - Student 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, ~~but 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.~~ four copies of the *Handbook* to all K-8 schools for placement in the school's main office, the principal's office, the counselor's office, and the library-media center.

3.4. The State Department of Education will provide a master copy of the *Handbook* to each school serving students in grades 9-12, and a master copy of the *Handbook* summary statements.

3.5. Each school serving students in grades 9-12 shall provide a copy of the Handbook summary statements to each student in the school. These summary statements shall be made part of the school handbook provided to each student. The school's handbook shall also state, "Students may view a copy of the entire Student Handbook - Student Rights and Responsibilities in the school's main office, in the principal's office, in the counselor's office, or in the library-media center."

**§126-98-4. Incorporation by Reference**

4.1. A copy of the rules and regulations are attached. Copies may be obtained in the office of the Secretary of State and in the West Virginia Department of Education, Division of Instructional and Student Services.

4.2. Summary of rules and regulations. -- The State Department of Education recognizes that the education program within a school is of primary importance and that the education program must proceed without disruption. Educators and students in the public schools have both rights and responsibilities for ensuring the orderly operation of educational programs. The Student Handbook -Student Rights and Responsibilities addresses the following: thorough and efficient education; student inquiry; contraband; search and seizure; police in the school; discipline(suspension and expulsion); attendance; prevention of child abuse; and, harassment.

**STUDENT HANDBOOK - STUDENT RIGHTS AND RESPONSIBILITIES (4372)**

**A Handbook for Students  
in the Public Schools**

**Approved by  
West Virginia Board of Education  
Revised April 1998**



**Henry Marockie  
State Superintendent of Schools**

## PREFACE

In West Virginia, boards of education, administrations, principals and teachers are given broad authority to control the schools and the behavior of students to ensure that the educational program proceeds without disruption. West Virginia Code §18-5-13 assigns county boards of education the right to control and manage the schools for all school activities. West Virginia 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 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. Students possess many of these same rights. However, certain rights possessed by adult citizens do not extend to students.

The Student Handbook - Student Rights and Responsibilities is a guide for students concerning their rights and responsibilities and the rights and responsibilities of school officials. Court decisions, legislation, and West Virginia Board of Education policies that deal with these rights and responsibilities are cited in this handbook.

Henry Marockie  
State Superintendent of Schools

## TABLE OF CONTENTS

|                        |  | <u>PAGE</u> |
|------------------------|--|-------------|
| SECTION I:             | Rights and Responsibilities of Students .....                        | 1           |
| SECTION II:            | A Thorough and Efficient Education .....                             | 1           |
| SECTION III:           | Student Inquiry and Expression .....                                 | 2           |
|                        | A. Freedom of Religion .....   | 2           |
|                        | B. Freedom of Speech .....   | 2           |
|                        | C. Freedom of the Press .....  | 2           |
|                        | D. Freedom to Assemble Peaceably and To<br>Petition Government ..... | 3           |
|                        | E. Noncurriculum Related Student Groups .....                        | 3           |
| SECTION IV:            | Extracurricular Activities .....                                     | 3           |
| SECTION V:             | Personal Appearance .....  | 4           |
| SECTION VI:            | Privacy .....  | 5           |
| SECTION VII:           | Contraband: Alcohol, Drugs, Tobacco, Deadly<br>Weapons .....         | 5           |
| SECTION VIII:          | Protection from Unreasonable Searches and<br>Seizures .....          | 7           |
| SECTION IX:            | Police in the School .....   | 7           |
| SECTION X:             | Discipline .....   | 8           |
|                        | Suspension and Expulsion .....                                       | 9           |
|                        | 1. Suspension .....  | 9           |
|                        | 2. Suspension of Disabled Students .....                             | 10          |
|                        | 3. Expulsion .....   | 11          |
| SECTION XI:            | Attendance .....   | 13          |
| SECTION XII:           | Child Abuse Prevention .....   | 13          |
| SECTION XIII:          | Harassment .....   | 13          |
| FOOTNOTES .....        |  | 14          |
| HANDBOOK SUMMARY ..... |  | 18          |

## **SECTION I: RIGHTS AND RESPONSIBILITIES OF STUDENTS**

Rights and responsibilities go hand in hand. As a student in West Virginia, you have basic rights and responsibilities similar to those enjoyed by other citizens. These include the right to the equal protection of the laws and your right to the privileges and immunities of United States citizenship. Your enjoyment of these rights is governed by due process of law.<sup>1</sup>

School officials have control of your safety, welfare, and behavior from the time you board the school bus or arrive at school until you return home or to your designated bus stop.<sup>2</sup> To meet this responsibility school officials have the right and responsibility to adopt rules and regulations for the purpose of maintaining order and discipline for creating a positive learning environment.<sup>3</sup> As a student, it is your responsibility to obey these rules and regulations and to cooperate with school authorities who enforce these rules and regulations.

You as a student are responsible for the following:

1. Attend school faithfully, complete assignments on time, and work to your full potential.
2. Behave in a manner that does not disrupt classroom learning or the operation of the school.
3. Obey teachers, principals, and others in authority.
4. Refrain from aggressive or threatening behavior toward fellow students, teachers or other school staff.
5. Refrain from the possession or use of any weapons, illegal drugs, alcohol, or tobacco products.<sup>4</sup>

## **SECTION II: A THOROUGH AND EFFICIENT EDUCATION**

All students, regardless of race, color, religion, national origin, language, gender, ~~handicapping condition~~ disability, marital status, parenthood, or pregnancy have the right to an equal education opportunity. As a student, you are required by law to attend school regularly until: your sixteenth birthday; as long as you continue to be enrolled as a student after your sixteenth birthday; or until your graduation.<sup>5</sup> If you have not graduated, you may attend school until you are twenty-one.<sup>6</sup> If you are ~~handicapped~~ disabled or gifted and in need of special education and related services, your parents or guardian should contact the county's Director of Special Education.

Marriage, parenthood, or pregnancy do not deny you the right to a thorough and efficient education. If you are pregnant, you have the right to attend school. You may voluntarily request to participate in an alternative program or activity. Such program or activity must be comparable to those offered to other students.<sup>7</sup>

You have the right to attend public school, including summer school. Public schooling is tuition-free for all eligible students. School systems, however, may charge tuition for summer school "provided that any deserving pupil whose parents, in the judgment of the board are unable to pay such tuition, may attend at a reduced charge or without charge"<sup>8</sup> except for post secondary, community education, or adult preparatory programs. As a student, 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.<sup>9</sup>

You may have the opportunity or may be required to attend an alternative education program if the county policy determines that you are at-risk of not succeeding in the traditional school structure.<sup>10</sup>

### **SECTION III: STUDENT INQUIRY AND EXPRESSION**

#### **A. Freedom of Religion**

The United States and West Virginia constitutions guarantee freedom of religion.<sup>11</sup> You have the right to be absent from school, on a reasonable basis, for religious instruction and/or for participation in religious activities.<sup>12</sup> An opportunity must be provided for you 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 guarantee freedom of speech.<sup>13</sup> You are entitled to exercise appropriate 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 and wear buttons, armbands, flags, decals, or other badges of symbolic speech or expression, provided this activity does not interfere with the orderly process of the school or with the rights of others.<sup>14</sup> It is your responsibility to conduct yourself in a manner that does not interfere with the orderly conduct of classes or the normal operation of the school and will not incite others to harm individuals or property. If you do not conduct yourself in an appropriate manner, you may be subject to disciplinary action by the teacher, principal and/or county board of education. The Student Code of Conduct defines appropriate behavior for all students in the public schools of West Virginia.<sup>4</sup>

#### **C. Freedom of the Press**

The United States and West Virginia constitutions guarantee freedom of the press.<sup>15</sup> 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. A student run press can have freedom similar to the freedom enjoyed by the

press at large if it is an extracurricular activity. However, if the student run press is the product of a class, then school authorities can exercise editorial control.<sup>16</sup>

School officials may prohibit the publication of school papers and the distribution of materials when the materials would interrupt the educational process or infringe upon the rights of others. In order to distribute any literature on school grounds, you must follow all guidelines for distribution.<sup>17</sup>

#### **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 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 when circulating petitions to respect the orderly process of the school and to respect the rights of others.<sup>18</sup>

You 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.<sup>19</sup> 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.

#### **E. Noncurriculum Related Student Groups**

High schools that allow one or more student groups whose purpose is not directly related to any class taught at the school to meet there are referred to as limited open forums. If your school is a limited open forum for any purpose, your school must allow religious, political, and/or philosophical group meetings as long as the meetings are voluntary, monitored by the school, and do not interfere with the conduct of school activities.<sup>20</sup>

### **SECTION IV: EXTRACURRICULAR ACTIVITIES**

Extracurricular activities are offered to all 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, language, gender, disability, marital status, parenthood or pregnancy.<sup>21</sup> However, participation may be denied if it is considered detrimental to the health and safety of yourself or others.<sup>22</sup>

You must maintain a 2.0 grade point average in order to participate in non-academic extracurricular activities (e.g. interscholastic athletics such as football, basketball, track or wrestling; cheerleading; student government; class officers; and/or clubs in grades 7-12). Your eligibility is determined for each semester by your grade point average of the previous semester. Excluded from the eligibility requirement are extracurricular activities that are closely related to identifiable academic programs/areas of study in grades 7-12 and which serve to complement academic curricular activities, such as vocational, linguistic, mathematic, scientific, forensic, theatrical, musical, journalistic, and other similar academic extracurricular activities.<sup>23</sup>

Fees may be required to help support the cost of extracurricular activities; however, the fees should be kept to a minimum in order to further equal opportunity for participation regardless of economic status. Fees required should be the same for female and male students. If the fees are paid by your school for a sport for males and not for the females who participate in the same sport, the non payment of fees would violate Title IX of the Education Amendments of 1972. If fees are to be paid by you and if you cannot afford those fees, talk with a school official concerning alternatives that will allow you to participate.

The West Virginia Secondary School Activities Commission and the State Board of Education regulate the non-academic extracurricular activities of West Virginia's public schools.<sup>24</sup>

#### **SECTION V: PERSONAL APPEARANCE**

As a student, you have the right to choose your own styles of dress and hair. The county board of education may reasonably limit the personal appearance and dress of its students if the objectives of the regulation are reasonably related to a valid educational objective such as teaching community values or maintaining school discipline.<sup>25</sup> For example, proper attire is required when participating in athletics and working around or with food, machinery or chemicals. Health, safety, morals, community standards and welfare are considered when rules are made regarding determining appropriate styles of dress and hair. Any rules regarding appearance that are imposed by your school must be generally the same for female and male students.<sup>26</sup>

The county board of education may adopt a policy regarding the wearing of school uniforms.

## **SECTION VI: PRIVACY**

You have certain privacy rights in regarding your school records. To ensure this privacy, the West Virginia Board of Education has adopted a policy which provides regulations for your school to follow regarding your school records.<sup>27</sup>

If you are under eighteen years of age, your parent(s)/guardian(s) is entitled by law to inspect and review your school records. This right applies to both custodial and non-custodial parents. 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)/guardian(s) in interpreting the information in your permanent record file, but their assistance is not required.

If you, or your parent/guardian believe that information contained in your education record is inaccurate or misleading or violates your privacy or other rights, you may request that your records be amended. If your school does not amend the records, you may have a hearing to challenge the content of the records.<sup>27</sup>

Except in certain instances, school officials may not release information from your records without your parent's/guardian(s) the consent of a parent or guardian, or your consent if you are eighteen years of age or older. For example, confidential medical information cannot be released without the consent of the parent(s)/guardian(s) or eligible student's specific written consent. However, under certain conditions, authorized persons or agencies may receive information without consent.<sup>28</sup> School officials must release any information if served with a valid subpoena for that information.

## **SECTION VII: CONTRABAND: ALCOHOL, DRUGS, TOBACCO, DEADLY WEAPONS**

The possession or use of alcohol, drugs, tobacco, and deadly weapons is controlled by state and federal laws and state and local board policy.<sup>29</sup> You will be subject to disciplinary procedures as well as criminal proceedings if you violate any of these laws or policies. Your board of education and/or the school must have rules and regulations affecting the possession or use of the above substances. Please note:

1. State law decrees that no person under age 21 may possess or consume alcoholic beverages.
2. 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.
3. State law declares that ~~no any person under the age of 18 may have tobacco products in his/her possession. The law further declares that any person under the~~

~~age 18~~ who uses tobacco in school buildings or on school grounds while school is in session or during school functions shall be guilty of a misdemeanor.<sup>30</sup> ~~School employees, however, may be permitted to use tobacco in non-instructional areas which are not accessible to students.~~ Further, state policy also prohibits the possession or use of tobacco products in school buildings and on school grounds. Violations of this policy may result in penalties based on Student Code of Conduct or county tobacco policies and personnel policies.<sup>31</sup>

4. State law makes the possession of, exposing of, brandishing of, or holding of a "deadly weapon" on school premises a crime. The same law cites examples of deadly weapons: blackjack, gravity knife, knives with a blade of over three and one-half inches in length, switchblade knife, nunchucka, metallic or false knuckles, pistol, revolver, or other instruments designed to produce serious bodily injury or death.<sup>32</sup>

State law requires mandatory suspension by the principal and mandatory expulsion for a period of not less than 12 consecutive months by the county board of education if you possess a deadly weapon; assault a school employee or sell a narcotic drug. This expulsion may be lessened at the request of the county superintendent if circumstances warrant.<sup>33</sup>

If you are in possession of, or suspected of, possessing a deadly weapon while on school grounds, on a school bus, or while attending a school-sponsored activity, school authorities must:

- ~~a. contact a law enforcement agency;~~
- a. notify the State Superintendent of Schools;
- b. notify the State Police.

School authorities may must also:

- a. notify your parent(s)/guardian(s);
- b. secure the deadly weapon if this can be done without jeopardizing the safety of all present;
- c. initiate the procedures for your suspension and expulsion
- ~~d. seriously consider your expulsion from school;~~
- ~~e.d.~~ provide counseling services upon your return to school.
- e. provide some form of education as determined by county policy unless you are determined to be dangerous to yourself and /or others.<sup>34</sup>

State law requires mandatory suspension and possible expulsion for up to one school year if you commit an act that would be a felony if committed by an adult or if you possess a controlled substance.<sup>35</sup>

State law requires the possible suspension and expulsion for up to one year if you threaten to injure or injure a pupil, teacher, administrator or other school employee; possess alcohol, use profane language directed at a school employee or pupil;

intentionally deface school property; participate in any fight; habitually violate school rules or policies.<sup>36</sup>

You may also be declared delinquent by a court, and if so, will lose your driver's license.<sup>37</sup>

Your parents are required by law to help enforce the restrictions against having a firearm or deadly weapon at school.<sup>38</sup>

If you are a special education student have a disability, the rules and regulations governing the suspension and expulsion of handicapped students with disabilities will be followed.

### **SECTION VIII: PROTECTION FROM UNREASONABLE SEARCHES AND SEIZURES**

~~Your~~ Federal and state constitutions guarantee protection for all citizens from unreasonable searches and seizures. State and federal laws regulate searches and seizures by police officers.<sup>39</sup> Although school personnel are less restricted than police officers in this regard, searches and seizures by school officials must be reasonable. School officials who conduct reasonable searches do not need search warrants.<sup>40</sup>

Your locker and desk are held secure from everyone ~~but~~ except school officials or their designees who do have the right to search them. As a student, you have a limited right to privacy and may reasonably expect that your locker or your person will not be searched unless the search is reasonable, based upon the information known by the official at the time of search.<sup>41</sup>

Personal property may be searched by those authorized where there is "reasonable suspicion" to believe that your property contains stolen articles, illegal items or other contraband as defined by law or by local board or school policy.

The Fourth Amendment protects you from arbitrary searches ~~not only~~ by the police ~~but also~~ and by 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 to ensure 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 his/her representative and that every effort is made to give your parent(s)/guardian(s) the opportunity to be present. When police are present, you

must be given the same rights as citizens outside schools. You must be advised of certain 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.<sup>42</sup>

## SECTION X: DISCIPLINE

Disciplinary action may be taken against you if you violate the West Virginia Student Code of Conduct,<sup>4</sup> local board policies, or school rules and regulations. These policies, rules and regulations should be available to you in your school and ~~and [West Virginia Code §18A-5-1 permits moderate corporal punishment of public school children by use of the open hand or a paddle to the buttocks. In addition, the physical seizure and removal of unruly pupils from the classroom and the exercise of physical force to restrain pupils from fighting or engaging in destructive or illegal acts may be used when necessary. Explanations of specific disciplinary actions follow:~~

### ~~A. Corporal Punishment~~

~~The principal or her/his specific designee shall have the authority to administer moderate corporal punishment by means of the open hand or a paddle. You need to be aware of the following stipulations in the law:~~

- ~~1: Corporal punishment should be administered only as a last resort after use of alternative methods of discipline have failed to correct the inappropriate pupil behavior.~~
- ~~2: Pupils are informed of the rules and regulations that govern the school.~~
- ~~3: The pupil is informed of the school rule or rules allegedly violated and is given an opportunity to explain his or her behavior prior to the administration of corporal punishment.~~
- ~~4: Punishment is administered without anger or malice. The amount of physical force used is not wanton or in excess of the offense, is suitable to the pupil's age and mental and physical conditions and is applied without discrimination.~~
- ~~5: The punishment is administered by the school principal or by a specific designee authorized by the principal to administer such punishment and in either case in the presence of another adult professional employee and not in the presence of another pupil.~~
- ~~6: The punishment is administered by use of the open hand or a paddle to the buttocks.]~~

- ~~7. A report which includes a description of the pupil's conduct prompting the use of corporal punishment and the name of the witness is attempted to be made informally by telephone or notice sent with the child to the parent(s)/guardian(s) at least twelve hours prior to administration of the corporal punishment and is made orally in the school office by the end of the school day and a written report is filed in the school office within twenty-four hours of the incident.~~
- ~~8. The parent(s)/guardian(s) of the pupil is notified in writing of each instance of corporal punishment within three (3) school days.~~
- ~~9. Each school principal shall be responsible for the maintenance of discipline in the school.~~
- ~~10. Corporal punishment shall not be administered to a pupil: (a) identified as handicapped, learning, hearing, mentally, or behaviorally disabled; or (b) whose parent has petitioned in writing to the school principal that corporal punishment not be administered to the pupil and attached a certificate from a physician that by reason of a physical or emotional condition the pupil should not be subjected to corporal punishment.<sup>35</sup>~~

~~Your school must have alternatives to corporal punishment. These alternative methods violations may result in include withdrawal of certain privileges, detention, or in-school suspension.~~

## **B. Suspension and Expulsion**

To retain the right to a free education, you must comply with the regulations and requirements of the West Virginia Board of Education's Student Code of Conduct<sup>4</sup>, local board of education policy and school policy. Denying students school attendance, either through suspension or expulsion, must be for just cause and in accordance with due process of law.<sup>43</sup>

### **1. Suspension**

The purpose of suspension is to protect the student body, school personnel and property, the educational environment, and the orderly process of the school. Suspension is intended as a temporary solution until the problem which caused the suspension is corrected. A suspension should be short, usually one to three school days, but may extend to ten school days.<sup>44</sup> If you are suspended, you will be expected to continue your studies either at home in an in-school suspension setting.

You may be suspended from attending class by a teacher, from school by the principal, or from riding a bus by the driver, the county superintendent of schools, and the county director of transportation.<sup>45</sup> Your parent is entitled to participate in the settlement of the problem causing your suspension.

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 practical after the suspension.<sup>46</sup> Other procedures which your school must follow when dealing with suspensions are:

- a. Your parent(s)/guardian(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. If you are suspended from school, you may not participate in any school-sponsored activities, and you 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.

**In the event of a suspension of more than ten days:**

- a. Your parent(s)/guardian(s) must be informed in writing of the charges against you, including a summary of the evidence upon which the charges are based.
- b. Upon your request you must be given a formal, trial-like hearing before the county board of education.
- c. You are entitled to be represented or advised during the proceedings by a person or persons of your choosing, including legal counsel.
- d. You are entitled to be given reasonable time to prepare a case.

**2. Suspension of Handicapped Disabled Students**

The discipline policies of your county apply to students with disabilities as well as non-disabled students. The only exception is if the misconduct is determined to be a manifestation of the disability. If you are a student with a disability, the following information is important to you:

- c. You may be suspended immediately for up to ten school days for Student Code of Conduct<sup>4</sup> violations or when it is necessary for your protection, the protection of school personnel or the protection of other students.

- b. If you have violated the Student Code of Conduct<sup>4</sup> and have exceeded the ten (10) school days of suspension, an IEP Committee must determine if the violation was a manifestation of the disability.
  - 1. If it is determined that the violation was not a manifestation of the disability, you may be suspended for more than ten school days. A free, appropriate public education must be provided during the suspension period beyond ten (10) school days.
  - 2. If it is determined that the violation was a manifestation of the disability, you may not be suspended and alternative disciplinary actions must be utilized.
  
- c. If you possess a weapon, possess or use an illegal drug or solicit a controlled substance, you may be placed in an interim alternative educational setting by an IEP Committee for not more than forty-five days. On or within ten (10) school days of the violation, an IEP Committee will determine if the violation was a manifestation of the disability.
  - 1. If it is determined that the violation was not a manifestation of the disability, you may be expelled from school. A free, appropriate public education must be provided during the period of expulsion unless determined to be dangerous.
  - 2. If it is determined that the violation was a manifestation of the disability, you may not be expelled from school and alternative disciplinary actions must be utilized.<sup>47</sup>

If there is a direct causal relationship between the handicap disability and the misconduct, alternative disciplinary actions must be utilized.<sup>48</sup>

### **3. 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 recommendations to expel you from school:

- a. You or your parent(s)/guardian(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)/guardian(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)/guardian(s) have the right to be present at the board hearing and to defend you against the charges.
- e. If you desire, you have the right to be represented at your own expense by an attorney at the board meeting.
- f. You have the 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 the 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 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 subjected to punishment or harassment.<sup>49</sup>

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.<sup>50</sup>

## **SECTION XI: ATTENDANCE**

Once you are enrolled in school, you are required to attend. Daily attendance is necessary for you to keep up with the academic program. If you accumulate five (5) unexcused absences during a semester, the principal shall contact your parent(s)/guardian(s) and meet with them.<sup>51</sup> You must also follow the county attendance policy.<sup>52</sup>

Driving a car is a privilege. You will lose your driver's license if you drop out of school and are under the age of eighteen (18). You will also lose your license if you have more than ten (10) consecutive days of unexcused absences or fifteen (15) unexcused absences during a ~~single semester year~~.<sup>53</sup>

## **SECTION XII: CHILD ABUSE PREVENTION**

You have the right to grow up without being physically or sexually abused at school, in the home or the community. State law requires teachers, counselors, nurses, or other professionals who suspect that a student is being abused to report the circumstances to the West Virginia Department of Health and Human Resources.<sup>54</sup>

If you are a victim of abuse, you may seek the advice or assistance of a teacher, counselor, nurse, or other school professional. The school professional will assist you in getting needed help to prevent the abuse from recurring.

## **SECTION XIII: HARASSMENT**

You have the right to study and learn in an environment free from racial, sexual, religious or ethnic harassment or violence. State Board policy requires county boards to have a policy and procedures that require schools in West Virginia to be free of harassment and violence. The reporting of harassment or violence should be made to a teacher, a counselor, a principal, or a school nurse, but may be made directly to the county superintendent.<sup>55</sup>

## FOOTNOTES

<sup>1</sup>United States Constitution, Fourteenth Amendment; West Virginia Constitution, Article III §10.

<sup>2</sup>West Virginia Code §18A-5-1.

<sup>3</sup>West Virginia Code §§18-2-5, 18-5-1, 18-5-13.

<sup>4</sup>West Virginia Code §18-2E-5(b); West Virginia Board of Education Policy 4373: Student Code of Conduct.

<sup>5</sup>West Virginia Code §18-8-1, §18-8-1a.

<sup>6</sup>West Virginia Code §18-5-15.

<sup>7</sup>Title IX of the Education Amendments of 1972, §106.40.

<sup>8</sup>West Virginia Code, §18-5-39.

<sup>9</sup>West 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.).

<sup>10</sup>West Virginia Code §18-5-19; West Virginia Board of Education Policy 2418: Regulations for Alternative Education Programs for Disruptive Students.

<sup>11</sup>United States Constitution, First and Fourteenth Amendments; West Virginia Constitution, Article III, §15.

<sup>12</sup><sup>12</sup>Ibid; West Virginia Code §18-8-1 (Exemption J.) Cf. Smith v. Smith, 523 F.2d 121 (4th Cir.).

<sup>13</sup><sup>13</sup>United States Constitution, First and Fourteen Amendments; West Virginia Constitution , Article III, §7.

<sup>14</sup><sup>14</sup>Tinker v. Board of Education of Des Moines, Iowa. 393 U.S. 503, 21 L. Ed. 2d 781; 89 S.Ct. 733 (1969).

<sup>15</sup><sup>15</sup>United States Constitution, First and Fourteenth Amendments; West Virginia Constitution, Article III, §7.

<sup>16</sup><sup>16</sup>Hazelwood School District v Kuhlmeier, 484U.S.260, 108S.Ct.562, 98L.Ed592 (1988).

<sup>17</sup><sup>17</sup>Tinker v. Board of Education, supra.

<sup>1718</sup>United States Constitution, First and Fourteenth Amendments; West Virginia Constitution, Article III, §16.

<sup>1819</sup>West Virginia Board of Education v. Barnette, 391 U.S. 624, 87 L.Ed. 1628, 63 Sup. Ct. 1178 (1943); WV Code §18-5-15b.

<sup>1920</sup>Westside Community Schools v. Mergens, 58LW4720(1990).

<sup>21</sup>West Virginia Board of Education, Policy 4200; Title IX of the Education Amendments of 1972; The Rehabilitation Act of 1973 and Title VI of the Civil Rights Act of 1964; West Virginia Code §18-20-1, et seq.; and West Virginia Board of Education Policy 2419: Regulations for the Education of Exceptional Students.

<sup>22</sup>West Virginia Code §18-5-9.

<sup>23</sup>Bailey v. Truby, 321 S.E. 2d 302 (W.VA. 1984).

<sup>24</sup>*Ibid.*

<sup>25</sup>Lambert v. Marushi, 322 F. Sup. 326 (1971); Title IX of the Education Amendments of 1972, 86.31 (b).

<sup>26</sup>Title IX of the Education Amendments of 1972.

<sup>27</sup>U.S. Family Education Rights and Privacy Act of 1974; West Virginia Code §29B-1-4; West Virginia Board of Education Policy 4350: Procedures for the Collection, Maintenance and Disclosure of Student Data.

<sup>28</sup>*Ibid.*

<sup>29</sup>West Virginia Code, Chapters 60, 60A, and 61; §§61-7-11a; 16-9A-4; 18A-5-1a.

<sup>30</sup>West Virginia Code §16-9A-4.

<sup>31</sup>West Virginia Board of Education Policy 2472.5A: Tobacco Control, and Policy 4373: Student Code of Conduct.

<sup>32</sup>West Virginia Code §§61-7-44-2, 61-7-14; 18A-5-1a.

<sup>33</sup>West Virginia Code §18A-5-1a

<sup>34</sup>West Virginia Code §§18A-5-1a; 61-7-11a

<sup>35</sup>West Virginia Code §18A-5-1a.

<sup>36</sup>*Ibid.*

<sup>37</sup>West Virginia Code §61-7-11a.

<sup>38</sup>Ibid.

<sup>39</sup>United States Constitution, Fourth Amendment; West Virginia Constitution, Article III, §6.

<sup>40</sup>Overton v New York, 393 U.S. 85 and 992, 21L. Ed. 2d 218 and 457, 89 S.Ct. 252 and 441 (1968). State v. Joseph T., 336 S.E. 2d 728 (W.Va. 1985).

<sup>41</sup>Ibid

<sup>42</sup>Miranda v. Arizona, 384 U.S. 436, 16L. Ed. 2d, 694, 86 S.Ct. 1602 (1966), 10ALR3d974.

<sup>43</sup>West Virginia Code §§18A-5-1, 18A-5-1a, 18-8-8, 18-2E-5(b). Goss v. Lopez, 419 U.S. 565 958S.1t.729, 42LEd2d725 (1975). West Virginia Board of Education Policy 4373: Student Code of Conduct.

<sup>44</sup>Ibid.

<sup>45</sup>West Virginia Board of Education Policy 4336: West Virginia School Transportation Regulations; West Virginia Code §18A-5-1.

<sup>46</sup>Goss v. Lopez, 419 U.S. 565, 958 D.Vy.729, 42L.Ed. 2d 725(1975); West Virginia Code §§18A-5-1; 18A-5-1a.

<sup>47</sup>~~The Education of All Handicapped Children Act of 1975 as Amended (P.L.94-142~~ P.L. 105-17 Individuals With Disabilities Education Act amended 1997 West Virginia Code §§18A-5-1a 18-20-1 et seq., and West Virginia Board of Education Policy 2419 ("Regulations for the Education of Exceptional Students").

<sup>48</sup>Ibid.

<sup>49</sup>West Virginia Code §18-8-8; Article III, §10 of the West Virginia Constitution; Fourteenth Amendment to the United States Constitution; Goss v. Lopez, supra.; West Virginia Code §§18A-5-1, 18A-5-1a.

<sup>50</sup>West Virginia Board of Education Policy 1340: Rules of Procedure for Administrative Hearings and Appeals and Policy 7211: Appeals Procedure for Citizens, depending upon type of complaint.

<sup>51</sup>West Virginia Code §18-8-4.

<sup>52</sup>West Virginia Board of Education Policy 4110: County Attendance Policy.

<sup>4653</sup>West Virginia Code §18-8-11.

<sup>4654</sup>West Virginia Code §49-6A-2.

<sup>55</sup>West Virginia Board of Education Policy 2421: Racial, Sexual, Religious/Ethnic Harassment and Violence.

## HANDBOOK SUMMARY

### **Section I:**

Rights and responsibilities go hand in hand. As a student in West Virginia, you have basic rights and responsibilities. As a student, it is your responsibility to obey rules and regulations and to cooperate with school authorities who enforce these rules and regulations.

### **Section II:**

Regardless of race, color, religion, national origin, language, gender, disability, marital status, parenthood, or pregnancy, you have the right to an education and the responsibility to pursue it.

### **Section III:**

The United States and West Virginia constitutions guarantee certain freedoms including freedom of religion, speech, the press, to assemble peaceably, and to petition the government.

### **Section IV:**

Regardless of race, color, religion, national origin, language, gender, disability, marital status, parenthood, or pregnancy, you have the right to participate in extracurricular activities.

### **Section V:**

As a student, you have the right to choose reasonable styles of dress and hair.

### **Section VI:**

You have certain privacy rights in your school records.

### **Section VII:**

You may not possess or use alcohol, drugs, tobacco or deadly weapons.

### **Section VIII:**

The United States and West Virginia constitutions guarantee certain protections, including protection from unreasonable searches and seizures.

**POLICY 4372: STUDENT HANDBOOK-STUDENT RIGHTS AND RESPONSIBILITIES  
COMMENTS/SUGGESTIONS**

*Directions: Please use this form in commenting on proposed Policy 4372.*

**Individual/Organization:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_ **City/State/Zip:** \_\_\_\_\_

| <b>Comments/Suggestions</b>   |
|---|
| <b>126-98-1. General</b>  |
| <b>126-98-2. Rationale</b>  |
| <b>126-98-3. Procedures</b>   |
| <b>Handbook (Please identify the section on which you are commenting)</b> |

**RETURN COMMENTS BY JULY 12, 1998 TO:**

Therese M. Wilson  
Director  
West Virginia Department of Education  
Building 6, Room B-057  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0330

**FISCAL NOTE WORKSHEET**  
(Submit 4 Copies)

HD NO \_\_\_\_\_ DRAFT NO \_\_\_\_\_ BILL NO \_\_\_\_\_ RESOLUTION NO \_\_\_\_\_

SUBJECT Policy 4372: Student Handbook - Student Rights and Responsibilities FUND \_\_\_\_\_

SOURCE OF REVENUE:  GENERAL FUND  SPECIAL  OTHER (SPECIFY) \_\_\_\_\_

COST OF ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) \_\_\_\_\_

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

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

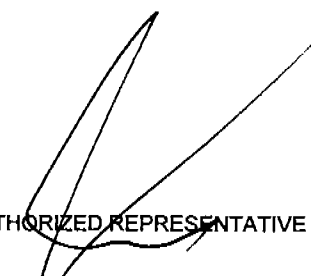
| EFFECT OF PROPOSAL   | ANNUAL   |          | FISCAL YEAR |      |            |
|--|----------|----------|-------------|------|------------|
|  | INCREASE | DECREASE | CURRENT     | NEXT | THEREAFTER |
| 1. ESTIMATED TOTAL COST  | \$       | \$       | \$          | \$   | \$         |
| PERSONAL SERVICES<br>CURRENT EXPENSES<br>REPAIRS/ALTERATIONS<br>EQUIPMENT<br>OTHER | \$       | \$       | \$          | \$   | \$         |
| 2. ESTIMATED TOTAL REVENUES  | \$       | \$       | \$          | \$   | \$         |

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

NO COST

DATE  
5/4/98

AGENCY  
West Virginia Department of Education

AUTHORIZED REPRESENTATIVE  
  
\_\_\_\_\_