

**Thrun Law**

**March 21, 2017**

**Lisa Swem to**

**MASSP**

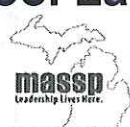


3/21/17

Can you ~~ask~~ ask a kid to give you a password

Signatures - can they last for yrs or each yr on line  
RtB w/ police depts  
18yr old - discipline  
usage of off campus - open campus lunch walking home after school


## Student Handbooks and School Law Update



MASSSP  
Leadership Lives Here.

Michigan Association of Secondary School Principals

March 21, 2017  
Lisa L. Swem



THRUN  
LAW FIRM, P.C.

### Caution


- These slides reflect general legal standards for the related presentation and are not intended as legal advice for specific situations
- Future legal developments may affect these topics
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Consistency between BOE policy and handbook.  
Living Document updates Annually

### Student Handbook Overview

- Legal authority
- Drafting considerations
- School facilities
- General school information
- Academics
- Attendance
- Student conduct
- Athletics and extra-curriculars




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### School District Legal Authority

A general powers school district may exercise a power related to the interests of education in the school district, including:

*"Providing for the safety and welfare of pupils while at school or a school sponsored activity or while en route to or from school or a school sponsored activity."*



} Bus of? walking?

MCL 380.11a(3)(b)

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### Code of Student Conduct

"A [school] **shall** develop and implement a code of student conduct and **shall** enforce its provisions with regard to pupil misconduct in a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school sponsored activity or event whether or not it is held on school premises."


MCL 380.1312(8)

Michigan School Code

Michigan Compiled law

### Judicial Interpretation

- Presumption of reasonableness
- Deference given to school officials
- Courts are to uphold school rule unless
  - Arbitrary and capricious
  - Discriminatory
  - Illegal



here is drifting and interpreting own rules.

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In court there is a presumption that all rules are reasonable

Boe Policy  
 = administrative Guidelines

### What Is the Handbook's Purpose?

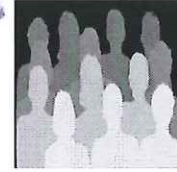
1. Communicate information *audience: students + Parents amongst Admin. + staff*
2. Administrate policy and procedure
3. Litigate as "Exhibit A"
  - ↓
  - Want it to be Exhibit A in my defense not the prosecutors



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### Who Is Your Audience?

- Students
- Parents
- Staff
- Media (?)
- Judge (?)



Who is my audience and what is my purpose

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Online is acceptable

### Handbook Format

- Organization *easy accessed + understood*
- Table of Contents or Index
- Proper grammar/punctuation
- Non-exclusive pronouns
- Cross reference other sections
- \* Do not use *etc.* or *et cetera*, instead use *including*, but not limited to ...



if attend in the reference attendance policy location

### Be Consistent

- Actual practice
- Building procedure
- Board policy
- Legal standards



Slam - ms - HS  
 Ferrate + Rules

Handbook should be consistent with your actual practice

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### Use Definitions

- Prefatory comment about certain words used throughout the handbook
  - Parent:* parent or legal guardian
  - Principal:* principal or designee
  - Teacher:* teacher or substitute
- Meaning of abbreviations

*definition n. 1. The teacher gave de of the new words. of an image (pic)*

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### Distribution of Handbook

- Signed acknowledgement form for Student and Parent
- Document any announced rule changes
- Review at start of school year
- Implement process for new students who enroll during the school year



highlight our expectations not item by item

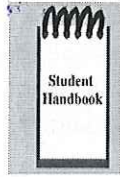
1  
 Class meeting

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## A Living Document

- Review
- Update
- Dialog and delegate
  - Students
  - Parents
  - Staff



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## Who?

- Board of Education
- Administration - *who are they*
- Faculty *List.*
- Staff
- Student Leaders *Student Council*



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## What?

- Academics
- Conduct standards
- Extracurricular activities
- Athletics
- ~~Transportation~~



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## Where?

- ~~Maps (caution: security issues)~~
- Addresses
- E-mail
- Phone numbers
- Websites
- ~~Cable television~~



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## When?

- Calendar
- Grade reports
- Conferences
- Special events
- School hours
- Bell schedule



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## Why?

- Statement of philosophy
- Foreword from Principal
- Mission statement



*Optimized Set TONE*

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### School Pride

- Mascot
- Colors
- Fight Song
- Alma Mater
- Traditions



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### Accessibility/Accommodations

- Nondiscrimination statement
- Compliance officer
- Complaint procedure
- Additional information




*PP total refer to 504 policy*

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### Bus Transportation

- Conduct standards
- Information
- Routes




Note: Unless special transportation is required by IEP, the school has no legal obligation to transport students.  
*Sutton v Cadillac Area Schs, 117 Mich App 38 (1982)*  
*Hiers v Detroit, 376 Mich 226 (1965)*

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### Cafeteria

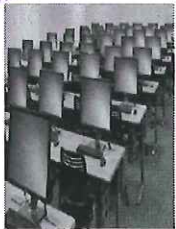
- Breakfast
- Lunch
- Prices
- Procedures
- Conduct standards
- Food allergies



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### Computers

- Access
  - CIPA
  - COPPA
- User's Agreement
- Conduct standards
- Penalties
- Computer access




*Children's online protection and privacy Act*

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### Library/Media Center

- Access
- Conduct standards
- Material check-out
- Overdue materials




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applies to secondary schools  
 HAS to be student run on occasion can have an outside speaker

### Communications

- Announcements
- Bulletin board
- E-mail
- Website




Equal Access Act implications for student clubs  
 Not sponsored by school

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### Equal Access Act

- Non school-sponsored student clubs
- Access to school facilities if
  - Voluntary/student-initiated
  - No school sponsorship
  - Nondisruptive
  - No regular attendance by outsiders
  - Employee at religious meeting only as non-participant *only as a supervisor*



Pastor Bob comes w/ Pizzas regularly

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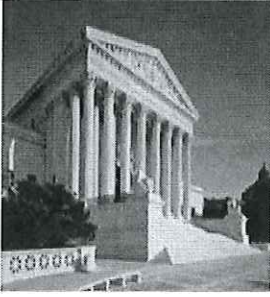
Bible Club  
 Give some right of access as other student clubs that are non-curricular. A related

SADD Young-life  
 ↓  
 Non-curricular related clubs

French Club is a curriculum related club

if SADD can have posters + announcements the Fellowship of Christian Athletes can do the same

### Supreme Court Rulings: Student Speech




**Tinker (1969)**  
**Bethel (1986)**  
**Hazelwood (1988)**  
**Morse (2007)**

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### The Schoolhouse Gate

"Public school students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."



Justice Fortas  
 Tinker v Des Moines  
 393 US 503, 506 (1969)

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### Tinker v Des Moines Sch Dist 393 US 503 (1969)

- School must prove that the student's speech would "materially and substantially disrupt" school work or discipline
- School cannot suppress speech due to "undifferentiated fear or apprehension of disturbance"
- Need "reasonable forecast" of disruption


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\*  
 Include in handbook

School has burden of proof of establish caused or reasonably forecasted disruption.

### Matthew Fraser's Speech

"I know a man who is firm--he's firm in his pants, he's firm in his shirt, his character is firm--but most ...of all, his belief in you, the students of Bethel, is firm."



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Bethel 1986



3 day suspension + can't speak at graduation  
upheld

Part's breaks on Stud. Speech.

**Bethel Sch Dist v Fraser**  
478 US 675 (1986)

- School inculcates "habits and manners of civility"
- "It is a highly appropriate function of a public school education to prohibit the use of vulgar and offensive terms in public discourse."
- Speech that undermines school's "basic educational mission" may be disciplined

**Fraser's "Basic Principles"**

1. "[T]he constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings."
2. "[T]he mode of analysis [substantial disruption] set forth in Tinker is not absolute."

Morse, 551 US at 394, 405  
Roberts Opinion

Rights of students in public schools are not the same as adults

tinker is not absolute

what case rests on

Hard to define - be cautious w/ it too broad Don't take a lot of stock in it

**Hazelwood Sch Dist v Kuhlmeier**  
484 US 260 (1988)

- A school "need not tolerate student speech that is inconsistent with its educational mission"
- School-sponsored expressive activity is subject to greater scrutiny that the "public might reasonably perceive to bear" the school's "imprimatur" is subject to greater scrutiny

**Hazelwood Holding**

"[E]ducators do not offend the First Amendment by exercising editorial content over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."

Hazelwood, 484 US at 273

School Sponsored Newspaper  
Yearbook  
Literary Magazine

can use a heavy hand in editing.

**Bong hits for Jesus**  
**Morse v Frederick**  
551 US 393 (2007)

"The question thus becomes whether a principal may, consistent with the First Amendment, restrict student speech at a school event, when that speech is reasonably viewed as promoting illegal drug use. We hold that she may."

Morse, 551 US at 403  
Roberts Opinion

↓  
School Wins

5-4 decision for the School

**Student Off-Campus Speech**

- School must show conduct has direct impact on school
- Without nexus, court may overturn discipline
- No First Amendment protection
  - Substantial disruption
  - True threat
- Parodies are protected



Has to have a nexus to school



**Requa v Kent Sch Dist No. 415 (WD Wash, 2007)**

- Student received 40-day suspension for secretly filming teacher in class and posting video on YouTube
- TRO denied, because filming in class created substantial disruption



*Ruled in school's favor.*

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**In-School v Off-Campus**

"He is not likely to prevail in establishing that the **classroom conduct** of which he is accused is subject to First Amendment protection. His admitted free speech **activities outside the classroom** – posting a link to the YouTube video on the internet – are protected speech and the school district agrees that he may not be disciplined for this out-of-school expression of his viewpoint."

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*↓ Discipline is for what did "in School" Not out of School  
posting on "YouTube"  
classroom conduct*

**Substantial Disruption**

"The Court has no difficulty in concluding that one student filming another student standing behind a teacher making 'rabbit ears' and pelvic thrusts in her direction, or a student filming the buttocks of a teacher as she bends over in the classroom **constitutes a material and substantial disruption to the work and discipline of the school.**"

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*↑ in class behavior can be disciplined*

**Distribution of Literature**

- First Amendment expressive activity
  - Prior restraint on speech
  - Content regulation
  - Vague/overbroad
- Forum determines ability to control
  - Closed (e.g., classroom) - *Very limited, little rights*
  - Limited (e.g., cafeteria) - *common areas*
  - Public (e.g., sidewalk) - *in front of school*

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*↓ protected speech outside school*

*What's the connection to School*

**Permissible Regulation**

- Time, place, and manner
- Certain content
  - Material/substantial disruption
  - Obscene, indecent, vulgar
  - Defamatory/invasion of privacy
  - Violate school rules (careful)
  - Illicit substances



*Tinker  
Bethel  
Fredrik vs Morse*

*- principal can control b/c content neutral  
can limit these kinds  
"freddy"*

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**Dress Code and Discipline**

- Standards for the school environment
  - Tinker "substantial disruption"
  - Bethel "vulgar and offensive"
  - Morse illegal drugs
- Policy and procedures
- Consequences
  - "Teachable moment"
  - Discipline



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School tried to ban wearing of view pts

To be 1st Amendment Issue - Dress has to be expressive

### Blau v Ft. Thomas Pub Sch (CA 6, 2005)

- First Amendment applies to a "particularized message" and not "vague notions of expression"
- Student had no message and only wanted to "wear clothes she feels good in"
- Dress code upheld because it did not suppress a particular view point

↑ student had no message or expression trying to make by wearing blue jeans

### Court Ruling

"A school district may enforce a dress code that regulates the types of pants and tops students may wear [even for] a student who does not wish to convey any particular message through her clothing but simply wants to wear clothes that look nice on her."

Blau v Ft. Thomas (CA 6, 2005)

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### Newsom v Albemarle Pub Sch (CA 4, 2003)

- Student wore NRA t-shirt depicting weapons in nonviolent manner
- No *Tinker* substantial disruption
- Dress code unconstitutional
  - Vague
  - Overbroad



Student won b/c No substantive disruption

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### D.B. v Lafon (CA 6, 2007)

Based on recent history of racial tensions, "school officials reasonably could surmise that displaying a Confederate flag posed a substantial risk of provoking problems in the incendiary atmosphere then existing."



about 24 cases so far 1/2 for school 1/2 for students

based on Tinker standard b/c of facts + context

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### Castorina v Madison Co Sch Bd (CA 6, 2001)

- School policy prohibited attire with "racist implications"
- Student suspended for Confederate flag attire, worn to convey pride in Southern heritage
- Others permitted to wear Malcolm X attire
- Court remanded case to determine
  - Viewpoint discrimination
  - Likelihood of disruption

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### Dariano v Morgan Hill Unified SD (CA 9, 2014)

- Caucasian students wore shirts with U.S. flag emblems to high school's Cinco de Mayo celebration
- School had history of student violence, including some along racial lines
- For safety, AP directed students to either remove or reverse the shirts
- Students refused and were sent home with excused absence
- Court ruled in school's favor

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Context is everything

for substantial disruption

based on context w/in which it happened

fact specific



They weren't suspended - given option to turn it inside out - students exercised choice to go home

It depends means you have to look at all the facts + context & to look at all perspectives

### Cinco de Mayo Flag Ban

"[O]fficials restricted the wearing of certain clothing, but did not punish the students. School officials have greater constitutional latitude to suppress student speech than to punish it."



School's action was constitutional based on reasonable forecast of substantial disruption under *Tinker*

1st Amend. doesn't prohibit hurt feelings. Usually have to show substantial disruption (less of *Tinker*)

Can you reasonably forecast + what are you using to make that forecast

### Fourth Amendment

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated . . ."



US Const, Am IV

Can search as long as they are reasonable

### Legal Standards

- Reasonable expectation of privacy?
- Search standard
  - "Probable cause" for law enforcement
  - "Reasonable suspicion" for school officials since 1985 lower standard
- Illegal search consequences
  - Exclusion of "tainted" evidence - does not apply to school cases though may see a civil lawsuit
  - Civil rights violation

until 1985 schools use this

### New Jersey v TLO 469 US 325 (1985)

- Reasonable suspicion, not probable cause, is needed for school officials to search students
- Was the search
  - Justified at inception?
  - Reasonable in scope?



initials of student

criminal case + lawyer trying to argue that principal's search was illegal. Said no reasonable suspicion

2 things make it reasonable

when you start looking you have to have reason to believe it will be there. If find something then that didn't expect that is

### Search Justified at Inception

The presence of "reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school."



T.L.O., 469 US at 342

### Reasonable in Scope

A school search "will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction."



T.L.O., 469 US at 342

initial justifications

Reasonable is contextual - more leeway if looking for a gun vs. a stolen stapler



→ should be in handbook

Completely different standard with staff vs. student

**School Code Sec. 1306 Locker Searches**


- No privacy expectation
- Principal may search locker/contents
  - Without reason
  - Without notice
- Law enforcement may assist
- Policy required
  - Copies to student, parent, MDE

↑ including its contents  
↑ use discretion here make sure reasonable suspicion

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**Locker Statement**

- School property
- Search at any time
- No privacy expectation
- Locks
- Student responsibilities



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**Doe v Little Rock Sch Dist (CA 8, 2004)**


- Students removed personal items from pockets, placed purses/backpacks on desks
- While students were in the hall, school officials searched their belongings
- Marijuana found in Doe's purse
- Search unconstitutional because no individualized suspicion

if did that in lockers than ok w/ school owns them

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**Doe Court Ruling**

"Full-scale searches that involve people rummaging through personal belongings concealed within a container are manifestly more intrusive than searches effected by using metal detectors or dogs."



But a dog can smell

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**B.C. v Plumas Unified Sch Dist (CA 9, 1999)**


- Students required to exit classroom and walk by a drug-sniffing dog
- No drugs found
- Dog-sniff of individual students was
  - Highly intrusive search
  - Unreasonable

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Characterize as a privilege or a right

**Student Vehicles**

- Privilege to park on school property
- Registration form
- Conduct standards
- Searches



✓

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Car is not a locker w/ an expectation of privacy & thus you have to have reasonable suspicion.

# Cell Phone Searches

### Vehicle Search

- Parking lot patrols
- Plain view
- Canine
- Reasonable suspicion
- Vehicle entry
  - Permission
  - Law enforcement *if student refuses*



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### G.C. v Owensboro Pub Schs (CA 6, 2013)

- Teacher confiscated student's cell phone for texting in class
- AP looked "to see if there was an issue with which I could help him so that he would not do something harmful to himself or someone else."
- School officials lacked reasonable grounds under TLO and Klump to search text messages on cell phone

*No Reasonable Suspicion*


### Sixth Circuit Ruling

"A search is justified at its inception if there is reasonable suspicion that a search will uncover evidence of further wrongdoing or of injury to the student or another. **Not all infractions involving cell phones will present such indications.** Moreover, even assuming that a search of the phone were justified, the scope of the search must be tailored to the nature of the infraction and must be related to the objectives of the search."

*Not all infractions involving cell phones will present such reasonable suspicion*

### Sixth Circuit Ruling

"Under our two-part test, using a cell phone on school grounds does not automatically trigger an essentially unlimited right enabling a school official to search any content stored on the phone that is not related either substantively or temporally to the infraction."



G.C. v Owensboro Pub Schs (CA 6, 2013)

*Search must be reasonable in scope to the reasonable suspicion*

### Cell Phone Search Protocol


- Is the suspected content on the device directly related to the alleged violation?
- Is the content created off-campus affecting the school environment?
- Do you have consent to search from either the student or parent?
- If no consent, is it an emergency or have you spoken to Central Office or legal counsel?

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### Laney v Farley

2006 US Dist LEXIS 13449 (MD Tenn, 2006)

"There is no constitutional right to possess a cell phone in a classroom setting. It is clear that the student had notice of the conduct that caused the confiscation of the cell phone and that she had an opportunity to explain any mitigating circumstances to the teacher that confiscated it."



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*if don't have consent - seek sup'l legal guidance if not an emergency*

## Parent Options

"If the parent did not wish a phone confiscated, they have the simple alternative of not allowing their child to take the phone to school, in violation of clearly stated school policy."

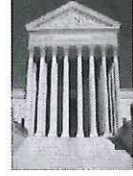


Laney v Farley (MD Tenn, 2006)

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## T.L.O. Remains the Touchstone

"[T]he legality of a search of a student should depend simply on the reasonableness, **under all of the circumstances**, of the search."



T.L.O., 469 US at 341

*Context of the facts*

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## "Reasonableness" Factors

- **Who** is being searched?
- **What** are you looking for?
- **Why** are you looking for this item?
- **Where** will you look?
- **When** will you conduct the search?
- **How** will the search be conducted?
- Should law enforcement be contacted?

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## Required Notices

- FERPA rights
  - Directory information
  - Military recruiters
- Pupil privacy
- Parental rights
- Pesticide application
- Non-discrimination statement
- Discrimination complaint procedure



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## FERPA Notice of Rights

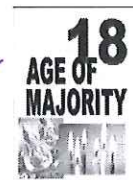
- Inspect
- Amend
- Prevent disclosures
- Complain
- Obtain policy
- Release of directory information
- Military recruiters



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## 18-Year-Old Students

- New "rights"
  - Control records ✓
  - Verify absence/tardy ✓
  - Represent selves ✓
- Procedure
  - Student "registers"
  - Parent "acknowledges"



*Send it to parent for them to sign it*

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*Don't advertise it  
Don't even have*

*Not asking for their permission just acknowledging that they understand they can't set report card.*

*Under FERPA rights of parents b/c rights of student go from a being a minor to a major.*



## School Safety and Security

- Bus drills
- Fire/tornado drills
- Lockdowns
- Evacuation
- Early dismissal



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## Visitors

- Notice at entrances
- Register at office
- Guest passes
- Restrictions



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## *Mejia v Holt* (WD Mich, 2002)

"[A] school may ban a person, including a parent, from going onto school property in order to preserve order in the educational process or to protect students from potential harm without violating any fundamental right to go onto or access school property."



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## Sex Offenders Registration Act

- A registered sex offender *shall not*
  - Reside
  - Work or
  - Loiter
- Within a student safety zone
- 1,000 feet from school property



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## Loiter

"Remain[ing] for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing and contacting minors"



MCL 28.733

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## AG Letter Opinion (2006)

"Attendance at a school play or sporting event involves the primary purpose to observe minors. This activity falls within the definition of 'loiter' as defined unambiguously by the Legislature. Therefore, it would be prohibited by the Act for registered offenders to attend a school play or sporting event."



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## Electronic Communication Devices

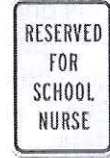
- State law prohibition repealed
- District policy may permit
  - Define
  - Limitations/prohibitions
  - Penalties



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## Medical Issues

- Accidents/injuries
- Emergency treatment
- Illness at school
- Immunization requirements
- Lice



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## Medication

- Procedures
- Self-possession
- Self-administration
- Nurses
- Inhalers
- Epi-Pens



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## Deposits/Fees

- Identify required fees (careful!)
- *Annual* refunds for book deposits *- a pain*
- No withholding grades/records
  - FERPA violation



*Dept. of Education Website - What can charge fees for or not.*

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## Parental Rights

- Class visitation
- Curriculum review
- Opt-Out
- Access to records



*may not want to ~~release~~ publicize this*

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## Miscellaneous

- Animals
- Assemblies
- Dances
- Enrollment
- Field trips
- Identification cards
- Insurance



*optimal*

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### More Miscellaneous

- Bicycles
- Birthdays
- Deliveries
- Food/beverages
- Hall passes
- Telephone use
- Lost and found
- Insurance
- Weather closing


OTHER  
THINGS

\* may want to add

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### Academic Status

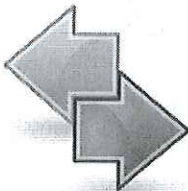
- Class rank
- Grade classification
- Grade point average
- Honor roll



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### Credit Transfer


- Distinctions for transferring school?
  - Accreditation
  - Public, nonpublic, home school
- Testing
- Grades/credits
- Honors
- Religion classes
- MHSAA eligibility



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### Other Academic Programs

- Vo-Tech
- Dual enrollment
- Independent study
- Advanced Placement
- On-line



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### Miscellaneous

- Foreign exchange students
- Parent-teacher conferences
- Homeroom
- Homework
- Scholarships
- Study habit suggestions



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### School Code Sec. 1561

*“Except as otherwise provided in this section, for a child who turns age 11 on or after December 1, 2009 or a child who was age 11 before that date and enters grade 6 in 2009 or later, the child’s parent, guardian, or other person in this state having control and charge of the child shall send the child to a public school during the entire school year from the age of 6 to the child’s eighteenth birthday.”*

MCL 380.1561 (PA 204 of 2009, eff.1/04/10)

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Compulsory School Law

Attendance

### Students Age 16-18

Added in 2010 to 15

"For a child who turns age 11 on or after December 1, 2009 or who was age 11 before that date and enters grade 6 in 2009 or later, this section does not apply to the child if the child is **at least age 16** and the child's parent or legal guardian has provided to school officials of the school district in which the child resides a **written notice that the child has the permission of the parent or legal guardian to stop attending school.**"

MCL 380.1561 (PA 204 of 2009, eff. 01/04/10)

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### Compulsory School Exceptions

- State approved nonpublic school
- Under 9, no school transportation, and 2-1/2 miles from school
- Confirmation class (age 12-13) up to 5 months
- Off-school religious instruction up to 2 hours per week
- High school graduation
- Home School
- Age 16 with written parent permission

No law violation then

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### Purpose of Attendance Policy

- Link attendance with success in school
- Emphasize *earning* credit
- Relate attendance habits to positive traits
  - Punctuality
  - Dependability
  - Self-Discipline



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### Attendance Policy Components

- Philosophy
- Excused/Unexcused
  - Religious
  - Medical
  - Suspensions
- Appeal Procedures
- Adult students
- Tardies
- Notification
- Co-curriculars
- Extracurriculars



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### Suspensions: Excused or Unexcused?

- Double jeopardy or "paid" vacation?
- No binding Michigan court decisions
- Significant vulnerability if designation of "unexcused" absence automatically leads to grade reduction/credit loss
- Carefully consider rationale for this aspect of attendance policy

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### Court Review of Attendance Policy

- Exceed statutory authority?
  - Sec. 1279g(4)(b) attendance on transcript
  - Sec. 1561(1) compulsory attendance
- Violate student due process?
  - Substantive
  - Procedural



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*in regard to attendance*

### School Code Sec. 1279g(4)(b)

*"A student's high school transcript shall include the number of school days the pupil was in attendance at school each school year during high school and the total number of school days in session for each of those school years."*



MCL 380.1279g(4)(b)

97

### Substantive Due Process

- Is the academic sanction rationally related to a valid educational objective?
- If so, is the severity of the sanction reasonably related to the student's conduct?



98

*Attorney General Opinion*

### Procedural Due Process

- Did the student receive notice of the conduct which may trigger the academic penalty?
- Was the student allowed to explain the absence before being penalized?



99

### OAG No. 5414 (1978)

*"Presence in a classroom aids in instilling concepts of self-discipline and exposes a student to group interaction with teachers and fellow students. Such presence also enables a student to hear and participate in class instruction, discussion and other related learning experiences. These and similar considerations are proper educational values which will not necessarily be fully reflected in test results."*

100

### Slocum v Holton Bd of Ed 171 Mich App 92 (1988)

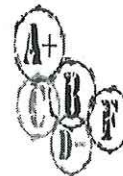
*"There are many factors which may properly be considered in determining a student's course grade – attendance is one such factor."*



101

### Interest at Stake

*"The interest at stake here is not the right to certain grades which [the student] had 'earned' but which were later reduced by some action of [school officials]. Rather, the interest here is the right not to have attendance considered in determining one's grades."*



*Slocum v Holton (1988)*

102

Affordance

### No Property Interest

"To hold that the student had a vested property interest in higher grades would be as absurd as holding that an employee has the right to a paycheck for which she has not worked or that a consumer has the right to a product for which he has not paid."

*Slocum v Holton* (1988)

103

### *Isbell v Brighton Area Schs* 199 Mich App 188 (1993)

- Senior was absent without excuse on more than 6 occasions and was denied course credit under attendance policy
- Circuit court granted student's summary judgment motion, holding
  - Attendance policy was unreasonable
  - Student was entitled to high school diploma

104

*delist rule on whether policy legal or illegal*

*looked at this instead - girl had unclean hands so case dismissed*

*policy never ruled on*

### "Clean Hands" Doctrine

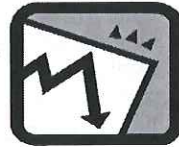
"One who seeks the aid of equity must come in with clean hands . . . . Plaintiff admittedly forged excuse notes, so she does not have clean hands."



105

### Credit Loss/Grade Reduction

- Litigation target
- Should *not* be automatic
- Should be reversible
  - Review procedure
  - Appeal process
- Characterize as a failure to earn



106

### What Is the Value of "Seat Time"?

- Credit awarded for
  - "Testing out"
  - Online instruction
  - Completing subject area content
  - Dual enrollment courses at college
- Yet, schools impose credit loss/grade reduction for surpassing absence threshold?
- How do schools reconcile those standards?



107

### School Code Sec. 1279b

"The board of a school district shall grant high school credit in any course to a pupil enrolled in high school, but who is not enrolled in the course, who has exhibited a reasonable level of mastery of the subject matter of the course by attaining a grade of not less than C+ in a final exam in the course, or, if there is no final exam, by exhibiting that mastery through the basic assessment used in the course. . . ."

MCL 380.1279b

108

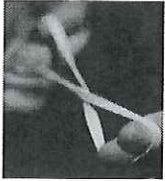
*TESTING OUT*



# MANDATORY EXPULSIONS

### "Elastic Clause"


*This list is not exhaustive, and includes, but is not limited to...*



109

### Off-Campus Conduct


- Clear notice
- Connection to school
- Consequences



110

### Violence

- Weapons
- Physical Assault
- Fights
- Threats
- Bomb threats
- False alarms



111

### Revised School Code ' 1311(1)

"...the school board, or the school district superintendent, a school building principal, or another school district official if designated by the school board, may authorize or order the suspension or expulsion from school of a pupil guilty of **gross misdemeanor or persistent disobedience** if in the judgment of the school board or its designee, as applicable, the interest of the school is served by the authorization or order."

MCL 380.1311(1)

→ did something really bad - not illegal

→ You've done a lot of bad things + we've had it.


### "Gross Misdemeanor"

- Criminal act *not* required
- Gross misconduct or misbehavior

*Holman v School Trustees*  
77 Mich 605 (1889)

- Something more than a trivial offense


*Kloberdanz v Swan Valley*  
Mich App No. 256208 (2006)



113

### Mandatory Permanent Expulsion Subject to Possible Reinstatement

- Dangerous weapon
- Criminal sexual conduct
- Arson
- Physical assault to employee, volunteer, or contractor



114

Permanent NOT 180 days only subject to possible reinstatement after 180 days

put in handbook w/ new pieces

**It's Permanent,  
Not a "180-Day" Expulsion**



115

**RSC ' 1311(2) – Weapon, CSC, Arson**

"If a pupil possesses in a weapon free school zone a weapon that constitutes a **dangerous weapon**, commits **arson** in a school building or on school grounds, or commits **criminal sexual conduct** in a school building or on school grounds, the school board, or the designee of the school board as described in subsection (1) on behalf of the school board, **shall expel** the pupil from the school district **permanently**, subject to **possible reinstatement** under subsection (5)."

MCL 380.1311(2)

116

**Revised School Code § 1313(4)**

"As used in this section, '**dangerous weapon**' means a firearm, dagger, dirk, stiletto, knife with a blade over 3 inches in length, pocket knife opened by a mechanical device, iron bar, or brass knuckles."



MCL 380.1313(4)

117

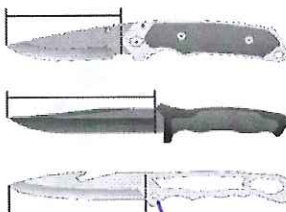
**Weapon Offense**

- Secure weapon
- Determine facts about possession/intent
  - Item for use or delivery as weapon
  - Item knowingly possessed
  - Knowledge that item was weapon
  - Permission to have weapon at school
- Determine if "dangerous weapon"
- Photograph weapon
- Contact law enforcement

118

*Next to a rule*

**AKTI Blade Measuring Protocol**



"...the measurement shall be the straight line extending from the tip of the blade to the forward-most aspect of the hilt or handle."

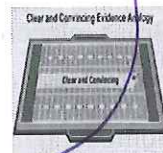
American Knife & Tool Institute  
(Adopted Feb. 16, 2004)

"Dangerous weapon" includes a "knife with a blade over 3 inches in length" MCL 380.1313(4)

*X To where blade enters into the handle = hilt*

**"Clear and Convincing" Proof**

- Board not required to expel (but may)
- If student proves in a **clear and convincing** manner one of the statutory exemptions for weapon possession:
  - Is it clear?
  - Are you convinced?



*You are not required to expel if student can prove one of the exemptions.*



Board makes this decision NOT building level designees

criminal sexual conduct.


### Weapon Expulsion Exemptions

1. Item not possessed for use as weapon, or for direct/indirect delivery to another for use as weapon
2. Weapon not knowingly possessed
3. Student did not know or have reason to know that item was "dangerous weapon"
4. Weapon possessed at direction or express permission of school or police

121

### Arson/CSC

- School Code does not define and instead "bootstraps" the Michigan Penal Code
- Arson: felony violation of Penal Code
- CSC: violation of Penal Code for CSC 1, 2, 3, 4




MCL 380.1311(11)

122

### Mandatory Expulsion

"If a pupil ... commits **arson** ... or **criminal sexual conduct** in a school building or on school grounds, the school board, or the designee ... **shall expel** the pupil from the school district **permanently**, subject to possible reinstatement under subsection (5)." MCL 380.1311(2)




123

### Arson/CSC Defined

"Arson" means a felony violation of ... the Michigan penal code"

"Criminal sexual conduct" means a violation of ... the Michigan penal code...."



So ... when does the mandate to expel apply? MCL 380.1311(11)(a)(b)

124

mandate to expel does NOT kick in until Plea or conviction - But Do NOT WAIT - Discipline

### CSC: How to Proceed?

- No requirement to wait for criminal adjudication
- Consider disciplinary action for Code of Conduct violation of only and provide the following written notice:

*Because the conduct approximates that described in Revised School Code Section 1311(2), the District reserves the right to further review this matter and impose disciplinary consequences consistent with Section 1311(2) if the student pleads guilty or no contest to, or is convicted of criminal sexual conduct.*

125

### Sec. 1311a(1) – Physical Assault

"If a pupil enrolled in grade 6 or above commits a **physical assault** at school against a **person employed by or engaged as a volunteer or contractor** by the school board...then the school board, or the designee of the school board as described in section 1311(1) on behalf of the school board, **shall expel** the pupil from the school district **permanently**, subject to **possible reinstatement** under subsection (5)."

MCL 380.1311a(1) 126

according to School Code Violation

Put in letter that if a conviction or plea with revisit & lead to mandatory expulsion



### Physical Assault to Student

- School property, activity, vehicle
- Suspension or expulsion up to 180 days
- Grade 6 and above
- Reporting requirements
- MCL 380.1310(1)



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### Physical Assault

*"Intentionally causing or attempting to cause physical harm to another through force or violence"*



MCL 380.1310(3)(b)  
MCL 380.1311a(11)(b)

128

### Verbal Assault/Bomb Threat

- Student in grade 6+ commits
  - Verbal assault, or
  - Bomb threat or similar threat directed at school building, event, or property
- Board **"shall suspend or expel the pupil from the school district for a period of time as determined in the discretion of the school board."**



MCL 380.1311a(2)

129

### Permanent Record

*"If an individual is permanently expelled pursuant to this section, the expelling school district shall enter on the individual's permanent record that he or she has been permanently expelled pursuant to this section."*

RSC § 1311(3) Weapon, CSC, Arson  
RSC § 1311a(3) Assault, Bomb Threat

130

## Bullying

### "The Matt Epling Safe School Law"

- Added Sec. 1310b to RSC
- Requires anti-bullying policy by June 6, 2012
- PA 478 of 2014 amended statutory definition of bullying to include cyberbullying
- By September 30, 2015, policies must include **cyberbullying** as a form of bullying



Matt Epling

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### Mandated Procedures

- **Notify** parent/guardian of
  - Bullying victim
  - Perpetrator
- **Report** an act of bullying
- **Promptly investigate** report of policy violation or related complaint, identifying either the principal or designee as person responsible for investigation



MCL 380.1310b(5)(f)(g)(h)

132

### Mandated Procedures

- **Document** any prohibited incident that is reported
- **Report** all verified incidents of bullying and resulting consequences, including discipline and referrals, to the board on an annual basis



MCL 380.1310b(5)(i)

*verified vs. Alleged*

### Section 1310b Definitions

#### Bullying

"any written, verbal, or physical act, or any electronic communication..."

#### Cyberbullying

"any electronic communication..."

*both include this*



134

### Bullying/Cyberbullying

... that is intended or that a reasonable person would know... is likely to harm 1 or more pupils either directly or indirectly by doing any of the following...



135

### Bullying Components

(i) **Substantially interfering** with educational opportunities, benefits, or programs of 1 or more pupils.

(ii) **Adversely affecting** the ability of a pupil to participate in or benefit from the ... school's educational programs or activities by placing the pupil in reasonable fear of physical harm or by causing substantial emotional distress.

MCL 380.1310b(8)(b)(i)(ii)

136

### Bullying Components

(iii) **Having an actual and substantial detrimental effect** on a pupil's physical or mental health.

(iv) **Causing substantial disruption** in, or **substantial interference** with, the orderly operation of the school."

MCL 380.1310b(8)(b)(iii)-(iv)

137

### Cyberbullying v "At School"

- Definition of cyberbullying is essentially the same as bullying
- And ... the Legislature did **not** change the definition of "at school"

*of a div... definition... formal definition... expressing the es... meaning of a wor... a produ... the ac...*

138


*This is in handbook - the statute*

*Bullying law only applies at school*



### “At School”

*“In a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school-sponsored activity or event whether or not it is held on school premises”*




MCL 380.1310b(8)(a)

139

### “At School”

*“Includes conduct using a **telecommunications** access device or telecommunications service provider that occurs off school premises **if** the telecommunications access device or the telecommunications service provider **is owned by or under the control of the school....”***



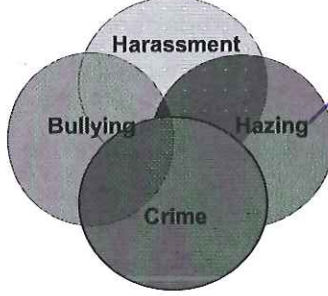
MCL 380.1310b(8)(a)

140

*device has to be owned by the school*

*if do it at home on school issued ipad have to deal w/ it*

### Categories of Behavior



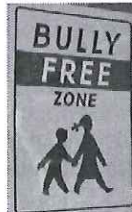
*crime in Michigan*

**And . . . First Amendment “Speech Rights”**

141

### Bottom Line . . .

**Is the conduct appropriate in the school setting?**



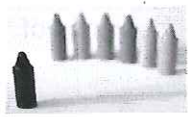
*Fundamental Question at Hand*

142

### 2010 “Dear Colleague” Letter

*“[S]ome student misconduct that falls under a school’s anti-bullying policy also may trigger responsibilities under one or more of the **federal antidiscrimination laws** enforced by the Department’s Office for Civil Rights (OCR).”*

Race  
Color  
National Origin  
Sex  
Disability




OCR, October 26, 2010

143

### Sexual Orientation

*“When students are subject to harassment on the basis of their LGBT status, they may also . . . be subjected to forms of sex discrimination prohibited under Title IX.”*



OCR Dear Colleague Letter (Oct. 26, 2010)

144

## Contraband

- Fireworks
- Explosives
- Matches
- Lighters
- Caustic or noxious substances

THE BAD STUFF

145

## Illicit Substances

- Alcohol
- Drugs
- Tobacco
- Look-alike drugs
- Paraphernalia



*these represented as such.*

146

## What Is an E-Cigarette?

Battery-operated device that allows user to inhale nicotine and other substances in aerosol form

- Not smoking, but "vaping"
- Not currently regulated
- Not tobacco
- Health risks unknown



147

## Update Policies and Rules

- Policies and rules prohibiting "tobacco" and may need to be updated
- Board has authority to prohibit use on school property by
  - Students
  - Employees
  - Community Members



148

*\* FDA Rule => We construe Vaporizers to be same as a tobacco product*



2016

## FDA: Tobacco Product = Vaporizer

Under the Federal Food, Drug, and Cosmetic Act, a "tobacco product" includes "any product made or derived from tobacco that is intended for human consumption, **including any component, part or accessory of a tobacco product** ...."



21 USC § 321(rr)(1)

149

## FDA Comment

"FDA agrees that vaporizers are components or parts of a tobacco products.... FDA considers components or parts sold directly to consumers to be finished tobacco products."



FDA Comment 81 to Final Rule (2016)  
21 CFR §§ 1100, et seq.

150



## Dishonesty

- Cheating
- Plagiarism
- Forgery
- Extortion



151

## Property

- Theft
- Trespassing
- Vandalism
- Littering
- Loitering



152

## Disrespect

- Insubordination
- Interference
- Profanity/obscenity
- Hate speech
- Public display of affection



153

## Due Process Procedures

- ✓ Notice of rules
- ✓ Notice of misconduct
- ✓ Opportunity to respond
- ✓ Appeal



↑↑  
Key Components

154

## Disciplinary Sanctions

- Reprimand
- Corrective action
- Behavior contract
- Detention
- Restitution
- In-school suspension
- Expulsion (permanent v 180 days)
- Law enforcement referral



some mandated.

## Constitutional Due Process

Under the Fourteenth Amendment to the U.S. Constitution, a state may not "deprive any person of life, liberty, or property without due process of law."

- Substantive due process —
- Procedural due process —



156

preference for a range 5-10 days  
so some discretion.

Zero Policy = zero thinking Fact specific


Notice + opportunity to be heard

Due Process <sup>ST suspension</sup>

### Procedural Due Process

The fundamental requirements of procedural due process are "notice and an opportunity to be heard."

*Seal v Morgan*  
229 F3d 567 (CA 6, 2000)




157

### Goss v Lopez

419 US 565 (1975) <sup>5-4 decision</sup>


- Right to attend school is a property interest protected by due process
- Exclusion from school violates due process without "some kind of notice of the charges and an opportunity to refute them"
- Suspension over **10 days** "may require more formal procedures"



158

### Short-Term Suspension

For a suspension of 10 days or less, the student must "be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story."



*Can be rudimentary*


Goss, 419 US at 581

159

*No requirement for a hearing 10 days or less*

### Notice

The notice need not be formal, and there "need be no delay between the time 'notice' is given and the time of the hearing."




Informal

Goss, 419 US at 582

160

### Informal Give and Take

Minimum due process requirements are met if, during "an informal give-and take between student and disciplinarian," the student is "told what he is accused of doing and what the basis of the accusation is" and then given an opportunity to respond.




Goss, 419 US at 582, 584

161

### More Due Process

"Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures."



Goss, 419 US at 584

162



Move formal due process

### Dialogue

"[O]nce school administrators tell a student what they heard or saw, ask why they heard or saw it, and allow a brief response, a student has received all the process that the Fourteenth Amendment demands."



C.B. v Driscoll, 82 F3d 383, 386 (CA 11, 1996)

163

### Notice for Long-Term Removal

- Charges
- Summary of facts *- Basic*
- Recommended consequences
- Procedural rights *- include copy of policy*
- Date, time, place of hearing
- Status pending hearing
- Student Handbook/Board Policy



Template Documents.

States before the hearing

164

### Anonymous Student Statements

Student does not have due process right to review statement of anonymous witness when "essential facts" of the allegations are provided



*Paredes v Curtis*  
864 F2d 426, 430 (CA 6, 1988)

Note: do **not** base discipline determination solely on hearsay *- can have some of it*

165

### Attorneys

"Students do not have a due process right to an attorney at expulsion hearings, let alone a right to be notified that they are entitled to an attorney."



*C.Y. v Lakeview Pub Schs*  
No. 13-1791 (CA 6, 2014)

**But**, Board Policy may permit the student to have an attorney at the hearing

166

### Application of Athletic Rules

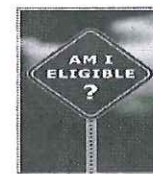
- Semester
- Season
- Year-round
- Place of conduct
- Attendance
- Conduct standards
- Due process



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### Academic Eligibility

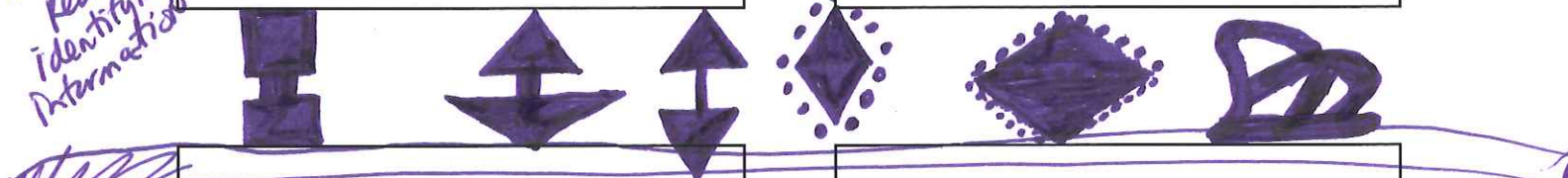
- School standards
- MHSAA standards
- Accommodations
  - IEP
  - 504 Plan



168


Everything BOE gets the kid gets

Written statement Redact identifying information



### MHSAA Eligibility Rules


- Refer to MHSAA Bulletin
- Review
  - Team meetings
  - Coaches
- Athletic Director



169

### Permission/Acknowledgement

- No practice until submitted
  - Parent
  - Student
- Team meeting
  - Review Athletic Handbook
  - Team rules
- Athletic Director documentation




*Athletic HB*

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### Physicals

- For current school year
- Must be signed by a
  - Physician
  - Nurse practitioner
  - Physician's Assistant
- After injury/illness




*Athletic HB*

171

### Miscellaneous

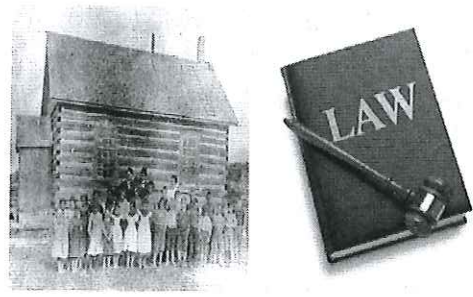
- Dress Code
- Equipment
- Fundraising
- Letters and awards
- Steroids
- Tickets
- Transportation



*Athletic HB*

172


### School Law Update



173

### Protected Classification?

No Michigan or federal statute specifically prohibits discrimination based on transgender status



*LGBT*

*But...see case law addressing gender stereotypes and OCR "Dear Colleague" letters*

174



*Dear colleague letter 2016*

## DOE/DOJ: Transgender Students

"The Departments treat a student's **gender identity** as the student's sex for purposes of **Title IX** and its implementing regulation. This means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity."



DOE/DOJ Dear Colleague Letter (May 13, 2016)

*FG protected under Title IX*

*Trump 2017*

## DOE/DOJ Guidance Withdrawn

"These guidance documents do not... contain extensive legal analysis or explain how the position is consistent with the express language of Title IX, nor did they undergo any formal public process."



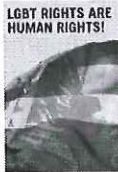
*w/draws 2016*  
DOE/DOJ Dear Colleague Letter (Feb. 22, 2017)

176

*But ↓*

## LGBT Students Still Protected

✓ "Please note that this withdrawal of these guidance documents does not leave students without protections from discrimination, bullying, or harassment. All schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment."



DOE/DOJ Dear Colleague Letter (Feb. 22, 2017)

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## OCR on Duty

*IE*  
"The Department of Education Office for Civil Rights will continue its duty under law to hear all claims of discrimination and will explore every appropriate opportunity to protect all students and to encourage civility in our classrooms."



DOE/DOJ Dear Colleague Letter (Feb. 22, 2017)

178

## G.G. v Gloucester Co Sch Bd (ED Virginia, 2015)

- Virginia school district adopted policy restricting use of single sex restrooms to matching genders and provided 3 unisex restrooms
- ACLU sued on behalf of FtM transgender student, alleging violation of Title IX and equal protection clause
- DOJ filed statement of interest
- Court denied student's injunction request and dismissed Title IX claim

*School's favor*

## Title IX Reg. is Ambiguous

"The regulation is susceptible to more than one plausible reading because it permits both the Board's reading – determining maleness or femaleness with reference exclusively to **genitalia** – and [OCR's] interpretation – determining maleness or femaleness with reference to **gender identity**."

G.G. v Gloucester Co Sch Bd  
Fourth Circuit Court of Appeals (April 19, 2016)

*Students favor - Title IX includes gender identity not genitalia*

*Does SEX = general identity or genitalia*

### Grimm Court Actions

- 09/04/15: district court denies injunction request
- 04/19/16: 4<sup>th</sup> Circuit Court of Appeals (2-1) reverses
- On remand, district court issues injunction



*Vacated Decision due to Trump guidance  
No Oral Arguments*

### Grimm Court Actions

- 08/03/16 US Supreme Court (5-3) stays the injunction
- 10/28/16 US Supreme Court agrees to hear the case
- 02/22/17 DOE/DOJ withdraws guidance
- 03/06/17 US Supreme Court vacates 4<sup>th</sup> Circuit Court of Appeals' decision and remands; will not hear case

182

### Michigan State Board of Educ.

SBE directed MDE to prepare guidance on "Safe and Supportive Learning Environments for LGBTQ Students"



- Input received from schools, health professionals, attorneys, LGBTQ students
- Approved by State Board of Education on 9/14/16

183

### SBE "Guidance" ... Not Law

- SBE Statement is *not* binding on schools
- Schools may choose to implement all, some, or none of the suggestions
- Useful strategies for tricky situations



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### Moving Forward

- Look for solutions, not problems
- Work with the student (and family) on this journey
- Treat student in accordance with genuinely-held gender identity
- Watch for and respond to harassment



*Case by Case basis*

185

### 3<sup>rd</sup> Grade Reading – 2016 PA 306

- MDE must develop reading assessment systems and literacy coach model
- Beginning 2017-18, school must assess K-3 students 3 times per year using one of MDE's systems
- School must develop reading improvement plan for students with reading deficiencies within 30 days of identifying deficiency

MCL 380.1208(f)

186

*CURRICULUM Δ'S*



### Additional Requirements

- Reading intervention program for K-3 students
- Targeted/intensive interventions for students with identified deficiency, at risk of being retained, or have been retained
- Notify parents of reading delay and provide tools to assist at home
- Targeted PD for K-3 teachers

MCL 380.12080f

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### Mandatory Retention: 2019-20

- Must retain student in grade 3 if at least one grade level behind on 3<sup>rd</sup> grade assessment, *unless* student shows 3<sup>rd</sup>-grade level reading on alternate assessment
- Good cause exception
  - IEP/504 team determines
  - Limited English Proficiency
  - Parent request and superintendent agrees retention not in student's best interest

↳ Wild Card.

### CPR/AED Training - 2016 PA 388

- Effective 2017-18 school year, health curriculum must include CPR/AED training for students in grades 7-12
- Based on Red Cross, American Heart Association, or other nationally recognized source
- Schools encouraged to use "locally available resources"
- No need to use authorized CPR/AED instructor if no CPR card

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1 time before 7th + 12th

### Genocide Education - 2016 PA 170

- Effective 2016-17 school year
- Requires age/grade-appropriate curriculum in grades 8-12 on genocide, including Holocaust and Armenian Genocide
- Recommends 6 total hours
- Creates temporary advisory Governor's Council on Genocide and Holocaust Education

MCL 380.1168

190

### Naturalization Test Questions (2016 PA 391)

- SBE shall revise social studies content standards "to ensure that those content standards cover the same content as covered by the 100 questions on the civics portion of the naturalization test used by the U.S. Citizenship and Immigration Services as of December 1, 2016"
- Not later than May 1, 2018 or next update of state curriculum content standards after March 29, 2017

191

### Updated Assessment

"Superintendent of Public Instruction shall ensure that the high school social studies assessment includes questions related to the revised learning objectives...."



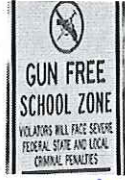
MCL 388.1166

192

↓ m-step SS will include questions on this

### Michigan Gun Owners v Ann Arbor Pub Schs (2016)

- Schools may regulate firearms at school or school-sponsored events
- Allows schools to close the "open carry" loophole
- Exceptions apply for those who with statutory right to possess firearm (e.g., law enforcement, parent with firearm in vehicle)



*appealed to Michigan supreme court*

*Our Board Needs to Address this*

### Abortion Policy - 2016 PA 249

Board must adopt and implement a policy disciplining school official, board member, employee, or other person who

- Refers student for an abortion
- Assists student with getting abortion
- Violates RSC § 1507 (reproductive health)

MCL 388.1766

194

### Penalties

- Employee who violates will face financial penalty:
  - Not less than 3% of employee's annual compensation
  - Refunded to state school aid fund
- School failing to adopt policy by March 29, 2020 forfeits \$100,000 state aid



195

### Opioid Antagonists - 2016 PA 385

- Effective March 29, 2017
- May require storage and administration of opioid antagonist
- If required, must develop policy
  - Authorizes nurse or trained employee to administer
  - Must call 911
  - Must call parents
- Must report use to MDE
- Immunity if administered in good faith in accordance with policy

MCL 380.1179b

196



### New Section of School Code

#### Pupil Privacy- 2016 PA 367

- Effective March 22, 2017
- Restricts MDE/CEPI from disclosing student information *it and*
- Schools may not sell or provide to "for-profit business entity" any student personally identifiable information (some exceptions)

MCL 380.1136

197

#### Parent Rights Under Act

- Upon written request, school must, within 30 days, disclose to parent/guardian:
  - Previous disclosure of student information
  - Name/contact information for each person or organization to whom disclosure was made
  - "Legitimate reason" for disclosure
- Exceptions (e.g., written consent, subpoena, standardized tests)

198

*Parent can request school who disclosed info. to*



### Directory Information

- Schools must develop list of common reasons for directory information disclosure
- Must create opt-out form enumerating each of the reasons
- Opt-out form must be presented to parents within first 30 days of school year and on request
- If parent opts out, may not include student's directory information for any opted-out use

199

### Student Online Personal Protection Act - 2016 PA 368

- Effective March 22, 2017
- Prohibits an Internet "operator" from
  - Engaging in "targeted advertising" based on "covered information" acquired by the operator for K-12 school purposes
  - Selling/renting student information
- Many exceptions

MCL 388.1291 et seq.

200

*as of Aug. 1, 2017*

*New Section of School Code*

### Mandatory Factors § 1310d

Before suspending or expelling a student, school must consider:

1. Age
2. Disciplinary history
3. Disability
4. Seriousness of behavior
5. Whether behavior posed safety risk
6. Restorative practices
7. Whether lesser interventions would address behavior



201

*Needs to be in board policy  
↓  
put in suspension procedures and/or weapons which c.s.a. i.e. incend explosives*

### In What Circumstance?

School officials must consider these factors before suspending or expelling under the following Revised School Code sections:

- 1310 (physical assault on student)
- 1311(1) (gross misdemeanor/persistent disobedience)
- 1311(2) (weapons, CSC, arson)
- 1311a (assault on staff, bomb threat)

MCL 380.1310d(2)

202

*Must we consider these factors*

*we have to document these things ✓ List*

### "Discretion" Under 1310d

"[T]his section applies to give the [school] discretion over whether or not to suspend or expel a pupil under section 1310, 1311(1), 1311(2), or 1311a."



MCL 380.1310d(2)

203

### Removal More Than 10 Days

"In exercising this discretion with regard to a suspension of more than 10 days or an expulsion, there is a **rebuttable presumption** that a suspension is not justified unless the [school] can demonstrate that it considered each of the factors..."



MCL 380.1310d(2)

204

*document this*

*\**

### 10 or Fewer Days

"For a suspension of 10 or fewer days, there is **no rebuttable presumption**, but the [school] shall consider each of the factors..."



See factors 1-7, above

MCL 380.1310d(2)

205

*document list*

### Rebuttable Presumption

A rebuttable presumption is one that may be overcome if the evidence demonstrates that the presumption is incorrect



*No I shouldn't be expelled b/c I'm only 7 I was using it for fishing*

*So I rebut the expulsion*

206

### New Definitions

**Expel:** "to exclude a pupil from school for disciplinary reasons for a period of **60 or more school days**"

**Suspend:** "to exclude a pupil from school for disciplinary reasons for a period of **fewer than 60 school days**"

MCL 380.1310d(5)

207

*Previously Michigan has never defined.*

*Put in Board Policy & Suspension & Expulsion Policies.*

*1/3 of 180 day year.*

### Firearms

Section 1310d factors not required when expelling a student "for possessing a **firearm** in a weapon free school zone."



*Does not apply to Fire Arm*

*Expulsion*

208

*air soft shotgun bb gun No meet definition of fire arm So just not mandate expulsion.*

### But, Rebuttable Presumption That Expulsion Not Justified If

- Board or designee determines in writing that at least one of the "weapons exemptions" has been established in a clear and convincing manner; and
- Student has no history of suspension or expulsion



209

### Caution: Discipline History

- Statutory factors allow consideration of student's discipline history
- OCR has increased investigations of racial disparities in student discipline
- Consideration of discipline history in determining current discipline could increase disparities



OCR  
Office for Civil Rights

*But this dangerous ok may have been based on race*

210



### Financial Penalty -2016 PA 249

- SSAA §167a "encourages" schools to implement a plan to reduce expulsions and suspensions that exceed 10 days
- Legislative intent that districts not implementing such a plan "...will be subject to forfeiture of a portion of its total state school aid."
- Effective October 1, 2016

MCL 388.1767a

211

### Restorative Practices

- School "**shall** consider using restorative practices as an alternative or in addition to suspension or expulsion under this act"
- "If a [school] suspends or expels a pupil under this act, the [school] **shall** consider using restorative practices in addition to suspension or expulsion"

MCL 380.1310c

individualized training by professional scripted and formal process

if agree to Restor. Practice then can ↓ suspension days

Admin. Guidance. some teachers

Document Not use but consider.

### Caution: Peer Mediation

"Grievance procedures...may include voluntary **informal mechanisms** for resolving some types of sexual harassment complaints.... [I]t is **improper** for a student who complains of harassment to be **required** to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school."

OCR Dear Colleague Letter (April 4, 2011)

here is an escape when R.T. NOT appropriate

good to use w/ social media instances recommend whole staff trained

has to be a willing need on both sides.

### First of All . . . No Change to RSC § 1312

- Prohibits (shall not) corporal punishment
- Permits (may) reasonable physical force in limited circumstances



MCL 380.1312

214

still in place

New info doesn't ↓ this

### Corporal Punishment Defined

"Deliberately inflicts of physical pain by"

- Hitting
- Paddling
- Spanking
- Slapping, or
- Any other "physical force as a means of disciplining a student"



MCL 380.1312(1)

215

### Corp. Punish Definition Excludes Athletic Training

Does not include "physical pain caused by reasonable physical activities associated with athletic training."



MCL 380.1312(2)

Sprints pushup

216

## Reasonable Physical Force

*May* be used "as necessary to maintain order and control in a school or school-related setting for the purpose of providing an environment conducive to safety and learning."



MCL 380.1312(3)

217

## Limited Use of Physical Force

- When behavior interferes with "orderly exercise and performance" of school functions if student refuses to comply with request to stop
- For self-defense or defense of another
- To prevent student from self-harm



MCL 380.1312(4)

218

*Reasonable is determined by the locally present context*

## Limited Use (cont'd)

- To quell disturbance threatening physical injury
  - To obtain weapon/dangerous object within student's control
  - To protect property
- Note: MDE FAQ state that seclusion and restraint **cannot** be used to protect property

MCL 380.1312(4)  
Holly Policy 5630

219

## Penalty/Liability

- Willful or grossly negligent violation of corporal punishment law may result in discipline, up to discharge
- Deference to "reasonable good-faith judgment" of person who uses necessary reasonable physical force



MCL 380.1312(5)

220

## New Seclusion & Restraint Laws

- Require MDE to draft policy and guidelines for seclusion and restraint in schools
- Require boards to adopt emergency seclusion and restraint policies (consistent with MDE) by start of 2017-18 school year



RSC §§ 1307 to 1307h

## Prohibited, Even in Emergency

- Corporal punishment
- Deprivation of basic needs
- Child abuse
- Intentional application of noxious substance
- Seclusion (except for emergency)
- Mechanical restraint
- Chemical restraint
- Prone restraint
- Restraint that negatively impacts breathing
- Physical restraint (except for emergency)

MCL 380.1307b

222



*Suspension/Exp  
Required  
by statute*

*8383  
Procedures  
for Discipline  
8386*

*8345 Assaults  
8355 Weapon Free  
8363 Crime canceller by*

*8390*

### Emergency Seclusion & Restraint Requirements

- Not in place of less restrictive interventions
- Not longer than needed to allow student to regain control to end emergency
- Key personnel (trained in emergency seclusion/restraint procedures) must be called immediately at onset of emergency or asap

MCL 380.1307c

223

### Emergency

- Last resort emergency safety intervention
- Necessitated by ongoing "emergency situation"
- Student has opportunity to regain self-control while maintaining safety for student and others



MCL 380.1307h(e)(r)

224

### Emergency Seclusion

- **Seclusion:** confining student in room where physically prevented from leaving

MCL 380.1307h(e)(r)



- **Restraint:** direct physical contact/force by 1 or more people to prevent or significantly restrict student's movement

MCL 380.1307h(d)(j)(o)

225



### Additional Requirements

- Observe student for physical distress indicators; seek medical help if needed
- Document observations
- Ensure restraint does not restrict student's primary mode of communication
- Ensure presence of persons who can communicate with student using primary mode of communication



MCL 380.1307c(g)(i-v)

271

*observation documentation training } New components w/ exclusion + Restraint*

### Training Requirements

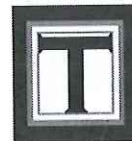
- "Awareness training" for all personnel, including substitute teachers
- Substitute teacher training can be online with acknowledgment
- Comprehensive training for key personnel who are generally available in emergency situation



MCL 380.1307c(e) and 1307g

227

*Will people do this?*



**THRUN**  
LAW FIRM, P.C.

228

*f*