

STUDENT'S RIGHTS HANDBOOK

Because Students Deserve To Be Treated Fairly

By Ghazey H. Aleck II

Attorney at Law

**This Handbook is under constant revision.
Check back to find new information.**

DISCLAIMER

This handbook is meant to provide some means for students to protect their basic human rights, rights that schools are eroding on a regular basis. We do not condone misconduct. Students are encouraged to engage in good behavior and good study habits.

However, it must be recognized that schools are often overzealous in enforcing the rules. Instead of handling matters internally, schools now routinely involve law enforcement. Even when a school handles a matter internally, the results can be quite harsh including suspension or expulsion.

Zero tolerance is creeping its way into schools for a multitude of issues. Zero tolerance is a law or rule that eliminates discretionary responses by the school or other authorities. In other words, by expanding the areas in which zero tolerance applies, schools can shirk their responsibilities to investigate the matter to determine if any extenuating circumstances apply. It most often leads to harsh results many people find illogical.

The result is that rules that were first made to protect students are being used against them not because what they did was so wrong but because no discretion is being used by the administrators, and oftentimes a warped outcome occurs.

Regardless whether a student has done something wrong or not, most can agree that a student should be treated fairly. However, school hearings and appeals afford students of fewer rights than you would get in court and therefore are ripe for miscarriages of justice through the use of unreliable evidence.

Students should be respectful and behave but so should the schools, and this handbook helps students make the school conduct itself in a fair, respectful manner mindful of the basic human rights of students.

WHEN EVEN GOOD KIDS CAN'T CATCH A BREAK, THEN WHAT?

Schools have gotten so far away from doing what is right that even good kids can't catch a break.

Have you heard stories like the following?

1. A good student can't test out of a class because he missed a deadline even though that deadline violates the law.
2. A good student can't go out for a sport because the coach had some unknown deadline.
3. A good student is given detention for forgetting his School Parking pass.
4. All the students are punished for a food fight by a few during lunch.
5. A good student is forbidden to participate in the graduation ceremony because she missed the rehearsal.
6. A good student fan has a polite sign supporting an athlete taken away at an athletic event because it might offend the coach or athletic director.
7. A good student is accused and expelled because someone told someone else who told the principal that they had marijuana without ever finding the marijuana and without ever presenting the actual witness.
8. A good student is expelled for defending himself from a bully who attacked him in front of witnesses.
9. A good student is punished for posing for a silly photo with an empty alcohol container.
10. A good student is punished for have Tylenol, Aspirin, Cough Drops etc. to treat minor ailments.
11. Or a good student is punished for having a finger nail clipper, pocket knife, or other instrument that the school says is a dangerous weapon.

YOU KNOW WE HAVE A PROBLEM IN OUR PUBLIC SCHOOLS WHEN EVEN GOOD STUDENTS CAN'T CATCH A BREAK.

STUDENT ADVICE

The most important thing that Students can do when confronted by authority is to request that a parent or attorney is present BEFORE the student answers any questions.

DO NOT ANSWER ANY QUESTIONS WITHOUT YOUR PARENT OR ATTORNEY BEING PRESENT.

Parents should be careful too. An attorney is better equipped to deal with law enforcement officers or school authorities.

The reason that students should not answer any questions is that the school or police will probably not record the meeting and their interpretation of the statements will be written down as they perceive them rather than exactly what was stated by the student. Secondly, even innocent statements can incriminate the student when their statements are taken out of context or twisted to fit the events.

An attorney is best equipped to decide whether the student answers any questions. An attorney may be able to negotiate a resolution prior to any interview. If an attorney decides to let an interview take place, he can require that the interview be tape recorded, and the attorney can make sure that the questions posed are not repetitive or unfair.

Decisions made by an attorney will protect you from losing any defense you may have and will be made with an eye on future litigation. These are things that you cannot anticipate. An attorney will act without the emotional outlook a parent or student will have in the stressful situation. An attorney can look out for your best interest because he can see the case for what is rather than what a parent or student wants it to be.

Attorneys are not as expensive as you may think. A couple hundred dollars will go a long way when you are talking about your education or freedom. Some attorneys may take a case for free if they see that an injustice is occurring. Getting an attorney after the damage is done is more expensive than getting one from the outset so he can stop the damage early.

Keep in mind the both the school and police will tell you that you HAVE to talk to them and that you have no choice in the matter. This is UNTRUE. Also, keep in mind when the police or school authorities have to ask you a question, they probably don't know the answer—so why help them out?

THEY WILL LABEL YOU

When every student and every parent is vigilant in implementing the advice in this handbook, in the larger view, it does not matter if every student wins (although many will by using this handbook). When a school is faced with unrelenting numbers, they will have no choice but to change their behavior and act with respect and fairness toward students. One student or one parent cannot change a school system, but many can!

This is an important concept because school authorities apply certain techniques that make an individual feel helpless. You will feel like “you cannot fight city hall.” As many people cut off the school from using unfair tactics and fight back it is much more effective than one person alone.

The techniques employed by school authorities are threefold.

They Will Label Your Conduct Disruptive (Regardless if it is or not)

First, they will always try to portray the alleged conduct as disruptive to the school environment. For example, *any* free speech attempt by a student that an administrator finds objectionable will be categorized as disruptive. So a student may say or write that the administration is for example, “unfair”, and the typical response by school administrators that wish to punish the student will be that such a statement is disruptive. No matter what your speech, if they disagree, your speech will be labeled as disruptive. This is true of everything you say or anything that you do while you are in school. If they don’t like it they will label it as disruptive to the school environment. The trick for you is to stop them from employing this technique because it is unfair. Don’t accept their representation that it is disruptive. Once you accept this bogus argument you are lost.

They Will Attempt To Get Your To Agree To The Facts As They See Them

Secondly, the school authorities will try to appear reasonable. They usually want to avoid the cost of litigation especially in bad economic times. Administrators are usually willing to let you say your piece and will talk on and on with you about the issues because he is looking for an opening to win the argument without giving up any ground. They also will be looking to get you agree with their position. Remember, they do this on a regular basis, so they know how to draw you in to “seeing how it is disruptive” or even “*potentially disruptive*,” and then get you to agree with them. **You should never agree with the facts as they see it.** Use “if that is true, I would like to see the proof” or “I hope that is true” or “I don’t know that that is true” to avoid letting them get agreed facts from you. Don’t agree to their facts. Don’t assume they have all the facts right. More often than not, they warp the facts to fit their warped rules.

They Will Say They That They Have No Choice

Lastly, if you are successful in stopping school authorities from labeling your conduct and you did not let them get away with establishing their facts by getting you to agree, then they will use the old worn line, “I have no choice but to punish you.” They will claim that the law requires them to do certain things or that the Board of Education Policy requires them to do certain things and that they can do nothing about it. However, this is absolutely untrue. All but one of the school rules gives the administrators discretion in enforcing the rules. The only exception is the “zero tolerance” laws or rules.

Most laws and policies that the administrators cite are warped to fit their interpretation though. *Demand to see the rule but don't read it for what they say it says.* Read each word and interpret each word. Then point out how the rule does not say what the administrator says.

If they insist on enforcing the rules or laws in their warped view of it, then this must be met with litigation. You may need to hire a lawyer. You may also be able to complain to a State or Federal Agency instead of hiring a lawyer and we will cover that later.

If more than one person uses these responses to fight the school's acts of unfairness, the schools will ultimately lose. They can usually beat off a number of uninformed students but they can only defeat a few well informed students. If many well informed students fight back, the school will lose and will have to compromise or change. That change should be for fairness and justice, and students deserve this as much as anyone else.

USING THE CHAIN OF COMMAND

Schools have a chain of command, so to speak. You are expected to follow this chain of command to address your concerns. Use their chain of command against them. Each level will probably not be aware of your activities at the lower level so use each level to affect the higher levels.

The chain of command is simple. Teacher→Principal→Superintendent→School Board.

If your problem is with a coach, aide, bus driver etc. these people should take the place of the Teacher in the chain. You may encounter an assistant principle, athletic director or bus supervisor before you see the Principal. You may encounter an assistant superintendent before the Superintendent. It depends on the school district and the situation.

You want to use the chain of command to your benefit whenever possible. If you have a problem with a Teacher, you should first meet with the Teacher to see what the issue is and see if it can be worked out at that level. Usually Teachers are the most reasonable group in the school system with the administrators being the least reasonable so keep this in mind when you approach school personnel. The lowest in the chain are usually the most reasonable!

You want to make the most of each encounter with school personnel. If possible get their position in writing so you do not have to fight something *that keeps changing*. “Standing on shifting sands” is often fatal to your position when dealing with a school. If you get it in writing you can fight from solid ground. If you cannot get it in writing, collect as much evidence as you can starting at the lowest level and each step along the way going up the chain of command. It is important for you to collect as much evidence in writing. If you can get away with it, ask if you can tape the meeting so that nothing gets misinterpreted. Your efforts will be paid back in two ways. First, you may get them to act in the way you wish but most importantly, you will have all the ammunition you need to go before the Board of Education, a Federal or State Agency or to Court.

Always be polite. Always keep in mind that the higher levels are probably unaware of your activities but look ahead to meeting with the next level. Ask yourself, “what will I need if I have to meet with the Principal, the Superintendent or School Board?”

Most problems can be worked out with the lowest level. However, if they are not worked out there, you may find yourself arguing your case before the School Board, a State or Federal Agency or a Court.

BOARD OF EDUCATION HEARINGS

The Board of Education is elected by the community but don't think that that makes them independent and fair. A person may get on the Board with the full intention of being the voice of the people but the School environment corrupts and diminishes the independence of School Board members.

All one needs to do is go to School Board meeting to witness the dog and pony show put on by the School Administration for the School Board. The Board is bombarded with happy, wonderful little tidbits of information, awards, student achievements, teacher presentations, athletic accomplishments and list goes on and on.

It is nearly impossible for real issues to be raised in this atmosphere. Board meetings look like pep assemblies not business meetings. It is no wonder that when some student upsets their happy little apple cart that the student looks

If you are at a Board of Education Hearing, it is because you are facing serious discipline.

The Board of Education is not a court. The do not have to follow all of the rules of evidence that you would have to follow in a court.

You are entitled to be represented by an attorney. You are entitled to present evidence and challenge the school's evidence including cross examination of their witnesses.

However, the school will rely on what courtroom's consider unreliable evidence. Hearsay is a statement by a person that is not there to cross examine. Schools will rely on hearsay evidence—like handwritten statements of witnesses that do not come in to testify. When this happens you cannot cross examine or challenge the witness.

You need to get all of the evidence that the School has before going to a hearing and then fully prepare. You will not have much time to prepare and you should fight for more time to prepare so that you can challenge the School's case.

You must make a record on why you need more time to prepare and request more time. Do it in person, do it in writing and request the postponement at the hearing if necessary. Every time you raise an issue do it in the same fashion. If they do not give you adequate time to prepare, challenge *every piece* of evidence before it is submitted with the same objection: "I object to the evidence as I have not had enough time to prepare to meet or challenge it."

The Board of Education Hearings must be taped. Bring a video recorder and request that you be able to record it as well. These recordings can be used in a court case against the school and they know it so make sure you get an accurate recording of the hearing.

Since they know that the recordings can be used in court, you should present as much evidence as possible, object often against each piece of evidence that the school presents

and get as much information into the record as possible. You should be striving for a very long, hard fought hearing.

Most hearings before School Boards are short kangaroo court-type proceedings. The Board views you as a derelict and has probably prejudged you as guilty of whatever infraction is alleged. Nearly every student will lose when facing a Board of Education Hearing so you have to fight hard to be heard. Board's support the administration and vice versa.

Fight against going into a closed session. Make the evidence be heard in the light of day so that their decision can be scrutinized by the media and public. In this situation, a Board of Education will have difficult time acting on faulty or questionable evidence. First, they don't want to lose a court case but secondly and maybe most importantly, they do not want to look bad in the court of public opinion.

THE LIE ABOUT SELF DEFENSE

Students are regularly told that if there is a fight that both students will be suspended from school according to “law.” Well Michigan law doesn’t exactly say that. It says that a student in grade 6 or above that assaults another student shall be expelled. It does not say that that student who was assaulted and defending himself should also be expelled.

The actual law is set forth below and you can read it for yourself. However, you should watch out for the school attempting to suspend you anyway for defending yourself because they have a school rule that any students acting aggressively toward another is grounds for suspension. They will bootstrap the argument by looking for any opportunity that you could have had to escape and use that against you. (“You should have walked away”) Or if you say something aggressive back to a bully to repel his advance they will say that you were “an equal participant”. These stupid school tactics belie the way the world works

When a person is confronted verbally or physically, that person must make a split second decision on how to repel that confrontation. It is common knowledge and a manner of survival that by showing any sign of weakness or fear, the victim can intensify the attack. Parents teach their children that if they wish to avoid being physically attacked they must either escape or show that they are not afraid and are willing to defend themselves.

The schools are punishing children who in a split second decide that they cannot escape and must show strength in the face of an attack. They are punishing children for engaging in self defense—a basic human right to existence. They being punished for being taught to survive.

If you have to defend yourself, and the school, in their infinite lack of wisdom, attempts to punish you, read the law below, use it to your benefit and demand that your basic human right to self defense is respected.

380.1310 Physical assault at school against another pupil; expulsion required; alternative education; definitions.

Sec. 1310.

(1) If a pupil enrolled in grade 6 or above commits a physical assault at school against another pupil and the physical assault is reported to the school board, school district superintendent, or building principal, then the school board or the designee of the school board as described in section 1311(1) on behalf of the school board shall suspend or expel the pupil from the school district for up to 180 school days. A district superintendent or building principal who receives a report described in this subsection shall forward the report to the school board. Notwithstanding section 1147, a school district is not required to allow an individual expelled from another school district under this section to attend school in the school district during the expulsion.

(2) If an individual is expelled pursuant to this section, it is the responsibility of that individual and of his or her parent or legal guardian to locate a suitable educational program and to enroll the individual in such a program during the expulsion. The office for safe schools in the department shall compile information on and catalog existing alternative education programs or schools and nonpublic schools that may be open to enrollment of individuals expelled under this section and pursuant to section 1311(2) or 1311a, and shall periodically distribute this information to school districts for distribution to expelled individuals. A school board that establishes an alternative education program or school described in this subsection shall notify the office for safe schools about the program or school and the types of pupils it serves. The office for safe schools also shall work with and provide technical assistance to school districts, authorizing bodies for public school academies, and other interested parties in developing these types of alternative education programs or schools in geographic areas that are not being served.

(3) As used in this section:

(a) "At school" means 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.

(b) "Physical assault" means intentionally causing or attempting to cause physical harm to another through force or violence.

(c) "School board" means a school board, intermediate school board, or the board of directors of a public school academy.

(d) "School district" means a school district, a local act school district, an intermediate school district, or a public school academy.

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Popular Name: Act 451

DRUGS AND ALCOHOL IN SCHOOLS

Schools are so intolerant of drugs and alcohol in schools that they are overzealous in their approach to the problem. Students have faced discipline for out of school activities on private property and even for students being silly off campus posing for pictures with empty alcohol containers they found but never drank.

One must ask, if a student is caught with drugs or alcohol, do they need less education or more education? Should they be punished by being denied access to education or is there another way to punish the conduct? Schools act more like they are a criminal justice system and they throw the kids out of school. Schools are run more like prisons than like institutions of education. Educators are no longer really educators. They are bureaucrats more concerned with enforcing rules and doing paperwork.

Ask yourself if we are making a better world by denying young people education because they had a joint or a beer. Are we making a better community by throwing kids out of school? At schools the punishment never seems to match up with what is best for the community. A student is not yet an adult but they are treated harshly like they are adults in today's schools. It is wrong.

Students who experiment with drugs or alcohol need more education, not less. Students who have substance abuse problems need more education, not less. They should be required to attend classes, counseling, drug testing and community service to learn a lesson. They should not be thrown out with garbage and denied an opportunity to contribute to our society. The most disturbing thing is that a large number of teachers, principals, superintendents, policeman, lawyers, doctors, judges and others experimented with drugs or alcohol when they were young but because we were more tolerant when they were young, they were able to go on and contribute positively to our society. These same people are now not giving our children the same chance.

If you are caught with drugs or alcohol on or off campus, be prepared to be treated unfairly harsh by your school. Even if you are successful in limiting the length of the suspension by some extraordinary acts of counseling or treatment, you will probably lose the right to participate in sports or other extracurricular activity. This brings up another issue.

Should athletes be denied the right to participate in sports? Is it not true that sports promote good health, promote teamwork and an obligation to one's teammates to do your best, promote honesty, cooperation and good sportsmanship and otherwise provide an athlete with the kind of qualities we like to see in our community? Does a student who uses drugs or alcohol need more or less participation in athletics? Can not an athlete remain on the team if he does classes, counseling, drug testing, community service and additional workouts to make up for what he lost in abusing his body? Should this not be the punishment? Will we build a better community if we teach our kids to do better? Or

should we just throw them out and/or deny them the opportunity to learn good health and teamwork?

What should you do if you are caught with drugs or alcohol? The correct answer is not the right answer. The correct answer is to refuse to answer any questions without an attorney and prepare to fight against a harsh school.

The right answer is to take responsibility for your actions and take your punishment-- *but if you are not going to be treated fairly, how can you do this*. I submit that you can't if you value your education. So once again, what is it that our schools are teaching us? I submit it is that you can't trust them to do what is right so don't cooperate with them and get yourself a lawyer and fight.

WHAT ABOUT SCHOOL SEARCHES?

Most drugs or alcohol are found during school searches.

Interestingly the Supreme Court has held that school officials are considered agents of the government and therefore, students qualify for protection under the 4th Amendment of the Constitution.

However, the 4th Amendment only protects against those searches that implicate a person's legitimate expectation of privacy. Students do have a legitimate expectation of privacy at school but it has been somewhat limited by the Supreme Court.

General routine searches of all lockers are usually not unconstitutional so long as the school did not turn over control to the student(s).

For individualized searches, the Supreme Court requires that first, the school official must have a reasonable suspicion that the particular student has broken the law or a particular school rule and secondly, the search must be reasonably related in scope to the particular rule the student is suspected of breaking. For instance, if someone sees you put a brown bottle suspected of being a beer in your back pack, they can search your back pack but not a strip search.