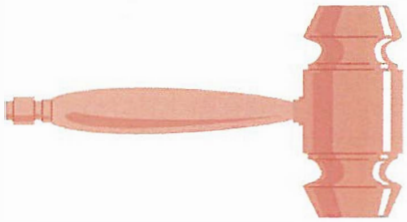
# Legal Corner



*By Michael I. Levin, Esq., PA Principals Association General Counsel*

# Did You Write This? Student Handbooks as Legal Documents

One of the most important publications that a school may issue is the student handbook. The student handbook provides valuable information to students and parents. Some of what is conveyed is intended to provide the basic information necessary for students to navigate the school day. For example, contact information is a common feature of such handbooks. However, student handbooks are more than informational brochures. They are legal documents and must be treated as legal documents.

If you, as a principal, have been tasked with the duty to write or edit a student handbook for your school, I suggest that you should insist that it be reviewed by legal counsel before it is finalized, before it is approved by the school board and before it is distributed to parents and students. "Loose" language can impose legal liability that was never intended or trigger unnecessary duties and processes that were unforeseen. Unnecessary language can trigger duties that do not otherwise exist. Conversely, the failure to contain legally required language can place the district in legal peril. "Sloppy" or imprecise language can mean the difference between winning or losing a case. Consequently, it is important to ensure that student handbooks contain all of the things that are legally required and contain language that best positions the school and school district legally. For that, just like counsel should be reviewing contracts and other documents of legal significance, skilled legal counsel is required to review the student handbook.

## I. Legal Notice Checklist

State and federal law requires that school districts provide notice to parents and students of a wide range of topics. Although some of the legal requirements can be met by posting on the school district's website, it is recommended that student handbooks contain all of the legally required notices. The following is a *checklist* of legal notices that should be included in a student handbook:

- ☑ School board approval of handbook. The school board should approve the handbook at a public meeting and the handbook should contain a statement that it has been approved and the date of approval should be indicated.
- ☑ Anti-Discrimination Notices
  - ☑ Contact information for Title IX coordinator(s)
  - ☑ Contact information for ADA coordinator(s)
  - ☑ Contact information for Section 504 coordinator(s)
- ☑ Sexual Harassment Notices
- ☑ Student Records Notice
  - ☑ Contact information for the Student Privacy Policy Office of the United States Department of Education
  - ☑ Contact information for school's student records administrator
  - ☑ Description of directory information
  - ☑ Method of opting out of certain directory information rules
- ☑ Student Privacy and the Protection of Pupil Rights
  - ☑ Amendment Notice
  - ☑ Contact information for the Student Privacy Policy Office of the United States Department of Education
- ☑ English as a Second Language Notice
  - ☑ Contact information for administrator regarding English as a Second Language
- ☑ Special Education Programs and Services Notice
  - ☑ Contact information for administrator responsible for special education services
- ☑ Notice of wellness program in accordance with the Healthy, Hunger-Free Kids Act
  - ☑ Contact information for the administrator responsible for school district's wellness program
- ☑ Child Nutrition Program Notice
  - ☑ Contact information for the administrator responsible for school district's wellness program
- ☑ Children's Internet Protection Act Notice
  - ☑ Contact information for the administrator responsible for school district's wellness program

*Continued on next page*

- ☑ Contact information for the Federal Communications Commission
- ☑ Student Services
  - ☑ Notice of Guidance Services
  - ☑ McKinney-Vento Homeless Assistance Act notice
  - ☑ Contact information for the administrator responsible for school district's wellness program
  - ☑ Working papers notice
- ☑ Allergies
  - ☑ Contact information for Section 504 coordinator
- ☑ Asbestos Hazard Emergency Response Act (AHERA) Information
  - ☑ Contact information for AHERA coordinator
- ☑ Audio Recordings on Buses and Vehicles Notice
  - ☑ Code of Student Conduct

## II. Notices Required or Implied by School Board Policies

In addition to the notices that the law requires, it is common for school board policies, or the administrative regulations adopted to implement policy, to require that students or parents be provided certain notices. Principals need to review the policy manual and administrative regulations to ensure that any required notices are provided in the student handbook. Many times, policies contain the same requirements as law. For example, policy 250[1] requires that notice of student recruitment be provided to students and parents. Other policies may not expressly require notice, but implementation of the policies suggests that notice be provided in the student handbook. For example, policy 203.1 allows students to be excused from HIV Infection education when such instruction conflicts with the religious beliefs or principles of the student or parents/guardians. It only makes sense to include notice of such rights in the student handbook. Similarly, many school districts have policy 915.1 regarding booster clubs and parent organizations. It only makes sense to provide some information about such organizations in the student handbook, with contact information about the responsible administrator.

## III. Ensuring Consistency Between Student Handbook and School Board Policies and Applicable Law

I have seen student handbooks that contain provisions that are inconsistent with school board policy. For example, Section 1303.1-A of the School Code grants discretion to school boards to determine whether the anti-bullying provisions prohibit conduct that occur outside of the school setting. 24 P.S. §13-1303-A(d). However, I have seen student handbooks that contained language inconsistent with what was contained in the school board policy on that point. It is therefore of the utmost importance that there be no inconsistencies between what is in policy or administrative regulations and what is in the student handbook. Another example concerns the burden of proof. The federal regulations adopted in 2020 governing sexual harassment required school districts to determine and state in their policies whether the burden of proof would be a "preponderance of the evidence" standard or a "clear and convincing evidence" standard. 34 C.F.R. §106.45(b)(1)(vii). The handbook references to Title IX need to be consistent with the standard adopted by the school board.

## IV. Code of Student Conduct

The "meat" of student handbooks is the code of student conduct. Codes of student conduct are highly regulated by law. The state board regulations provide:

> **(c)** Each governing board shall adopt a code of student conduct that includes policies governing student discipline and a listing of students' rights and responsibilities as outlined in this chapter. This conduct code shall be published and distributed to students and parents or guardians. Copies of the code shall also be available in each school library. 22 Pa. Code § 12.3(c).

This simple language means that if you, as a principal, include a disciplinary rule in the handbook that has not been adopted or approved by the school board, that rule is not legally valid. Hence, my recommendation is that the student handbooks be approved by the school board to ensure that all rules have been approved in accordance with 22 Pa. Code §12.3(c).

The next thing is to ensure that the code of student conduct contains all of the legally required rules. For example, the anti-bullying rules need to be stated in the code of conduct, must be posted prominently in each building and made available in every classroom. 24 P.S. §13-1303.1-A. Taking into consideration the legally required provisions and the provisions that may be required by school board policy or administrative regulations, the following is a *checklist* of items that should be addressed with specific and fulsome description of the rules.

- ☑ A recitation of the student rights and responsibilities contained in 22 Pa. Code, Chapter 12
- ☑ The standard of evidence to be used in determining whether there is a violation of the code of student conduct
- ☑ The type of discipline that may be imposed
- ☑ Non-disciplinary consequences that may be utilized
- ☑ The standard for determining the disciplinary consequences
- ☑ The duties of the student, such as cooperating with investigations or reporting criminal arrests
- ☑ Attendance and truancy rules
- ☑ Compulsory attendance procedures
- ☑ Special rules or processes related to conduct by students with disabilities
- ☑ Suspension procedures
- ☑ Expulsion procedures

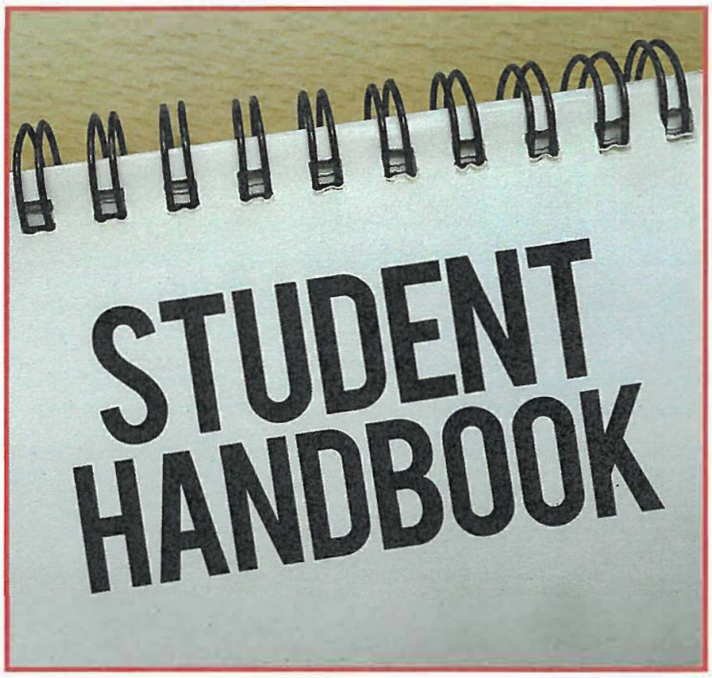
*Continued on next page*

- ☑ In-school suspension procedures
- ☑ Hearing processes
- ☑ Cafeteria rules
- ☑ Care of school property rules
- ☑ Hall pass rules
- ☑ Lavatory rules
- ☑ Locker rules, including locker search provisions
- ☑ Field trip rules
- ☑ Fundraising rules
- ☑ Dance and social function rules
- ☑ Senior pictures
- ☑ Student meeting rules
- ☑ Visitor rules
- ☑ Grading and graduation rules
- ☑ Advanced placement rules
- ☑ Honor society rules
- ☑ Transportation rules
- ☑ Telephone usage rules
- ☑ Electronic device rules
- ☑ Health and safety rules
- ☑ Emergency closing, opening delays or early dismissal rules
- ☑ Health services rules
- ☑ Medication rules
- ☑ Academic dishonesty (cheating) rules
- ☑ Student dress rules
- ☑ Drug and alcohol rules
- ☑ Fighting rules
- ☑ Anti-bullying rules
- ☑ Anti-harassment rules
- ☑ Anti-hazing rules
- ☑ Anti-tobacco and anti-vaping rules
- ☑ Itemization of prohibited conduct
- ☑ Guidance of levels of discipline based on severity of offense and other relevant factors
- ☑ Rules regarding searches and seizures
- ☑ Acceptable use rules regarding electronic devices and technology systems

**A.** ***Building Flexibility into the Code of Student Conduct***

I do not have enough space in this column to provide a complete set of provisions for the Code of Student Conduct, but I will make recommendations addressing some important issues. One critical issue is to ensure that the school has enough flexibility to address all circumstances. I recommend language like the following:

**§1.** ***Levels of Infractions.*** Absent the presence of mitigating factors or aggravating factors, the disciplinary consequences for rule violations are set for this **§7.4**; provided, however, that particular rules described elsewhere herein shall prevail over the levels of discipline




stated in this **§7.4**. Infractions generally are divided into the following four levels:

**§a.** ***Level 1 Infractions.*** Level 1 infractions are minor incidents that generally do not involve or affect other persons. It includes student behaviors that impede orderly classroom procedures or interfere with school operation to a minor or negligible extent. Except where there are repeated instances of Level 1 infractions or other aggravating circumstances, Level 1 infractions generally do not result in suspension, in-school suspension or expulsion.

**§b.** ***Level 2 Infractions.*** Level 2 infractions are more serious than Level 1 infractions and can be described as repetitive or frequent or cause a serious disruption to the learning climate of the school or affect other persons. Except where there are repeated instances of Level 1 or 2 infractions or other aggravating circumstances, Level 2 infractions generally do not result in suspension, in-school suspension or expulsion.

**§c.** ***Level 3 Infractions.*** Level 3 infractions are serious infractions which result or could result in the violation of the legal rights of others, violence to another person, damage or destruction of property, conduct that poses a direct threat to the safety of others in school or conduct that may constitute a criminal offense where exclusion from school would be justified. Level 3 infractions can also include repeated Level 1 or



*Continued on next page*

Level 2 infractions where progressive discipline does not appear to be working.

§d. ***Level 4 Infractions.*** Level 4 infractions are serious, perhaps criminal in nature, where expulsion from school is justified or intervention by law enforcement is justified. Level 4 infractions can also include repeated Level 1, Level 2 or Level 3 infractions where progressive discipline does not appear to be working.

§2. ***Prohibited Conduct; Guidance as to Levels of Infractions.*** The conduct described in the following matrix is prohibited at school or, where indicated, outside of school. Conduct outside of school that is prohibited will not consist of a suspension, in-school suspension, or expulsion unless applicable law allows it. To the extent that conduct outside of school is prohibited, and applicable law does not allow a suspension, in-school suspension or expulsion, the student may be subject to the other forms of discipline or consequences as may be allowed by applicable law. Notwithstanding anything herein to the contrary, any student who violates any of the rules is subject to discipline, including possible expulsion. The following matrix sets forth the minimum infraction level a violation would justify, absent any relevant mitigating or aggravating circumstances.

The Code of Conduct then should contain a matrix that sets forth the prohibited conduct and the usual levels of discipline associated with each type of conduct.

**B.** ***Extracurricular Activities***

The power and authority of school districts to regulate extracurricular activities and student conduct related to such activities is much broader than it is regarding school activities. Section 510 of the School Code, 24 P.S. §5-510, governs the discretion that school boards have to adopt rules governing student conduct with regard to school. Section 510 of the School Code contains the following significant language limiting the power and authority of school boards. Specifically, section 510 of the School Code provides:

> The board of school directors in any school district may adopt and enforce such reasonable rules and regulations as it may deem necessary and proper, regarding . . . the conduct and deportment of all pupils attending the public schools in the district, during such time as they are under the supervision of the board of school directors and teachers, including the time necessarily spent in coming to and returning from school.
> *24 P.S. § 5-510 (Emphasis added)*

In contrast, the power and authority of school boards to control extra-curricular activities and student conduct with regard to extra-curricular activities is set forth in section 511 of the School Code, 24 P.S. §5-511. Section 511 of the School Code provides as follows:

(a) The board of school directors in every school district shall prescribe, adopt, and enforce such reasonable rules and regulations as it may deem proper, regarding **(1)** the management, supervision, control, or prohibition of exercises, athletics, or games of any kind, school publications, debating, forensic, dramatic, musical, and other activities related to the school program, including raising and disbursing funds for any or all of such purposes and for scholarships, and **(2)** the organization, management, supervision, control, financing, or prohibition of organizations, clubs, societies and groups of the members of any class or school, and may provide for the suspension, dismissal, or other reasonable penalty in the case of any appointee, professional or other employe, or pupil who violates any of such rules or regulations.
24 P.S. § 5-511.

Conspicuously absent from section 511 of the School Code is the limiting language that is contained in section 510 of the School Code. This, and other differences in basic legal principles, has resulted in courts generally concluding that the right of students to continue to participate in extra-curricular activities is a lesser right than the right of students to attend school. For example, one court stated that while students have a property right in education, "students do not have a recognized, freestanding property interest in participating in athletic and extracurricular activities." *T.W. v. S. Columbia Area Sch. Dist.*, 2020 U.S. Dist. LEXIS 176429, at *13 (M.D. Pa. Sep. 25, 2020).

However, where unnecessary language is placed in a student handbook granting students' rights that they do not have under law, the school will trigger duties that do not otherwise exist. In *T.W.*, the court held that the school district created a property right regarding extracurricular activities by what the school said in its student handbook. The court explained:

> Turning to the present case, the court finds that the district has established a legal property

*Continued on next page*

interest in participating in extracurriculars. ***The handbook's statement that all students subject to Section VII [regarding extra-curricular activities] will be 'provided due process' throughout the disciplinary process is enough to establish a legal interest in these activities.*** That said, the district's suspension will only violate the Due Process Clause if the procedures offered do not satisfy the requirements set forth in Davis. The district will thus have provided T.W. with sufficient due process so long as it gave T.W. oral or written notice of the charges against him, and if he denies them, an opportunity to present his side of the story.

*T.W. v. S. Columbia Area Sch. Dist.*, 2020 U.S. Dist. LEXIS 176429, at *14-15 (M.D. Pa. Sep. 25, 2020).

In other words, when the author of the student handbook in *T.W.* made a statement that students "will be provided due process," the school district triggered duties that did not have to be triggered. Had that simple statement not been made, this case against the school district would have been short-circuited and more easily defended.

### C. *Addressing the Differences Between Elementary School, Middle School and High School*

It is not unusual for each school to have its own student handbook as there will be differences in personnel and other issues that are dependent upon the particular school. However, it is recommended that the legally required provisions and the code of student conduct be uniform throughout the school district. I have heard administrators argue that elementary students should not be disciplined to the same extent as high school students for a variety of reasons. To the extent that such reasons exist, by having the language allowing flexibility allows the school district to treat elementary students less harshly than a high school student committing the same offense. Under the sample language proposed earlier, the level of discipline is determined only after considering "mitigating or aggravating factors." The age, maturity and intellect of young students are all mitigating factors that can be taken into account.

## IV. Practical Recommendations

I strongly recommend that student handbooks be reviewed and updated annually. I recommend that the review process start no later than December 31 each year and that the student handbooks be presented to the school board no later than April each year for approval and adoption. If the school board would like changes to be made, there is time to do so. The school board should approve the handbooks no later than June 30 each year. The handbooks can then be printed over the summer in time to distribute to students when school starts in August or September.

## VI. Conclusion

Student handbooks are important legal documents and must be treated as such.

***End Note***

*[1]Most public-school entities in Pennsylvania utilize the policy service of the Pennsylvania School Boards Association ("PSBA"). PSBA has developed a comprehensive format for school district policies with a detailed and consistent numbering system. I will use the policy numbers that PSBA utilizes and that most public-school entities employ. If your school entity does not use PSBA's policy service, I highly recommend that it be used.*


# Submit an Article for The Pennsylvania Administrator: Fall 2023 Edition

The Pennsylvania Principals Association is seeking articles for its award-winning magazine, *The Pennsylvania Administrator* - Fall 2023 edition. This issue does not have a theme, so any education-related articles may be considered for publication by the Editorial Review Board.

**Visit this link for article specifications and criteria: https://www.paprincipals.org/publications/the-pennsylvania-administrator/how-to-submit-an-article/**

**To submit an article, please send to Sheri Thompson at sherit@paprincipals.org by Monday, August 14, 2023.**