

WELFARE

OTHER

Student Rights and Responsibilities

STUDENT RIGHTS AND RESPONSIBILITIES HANDBOOK

SECTION X: DISCIPLINE, SUB-SECTION A: CORPORAL PUNISHMENT

The West Virginia Code §18-2-5, directs the State Board of Education to make rules for carrying into effect the laws and policies of the State relating to education including rules related to the physical welfare of pupils. The West Virginia Supreme Court of Appeals in Smith v. West Virginia Board of Education directed the State Board of Education to promulgate corporal punishment regulations consistent with standards established by the court. This policy, adopted pursuant to the Code and instructions of the court, is further revised in accordance with amendments to §18A-5-1 by the 66th Legislature. (1983)

The West Virginia Board of Education believes that the kind of discipline needed in a democratic society is that typified by self-discipline. It considers self-discipline as a learning process whereby the individual progressively develops habits of self control and recognizes his/her own responsibilities to demonstrate recognition of the individual pupil's constitutional rights and of the need for maintenance of a proper environment for learning within the school. Classroom discipline is best maintained through the use of techniques designed to teach pupils self-discipline and the need to obey school rules. Such techniques should involve the reinforcement of positive behavior and the correction of negative behavior.

The doctrine of in loco parentis, contained in the W. Va. Code §18A-5-1, as interpreted by the 66th Legislature permits moderate corporal punishment of public school children by use of the open hand or a paddle to the buttocks. In addition, the physical seizure and removal of unruly pupils from the classroom and the exercise of physical force to restrain pupils from fighting or engaging in destructive or illegal acts may be used when necessary. Areas of pupil activity outside the classroom would also be included in these provisions.

The principal or his specific designee shall have the authority to administer moderate corporal punishment by means of the open hand or a paddle, subject to the following restrictions:

1. Corporal punishment should be administered only as a last resort after use of alternative methods of discipline has failed to correct the inappropriate pupil behavior.
2. Pupils are informed of the rules and regulations that govern the school.

3. The pupil is informed of the school rule or rules allegedly violated and is given an opportunity to explain his or her behavior prior to the administration of corporal punishment. Such an explanation may cause school officials to determine that corporal punishment is not necessary or warranted.
4. Punishment is administered without anger or malice. The amount of physical force used is not wanton or in excess of the offense, is suitable to the pupil's age and mental and physical conditions and is applied without discrimination.
5. The punishment is administered by the school principal or by a specific designee authorized by the principal to administer such punishment and in either case in the presence of another adult professional employee as a witness and not in the presence of another pupil.
6. The punishment is administered by use of the open hand or a paddle to the buttocks.
7. A report which includes a description of the pupil's conduct prompting the use of corporal punishment and the name of the witness is attempted to be made informally by telephone or notice sent with the child to the parent or guardian at least twelve hours prior to administration of the corporal punishment and is made orally in the school office by the end of the school day and a written report is filed in the school office within twenty-four hours of the incident.
8. The parent or guardian of the pupil is notified in writing of each instance of corporal punishment within three (3) school days.
9. Each school principal shall be responsible for the maintenance of discipline in the school. This includes informing the school community of school procedures, maintaining records and authorizing a specific designee to administer corporal punishment.
10. Corporal punishment shall not be administered to a pupil: (a) identified as handicapped, learning, hearing, mentally, or behaviorally disabled; or (b) whose parent has petitioned in writing to the school principal that corporal punishment not be administered to the pupil and attached a certificate from a physician that by reason of a physical or emotional condition the pupil should not be subjected to corporal punishment; or (c) if medical information available to school authorities indicates that the pupil should not be subjected to corporal punishment.

For the purpose of this policy, "pupil" shall include any child, youth, or adult who is enrolled in any instructional program or activity conducted under board authorization and within the facilities of or in connection with any program under public school direction.

County boards of education shall adopt policies consistent with these provisions which shall include specific alternatives to corporal punishment, provide for training of school personnel in alternatives to corporal punishment, and encourage the use of such alternatives in lieu of corporal punishment. Alternative methods used with pupils could include but are not limited to withdrawal of privileges, study assignments, denial of participation in extracurricular activities, detention, in-school suspension and referral to other school personnel. Since pupil discipline is a shared responsibility between parents and school personnel, county board of education policies shall also provide a mechanism for the involvement of parents and guardians in the maintenance of school discipline.

County boards of education should provide school employees with information on issues related to corporal punishment including the fact that corporal punishment coverage is part of the state liability insurance program which provides comprehensive protection for such employees.

County boards of education may adopt additional procedures for administering corporal punishment which are not in conflict with this policy.

Policy approved: July 11, 1975

Policy amended: December 11, 1981

Policy amended: September 10, 1982

Policy amended: June 10, 1983

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Handbook for Students
in the Public Schools
of
West Virginia

STUDENT RIGHTS AND RESPONSIBILITIES HANDBOOK

Revised

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

Approved by
West Virginia Board of Education
December 11, 1981



Roy Truby
State Superintendent of Schools

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Preface

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

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

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

Roy Truby

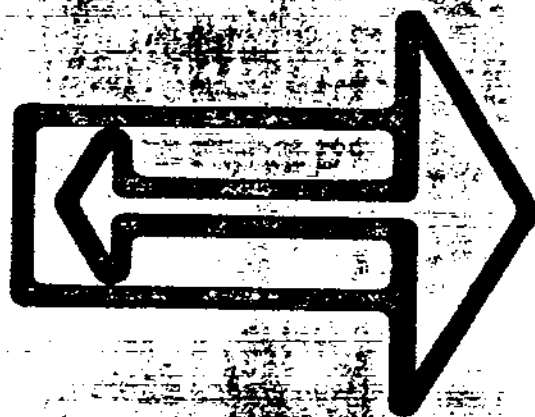
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SECTION I: RIGHTS AND RESPONSIBILITIES OF STUDENTS

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

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



SECTION II: A THOROUGH AND EFFICIENT EDUCATION

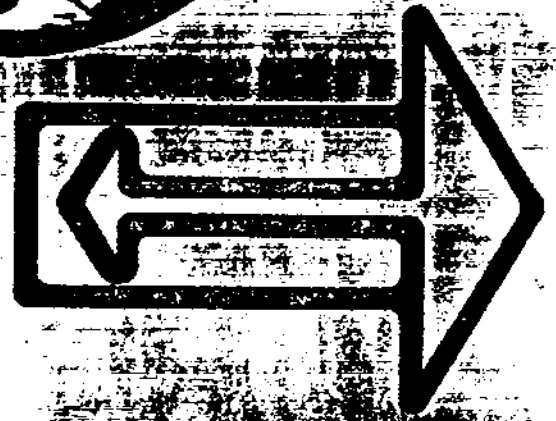
All students, regardless of race, color, national origin, religion, language, sex or handicapping condition have the right to an equal educational opportunity. As students, you are required by law to attend school regularly until your sixteenth birthday.⁵ If you have not graduated, you may attend school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

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

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

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

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



SECTION III: STUDENT INQUIRY AND EXPRESSION

A. Freedom of Religion

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

B. Freedom of Speech

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

C. Freedom of the Press

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

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

D. Freedom to Assemble Peaceably and to Petition the Government

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

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

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

SECTION IV: EXTRACURRICULAR ACTIVITIES

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



SECTION V: PERSONAL APPEARANCE

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



SECTION VI: PRIVACY

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

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

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

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

SECTION VII: CONTROLLED SUBSTANCES AND CONTRABAND

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

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

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

SECTION VIII: PROTECTION FROM UNREASONABLE SEARCHES AND SEIZURES

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

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

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

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

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

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



SECTION IX: POLICE IN THE SCHOOLS

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

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



SECTION X: DISCIPLINE

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

A. Corporal Punishment

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

B. Suspension and Expulsion

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

1. Suspension

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

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

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

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

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

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

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

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

2. Expulsion

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

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

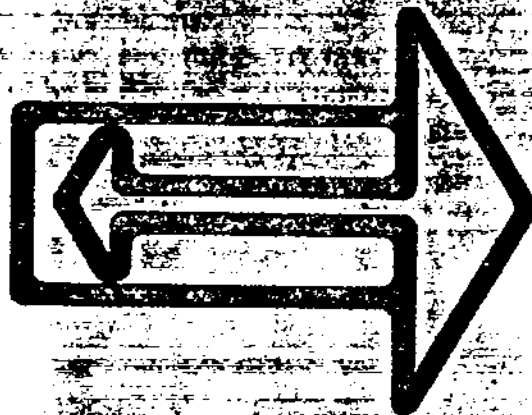
- a. You and/or your parent(s) must be given a written statement of the specific charges against you.
- b. The county board of education must hold a hearing on your expulsion.
- c. You and your parent(s) must be given a written notice of the time and place of the board of education hearing at which your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

g. You have a right to remain in school prior to the hearing unless your presence poses a clear danger to the integrity of the learning process or the safety of the faculty or the students.

h. If the board of education decides that the charges against you do not warrant your expulsion from school, you may remain in school or return to school without being subject to punishment or harassment.⁴⁰

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

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



DEFINITIONS

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

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

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

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

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

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

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

FOOTNOTES

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

²Ibid.

³West Virginia Code, §18A-5-1.

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

⁵West Virginia Code, §18-8-1.

⁶West Virginia Code, §18-5-15.

⁷West Virginia Code, §18-20-1.

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

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

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

¹¹West Virginia Code, §18-5-39.

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

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

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

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

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

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

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

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

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

²¹West Virginia Code, §18-5-9.

²²*Lambert versus Marushi*, 322 F. Sup. 326 (1971); Title IX of the Education Amendments of 1972, 86.31 (b).

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

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

²⁵Ibid, §13 (1)

²⁶Ibid.

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

²⁸West Virginia Code, §16-9-7.

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

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

³¹United states Supreme Court. *Miranda v Arizona*, 384 U.S. 436, 16L. Ed. 2d, 694,86 S. Ct. 1602 (1966), 10ALR3d974.

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

³³West Virginia Code, §18A-5-1, *Baker v. Owen*, 423, U.S. 907 (1976) original case at 395 L.2d294 (1975); *Ingraham v. Wright*, 430U.S.651 (1971).

³⁴West Virginia Code, §18A-5-1.

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

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

³⁷West Virginia Code, §18-8-8.

³⁸Goss v. Lopez, supra.

³⁹WV Code §18-8-8.

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

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