



Student Handbooks: The New 3 Rs: Rights, Responsibilities and Ramifications¹

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¹ In November 2006, NAIS published “School Handbooks: Beyond the Enrollment Contract” by Linda S. Johnson, Esquire. This article, “The New 3 Rs,” is an update of that article and includes both an overview of student handbook guidelines as well as some new policies to assist independent schools in managing some of the high risk behaviors and other issues encountered by schools today.

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I. Introduction

A school uses its handbook to convey any number of important pieces of information: the school mission, academic requirements, day-to-day school life expectations, drop off and pick up times, dress codes, and disciplinary policies, to name just a few. This information is turned to many times a year by virtually all families. The importance of the handbook, however, extends well beyond these practical considerations.

The legal relationship between an independent school and its students and their parents is largely contractual. The student handbook is one of the primary documents that spells out the contractual arrangement. As such, the handbook can act as both a sword and a shield for an independent school in outlining and enforcing the respective rights and responsibilities of the parties. It sets forth what the school can expect from the students and what the students and students' families can expect from the school.

Schools need to think about the contents of these guidebooks for families, as not only do they provide important practical information, they lay out the details of the relationship between the parties involved. They establish not only details of the relationship between the school and its students, but also the relationship between the school and parents. When this process is not approached with both the practical and legal ramifications in mind, a school may find itself inadvertently at the whim of its own drafting.

Schools should take care in drafting all handbook policies to ensure that they reflect the practical reality of school life and mutual expectations at the school. It is not a wish list. When an issue arises, the school should ensure that the requirements of the handbook policy are followed. A parent or student will be quick to raise a school's own failure to follow what is set forth in the handbook.

It is also important for a school to regularly update its handbook. New issues and trends arise all the time. Today, a school needs to have policies that address such issues as cyberbullying and other out-of-school conduct that can have an impact at school or on members of the school community. Without such explicit policies, a parent or student might successfully raise a lack of authority, lack of nexus, or a breach of privacy rights which could prevent a school from appropriately addressing the needs of its school community. By pro-actively addressing such issues as conditions of enrollment, a school maintains the ability to appropriately address situations as they arise.

When reading this article, schools should bear in mind that school handbook law is similar to employee handbook law, with many of the same principles applying. As such, most of the issues are going to be based on state law. This publication speaks to the general principles regarding school handbooks, but schools must work with knowledgeable legal counsel when drafting or revising the school handbook. Knowledge of the law in the school's state, as well as the individual school culture, is important to ensuring that the school's policies and procedures are drafted appropriately for the school's situation.

Additionally, handbook policies should be tailored to fit the individual needs of the school implementing the handbook. It is not uncommon to see some policies included in a handbook that do not even apply to a particular school. This can come about by using a sample from another school or a purchased sample that has not been reviewed by counsel. Once a handbook is drafted or revised, it would be wise to have it reviewed by legal counsel to help ensure that it does not contain provisions which may not apply.

II. Student Handbooks as a Legal Mechanism to Enforce School Policies

A. Handbook provisions may serve as terms to the parties' contractual agreement.

The legal relationship between a private school and its students and parents is largely contractual.³ Similar to other legal entities, private schools may sue or be sued for breach of contract. Private parties can hold educational institutions accountable by contract, and vice versa.⁴ Although the school-student-parent relationship is unique, the essential functions of contract law are “to promote the realization of...parties’ reasonable expectations.”⁵ The idea of having a court randomly assess what the terms of this relationship are from a variety of documents is not ideal.

For this reason, the intention of the parties must be clear and unambiguous. There must be a basis for a court to delineate the terms of the agreement. While many schools expect the relationship to be largely governed by the enrollment contract, schools must also recognize that handbooks may be similarly viewed as a delineation of the terms of the parties’ agreement. There are generally two schools of thought regarding the contractual nature of student handbooks and two possible approaches to implement when drafting handbooks: schools that expressly disclaim any contractual rights or obligations arising from a student handbook, and schools that recognize a student handbook as conferring certain contractual rights and obligations while preserving the school’s ability to exercise discretion.

1. *Disclaiming Language: Guarding Against Interpretation of a Student Handbook as a Contract*

Schools that expect the relationship between students and the school, or between parents and the school, to be largely governed by the school’s enrollment contract must use particular caution when drafting not only the enrollment contract, but also the student handbook and other materials that may set forth certain duties. Without careful drafting, the contract terms of the

³ See e.g., *Gorman v. St. Raphael Academy*, 853 A.2d 28, 38 (R.I. 2004); *Centre College v. Trzop*, 127 S.W.3d 562, 568 (Ky. 2003); *Allen v. Casper*, 662 N.E. 2d 367, 370 (1993); *Gamble v. Univ. Sys. of N.H.*, 610 A.2d 357, 360 (N.H. 1992); *Lyons v. Salve Regina College*, 565 F. 2d 200, 202 (1st Cir. 1977), cert. denied, 435 U.S. 971 (1978); *Jones v. Howe Military Sch.*, 604 F. Supp. 122, 125 (N.D. Ind. 1984).

⁴ *Gamble v. The Univ. Sys. of N.H.*, 610 A.2d 357 (1992); *DeMarco v. University of Health Sciences*, 352 N.E.2d 356 (Ill. App. Ct. 1976). (“[a] contract between a private institution and a student confers duties upon both parties which cannot be arbitrarily disregarded and may be judicially enforced.”)

⁵ Arthur L. Corbin, Corbin on Contracts I (1963).

relationship and the contractual duties of the parties may also be considered by the court as all those duties set forth in the student handbook as well as any other written information provided by the school.

There has been a long-standing tendency for schools to draft handbooks in such a way that disclaims any interpretation that it be viewed as a contract, and instead communicates that the enrollment contract serves as the only source of the parties' contractual agreement. In other words, schools may include a specific disclaimer provision within the student handbook, as well as the enrollment contract, to clearly communicate that the policies within the handbook do not constitute an enforceable contract between the school and the student or parents. For example, language in such a provision might read:

The policies and procedures set forth in this handbook are not a right or part of the enrollment contract. The procedures herein do not confer any contractual rights on any student, but instead serve as an aid to the school in its everyday decision-making responsibilities.

If following this approach, schools should ensure that disclaimer language exists in the student handbook, as well as the enrollment contract and any other documents that reference the parties' duties.

Even with careful disclaimer language, there is still risk that a court or adjudicative body may view the terms of the handbook in a way that confers rights and responsibilities upon the parties. While the disclaimer approach remains popular, many schools now incorporate the student handbook into the enrollment contract, but expressly maintain the right to deviate from handbook policies and procedures where appropriate.

2. *Conferring Contractual Rights: Carefully Drafting a Student Handbook to Confer Contractual Rights on Schools to Take Appropriate Action While Preserving School's Ability to Exercise Discretion*

As an alternative to the disclaimer approach, schools may choose to reference the handbook in the enrollment contract and use the handbook as a mechanism to gain a contractual right to take responsible action and enforce school policy in the event of a transgression. This approach clarifies that schools require compliance with handbook policies as a condition of enrollment, while preserving the school's ability to exercise its judgment in enforcing the policies.

B. *Handbooks should include specific language granting the school the flexibility to deal with situations appropriately as they arise.*

A handbook should clearly communicate the school's policies, procedures, mission and school philosophy, and it should not contain anything with which the school does not intend to comply. Schools should make clear, however, that while the handbook serves as a *guide* to help students and families learn school programs and opportunities and to set forth basic expectations and agreements between the school the students and parents, the school reserves the right to deviate from the handbook as may be needed. This kind of language will allow the school the greatest

flexibility to deal with situations as they may arise. The school should also specifically reserve the right to revise school policies and update them as it deems appropriate in its discretion, even throughout the school year. Some suggested language might read:

This handbook is intended to serve as a guide to help students and their families come to know Johnson Academy's programs and opportunities as well as to set forth basic expectations and agreements. Please take the time to familiarize yourself with the contents. We are hopeful that the handbook will answer many questions you may have about academics, security, discipline, school rules, dorm living, safety, athletics and other topics.

Please understand that no set of rules or guidelines can cover every conceivable situation that might arise at a school. The rules, policies and procedures set forth in this handbook are intended to apply under normal circumstances. However, from time to time, there may be situations that require immediate or nonstandard responses. This handbook does not limit the authority of Johnson Academy to deviate from the normal rules and procedures set forth in this handbook, and to deal with individual circumstances as they arise in the manner deemed most appropriate by the school taking into consideration the best interests of the Academy, its faculty, employees, students or overall school community. The policies may also be revised or updated periodically, even during the school year. You will be advised of any changes as they are made either electronically (email) or by mail. Any student or parent with a question about any handbook policy or statement should feel free to speak with the Dean of Students or Head of School.

On this same basis, schools should also preserve flexibility of school actions within the language of the individual policies themselves. Mandatory language should be used with care. For example, a school should exercise caution when drafting and not use “shall” when it meant to use “may.” If the word “shall” is used, that means something will happen. The word “may” gives the school more discretion with respect to outcomes. A court or tribunal could find fault with the school if it fails to adhere to mandatory language when it is in the handbook but not followed.

C. *Acknowledging mandatory compliance with the student handbook supports later action by the school to enforce its policies.*

1. *Acknowledgement Page: Requiring students and parents/legal guardians to sign an acknowledgement page upon enrollment*

At the outset, schools should make clear to students and their families that attendance at the school is subject to compliance with the student handbook. A good way to ensure this understanding is to include an acknowledgement page which both the student and his or her parents or legal guardian are required to sign. This acknowledgement will set the tone that student and family compliance with the handbook is mandatory. By making this point clear from the outset, schools may help protect themselves from future difficulties when taking responsive action to policy violations. An acknowledgment page will also help establish familiarity with the

handbook, and verify that students, as well as their parents or legal guardians, are familiar with the school's policies and expectations of students.

A sample acknowledgement of the student handbook might read as follows:

Acknowledgement of Student Handbook

All students and parents or legal guardians should return this acknowledgment form within 15 days of enrollment at the school.

Student Acknowledgement

My signature acknowledges that I have received a copy of The Johnson Academy Student/Parent Handbook. I understand that I am responsible for reviewing the handbook and becoming familiar with the Academy's policies and expectations set forth in the handbook. I also acknowledge that I will be held accountable for my behavior and may be subject to disciplinary action (up to and including expulsion) or other ramifications if I violate any policies or if I do not abide by the agreements set forth in this handbook. I understand that if I have any question about any policy or about any other school matter or situation, I can ask a member of the faculty, a counselor or any school administrator for assistance, and that if I do not feel my concern is being adequately addressed that I should speak specifically with the dean of students or head of school.

Date

Student Signature

Family Acknowledgement

My signature acknowledges that I have received a copy of The Johnson Academy Student/Parent Handbook. I understand that my child and I should review and become familiar with the Academy's policies and student expectations set forth in the handbook. I understand that my child will be held accountable for his or her behavior and may be subject to disciplinary action or other ramification if he or she violates any policy or agreement set forth in the handbook. I also know that if I have any questions or concerns about my student, the school's policies or procedures, or any other matter, that I can speak to any school administrator about the situation, and that if I do not feel that my question or concern is being adequately addressed that I should speak specifically with the dean of students or head of school

Date

Parent Signature (or legal guardian)

Date

Parent Signature (or legal guardian)

This document may be signed in counterparts.

2. *Acknowledging Need for Student Compliance with the Student Handbook in the Enrollment Contract*

In addition to having an acknowledgement page, or as alternative to having one, the expectation that the students will be expected to abide by student handbook policies and that the parents will be expected to support the school's policies can also be addressed within the *enrollment contract* itself by including a paragraph which reads:

By signing this Enrollment Contract I and my child agree that the student/enrollee and all parents and guardians will abide by the rules and regulations adopted by Johnson Academy including, but not limited to, the Student Handbook and such other policies as may be adopted and amended from time to time by the Academy. I understand that the school believes that a positive and constructive working relationship between the school and the parent or guardian is essential to the fulfillment of the school's mission. I agree to be supportive of the Academy's mission, its curriculum, administration, faculty and staff. I agree to bring any criticism or concerns directly to the appropriate authority (teacher, advisor, or administrator) depending on the nature of the concern, and that lobbying of other parents against the Academy will be frowned upon. I understand and agree that the school reserves the right to terminate enrollment of my child if the school concludes, in its sole discretion, that the actions of a parent or guardian seriously interfere with the school's accomplishment of its educational purpose. I also understand that a student's disregard of the rules and regulations of the Academy may be deemed sufficient cause for dismissal. I acknowledge that the Academy has the right to require the withdrawal of any student at any time if the student's behavior or academic achievement does not meet the Academy's standards, or when the conduct or cooperation with Academy authorities of either the student or the parent/guardian is not in keeping with the Academy's standards.

D. *Maintaining internal consistency with handbook policies is a proper foundation to enforcement.*

Schools should exercise caution to ensure that it maintains consistency with respect to its policies and expectations. For example, schools should ensure that language in all school documents—whether in the enrollment or employment agreement, school catalogues, or student/parent and faculty or staff handbooks—is consistent with similar policies or expectations. Likewise, schools should also ensure that faculty and staff consistently apply and enforce the policies as set forth in the handbook. In other words, schools must apply the policies routinely and ensure that any responsive action is consistent with the handbook. For example, if the handbook states that two administrators will conduct an investigation following a harassment complaint, this procedure must be followed. If one investigator performs the investigation, it may expose the school to claims of breach of contract or failure of due process.

E. A handbook is not a wish list of ideal policies and should not be drafted or treated as such.

Handbooks should contain written documentation of the school's actual rules and policies, not ideals that do not exist or will not be followed. Schools should only include those policies they intend to follow and enforce. Again, failing to enforce or follow handbook policies may expose schools to potential liability. Additionally, including ideals will likely lead to ambiguity and confusion among both students and faculty and staff about what the rules are.

It is important for every school to regularly update its handbooks to keep pace with changes in the laws as well as with changes in the school's social environment. Disciplining a student for off-campus behavior such as hazing or for personal computer or cell phone misuse were not issues that schools had to deal with until recently. These scenarios raise issues such as a school's legal right to reach beyond school grounds and the privacy rights of students. If a school has policies within its student handbook that clearly set forth the school's and the student's respective rights and responsibilities in these areas, the school will have a contractual right to take appropriate responsive action and enforce the policy should such transgressions occur.

III. Using a Student Handbook as a Proactive Way to Communicate Policies that May Help Protect the School in a Potentially High Risk Situation.

In addition to general provisions, the student handbook also provides the school with a good location for including policies that help to protect the school in high risk situations such as those involving student misconduct, safety and health issues. The following are some areas for a school's consideration in updating its student handbook. These include out-of-school conduct, criminal conduct, health information sharing, and student searches.

A. Jurisdiction Over Out of School Conduct

It would be wise for the school to notify students in its student handbook and code of conduct that students may be subject to disciplinary actions for out-of-school conduct that could disrupt operations or interfere with the safety or welfare of students or other members of the school community. It is helpful to put students on notice that out-of-school conduct that would subject the student to discipline within the school may subject the student to discipline outside the school. Although it is not necessary to list all types of behaviors that may be subject to discipline, it is a good idea to list some types of behaviors. Schools should also specifically remind students that electronic communications made outside school could subject the student to discipline.

1. *An out-of-school conduct policy might read as follows:*

Out-of School and Off-Campus Behavior: Students should be aware that certain activities, even outside of school hours or off school

property, may result in loss of school privileges and other disciplinary action up to and including suspension or expulsion. Students may be subject to discipline for misconduct which is, or may be, disruptive of the educational process, interferes with the work of the school, is contrary to the mission of the school, impinges on the rights of other students, employees, or members of the school community, or has a direct or immediate effect on the discipline or general welfare of the school, even if such conduct takes place off campus, during non-school hours, or on breaks from school. Such conduct will be evaluated at the sole discretion of the school, and the school reserves the right to deviate from the regular disciplinary process as may be deemed necessary under the circumstances. Some examples of such outside conduct that may have disciplinary ramifications at school include any violation of law; underage purchase, use or possession of alcohol or a controlled substance; use or misuse of computers, or computer websites (personal, at home or at school), which do, or could, impact the welfare of any member of the school community or the reputation or functioning of the school.

B. Dealing With Criminal Conduct

When the school becomes aware of misconduct that could lead to significant criminal prosecution, such as sex crimes, pornography, drug offenses, etc., it should recognize that statements given by the student or students involved in the course of an investigation could be used by the police in a subsequent criminal prosecution. This is especially likely when the school itself is under some obligation to report the matter to the police, such as child abuse reporting. In such a situation, the school is caught between conflicting obligations to investigate disciplinary matters and enforce the school's rules, on the one hand, and, on the other hand, to act *in loco parentis* to protect the interests of all students in its care.

A school can help minimize risk in this situation by having a policy which requires students subject to an investigation to cooperate fully and spells out consequences, including leave and even a requirement to withdraw, for students who fail to cooperate. With such a policy in place, the school has the option to notify parents in advance of questioning a student whose misconduct has, or will, be reported to the police and may become subject to criminal prosecution. The school can encourage the parents, in this situation, to seek advice from a criminal defense attorney. The parents can then make an informed decision whether to permit their child to cooperate in the investigation and give a statement or face leave and possible dismissal from the school. Often in this situation, parents choose to withdraw their child from school. For this reason, a school should consider having a policy to cover withdrawals pending discipline. Such a policy would note that in the event that the school has an obligation to report a sex crime or other abuse, that obligation generally does not end if a student withdraws.

A sample policy might state:

Students are expected to cooperate in investigations. Students are expected to be honest, but honesty is not necessarily a mitigating factor and students' own statements may be used against them. Failure to cooperate with an investigation may be cause for disciplinary action.

If a student refuses to participate or cooperate at any stage of an investigation for whatever reason, including, but not limited to, pending criminal charges, the school reserves the right to take action, including proceeding without a statement from the student, or to ask the student to leave school.

The school should also consider a policy to permit the school to place children on leave when an investigation is underway and the child has chosen not to make a statement for any reason. Schools should consider whether they want the leave policy to include a limit on such leaves, such as one semester.

C. Publicity of Disciplinary Action

Although private schools that do not receive federal funds are not subject to the confidentiality provisions of laws such as FERPA, there is the potential for a claim or breach of privacy when a school discusses a disciplinary matter such as at an all-school meeting. To mitigate the risk of such exposure, a school may wish to consider a specific handbook policy, such as the following:

Learning From Our or Other's Mistakes: The school reserves the right to raise at any school meeting any issue of discipline regarding a student for the purpose of furthering the educational and learning exposure of students and the school community overall.

D. Health Information Sharing

School administrators are legally obligated to protect the health and welfare of the school's students. Legally, administrators are presumed to be aware of significant risks which are known to subordinates employed by the school. Moreover, parents assume that if information about potential harm to their child is known by an employee of the school, that such information will be passed on to key administrators.

Private schools often provide a higher level of health and counseling services to students than is generally provided in public schools. Consequently, it is possible that doctors, nurses or counselors may learn about significant risks to students. Because this information is learned in a school setting, as opposed to a private practice setting, it is important that the school resolve the competing duty of confidentiality and the duty to protect students. This can be solved by putting into place a mandated waiver of confidentiality so that crucial information about high risk situations, such as eating disorders, known to health care providers and information about high risk conditions, such as depression, and suicidality, known to counselors can be shared with administrators and others on a need-to-know basis. Such a waiver can be made a condition of enrollment. Schools should have a procedure in place to obtain releases for students who turn 18.

A sample policy might read:

Parents and students agree, as a condition of continued enrollment, to consent to the release of any of the student's health related information, including information relating to drug treatment, testing, medical and mental health records, to employees or agents of Johnson Academy, as determined by the head of school or his or her designee, to meet the medical or safety needs of the student and the community or the legal responsibilities of the Academy.

Johnson Academy will maintain appropriate administrative, technical, and physical safeguards to protect the security of all health-related information within its care or custody. While it is the obligation of Johnson Academy to safeguard student medical information, we must also balance matters of privacy and confidentiality with safeguarding the interests and well being of our students and our community. Thus, parents/guardians and students consent to allow employees and agents of Johnson Academy who have a need to know medical and/or psychological information necessary to serve the best interests of the student and/or the community. In the event of a disclosure required by law, every effort will be made to notify the student and/or parents/guardians in advance.

A waiver should be included on the enrollment paperwork and included with an explanation in the school's handbook explaining the limits of health care information. Such an explanation should also include an explanation of the school's obligations under state reporting laws.

E. Searches

Private schools have more latitude to conduct searches than public schools. Schools should give themselves flexibility and not unnecessarily adopt criminal due process standards for searches. Searches of lockers, backpacks, and rooms should be permitted in the discretion of the school to protect the interests of the school and the school community.

Many private school student handbooks provide that a school will not conduct a search of a student room or student belongings unless there is “reasonable cause” to suspect that the violation of a school rule or criminal conduct has occurred. However, in a school's ongoing efforts to monitor compliance with school rules and also to further efforts to maintain a substance free and safe school environment, such a policy may not go far enough. Consider, for instance, if the school has some information that students may be in possession of controlled drugs that are being distributed on campus, but the school does not know the specific students involved. A full search of all student rooms and belongings, such as drawers or backpacks, or of all student rooms and belongings in a particular suspected dorm, might allow the school to get to the source of any problem. A private school should consider if a broader search policy would allow it more flexibility to further its efforts to maintain a safe school environment.

A sample search policy might read:

A search of a student's room and/or any other item in a student's possession may occur when any member of the faculty or school administration has reason to believe that a disciplinary infraction or the existence of physical or other potential harm to the student or others will be discovered. In addition, in the school's ongoing efforts to ensure compliance with our rules and that students engage in appropriate behavior, and to maintain a substance free and safe school environment, the school may choose to conduct a random search of any area of the school premises as well as any item of a student's personal belongings or items in a student's possession at any time and without prior notice.

Procedures should also be in place so that persons who conduct searches are trained and that searches are monitored and documented. Strip searches and pat downs should be avoided. If considering such searches, consult with counsel.

F. Toxic Parents

Parents whose behavior is unreasonable and extreme can drain the time and energy of administrators and faculty. Schools should consider including a statement about expectations for parents in their handbooks and recruitment materials. Schools may also want to include a provision in their enrollment contracts and parent handbooks reserving the right not to reenroll a student if, in the school's opinion, the student or the student's family is not a "fit" for the school.

An example of such a provision is as follows:

As a parent or guardian, I agree to abide by the rules and regulations of the school as set forth in the parent handbook. I understand that the school believes that a positive and constructive working relationship between the school and the parent or guardian is essential to the fulfillment of the school's mission. I understand and agree that the school reserves the right to terminate enrollment of my child if the school concludes in its sole discretion that the actions of a parent or guardian seriously interfere with the school's accomplishment of its educational purpose.

G. Alcohol and Drug Use, and Testing

Schools should also have a policy regarding the ramifications of alcohol or drug use by students, and about a parent's responsibility to pay for any required drug testing. Such a policy should address the possible ramifications and loss of privileges that might occur as a result of alcohol or drug use that occurs, even off-campus or on non-school time such as a school break. For instance, a school might decide to strip the captain of a sports team or club of his or her leadership position if the student was arrested or convicted of illegal alcohol or drug use over the summer months or during a school break.

A sample alcohol and drug use and testing policy might read:

Students are expected to be completely drug and alcohol free while enrolled at Johnson Academy. Misuse of prescription or over-the-counter medication, household cleaners and aerosol propellants is also prohibited. A student consuming, buying, selling, in possession of, or under the influence of such substances at Johnson Academy or at, or preceding, any Johnson Academy activity or event is subject to immediate dismissal and possible prosecution by local authorities. Being in the presence of the use and or possession of alcohol or any illegal substance is also prohibited. Even drug and alcohol violations during non-school time and/or off school premises may have ramifications; including loss of privileges or other disciplinary action. In the event of such offenses, Johnson Academy reserves the right to require drug and/or alcohol testing, substance abuse counseling, or other counseling or education for the offending student.

In addition, Johnson Academy may require without prior notification that a biochemical test for drugs and/or alcohol be performed on a student at any time *with or without parental permission*. The cost of such testing is the responsibility of the parents/guardians. Failure to appear for testing, failure to provide a sample, or evidence of attempted adulteration may cause a test to be presumed positive. A positive test may result in disciplinary action including possible immediate dismissal.

H. Medication Policy

It is important to schools to properly manage student medications to ensure the safety and well-being of the student.

A sample medication policy might read:

Parents and students are required to provide the Academy with a list of all medications that the student currently takes, including prescription and non-prescription medication. School policy prohibits students from self-administering any medication, prescription or over-the-counter. Certain limited exceptions may be made for emergency medications such as asthma inhalers, epinephrine auto-injectors, or insulin. In the case of a student who may require such medications, parents and students should consult with the clinical director or his/her designee to develop appropriate measures.

I. ADA Compliance

Schools may wish to consider adopting a policy that explains the school's legal requirements in connection with students with disabilities, but does not promise admission no matter the extent of impairment. Even as a privately-owned institution, a school is still prohibited from discriminating against students with disabilities and is required to provide reasonable accommodations to qualified students with disabilities under the Americans with Disabilities Act ("ADA").

There appears to be a trend of parents increasingly looking to private schools to provide IEP services for their children and demanding schools to provide these services. Private schools are not required to provide special education programs that public school systems are required to provide. However, under the ADA, private schools are required to make reasonable accommodation to qualified students with disabilities, so that such students can participate in the school programs. Such accommodations do not rise to the creation of special education programs and are not required if they would alter the nature of the school's programs or would create an undue burden on the school. Further, a school can establish admissions qualifications that require students to demonstrate independent academic achievement and ability, and students who cannot do so, would not be "qualified." An ADA policy can explain the school's obligations in this area. The language in such policy might read:

Johnson Academy is committed to a diverse community, which includes qualified students with documented disabilities and other health issues that may require reasonable accommodations to ensure access to education, housing, and recreation. Although the school cannot offer special education programs for students with disabilities, the school is committed to providing reasonable accommodations to qualified students so that such students can participate in the school's programs.

Federal and state laws prohibit discrimination against qualified students with disabilities. For these purposes a "qualified student with a disability" is defined as an individual with a disability who is able to meet and fulfill the fundamental requirements of the school's education, with or without reasonable modifications to the school's policies or the provision of auxiliary aid or services. "Reasonable modifications" include modifications in policies, practices or procedures when the

modifications are reasonable and necessary to afford services to qualified individuals with disabilities. They do not include modifications that would fundamentally alter the nature or purpose of the school's education or programs, or that would otherwise create an undue burden for the school.

IV. Schools should take special precautions when setting forth certain types of policies, particularly those involving student misconduct that may present additional legal ramifications for the student.

Certain issues call for special attention in drafting policies. These areas may serve as particularly frequent areas of concern. With careful drafting, schools may not only set forth expectations of how to deal with infractions of such policies, but also may serve to educate students about the school's expectations regarding behavior in a number of areas.

A. Bullying

Schools should check their state laws to determine if there is a mandatory obligation to have a written bullying policy. However, even if there is no mandatory requirement, studies show that bullying is a serious problem in schools, especially at the middle school level. Schools should consider adopting a written bullying policy to put students on notice that such behavior will not be tolerated. A sample bullying policy is as follows:

Bullying will not be tolerated at our school.

Bullying occurs when a student is the target of negative actions usually in the form of intentional, repeated hurtful acts, words, or other behavior such as:

**Intimidation, such as name-calling or threatening;
social alienation, such as shunning or spreading rumors; or
physical aggression, such as spitting or pushing.**

Any student who believes that he/she has been the victim of bullying shall report the incident(s) to the head of school, dean of students, school nurse or your advisor.

Any student found to have engaged in bullying shall be subject to appropriate disciplinary actions, which may include suspension or expulsion.

B. Hazing

Most states have adopted legislation aimed at preventing hazing in schools. Such state legislation typically has requirements regarding reporting hazing as well as adopting a hazing policy. The statutes differ from state to state, and the policies from school to school also differ. A school should take a look at the hazing law in its state, and use language in a school

policy that follows the definitions and requirements under state law. A sample policy based on New Hampshire's hazing law is as follows:

Hazing will not be tolerated at our school.

Hazing is defined as any conduct, coercion, or intimidation used as a method of initiation into a student organization or team which is likely to endanger the physical or mental health of any student.

Reporting Requirements

It is a crime to (1) participate as an actor in any student hazing, (2) knowingly submit to hazing, or (3) be present at or have direct knowledge of hazing and fail to report such hazing to law enforcement or school authorities. Every member of the school community must report hazing to the school principal or a vice principal. In addition, the school is required by law to report to the local police any hazing reported to it or of which it becomes aware.

Keep in mind that, under the law, the implied or even express consent of any person toward whom any act of hazing is directed is not a defense to hazing.

Examples of Hazing

Examples of behavior that could be considered hazing include being forced to:

- Destroy or steal property.**
- Be tied up, taped, or confined in a small space.**
- Be paddled, whipped, beaten, kicked, or beat up others.**
- Do embarrassing, painful, or dangerous acts.**
- Be kidnapped or transported and abandoned.**
- Consume spicy or disgusting concoctions.**
- Be deprived of sleep, food, or hygiene.**
- Engage in or simulate sexual acts.**
- Participate in drinking contests.**
- Be tattooed or pierced.**

Consequences of Hazing

Hazing will not be tolerated at our school. Offending students will suffer appropriate disciplinary action including the possibility of suspension or expulsion.

Any student who is witness to or the victim of hazing should report it immediately to your coach or group advisor, the head of school, or dean of students.

C. Computer Usage Policies

As computers become increasingly available in schools, a host of new issues are raised regarding their use. While electronic mail (e-mail) and the Internet now provide tremendous access to resources and widespread communication, these same resources and the networks to which they provide access can also create new challenges for schools. Common among a school's concerns are the possibility that an employee or student harasses another employee or student through e-mail; having a student access pornography and use it to harass others; whether the school can monitor the e-mail of its employees or students; and a host of other computer use related issues. Accordingly, school systems and administrators would be wise to establish policies that govern use of computers, just as there are rules governing acceptable behavior while on the school campus.

These computer policies, often referred to as "Acceptable Use Policies," serve many functions. For example, developing a computer policy allows school administrators to establish institutional priorities and expectations regarding use of computer equipment. While it is often difficult to anticipate and provide for every potential use or misuse of a computer, a policy developed prior to a crisis places school administrators in a proactive, rather than reactive, mode. The policy can then be used to educate and inform students and staff about the "ground rules" so that they know what is expected of them. Finally, having a policy in place also serves as a protective mechanism for the school in the event the school is faced with an incident of misuse.

Outlined below are some of the key elements of an acceptable use policy for computer usage:

- **Access.** The policy should define who has access to computer resources, including the time and duration of such use.
- **Purposes of Computer Use.** This section of the policy should establish the purpose for which computers may be used. Are computers available only for educational purposes or is incidental personal use permissible? Obviously, this will be institution-specific. Since it will be difficult to foresee every potential misuse of the school's computers, it would be wise to state the school's general position on use and then list examples of prohibited uses. (Refer to examples by using the language "including, but not limited to, . . ." to reserve the latitude to take action against unspecified uses which fall outside the more generically defined acceptable use.) Obvious examples of prohibited behavior include commercial use, plagiarism, and use of school computer resources for illegal purposes such as copyright violation or software piracy.
- **Ownership of Property.** This section should address issues relating to ownership of computer resources, including stand-alone computers and printers, as well as network resources. Notify students and staff that all computer property, including software, is the property of the school.
- **Anti-harassment.** The policy should specifically provide that neither e-mail nor the Internet may be used to send jokes or other comments that may be discriminatory, harassing, or offensive to others, or to send material that defames an individual, company or business, or discloses personal information without authorization.

- **Confidentiality.** Inform computer users that the school reserves the right to read any materials generated, sent, or received on school computers. Computer resources are subject to school “search” policies and procedures. The school should make clear that e-mail is not private and that the school reserves the right to monitor and access employee and student e-mail. Similar to the monitoring of e-mail, the policy should inform users that their use of the Internet may be monitored and is therefore not private.
- **Security.** Students and staff must maintain the security of the school computer system and should be prohibited from taking any actions to impair the integrity or security of the school’s or any other network. Computer users must have password-protected accounts and must respect the security of others’ accounts. Computer users should be prohibited from accessing any other person’s account, at the school or otherwise. The policy should address the procedures for deletion of messages and other stored information.
- **Disciplinary Action.** Inform computer users about what behavior will subject computer users to disciplinary action and the range of potential discipline. It might also be wise to advise a user of potential criminal liability for computer crimes which exist under federal and state laws. For instance, in New Hampshire, the computer crime law (RSA 638:16) covers (1) unauthorized access of any computer system without authorization; (2) theft of computer services for accessing a computer system for the purpose of obtaining unauthorized computer services; (3) interruption of computer services for knowingly or recklessly disrupting or degrading computer services or causing the denial of computer services to an authorized user; (4) misuse of a computer system for knowingly or recklessly altering, tampering or destroying data within a computer system; or (5) destruction of computer equipment for knowingly or recklessly tampering, altering, damaging, or destroying any equipment used in a computer system.
- **Termination of Access.** Describe the criteria that the school will use to terminate a computer user’s account.
- **Out of School Computer Use.** Include a statement that out of school computer use that has a detrimental impact on the school community may be grounds for disciplinary action up to and including suspension or expulsion. Examples of inappropriate out of school computer use, without limitation, might include making threats against members of the school community from a home or off-school computer, sending harassing or offensive messages from a home or off-school computer, etc.

D. Harassment Prevention and School Policies and Sexual Harassment

1. *Sexual Harassment*

Sexual harassment in schools is forbidden under both federal and state laws.

Title VII of the Civil Rights Act of 1964 makes it illegal to discriminate in employment based on race, color, religion, sex, or national origin. 42 USC § 2000e-2(a) et seq. Title IX of the Education Amendments of 1972 prohibits sex discrimination in schools and colleges receiving federal financial assistance. 20 USC §§ 1681-1688. Under state anti-discrimination laws, it is illegal to discriminate in employment on basis such as race, color, religion, sex, marital status, national origin, or sexual orientation.

There is also state common law, developed through precedent, that sets forth a duty upon schools and some school employees to protect students from sexual abuse and harassment at school.

It is incumbent upon all schools to have an effective sexual anti-harassment policy that encourages harassment victims to come forward and allows the school to take actions to stop the harassment. The harassment policies should cover harassment both of employees and of students. These policies should be widely publicized and disseminated. Along with inclusion in teacher and student handbooks, schools should conduct training to help ensure knowledge and understanding of the policy and grievance procedure. By having a strong policy against illegal discrimination and harassment as well as accessible, effective, and fairly-applied grievance procedures, a school is telling its students and employees that it does not tolerate harassment and that an individual can report such actions without fear of adverse consequences.⁶

Although awareness has grown about the need to develop a written "sexual" harassment policy, schools would be wise to broaden their harassment policy to include harassment on the basis of other protected categories such as religion and race. In the same manner that schools should protect students and employees from harassment on the basis of sex, they should extend the same protections regarding harassment on the basis of these other protected categories.

A written harassment policy should include at least the following basic components:

- A definition of the conduct that is prohibited, along with examples of the conduct.
- The statement that such conduct will not be tolerated and may subject offenders to disciplinary action.
- A clear and straightforward complaint procedure encouraging timely written complaints.
- A statement that all complaints will be investigated and a general definition of how the investigation will take place.
- Alternative reporting mechanisms, so that no employee or student could be forced to report harassment to the alleged harasser.

⁶ See Department of Education "Office of Civil Rights; Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties; Notice." (Final Policy Guidance in Federal Register, Vol. 62 No. 49, March 13, 1997.)

- A statement that the school will attempt to protect the confidentiality of the investigation to the extent possible without stating a guarantee of confidentiality.
- A prohibition against any retaliation.

The following is a sample school harassment policy:

This school will not tolerate sexual harassment of students, employees, or other members of the school community by anyone, whether on school property, at school or work-related assignments or events off school property, or at school-sponsored social functions.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature or related to a person's sex when:

submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment, or academic standing, or opportunities; or

submission to or rejection of such conduct by an individual is used as the basis for employment, or academic or school-related decisions affecting that individual; or

such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating a hostile, intimidating, or offensive environment.

Some examples of sexual harassment include:

**sexual innuendo;
verbal harassment, including derogatory comments or slurs, or inappropriate comments about a person's body or appearance;
physical harassment such as unwanted touching, patting, or pinching, or physical interference with movement or work; or
visual harassment such as derogatory cartoons, drawings, posters, or graffiti.**

Any student who believes he/she has been harassed should report such actions to the head of school, dean of students, school nurse, or the student's advisor.

Following a complaint of harassment, the school will conduct such investigation as is necessary to appropriately respond to the complaint and ensure that no further harassment or retaliation occurs. Complaints will be maintained in confidence to the extent possible considering the school's obligation to take appropriate responsive action.

Appropriate disciplinary actions will be taken against anyone found to have sexually harassed another. Some forms of sexual harassment are considered violations of criminal law or covered by mandatory reporting obligations, and may need to be reported to legal authorities.

Students are also protected from any retaliation for making a good faith harassment complaint or for participating in a harassment investigation. Any student with a concern that he or she is being retaliated against should immediately bring it to the attention of the head of school, dean of students, school nurse, or the student's advisor.

2. Other Forms of Harassment

Schools should also institute a general harassment policy. Such policy language might read:

Other, nonsexual harassment may occur when someone tries to humiliate or intimidate another, such as:

- **making racist comments**
- **making derogatory comments about your religion**
- **making cruel personal jokes**
- **teasing you about your sexual orientation**

No one should be allowed to harass you on the basis of your:

- **sex/gender**
- **race**
- **color**
- **religion**
- **national origin**
- **disability**
- **sexual orientation**
- **ethnic background**

Anyone who believes that he/she has been harassed as described above should report such action to the head of school, dean of students, school nurse or the student's advisor. The school will follow the complaint handling procedures set forth above regarding sexual harassment.

E. Inappropriate Text Messages or “Sexting”

The recent trend known as “sexting” provides a host of challenging issues for school administrators, parents, teachers, students and law enforcement alike. “Sexting” can be described as the use of cell phones to send inappropriate information and images, including sexually explicit images. This disturbing trend has emerged in the news recently, and by all accounts, provides a unique set of challenges in determining the appropriate response to such misbehavior. When “sexting” involves the transmission of sexually explicit images, implications of state and federal law arise. For instance, is this a crime? Should students sending these images be labeled as sex offenders? This area can also present a potential area of liability for the school in failing to act. It is important that the school address its concerns about “sexting” and its expectations of students, parents, and school personnel in dealing with this problem.

Schools should consult an attorney in drafting appropriate policy with respect to “sexting,” as the implications under state law and the reporting requirements of states may differ. Schools may also wish to consult with local law enforcement to determine their suggested approach for school personnel who stumble upon such images.

F. Sample Violence Policy

Sadly, times have warranted more specific provisions on violence in schools. Many states have passed laws on the criminal nature of threatening educators and others, and schools must be aware of the legal issues that have arisen in this area. Further, students and their families must be alerted to the expectations when it comes to violence of any sort on campus.

Students must never resort to physical confrontation to resolve their differences. Fighting for any reason will not be tolerated and may result in disciplinary action including possible suspension or expulsion, loss of athletic or extracurricular activities privileges, parental conference, behavior probations, or other disciplinary action as may be deemed appropriate. Fighting includes (without implied limitation) the throwing of punches or a serious physical struggle. Likewise, threatening another will not be tolerated. Threatening includes any behavior which purposely places or attempts to place another in fear of imminent bodily injury or physical contact.

The possession of a weapon or other dangerous object in the school building or on school property, school buses, or at school functions is prohibited and may result in suspension, police intervention, and possible expulsion. Dangerous objects include without implied limitation items such as guns, firearms, explosive devices, knives, slingshots, pepper spray, and chemical sprays.

G. Sample School Dance Policy

Increasingly schools have had to deal with issues that arise at school dances. This includes attendance by nonschool members who may act out-of-line, students attending under the influence and students who attend the dance but who did not attend school on the day of the dance. To help set expectations about appropriate behavior at school dances and proms, some schools have adopted a school dance policy such as the following:

Requirements for Participation at Dances

The following are rules that must be followed:

- 1. All students who come to the dance will remain at the dance for its duration. If a student leaves, under no circumstances will that student be readmitted. If a student wishes to retrieve something from his or her car, a chaperone at the dance will escort that student to the car and back to the dance.**
- 2. If any student appears to be under the influence of drugs or alcohol at a dance, the police will be notified, parents will be called, and the student will be required to leave the dance immediately accompanied by a police officer or a parent. Being under the influence of drugs or alcohol is against the law. Students and guests may be subject to search and or breathalyzer. In addition, school rules will apply and a student will either be suspended for a period of days or possibly face expulsion. The student handbook outlines these disciplinary actions. In the event of any issue with this provision or any other inappropriate action at the dance, the student and parent will be contacted by phone usually on the next school day following the dance by a school administrator.**
- 3. Any student who wishes to bring a guest to the dance must sign the student up prior to the day or night of the dance when purchasing tickets. Only one guest is allowed for each Johnson Academy student. If the guest misbehaves at the dance, the punishment by the school can apply to the Johnson Academy student who is responsible for the guest at all times. No middle school students are allowed at any high school dance. No guests who have reached their twenty-first birthday will be allowed.**
- 4. Any student caught smoking or in possession of tobacco or tobacco products on school grounds will be subject to the school disciplinary process. Any dance venue is considered school grounds.**
- 5. Students must be present at school on the day of the dance in order to attend. Since the prom is held on a half-day, students are expected to be at school on time. Any student not present by 8:15 a.m. may be excluded from the prom.**

V. Other General Considerations When Drafting a Handbook

A. Include contact information

Student handbooks should include a handy reference on whom to call or contact for particular reasons. This should include everything from the local hospital to the head of school. Therefore, a “Whom to Call” section is advisable. This would include the person’s name, title, phone number, e-mail address, mailing address, and any specific instructions about appropriate contact.

B. Plan the handbook to be user friendly

This means that when a student or parent is looking to find a policy, the handbook should be set up so that the policy can be found easily. An alphabetical index at the end and a carefully set up table of contents can help people use the handbook more easily.

C. Update the handbook regularly

Handbooks should be updated regularly, particularly provisions such as the harassment policies. Schools should reserve the right to update the handbook during the academic year.

D. Communicate your culture

Overall, the handbooks should help to communicate your school's culture and environment. It should communicate your school's policies and procedures, as well as your school's mission, goals, and school philosophy.

VI. Conclusion

A school’s student handbook is a critical document that sets forth the respective rights and responsibilities between a school and its students and student families. As laws change and as schools are forced to address new situations based on changes in societal behavior and advances, handbooks should be reviewed and updated. This article has addressed some policies that a school may wish to consider, tailor, and adopt. By proactively managing the parties’ expectations and responsibilities through a carefully drafted handbook, schools may protect themselves from future legal ramifications of an ill-defined relationship, and may clearly communicate the school’s policies, procedures, and mission.

SPECIFIC POLICES AND HANDBOOK TOPICS

Your school handbook should be the roadmap to your school. Invariably, parents are going to use it when they need it most, which is largely when a school representative is unavailable and they need to know a car pool time, how to get a copy of a transcript, or what happens if their child gets caught smoking a cigarette behind the gym. The following topics are reasonably standard in today's school handbooks:

- Introductory Materials
 - School Mission
 - School History
 - Letter from Head of School
 - Letter from Head of Parents' Association
 - Other similar materials
- Community Expectations / Standards
 - Honor Code
 - Bullying / Hazing
 - Harassment
 - Violence
 - Off-Campus Behavior
 - Parent Behavior
 - Disciplinary Proceedings and Policies
- Comings and Goings
 - School Calendar
 - School Hours
 - Arrival and Departure Information (drop-off / pick-up times), car pool and general transportation policies
 - Tardiness
 - Leaving School Early
 - Arriving to School Early
 - Absenteeism
 - Staying After School
 - Dismissal from School (disciplinary or weather)
 - Inclement Weather / School Closings
- Business Office
 - Billing and Tuition Policies
 - Lunch Fees
 - Activities Fees
 - Financial Aid
 - Enrollment Contracts
 - Reenrollment
- Student Health
 - Illness and Accidents
 - Health Forms
 - Medical, Emergency, and Field Trip Forms
 - Medications

- Day to Day Student Life
 - Lockers
 - Personal Possessions
 - Phone Messages
 - Cell Phones and Personal Laptops
 - Dress Code
 - Lunches
 - Free Periods
 - Grounds (e.g., where students are allowed to go and when)
- Educational Program
 - Graduation Requirements
 - Summer Reading and Projects
 - Classroom Materials and Textbooks
 - Homework
 - Tutoring / Extra Help
 - Academic Honesty (Honor Code)
 - Progress Reports
 - Academic Probation
 - Parent Conferences
 - Standardized Tests
 - Library
 - Physical Education (program, requirements, and equipment)
 - Sports Teams
 - Fine Arts Education
 - Music Education
 - Field Trips
 - Community Service
- Technology
 - School Resources
 - Technology in School
 - Internet Safety
 - Acceptable Use Policy
 - Infractions of Technology Use Policy
- Giving
 - Annual Fund
 - Capital Campaign
 - Class Gifts
 - Development Office Contact
- Safety and Security
 - Arriving and Leaving School
 - Arriving or Leaving Early or Late
 - Entrances and Exits
 - Permission to Pick-up or Drop-off Child
 - Security Cameras, etc.
 - Crisis Planning
- Other

Obviously, some of the above policies ultimately raise more issues than others. Additionally, schools that take federal financial assistance may find that they need additional provisions to the ones above to include policies on a variety of federal laws that the federal financial assistance requires the school to follow. These have not all been included in the above list. More information on those topics may be found in the NAIS publication “That’s a Lot of Money! Should I Take it or Leave it?” Schools may also find that there are specific additional terms that are important to the school culture or specific to the school’s unique programming.

Below is a basic checklist on drafting student handbooks:

A student handbook **should**:

√	01.	Communicate a school’s policies, procedures, mission, and school philosophy.
√	02.	Explain what the school expects of its students and what the students can expect from the school.
√	03.	Be user friendly (i.e., paginated with a table of contents and easy to read language).
√	04.	Contain legally applicable expectations such as regarding hazing and sexual harassment policy and procedure.
√	05.	State actual school practices, not a wish list.
√	06.	Preserve flexibility of school actions (e.g., do not use “shall” when you mean “may”).
√	07.	Comply with the law – state, federal, and local.
√	08.	Be internally consistent.
√	09.	Be distributed to all students and require a signed acknowledgement form from student and parent/legal guardian.
√	10.	Not contain anything with which the school does not intend to comply.

Overall Guidelines in Drafting Student Handbooks

- *All handbooks should be internally consistent.*

It is not uncommon for the student handbook to be within the responsibility of the dean of students and the faculty/staff handbook to be within the responsibility of the dean of faculty or the human resources manager. Unfortunately, that can lead to internal inconsistencies when policies common to both handbooks are revised in one handbook but not the other. Care should be taken to be sure that language in all school documents— whether it is the enrollment or employment agreement, school catalogs, or the student/parent and faculty or staff handbooks— is consistent as to similar policies or expectations.

- *Harassment policies should be updated regularly.*

Most school handbooks contain a sexual harassment policy. You should take a look at your policy and, if you have not done so already, it should be revised to include a section on an overall anti-harassment policy. Many obligations that are required of the school as to sexual harassment also apply to some other protected classes such as ethnic background and religion. Your policy should advise your students, faculty, and staff of these rights and note whom they should contact if they have a grievance.

- *Mandatory language should be used with care.*

Care should be taken regarding the use of the words "shall" and "may." If the word "shall" is used, that means that something will happen. "May" gives the school more discretion about outcomes. A court or other tribunal could fault the school when mandatory language is used but not followed.

- *A handbook is not a wish list.*

Handbooks should contain written documentation of the school's actual rules and policies, not some ideals that do not exist or will not be followed. If, for instance, your handbook says that two administrators will conduct an investigation following a complaint of harassment, you should ensure that this procedure is followed. If only one administrator did the investigation, it exposes the school to a claim of breach of contract or failure of due process.

- *Make sure the policies that you have apply to your school.*

It is not uncommon to see some policies included in a handbook that do not even apply to a particular school. This can come about by using a sample from another school or a purchased sample that has not been reviewed by counsel. For instance, the Family Educational Rights and Privacy Act (FERPA) regulates access to student records. FERPA only applies if a school is the recipient of federal grant monies. Notification of FERPA rights should not be contained in your student handbook unless your school receives

federal funds. Once a handbook is drafted or revised, it is wise to have it reviewed by legal counsel to help ensure that it does not contain provisions which may not apply.

- *Reasonably flexible language should be used to allow for unforeseen circumstances to be handled appropriately.*

While saying “We can do whatever we want, whenever we want” is probably not the type of culture or environment that your school wants to promote, care should be taken to maintain as much flexibility as possible so that you can deal with individual circumstances as they arise without being boxed in by your written policy.

- *Include contact information.*

Student handbooks should include a handy reference on whom to call or contact for particular reasons. This should include everything from the local hospital to the head of school. Therefore, a “Whom to Call” section is advisable. This would include the person’s name, title, phone number, e-mail address, mailing address, and any specific instructions about appropriate contact.

- *Plan the handbook to be user friendly.*

This means that when a student or parent is looking to find a policy, the handbook should be set up so that the policy can be found easily. An alphabetical index at the end and a carefully set up table of contents can help people use the handbook more easily.

- *Communicate your culture.*

Overall, the handbooks should help to communicate your school's culture and environment. It should communicate your school's policies and procedures, as well as your school's mission, goals, and school philosophy.

CASES OF INTEREST:

Bittle v. Okla. City Univ., 6 P.3d 509 (Okla. Ct. App. 2000) (“The great weight of authority generally holds that the law recognizes no cause of action for educational malpractice, either in tort or contract, by a student against a private educational institution asserting inadequate or improper instruction...[A]bsent a specific identifiable agreement for the provision of particular services, the public policy of this state...militates against recognition...[of such a claim.]”⁷

Southwell v. Univ. Incar. Word, 974 S.W.2d 351 (Tex. App. 1998) (“When courts are asked to review the substance of which is genuinely an academic decision, they should show great respect for a faculty’s professional judgment and ‘may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.’”);⁸

Fellheimer v. Middlebury College, 869 F. Supp. 238 (Vt. 1994) (While college left itself considerable flexibility with respect to the specific procedures that will be used in a student disciplinary proceeding, it is nonetheless bound to provide students with the procedural safeguards it has promised.);

Cavaliere v. Duff’s Business Institute, 605 A.2d 397 (Pa. Super. Ct. 1992) (The court will not recognize a cause of action based on a lack of quality education. “Such a complaint invites the court to enter into precisely the kind of generalized review of the entire course of instruction that so many courts have wisely refrained from doing.” *Id.* at 370. There must be a claim for breach of a specific promise, such as related to the offering of a certain curriculum.);

Boehm v. U. of Pa. School of Vet. Med., 573 A.2d 575 (Pa. Super. Ct. 1990) (Disciplinary proceedings must be fundamentally fair and substantially comply with the procedures established by the school.);

Hassey v. Palmer College of Chiropractic, 363 N.W. 2d 443 (Iowa App. 1984) (When the school establishes a specific procedure, it must be substantially followed.);

Wisch v. Sanford School, Inc., 420 F. Supp. 1310 (Del. 1976) involved the expulsion of a high school student from a private high school for violation of the school’s disciplinary rule regarding possession and use of marijuana. No formal procedure for dealing with disciplinary problems was set forth in the handbook. The court noted that although it would have been better to have a specific disciplinary process set forth in writing, the lack thereof did not lead to an automatic conclusion that the procedures actually followed by the school were unfair. The court evaluated this and found that the plaintiff was appropriately confronted with a detailed

⁷ *Id.* at 514 & 515.

⁸ *Id.* at 357.

description of the infraction and she admitted to it. The court concluded that there was no breach of any implied procedural fairness in the contract between the student and the school.

The plaintiff in *Wisch* also attempted to attack the school's actions by bringing up that, in the past, the school had imposed less severe sanctions in other similar cases. The court, however, was unconvinced. It stated:

The school handbook for the current school year and speech by the headmaster at the beginning of the term both indicated that expulsion was possible for the drug-related infractions, so it cannot be said that the disciplinary responses of the school in previous years are grounds for a reasonable expectation of similar responses this year. Moreover, the articulated policy of individualized treatment of disciplinary problems should have put any reasonable student on notice that dispositions of other cases had no procedural weight.

Id. at 1316.