

Handout 12A
Confidential Information for Plaintiff's Counsel

Davis v. Ann Arbor School Board

The judge has ordered the parties to engage in negotiations. Your client and his parents have asked you to try to settle the case. You have learned the following information from them to help you in your negotiations with counsel for the School Board.

The Davis family would prefer that this case not proceed to trial. They think that a trial could come out either way and do not want to risk losing. Kenji Davis is at a point in his life where he just wants to move on. The whole episode has been emotionally taxing, and he'd really like to move past the issue before he goes away to college. Although Kenji has graduated from high school, he is taking a gap year and will not apply to college until this coming fall. Kenji is worried that he will not be able to go to the college of his choice because he was suspended and lost his position on student council. He hopes that by settling this case and getting some sort of admission of wrongdoing out of the School Board, he can regain his prior competitive edge in the college admission process.

Kenji genuinely believes it was wrong that the school interfered with his right to express himself. He also believes that the school should not have held a mandatory assembly that highlighted working for a government organization that unconstitutionally spies on Americans. Even though he wants to settle for the reasons discussed above, it's important to him as a matter of principle that he stand up the school's policies, which he believes are unjust.

Details on what Mr. Davis is willing to settle for are as follows:

1. Money: Kenji's trial lawyer has taken the case "on contingency." That means she has agreed to forego any attorney's fees if Kenji loses the case. If Kenji wins at trial, the Defendant (the School Board) must pay for Kenji's reasonable attorney's fees. Kenji's lawyer's (reasonable) rate is \$200 per hour, and she will spend about 200 hours preparing for trial. This means his lawyer would be entitled to \$40,000 of attorney's fees if Kenji wins the case. (In a real trial, both the cost and the hours would likely be substantially higher). So either way, if the case goes to trial, Kenji doesn't have to worry about paying his attorney; if he wins, the Defendant pays, but if he loses, the lawyer does not get paid by anyone.

Kenji's lawyer has already spent 100 hours preparing for trial. To settle the case, Kenji and his family would like the School Board to pay the \$20,000 her time is worth.

Kenji would also like compensation for his reputational and emotional injuries, the full extent of which he believes is not yet measurable. He thinks that \$10,000 would be the proper amount for this harm, but recognizes that this might be difficult to obtain.

Kenji further believes that there is a good chance that these events could lead to a loss in earnings down the line. He already fears that he won't get into good colleges when they

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see that he has been suspended and kicked off of student council. (Kenji is very concerned that the college he attends will make or break his future.) He knows this number is tough to quantify, but ideally he'd like \$50,000 to offset his lost earning potential. That is, he says he won't be able to go to as good of a college, and therefore he won't get as good of a job, and won't earn as much money. If the School Board is reluctant to compensate him for lost earning potential, he would be satisfied if it agreed to the non-monetary conditions below, particularly those that would help him regain his status as a student leader and get into the colleges of his choice.

2. Other considerations: It is very important to Kenji that this episode not affect his future. Thus, he wants the suspension removed from his permanent record. He also wants a letter of recommendation to colleges from the Principal or Vice Principal, admitting that the suspension was wrong.
3. Kenji would also very much like to be reinstated, retroactively, to his position on student council. While that wouldn't have a practical effect because he has already graduated, it would allow him to list his student council membership on his resume and his college applications. As an active student leader for many years, Kenji is frustrated that he has had to essentially erase this important part of his high school experience from his resume, and of course, he believes that this important leadership role will help his college applications.
4. Lastly, Kenji feels this whole episode would be pointless if it does not result in some change to school policy regarding political speech, and assemblies in general. He'd like to see the school rule forbidding political buttons or messages rescinded, because he believes students should have the right to express their political opinions in school. Kenji also believes that the school shouldn't host assemblies promoting any topic the student body votes not to hear about. He thinks having students vote about every assembly would encourage them to learn more about current events. At a minimum, the assemblies shouldn't be mandatory; if students don't want to hear a particular speaker try to tell them about how great the NSA is, or the military, or some other potentially controversial employer, they shouldn't have to. Alternatively, because he is concerned about other kinds of mandatory assemblies that contain a political component, he wants the school to enact a policy under which an opposite political view is presented.
5. While they don't want to go to trial given the information above, the Davis family will take the risk if the Defendant plays hardball. Therefore, their absolute bottom line is (1) \$22,000 in money, of which \$20,000 would go to the attorney, and (2) the School somehow lessening the impact of the suspension on Kenji's permanent record, backed up by a glowing letter of recommendation from an appropriate employee of the High School. If the Defendant won't agree to that, they would prefer to go to trial. Of course, they would like to settle for a lot more.