

**Handout 12B**  
*Confidential Information for Defendant's Counsel*

***Davis v. Ann Arbor School Board***

The judge has ordered the parties to engage in negotiations. Your client has asked you to try to settle the case. You represent the School Board. You have learned the following information from the members of the School Board to help you in your negotiations with counsel for Mr. Davis.

The School Board would like to avoid trial in this case. The Board thinks that a trial could come out either way. It is concerned that a trial would generate a lot of bad publicity, especially given the generally liberal leanings of the Ann Arbor community. Board members fear that this negative publicity would be a distraction to the High School's educational mission (as well as endanger their chances of being reelected to the School Board). Negative publicity could also negatively affect enrollment, which would reduce the per-pupil funding the district receives from the state. That is a particular concern during these difficult economic times, when budget pressures are intense. (The Governor has just released his proposed budget, which would further decrease the funding the Ann Arbor schools receive. That makes it even more important to maintain enrollment numbers.)

The Board is also concerned that a trial would be extremely costly. The School Board's trial attorney charges \$200 per hour and has already worked on this case for 100 hours, which means the School Board already owes him \$20,000. If they go to trial, the attorney will put in another 200 hours to prepare for trial, which adds \$40,000 to the bill. (In a real trial, both the cost per hour and the hours of preparation would likely be substantially higher).

Additionally, if Kenji wins at trial, the School Board will be required to pay for Kenji's attorneys' fees as well as their own. Assuming Kenji's lawyer charges \$200 an hour and will spend 200 hours preparing for trial, she would be entitled to \$40,000 if Kenji wins the case. If Kenji loses, the School Board doesn't have to pay Kenji's attorney, but must still pay their own attorney.

The School Board is also concerned about maintaining the public perception that it can control and discipline its students. It is concerned that if it appears to make too many concessions to Kenji, other students will act out in similarly obnoxious and juvenile ways and the administration's ability to maintain discipline in the High School will be compromised.

Details on what the School Board is willing to settle for are as follows:

1. Money: The School Board is willing to pay some money to avoid having the case go to trial. Kenji is likely to demand the school board pay for his attorneys' fees, which he would be entitled to get if he won the case. While the Board is willing to provide some of Kenji's attorneys' fees, it is less willing to pay a substantial amount in compensation for Kenji's alleged reputational and emotional injuries. The Board would prefer to keep the total payment (for attorneys' fees and any damages) at \$15,000 or less, but is willing

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to pay up to \$30,000 if absolutely necessary to settle the case. Anything above that, and the Board would prefer to take its chances at trial.

2. Other considerations: The Board recognizes that Kenji will also likely make some non-monetary demands as a condition for settling the suit. Due to the concerns about negative publicity discussed above, the Board is wary of any sort of public admission of wrongdoing. The Board recognizes, however, that Kenji was a model student prior to this incident and does not feel the need to further punish him.
3. Removing the suspension from Kenji's permanent record is something the Board is reluctant to do. The School maintains that it was an appropriate punishment for disruptive behavior. However, the Board does not want to prevent Kenji's from going to a good college and would be willing to note in Kenji's permanent record that aside from the suspension, he had no other disciplinary problems. Furthermore, given its recognition that Kenji has for the most part been a good student, the Board is willing to agree that the High School will provide a letter of recommendation for his college applications, although it is not willing to admit to wrongdoing in relation to the suspension in the letter. Given the school's reluctance to admit wrongdoing by the administration, the Board thinks it would look foolish to have a principal or vice principal at the High School write the recommendation.
4. Your client is willing to retroactively reinstate Kenji to the student council. While that wouldn't have a practical effect because he has already graduated, it would allow him to continue to list his student council membership on his college applications and resume. The School Board is willing to take that step only if he takes responsibility for his actions. This would ideally require some sort of public acknowledgment that he acted in an immature manner, or at least a private written statement to Vice Principal Carpenter and Ms. Marquez acknowledging poor judgment.
5. Finally, Kenji has suggested he may make demands concerning future assemblies, political speech, and viewpoint neutrality at the school. The School Board is unwilling to repeal the rule forbidding political T-shirts or patches, as they believe it is necessary to maintain a peaceful and focused learning environment. As for assemblies, the School Board has a relationship with many local university and government leaders, and views assemblies featuring those individuals as valuable to students as they consider their futures. The Board wants the High School to be able to continue telling students about many different career opportunities in a highly publicized way, although you can explore options besides a mandatory assembly. The school is reluctant to have too many assemblies and is reluctant to invite overly political speakers to the High School. Any assembly has to have a clear educational purpose.