Search and Seizure 4th amendment module:

Developed by Ron Woodruff for AWSP and the Criminal Justice Training Commission:

This training module will provide an overview of issues related to search and seizure as it pertains to the school setting; but before we begin our exploration, we need to take have a broad understanding of the historical context of school law in general and where our authority is derived.

**Historical Context:**

“The powers of the federal government are circumscribed by delegation within the Constitution and are specifically limited by the Tenth Amendment, which provides that “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.”

Education is not mentioned in the Constitution and is, therefore, presumably reserved to the states or to the people. State government, through statute, regulates and controls education subject only to limitations placed on it by the state and federal constitutions. In holding that education is a state function, the courts maintain that the state’s authority over education is not a distributive one to be exercised by local government but is a central power residing in the state. The state legislature has both the power and the responsibility to enact laws to govern education. The state constitution is fundamental and is determinative of the broad scope within which the legislature can operate.

The courts have ruled regarding States responsibility: “a duty that is supreme, preeminent and dominant. Flowing from this constitutionally imposed duty is its jural correlative, a correspondent right permitting control of another’s conduct. Therefore, all children residing within the borders of the state possess a right, arising from a constitutionally imposed duty of the State, that the State makes ample provision for their education. Further, since the duty is characterized as paramount, the correlative right has equal stature. Consequently, all children residing within the State’s borders have a right to be amply provided with an education”

Washington State Constitution Article IX Section I states: It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

Washington State Constitution Article IX Sections 2 States: The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established.

States have established systems of public schools that are operated as administrative arms of the state government and hence are regulated by the various statutes and administrative codes developed by the state legislature and the administrative agencies.
Legal Framework Affecting Public Schools:

Constitutions at both levels of government are basic because the positive power to create public education systems is assumed by state constitutions, and provisions of both the state and federal constitutions serve as restraints to protect the people from unwarranted denial of basic constitutional rights and freedoms. It is important to note that the Washington State Constitution sets a higher standard for and protect an individual’s expectation of privacy more than the federal constitution. Article I section VII.

Statutes represent an act of the legislative branch of government. Statutes are the most abundant source of law affecting public schools. School district policy, rules, and regulations are generally based on statutory law. State legislators grant local school boards the authority to adopt and enforce reasonable rules and regulations necessary for the operation and management of schools.

Case law is generally reflected in judge-made or common law, as distinguished from statutory law. Common law consists of the judgments, opinions, and decisions of courts adopting and enforcing preceding usages and customs.

Federal courts typically deal with cases involving federal or constitutional issues. State courts are a part of each state’s judicial system, with the responsibility of hearing cases involving issues related to state constitutional law, state statutes, and common law. The Supreme Court of the United States is the highest court in the land, beyond which there is no redress. Cases may be brought before the Supreme Court by appeal, writ of certiorari, or through the original jurisdictions of the Court.

State legislatures in virtually all states have created administrative agencies to execute various laws and policies governing public school. One of these agencies typically includes state boards of education. In addition, each state has a state department of education, which is headed by a state superintendent or chief state school officer.

School board policies represent a basic source of law for school personnel as reflected in the rules and regulations governing the total operation of schools. School officials are granted broad powers to establish rules and regulations governing student conduct in the school setting. These powers, however, are not absolute. They are subject to the standard of reasonableness. Generally, rules are deemed to be reasonable if they are necessary to maintain an orderly and peaceful school environment and advance the educational process.

Although children are subject to reasonable rules and regulations promulgated by school officials, they do enjoy personal rights that must be recognized and respected by school officials. In cases where student’s rights are restricted, school officials must demonstrate a justifiable or legitimate reason for doing so. In these instances, the burden of proof justifiably rest with school officials. For example, school officials may restrict the rights of a student if they are able to demonstrate that such a restriction
is necessary to maintain order and proper decorum in the school. A student’s rights also may be restricted if the exercise of those rights infringes on the rights of others.

Legal Issues Affecting Public Schools: Search and Seizure—4th amendment

Since public schools are agents of the state and school personnel are considered government actors, both are subject to the provisions of the Bill of Rights, which means that school officials must recognize and respect the constitutional rights of students and school personnel. Failure to do so will result in infringement of their constitutionally protected rights and possible legal challenges through the courts. The Bill of Rights was added to the Constitution in part to ensure that the powers of the federal government would not trample upon individual liberty. The first eight amendments to the United States Constitution are designed to protect individuals from abuse by federal government officials. The ninth and tenth amendments set out the division of powers between the federal government and the various state governments. The Fourteenth Amendment ensures that most of the rights contained in the first eight amendments to the Bill of Rights apply to state and local government officials.

Many of the restraints that educators refer to as “federal control” emanate from the application of federal constitutional provisions to state statutes, regulations, or actions by agents of the public school system. Virtually all the cases that have held state actions unconstitutional have been based on either the First or the Fourteenth Amendments to the Constitution, with a scattering involving the Fourth, Fifth, Sixth, and even the Eight Amendments.

This module will take a close look at the 4th Amendment relating to search and seizure issues relative to the public school setting.

Bill of Rights—Fourth Amendment

“The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The major challenge facing school officials involves the task of delicately balancing a student’s individual right to Fourth Amendment protections against their duty to provide a safe and secure environment for all students. The reasonableness of the search becomes the critical issue in cases where students claim personal violations based on illegal searches.

From the courts’ view, reasonable suspicion is the key ingredient in legalizing school searches. The standard of reasonableness is less rigorous than the requirement for probable cause which the police must justify in order to conduct a search. Reasonable suspicion is based on information received from students or teachers that is considered reliable by school officials acting in a reasonable manner.
A search occurs whenever an expectation of privacy that society is prepared to consider reasonable is infringed. The constitutionality of a search is measured by its reasonableness under all the circumstances. This is sometimes called the “totality of the circumstances” analysis.

**General Rule:**

1. Search must be “justified at its inception”: i.e., it must be based on “reasonable grounds” that it will produce evidence of a violation of the law or school rules;

2. Search must be “reasonably related in scope to the circumstances which justified the interference in the first place” and “not excessively intrusive in light of the age and sex of the student and the nature of the infraction.”

Factors to be considered in determining reasonable grounds include:

- Age, history, and record of the student
- Prevalence and/or seriousness of the problem in the school to which the search is directed
- Exigencies in making a search without delay or further investigation
- Reliability of the information used as a justification for the search
- Prior school official or officer’s experience with the student
- Incriminating nature of the conduct observed, if any

The search is reasonably limited to:

1. the violation that is being investigated, and

2. the area or items where evidence of the violation is likely to be found.

*There must be a “nexus” or connection between the suspected violation and the search.*

In summary, a search of a student by a teacher or school official must be both “justified at its inception” and “reasonably related in scope to the circumstances which justified the interference in the first place.”

In sum, school officials should have reasonable grounds to believe a search of a particular student is necessary to provide pertinent proof that the student has violated a particular policy, rule, or law. Further, the scope of the search must be limited to the incident at hand.

**The leading case in search and seizure issues for school officials is New Jersey v T.L.O. (1985) United States Supreme Court Decision:**

“On March 7, 1980, a teacher at Piscataway High School discovered two girls smoking in a lavatory. One of the two girls was the respondent T.L.O., who at that time was a 14 year old high school freshman.
Because smoking in the lavatory was a violation of a school rule, the teacher took the two girls to the principal’s office, where they met with Assistant Vice Principal Theodore Choplick. In response to questioning by Mr. Choplick, T.L.O.’s companion admitted that she had violated the rule. T.L.O., however, denied that she had been smoking in the lavatory and claimed that she did not smoke at all. Mr. Choplick asked T.L.O. to come into his private office and demanded to see her purse. Opening the purse, he found a pack of cigarettes, which he removed from the purse and held before T.L.O. as he accused her of having lied to him. As he reached into the purse for the cigarettes, Mr. Choplick also noticed a package of cigarette rolling paper. In his experience, possession of rolling paper by high school students was closely associated with the use of marijuana. Suspecting that a closer examination of the purse might yield further evidence of drug use, Mr. Choplick proceeded to search the purse thoroughly. The search revealed a small amount of marijuana, a pipe, a number of empty plastic bags, a substantial quantity of money in one-dollar bills, an index card that appeared to be a list of students who owed T.L.O. money, and two letters that implicated T.L.O. in marijuana dealing. The student’s parents moved to have the evidence suppressed, claiming that the search was unlawful due to the absence of a search warrant. The Supreme Court, in upholding the school administrator, did not require that the search be based on the higher standard of “probable cause” necessary for obtaining a search warrant, reasoning that to do so “would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools.” Thus, the court struck a balance between the pupil’s “legitimate expectations of privacy” and the need of the school to preserve a proper learning environment.

All of the Court recognized that the school environment itself is the reason for a lower expectation of privacy.


“Generally, we have recognized students have a lower expectation of privacy because of the nature of the school environment. Courts have held a school official needs some ‘reasonable’ or ‘individualized’ suspicion in order to protect student from arbitrary searches, yet still give officials sufficient leeway to conduct their duties.”

Majority opinion of Justice R. Sanders

Thus, we have recognized the school setting requires some modification of the level of suspicion of illicit activity needed to justify a search based upon the ‘special needs’ in this environment.”

Concurring opinion of Justice B. Madsen

“A student in a regulated educational environment, where the school stands in loco parentis, clearly does not have the same reasonable expectation of privacy as an adult.”

Concurring opinion of Justice J. Johnson

**School situations involving the 4th amendment:**
Safford Unified School District v. Redding United States Supreme Court 2009

Savana Redding was an 8th grader in a middle school in Arizona. Following a report from another student that she had given the student ibuprofen pills, an assistant principal directed an administrative assistant and a school nurse to conduct a strip search of Savana for more pills.

Question: Could a similar search happen in your school?

It should NEVER arise in a Washington school.

Washington law expressly prohibits the type of strip search conducted in Redding.

RCW 28A.600.230 (3) states:

“A principal or vice principal or anyone acting under their direction may not subject a student to a strip search or body cavity search as those terms are defined in RCW 10.79.070.”

Constitutionality of the strip search was only the first question—the second was: even if this search was unconstitutional, should the school officials be immune from suit under “qualified immunity?”

Everyone on the Supreme Court (except Justice Thomas) agreed the search was unconstitutional.

The real issue in dispute was whether the school officials should be denied qualified immunity, as the 9th Circuit Court of Appeals had ruled.

“A school official searching a student is entitled to qualified immunity where clearly established law does not show that the search violated the Fourth Amendment. . . . The unconstitutionality of outrageous conduct obviously will be unconstitutional . . . . But even as to action less than an outrage, officials can still be on notice that their conduct violates established law . . . . in novel factual circumstances”

The Supreme Court eventually concluded that the confusion among lower courts regarding strip searches was “substantial enough to require immunity for the school officials in this case.”

However, the Supreme Court will not be that generous again.

Lessons from Redding: Why was the search unconstitutional?

1. The intrusiveness of the search was excessive in light of the age and sex of the student and the nature of the infraction.

   The pills were “common pain relievers.”

2. There was no reason to think that evidence would be found in the place searched—i.e., the assistant principal could not “have suspected that Savana was hiding common painkillers in her underwear.”

   “Perhaps the best that can be said generally about the required knowledge component of probable cause for a law enforcement officer’s evidence search is that does it raise a “fair probability” or a “substantial
chance” of discovering evidence of criminal activity. The lesser standard for school searches could as readily be described as a moderate chance of finding evidence of wrongdoing.” (J. Souter)

Question:

Is a School Resource Officer included within the “school search exception” allowing the School Resource Officer to do searches on less than probable cause in the school setting?

In some states, yes.

This issued has been specifically addressed in Illinois, Florida, New York, New Mexico, North Carolina, Texas, California, and Tennessee.

The issue has not been specifically addressed by Washington courts or the U.S. Supreme Court.

Other states—such as Wisconsin—have held that a search falls within the exception where there is involvement by a police officer at the behest of or in conjunction with school officials.

Courts that have addressed this issue have cited T.L.O for the proposition that the school setting justifies the relaxed constitutional standard, not the role of the school official.

Note: Courts have also said that school officials should not be required to handle dangerous weapons by unreasonable constitutional restrictions.

Police searches at school have been put in 3 categories:

(1) where search is initiated by school officials and SRO involvement is minimal, the search falls under the exception;

(2) where search is initiated by the SRO during school hours on school grounds in furtherance of the school’s education-related goals, the search falls under the exception

(3) BUT “outside” police officers who initiate a search for non-school-related goals are under the probable cause standard.

So...is the Washington Supreme Court ready to recognize that a school resource officer who is posted at a school and is integrated with school officials may conduct a search of a student on less than probable cause?

Maybe.

Question:

Can schools use metal detectors for the purpose of protecting students from violence in the schools?
A majority of the Washington Supreme Court may be prepared to endorse the use of metal detectors for the purpose of protecting students from violence in the schools

“Some courts have found the special needs exception applicable in the context of locker searches or metal detectors for the purpose of protecting students from violence in the schools…”

. . .For example, the Wisconsin Supreme Court permitted random locker searches for the purpose of deterring students from bringing weapons to school in response to a series of gun-related incidents that created an ‘atmosphere of tension and fear.’ . . . Similarly, the California Court of Appeals approved suspicionless searches using metal detectors for the purpose of keeping weapons off campus. . . .”

“. . . In finding a requirement of individualized suspicion unworkable, the California court reasoned that schools have ‘no feasible way to learn that individual students have concealed guns or knives on their persons, save for those students who brandish or display the weapons. And by the time weapons are displayed, it may well be too late to prevent their use.”

Concurring opinion of Justice B. Madsen

So... is the Washington Supreme Court ready to endorse the use of metal detectors at school house doors?

Maybe.

Question:

Can a school search be based on an anonymous tip alone?

Usually Not.

The United State Supreme Court has held that an anonymous tip alone is usually not sufficient for “articulable suspicion.” Since this is the same standard used to justify school searches (i.e., reasonable grounds or reasonable suspicion), courts around the country have held that school searches cannot usually be based on anonymous tips alone.


People v. Kline (2005): “Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed and its degree of reliability. . . . Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if his or her allegations turn out to be fabricated, an anonymous tip alone seldom demonstrates the informant’s basis of knowledge or veracity.”

Anonymous tip is not enough to support reasonable grounds or reasonable suspicion supporting a school search under “ordinary circumstances” involving allegations of marijuana—court, however,
recognizes that they might reach a different conclusion if the anonymous tip involved a weapon and threat to public safety.

The US Supreme Court in *J.L.* involved an anonymous tip about a gun. But the US Supreme Court also recognized that the result might be different in a “special needs” setting.

This is essentially the same conclusion of the Texas court in *K.C.B.*: While this was in the “special needs” setting of the school, it involved “ordinary circumstances” (marijuana). The court recognized that they might reach a different conclusion if the anonymous tip involved a weapon and threat to public safety.

**Can a school search be based on an anonymous tip alone?**

**Summary**—If:

- in the school setting (“special needs”)
- tip is specific, especially identifying a single student
- allegation is serious/life-threatening (e.g., a gun)
- information is “ripe”
- other “indicia of reliability”

then a limited search based on an anonymous tip is likely OK under the Fourth Amendment.

**Question:**

**Can schools use video surveillance cameras around the school to promote school safety?**

To enhance school security, school contracted with a firm to set up video surveillance cameras around school campus. Cameras recorded images that were stored and could be accessed from remote computers. A camera was set in the boys and girls locker rooms in a location where it captured students dressing and undressing. Court held that this was a “search” and so clearly violated common sense that qualified immunity was denied for the school officials who set up the video system.

“Video surveillance is inherently intrusive.”

*If you use surveillance cameras, do not record images of students in a bathroom or locker room.*

You can lose “qualified immunity” not only by violating established case law, but by committing an act so clearly contrary to common sense that a reasonable person—much less a professional in education or law enforcement—would know that the acts would violate the Fourth Amendment’s prohibitions against unreasonable search and seizure.

**Question:**
Do Washington students have an expectation of privacy in school lockers?

Unclear.

RCW 28A600.220: “No right nor expectation of privacy exists for any student...and subject to search for illegal drugs, weapons, and contraband as provided in RCW 28A.600.210 through 28.600.240.”

RCW 28A.600.230: School official may search the locker if he has “reasonable grounds to suspect that the search will yield evidence....”

RCW 28A.600.240: School officials may search “all student lockers at any time without prior notice and without a reasonable suspicion that the search will yield evidence of any particular student’s violation of the law or school rule.” (i.e., a General Search)

Remember: the locker search section applies to School Officials...even if the statutes are held to be constitutional, nothing extends the authority to search lockers to law enforcement.

The authority to search a locker absent “reasonable grounds” does not necessarily authorize school officials or law enforcement to search personal items inside of the locker.

In fact, RCW 28A.600.240 says that during a general search of all school lockers, you may search property within a locker if you develop reasonable grounds for conducting a further search.

The following scenarios will help to shed light on some of the issues related to search and seizure.

Scenario:

Teacher walks in and sees two 16-year old boys talking in a room together—the first student is not supposed to be there. She escorts the first student back to where he should go. She returns to the second student and speaks to him, and as she does, she notes the strong smell of marijuana coming from him. She contacts security and asks that both boys be brought to the office and searched. The first student is found to have marijuana. Is this search valid?

State v. C.A. (Florida Court of Appeals, Third District, March 5, 2008).

“Reasonable suspicion” does not arrive by “association” or “transference.” Smell of marijuana on a companion, without more facts, does not provide justification for a search.

(Very similar to Washington case, State v. Grande, decided July 17, 2008—probable cause to arrest must be “individualized”)

Scenario:

You are a [school resource officer, school security officer, or school administrator]
You see Johnny Junior, a 17-year old student at your school, leave campus and go to the woods near the school with a friend. The school has a closed campus. You leave the campus and stop both boys as they are leaving the woods and seem to be returning to school. Both boys have red eyes and seem sluggish.

You stop them and ask questions. His friend tells you that Johnny Junior has a knife in his pocket.

When you search Johnny Junior, you find marijuana but no knife.

Is there authority to believe that school officials or school security cannot search a student who is off campus?

**NO.**

**Factors that May Decide if Search is Reasonable:**

1. Nexus between search and “educational mission” of the school—is the search to further “educational purposes?”
2. Proximity to school property or activity
3. Temporal proximity (i.e., close in time) to educational hours
4. Nature of the infraction being investigated and the level of threat it poses to students/staff.

**Remember:**

The legislature has implicitly recognized that school safety needs extend beyond the boundaries of the campus

**RCW 9.41.280:** It is unlawful to possess a dangerous weapon on school premises, school-provided transportation, and facilities used exclusively for school activities.

**In closing remember:**

From the courts’ view, reasonable suspicion is the key ingredient in legalizing school searches. The standard of reasonableness is less rigorous than the requirement for probable cause which the police must justify in order to conduct a search. Reasonable suspicion is based on information received from students or teachers that is considered reliable by school officials.

A search occurs whenever an expectation of privacy that society is prepared to consider reasonable is infringed. The constitutionality of a search is measured by its reasonableness under all the circumstances. This is called the “totality of the circumstances” analysis.

**Ron**
I think there should be some reference in the document somewhere that indicates that the Washington State Constitution sets a higher standard and protect an individual’s expectation of privacy more than the federal constitution. Article I section VII.