I. Introduction

A. The United States Constitution
   The Fourth Amendment to the United States Constitution was adopted in 1791 and states:

   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 on probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

B. What is a Search?

1. A search is conducted when the government commits an invasion into a place where a person has a reasonable expectation of privacy.

2. School searches include:
   - Examining purses and bookbags
   - Patting down a students’s clothing
   - Looking into pockets
   - Drug screening by urinalysis
   - Withdrawal of blood
   - Breath tests
   - Dog sniffing a person
   - Strip searches

3. Searches do not include:
   - Sniffing the air in a car or the outside of a bag
   - Smelling a student’s hands
   - Consensual or non-consensual taking of handwriting samples
   - Examination of abandoned items thrown out or into the trash
   - Dog sniff of cars and lockers
   - Questioning a person (it is not an unlawful search of the mind)
   - Observing what is in open view
C. When does the Fourth Amendment Apply?

1. The Fourth Amendment applies to searches conducted by public school officials.

2. The requirement of warrants and probable cause are not required when searches are conducted by school officials.

3. Students do have a reasonable expectation of privacy when at school but the expectation of privacy at school is not absolute. Students do not “shed their constitutional rights...at the schoolhouse gate,” but students in the school environment have a lesser expectation of privacy than members of the population generally.

II. Individual Searches

A. Reasonable Cause


2. The search must be reasonable at its inception. There must be reasonable grounds for suspecting that the search will result in evidence that the student has violated a school rule or the law.

3. The search must be reasonable in its scope. The search measures taken must be related to the object being searched for and must not be excessively intrusive given the student’s age, sex and the nature of the infraction.

B. Reasonable at the Inception

1. In the search of a particular student, generally there must be an individual suspicion that the student has violated a rule or law before a search will be reasonable.

2. Individualized suspicion depends on the facts of each case. Clearly articulable facts that a student has violated a rule or law must be evident and it must also be evident that a search will turn up evidence that the student has violated either the law or school rules.

3. There must be a suspicion that the search will turn up evidence of the suspected violation. Having only a suspicion that a student might be violating some rule is not enough to justify a search. For example, the search of a student for drugs when the student is merely truant may not be a legal search.
4. Reasonable suspicion for a search may come from personal observation, information from teachers and other employees, and even information from students.

5. Personal observations may also determine reasonable suspicion, including slurred speech, glassy eyes, or an unbalanced walk.

6. Even sounds and smells may constitute reasonable suspicion such as an unusual metal thud, the smell of marijuana or alcohol.

7. Reasonable suspicion may come from the collective knowledge of several persons.

C. Reasonable in Scope

1. Once reasonable cause exists to justify a search, it must be conducted in a reasonable manner.

2. The measures taken in the search must be related to the object being searched for and not excessively intrusive given the student’s age, sex and the nature of the infraction.

3. The search should be confined in scope to an intrusion reasonably designed to discover the items sought and confined to what is minimally necessary to locate those items. The extent of the search should be just enough to locate the contraband being sought.

4. A strip search is a serious intrusion on personal rights. Strip searches may be even more traumatic to children than adults.

5. Do not strip search. If a serious infraction is suspected, call law enforcement and let them take over.

D. Searches by Law Enforcement

1. Many school districts now have campus police, or local law enforcement officials, who have a continual presence on campus or are called when there is criminal activity.

2. With the introduction of law enforcement, the search requirements increase from reasonable cause to probable cause, unless law enforcement searches at the request and direction of the school officials present.
3. A search of a student by the police when probable cause does not exist is most often found to be illegal.

4. School security guards, as long as they are not agents of a law enforcement agency, generally need the lower standard of reasonable cause rather than probable cause to conduct a search.

E. Use of Contraband as Evidence

1. When an administrator has reasonable cause to search a student and discovers contraband, that evidence may be used in a school disciplinary hearing. That evidence may also be used in criminal proceedings.

2. Evidence found by a police officer in a probable cause search may be used by the administration in school disciplinary hearings and by the state in criminal proceedings against the student.

3. The admissibility of evidence obtained in a search in the criminal context involves the exclusionary rule. The exclusionary rule precludes the admission of unlawfully seized evidence.

4. One court outside of Texas has held that the exclusionary rule does not apply in student disciplinary proceedings. No Texas court has yet determined whether or not the exclusionary rules applies in student disciplinary hearings.

5. Questions still exist over the use of evidence in a disciplinary hearing when that evidence was not properly obtained by either school officials or the police.

III. Group Searches

A. Individualized Suspicion

1. Individualized suspicion, as the Supreme Court told us in a footnote in the TLO case, is not always an “irreducible component” of reasonable cause. Factors in searches with no individualized suspicion include:

   • the importance of the governmental interests;
   • the degree of intrusion on the citizen's rights;
   • the amount of discretion the procedure vests in individual officials; and
   • the efficiency of the procedure.


B. Locker Searches

1. One Texas appellate court appeared to have presumed without specifically holding that searching lockers is legal when those lockers are on school property and the students have received notice (via the student handbook) that the lockers are controlled by the school and can be searched at any time. *Shoemaker v. State*, 971 S.W.2d 178 (Tex.App.–Beaumont 1998).


3. In an earlier case, school officials performed “random” locker searches in response to a series of gun-related incidents at school. They found a gun and cocaine in Isiah’s locker. The court upheld the search, having found a significant risk of serious harm to students and staff, heightened fear and tension at school... and a school policy that stated that “lockers are the property of the school system” and are “subject to inspection” as deemed necessary and appropriate. *Isiah B. v. State*, 500 N.W. 2d 637 (Wisc. 1993), *cert. denied*, 114 S.Ct. 231 (1993).

C. Metal Detectors

1. The use of metal detectors and magnetometers in airports and in government buildings has been held to be legal. No requirement of probable cause exists because there is a compelling governmental interest to deter violence or harm. The search is used to deter harmful events rather than procure evidence of a crime.

2. While metal detector searches in other contexts have been deemed to be reasonable because they are minimally intrusive, there are few school metal detector cases, and none in Texas.

3. In one of the early school metal detector cases, the procedures used by the school were found not to violate the Fourth Amendment. A student’s book bag was scanned, the metal detector activated, and a switchblade knife was found during the search of the student’s bag. During the criminal proceedings against the student, she tried to have the switchblade excluded arguing that the search
was illegal. The court refused to exclude the evidence based on an administrative search analysis, holding that the search was minimally intrusive, and the procedures followed by the school district were fair and reasonable.

4. A different result occurred in a case where a student who was carrying a gun, saw the metal detector and turned around to leave. In the criminal case against the student, the evidence was suppressed. The Court concluded that there could be innocent reasons that a student would turn away from the metal detector and that leaving the area did not constitute any individual suspicion to detain the student for a search. *People v. Parker*, 672 N.E.2d 813 (Ill. App. Ct. 1996).

5. It is important in magnetometer and metal detector searches that the school district be able to show a compelling interest - the wake of so many school shootings by students, this may be relatively easy to show.

6. A procedure should be instituted so that all students are searched or that a random group is searched (for example, every tenth student entering, all sophomores, all students whose names begin with A-D).

7. It is not appropriate to have the basis of the random searches because a group looks suspicious or because they are identified with gang activity. This may lead to allegations of constitutional violations.

8. Procedures should be developed in the event that a student walks away from the metal detector.

D. Student Drug Testing

1. The United States Supreme Court upheld an Oregon school’s policy that required initial and random weekly drug testing of student participants in interscholastic athletics. In upholding the program, the Court noted that athletes have a reduced expectation of privacy because they shower and change clothes together in the locker room, that athletes are role models and school leaders, and the risk of immediate physical harm to a drug user or to those with whom the drug user is playing his sport.

The Court further emphasized the school’s proof of increasing drug problems in the school, with a resultant increase in discipline problems, the fact that the school had tried several other measures to address the discipline problems before instituting the drug testing program, and the fact that the student athletes appeared to be leaders in the drug culture. *Vernonia Sch. Dist. 47J v. Acton*, 115 S. Ct. 2386 (1995).
2. Prior to Vernonia, the Fifth Circuit Court of Appeals had overturned a school district policy requiring drug testing as a condition of participation in any extracurricular activity for students in grades 7 through 12. Upon a challenge by a senior vocational ag student who was a member of the Future Farmers of America, the testing was curtailed by a federal court. The court issued a permanent injunction against the school district's further use of drug testing as a condition of participation in any curricular or extracurricular activity. The Fifth Circuit Court of Appeals modified the District Court's judgment as overbroad, but affirmed the injunction without determining the constitutionality of the drug testing. Brooks v. East Chambers Cons. Indep. Sch. Dist., 730 F.Supp. 759 (S.D.Tex. 1989), aff’d, 930 F.2d 915 (5th Cir. 1991).

3. Since Vernonia, there have been at least three lawsuits against Texas school districts. In the first decision, a federal judge in the Northern District of Texas struck down a policy that required drug testing for all participants in extracurricular activities in grades 7-12. The court held that Brooks v. East Chambers had not been overruled by Vernonia - that the holding in Vernonia is limited to drug testing student athletes. The court further noted that there was no widespread drug problem in Tulia and no connection between participants in extracurricular activities and drug use. Gardner v. Tulia Indep. Sch. Dist., No. 2:97-CV-020-J 2000 U.S. Dist. LEXIS 20252 (N.D. Tex. Nov. 30, 2000).

4. Another division of the same Texas federal district court recently overturned a policy that required drug testing for all students in grades 7-12. While the court acknowledged that “special needs” sometimes justify random suspicionless drug testing of students when a school district can show exigent circumstances and continued failure to alleviate a drug problem, the court found that Lockney had failed to prove a special need for suspicionless testing. The court stated, “...numerous cases have also made it clear that general concerns about maintaining drug-free schools or desires to detect illegal conduct are insufficient as a matter of law to demonstrate the existence of special needs.” Tannahill v. Lockney Indep. Sch. Dist., 133 F.Supp.2d 919 (N.D. Tex. 2001).

E. Sniffer Dogs


2. Searches of lockers and cars are not searches and do not require reasonable suspicion. A dog alerting may constitute reasonable cause to search further.

3. Use of the police and their drug detection dogs may raise the standard of causation required in locker searches.
F. Breathalyzers

1. At least one Texas school district has required students to submit to breathalyzers when participating in an extracurricular activity. The students were tested before they could enter the Senior Prom. The District had evidence that, in prior years, students had consumed alcohol before attending the Senior Prom.

2. The breathalyzer used was one in which the student spoke into the device and a blood alcohol reading would appear. If the student failed the first test, a second test would be administered within a few minutes. Upon failing a second time, after a 15 minute delay, a test was given using a breathalyzer in which a the student blew into a tube inserted into the students mouth. If the student failed that test, after another 15 minute delay, a third test was administered. In this test, a chemically treated paper which registers the presence of alcohol is inserted into the mouth. If that test indicated alcohol, the student would not be allowed to enter the prom and the student’s parents would be contacted to take the student home. Disciplinary consequences would be proposed for those students who violated the code of conduct.

3. The plan was not legally challenged and there is no definitive answer in Texas on the subject of the legality of breathalyzers.

4. In one reported case students on a senior trip admitted to attending a party where alcohol was consumed. The students were taken to the police station where breathalyzers were administered. One student sued the school district and the police department for violation of numerous rights including his Fourth Amendment rights. The court held that, based on the information that the school officials and the police had obtained, there was probable cause to require the breathalyzer. The court further held that a breathalyzer is not unreasonably intrusive.

IV. Summarizing Practical Pointers

A. Deciding to Search

1. You can’t justify a search by the seizure.

2. The fact that you didn’t find anything doesn’t make the search illegal.

3. When you receive a general tip, follow up with specific questions about details such as date, time, and location of the tipster’s observations.

4. Don’t use “stale” tips for small potatoes.
5. You may use “tacked” tips (bits and pieces of information from different sources).

6. Student tips do not necessarily need corroboration, but don’t use one from a student who has lied to you before, or who has questionable motives, unless it is pretty specific.
7. Reliance on a student’s consent is still “iffy” in Texas.
8. Getting consent is still a good idea.
9. Try simultaneously to get consent and establish reasonable cause. Belt and suspenders provide security.

B. Strip Searches
1. Strip searches have never been upheld when stolen money was the object.
2. If the danger is high enough to justify a strip search, it’s high enough to call the cops.
3. Just don’t do them. Ever.

C. Group Searches
1. Individualized suspicion is not an absolute requirement for reasonable cause. But . . .
2. The level of potential danger will be weighed against the intrusiveness. So, be sure you’re looking for something really dangerous.

D. Sniffer Dogs
1. A dog’s sniff of inanimate objects is not a search.
2. A dog’s sniff of a person is a search.
3. The alert of a properly trained and certified dog constitutes reasonable cause to search the inanimate object upon which the dog alerts.

E. Police Involvement
1. Police involvement may compromise searches that are otherwise lawful because police are held to a higher level of suspicion: probable cause.
2. If you initiate the search, later involvement by police doesn’t raise the standard to probable cause.

3. You may lawfully turn the fruits of your lawful search over to police.
4. Tag your seizures with – at a minimum – your initials and the date.

5. Secure anything you seize in such a way that it’s not subject to tampering.

6. When you’re called to testify, emphasize your experience. (e.g., “In my experience, high school boys frequently hide their marijuana cigarettes/pills/cocaine in their socks/jacket linings/calculator cases.” “In my experience, rolling papers are much more frequently associated with marijuana use than with Bull Durham.”)

F. Violations of the Fourth Amendment

1. Suits may be brought against the school district.

2. Suits may be brought against the individuals conducting the search in their individual capacity

3. There is a potential for the court to award monetary damages to the injured student.

4. The use of evidence obtained in illegal searches in disciplinary hearing may implicate other constitutional provisions with further violations of a student’s rights.
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