

**WEAPONS, DRUGS AND ALCOHOL:  
RIGHTS OF STUDENTS v RIGHTS OF THE SCHOOL DISTRICT  
IN MAINTAINING A SAFE SCHOOL ENVIRONMENT**

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This document provides information of a general nature regarding legislative and case law developments. None of the information contained herein is intended as legal advice or opinion relative to specific matters, facts, situations or issues. Additional facts and information or future developments may affect the subjects addressed.

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## I. GANGS IN THE SCHOOL

### A. School Code Provisions.

1. Sec. 1316. "(1) A school official or a board of a school district shall not authorize, support, or permit the creation and existence of a public school fraternity, sorority, or secret society.  
  
(2) A fraternity, sorority, or secret society is declared an obstruction to education and inimical to the public welfare.  
  
(3) As used in this section, a public school fraternity, sorority, or secret society means an organization whose active membership is composed wholly or in part of pupils of the public schools of this state enrolled in 1 or more of the 12 grades and perpetuating itself by taking in additional members from the pupils enrolled in the public schools on the basis of the decision of its membership, rather than upon the right of a pupil who is qualified by the regulations of the school to be a member of and take part in class or group exercises, subjects required by the course of study, or program of school activities fostered and promoted by the board and superintendent of schools or by the board and intermediate superintendent for a school not employing a superintendent of schools." MCL 380.1316.
2. Sec. 1303. "The board of a school district shall not permit any pupil to carry a pocket pager or electronic communication device in school except for health or other unusual reasons approved by the board, and may develop penalties that it considers appropriate for a pupil who violates this prohibition." MCL 380.1303.
3. See also statutory authority discussed below regarding student discipline, drugs and weapons.

### B. Dress Codes.

1. Legal Authority for Dress Codes.
  - a. Section 1300 of the Michigan School Code expressly authorizes boards of education of public school districts to adopt reasonable rules and regulations "relative to anything necessary for the proper establishment, maintenance, management and carrying on of the public schools of the district." MCL 380.1300. This section was amended by Public Act 335 of 1993 which states: "The regulations made under this section may include a dress code for pupils".
  - b. The authority to exercise this discretionary power by adopting regulations relative to a student dress code was recognized by the

Michigan Court of Appeals in Graber v Kniola, 52 Mich App 269 (1974). The board of education's authority to regulate student dress, however, is not without limitation. In Graber, the Court of Appeals struck down a school district's student dress code provision which restricted the length of hair for male students. The Court concluded that this regulation was unduly restrictive and was not predicated upon any safety or health concerns. The Graber Court specifically ruled that a school dress code policy must bear a reasonable relationship to the purpose of compulsory school attendance and education.

- c. Courts in other jurisdictions have upheld restrictions on student dress as long as school officials could articulate a legitimate educational objective to be accomplished by imposition of the regulation. Harper v Edgewood Bd of Ed, 655 F Supp 1353 (SD Ohio, 1987) ("teaching community values and maintaining school discipline"); East Hartford Ed Ass'n v Board of Ed of East Hartford, 562 F Supp 838 (CA 2, 1977) ("promoting respect for authority and traditional values, as well as discipline in the classroom").
- d. In addition to being based upon a valid educationally-related rationale, the dress code should afford adequate due process rights to all affected students through: (1) appropriate prior notice of the restrictions; (2) reasonable relationship of the restrictions to the policy's underlying educational purpose(s); (3) consistent application to all students; and (4) language which is not vague, ambiguous or difficult for students to understand.

## 2. First Amendment Speech Rights.

- a. The First Amendment provides that "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people to peaceably to assemble." The rights under this clause have been encapsulated by the term "freedom of expression". Conduct that is nonverbal in nature yet still has a communicative impact is sometimes found to fall within the parameters of the right to free expression. The choice of dress may be just this type of nonverbal communication.
- b. The United States Supreme Court has held that student speech is entitled to First Amendment protection. Tinker v Des Moines Indep School Dist, 39 S Ct 733 (1969). In order to regulate student speech, school officials must demonstrate that the particular speech to be regulated will lead to a substantial disruption of, or material interference with, school activities. In Tinker, *supra*, the Supreme Court ruled that the wearing of black armbands to protest U.S. policy in Vietnam was protected because the school district could produce no

substantial evidence to justify its fear of disruption and violence. However, as critics of dress codes often fail to recognize, the Supreme Court in Tinker distinguished its holding on the right of free expression from the way in which it would view a dress code: "The problem posed by the present case does not relate to regulations of the length of skirts or the type of clothing, to hairstyle, or deportment. It does not concern aggressive, disruptive action or even group demonstrations. Our problem involved direct, primary First Amendment rights akin to 'pure speech.'"

- c. While school officials may not infringe upon a student's right to engage in non-disruptive, passive expression of a political viewpoint, the United States Supreme Court has also held that the First Amendment does not preclude school officials from banning offensive, lewd or indecent speech, whether communicated verbally or displayed on a T-shirt, button or other attire. Bethel School Dist No. 403 v Fraser, 408 US 675 (1986). In Bethel, the Supreme Court recognized the duty of school boards to "inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation." The Bethel case assists advocates of dress codes because it signals that the Supreme Court is not willing to protect student speech that "intrudes upon the work of the school or the rights of other students."

3. Tobacco, Alcohol and Illegal Drugs.

- a. McIntire v Bethel Indep School Dist No. 3, 804 F Supp 1415 (WD Okla, 1992). A federal district court enjoined school officials from applying a dress code provision prohibiting high school students from wearing apparel advertising alcoholic beverages, to a T-shirt bearing the phrase, "The best of the night's adventures are reserved for people with nothing planned." The court ruled that the T-shirt was speech protected by the First Amendment and the superintendent did not show that the t-shirt was an advertisement for an alcoholic beverage in violation of the dress code, though there was evidence that the message was derived from a liquor advertisement. Furthermore, the superintendent did not show that prohibition of the speech was related to a legitimate pedagogical concern or was inconsistent with the school's educational mission.
- b. Gano v School Dist No. 411, 674 F Supp 796 (D Id, 1987). The court denied a preliminary injunction to a high school student who sought to wear a T-shirt depicting school administrators holding alcoholic beverages. The court held that the authority of school officials would be severely compromised if the T-shirt was displayed.

The court also noted that the schools had a statutory obligation to teach about the effects of alcohol, and their disciplining students for wearing the offending T-shirt fulfilled that duty.

4. Inappropriate Language

- a. The First Amendment does not prevent the school district from banning offensive, lewd or indecent speech on a T-shirt, button, or other attire. Bethel School Dist No 403 v Fraser, 106 S Ct 3159 (1986). Moreover, the United States Supreme Court has ruled that government may "accord minors . . . a more restricted right than that assured to adults to judge and determine for themselves what sex materials they may read or see." Ginsberg v New York, 390 US 629, 637 (1968).
- b. Baxter v Vigo County School Corp., F3d (CA7, 1994). The Seventh Circuit dismissed a suit which alleged that an elementary student's civil rights were violated when the school principal prohibited her from wearing T-shirts that said "Unfair Grades", "Racism", and "I Hate Lost Creek". The T-shirts were worn to protest grades, racism and other unspecified policies at Lost-Creek Elementary School. The Seventh Circuit found that the student's age was a "relevant factor in assessing a student's free speech rights in school".
- c. Pyle v South Hadley School Committee, 824 F Supp 7 (D Mass, 1993). In Massachusetts, a federal district court ruled that a school policy prohibiting students from wearing t-shirts bearing suggestive sexual slogans did not violate the First Amendment. The policy was designed to diffuse a highly chargeable atmosphere, to protect the students and to enhance the educational environment.
- d. Broussard v School Bd of City of Norfolk, 801 F Supp 1526 (ED Va, 1992). A federal district court in Virginia upheld a student's one-day suspension for wearing a shirt saying, "Drugs Suck!" The court found that although the anti-drug message itself made no sexual statement, the use of the word "suck" was lewd, vulgar and offensive. The court ruled that the school's response was a permissible regulation of student speech.

5. Symbolic Speech

- a. Olesen v Board of Ed of School Dist No. 228, 676 F Supp 820 (ND Ill, 1987). The court upheld a dress code that prohibited the wearing of earrings by male students. After experiencing problems with gangs in its schools, the school district adopted a gang policy which prohibited the display of gang emblems or symbols on school



grounds. School officials concluded that many male gang members wore earrings to demonstrate their gang affiliation, the practice was prohibited. A male high school student was repeatedly suspended for wearing an earring to school. The student filed suit against the school district, claiming that the rule violated his right to free speech under the First Amendment and his Fourteenth Amendment right to equal protection. The court rejected both arguments and noted that symbolic speech is protected only if it is intended "to convey a particularized message . . . and . . . the likelihood [is] great that the message would be understood by those who viewed it." The court ruled that the boy's intention to express his "individuality" was not sufficiently particularized to be protected as free speech. On the equal protection issue, the court found no gender-based discrimination because the policy intended to discourage gang membership and girls did not wear earrings to symbolize gang affiliation. Dismissing the lawsuit, the court found the dress code to be a reasonable means of addressing the board's legitimate interest in curtailing gang activity.

- b. Jeglin v San Jacinto Unified School Dist., 827 F Supp 1459 (CD Cal, 1993). A federal court ruled that a school district's dress code prohibiting students from wearing clothing with professional or college sports insignias violated the students' free speech rights. This decision, however, only applied to elementary and middle schools in the district. Because gang problems were demonstrated at the high school, the dress code was upheld because it prevented disruption of school activities.
- c. Melton v Young, 328 F Supp 88 (ED Tenn, 1971), aff'd 465 F2d 1332 (CA 6, 1972), cert den 411 US 951 (1973). The court considered whether a public school regulation forbidding students from wearing "provocative symbols" upon their clothing is violative of the First Amendment. In that case, a student persisted in wearing an emblem depicting the Confederate flag sewn on one sleeve. The school had recently outlawed the use of the Confederate flag as a school symbol because of prolonged and violent confrontations between African-American and white students. After documenting the numerous confrontations and problems that were caused by the use of the symbol, the court upheld the regulation, stating that "[r]easonable and non-discriminatory regulation of time, place, and manner are always permissible restrictions upon expression."
- d. Crosby v Holsinger, 852 F2d 801 (CA 4, 1988). The court ruled that the high school principal was justified in eliminating the school's "Johnny Reb" symbol after receiving complaints from African-American students and parents.

## II. SEARCHES AND SEIZURES

The Fourth Amendment to the United States Constitution guarantees that:

"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."

### A. The T.L.O. Standard.

1. New Jersey v T.L.O., 469 US 325 (1985). The Fourth Amendment's prohibition against unreasonable searches and seizures applies to searches of public school students by school officials. A school official may search a student based upon a "*reasonable suspicion*" that the search will uncover evidence of a violation of the law or of the school's rules. Because the "school setting requires some easing of the restriction to which searches by public authorities are ordinarily subject," the Supreme Court also held that the warrant and probable cause requirements traditionally applied to searches would *not* apply to searches by school authorities. To determine whether the reasonable suspicion standard was met, the Supreme Court adopted a two-prong analysis:
  - a. Was the search justified *at its inception?* and
  - b. Was the search "*reasonably related*" *in scope* to the circumstances which justified the interference in the first place.
2. Courts continue to utilize the *T.L.O.* standard. Most of the cases outlined below were issued after *T.L.O.*

### B. Personal Searches.

1. People v Taylor, 625 NE2d 785 (Ill App, 1993), app den 633 NE2d (1994). The court found reasonable suspicion to search the students and their lockers, based on the conversation of another student regarding a drug transaction, a statement by the same student to administrators that the students had marijuana, a cigarette package containing marijuana, and marijuana found in the student's locker.
2. In the Matter of Ronnie H., 603 NYS2d 579 (NY App, 1993). The court ruled that an assistant principal did not illegally search a student's jacket pocket by complying with the student's request for return of the contents. Because the administrator suspected the jacket of being stolen, the student



agreed to leave the jacket with the principal until it could be identified. The jacket contained four vials of crack cocaine.

3. State v Moore, 603 A2d 513 (NJ Super, 1992). The New Jersey Superior Court ruled that an assistant principal's search of a student's book bag was reasonable. The search revealed 75 vials of cocaine and the student was indicted for possession of cocaine with intent to distribute on school property.
4. In the Matter of Gregory M., 585 (NYS2d 193 (NY App Div, 1992), aff'd 82 NYS2d 588 (1993). A student informed a security guard that he needed to obtain a new security card. In accordance with school policy, he had to leave his bookbag with the guard. When the student tossed the bag onto a metal cabinet, an unusual thud alerted the guard, who rubbed his hand along the bottom of the bag and felt the outline of a gun. A school dean subsequently searched the bag. The unusual metal thus was deemed sufficient to support the reasonableness of the search.
5. In Re Alexander B., 270 Cal Rptr 342 (Cal App, 1990). Upon separating two gangs who were about to clash, a school dean was told by one of the gang members that a member of a third group of students, observing the confrontation, had a gun. The dean instructed a police officer to search the implicated student, and a machete knife and scabbard were subsequently found inside the student's trouser leg. The uncorroborated information provided by a unidentified informant was held to justify the reasonableness of the search.
6. T.J. v State, 538 So2d 1320 (Fla App, 1989). A student who had been threatened with a knife the previous day reported that either T.J. or another student had a knife at school. Although the assistant principal searched the student's purse for the knife, no weapon was found. The assistant principal, however, continued the search to examine a zippered side pocket in the purse, which contained a plastic bag with cocaine. The court characterized this search as a "scavenger hunt" because the side pocket "clearly contained no weapon because it did not bulge, nor did the assistant principal feel anything in it beside the plastic bag." Accordingly, the court held that the search exceeded the scope permitted by the Fourth Amendment and suppressed the evidence.
7. Webb v McCollough, 838 F2d 1151 (CA 6, 1987). The Sixth Circuit Court of Appeals ruled that a random search of students' hotel rooms by school officials supervising a voluntary band trip to Hawaii was permissible. Rather than applying the *T.L.O.* reasonableness standards, the court deemed individualized suspicion unnecessary on the ground that school officials act in loco parentis when supervising students away on school trips where the likelihood of injury or misconduct by students is greater than on school premises.

8. Wynn v Bd of Ed, 508 So2d 1170 (Ala, 1987). A class had accumulated \$9 for a class project which was placed in an envelope and given to one student for safekeeping. All students except for the accused student and another student left the room. When the others returned, the envelope and money were missing. The teacher told the other student to search the accused student's books and person, which they did. The court held "that the very limited search that occurred was not excessively intrusive and was reasonably related to the objective of the search."
9. In Re Appeal of Pima Co Juvenile Action, 733 P2d 316 (Ariz App, 1987). The court ruled that school officials had insufficient evidence to justify a search based on the student's presence in areas where students reportedly went to skip class, smoke cigarettes and use drugs. The school principal also suspected the student of being involved with drugs, but had no personal knowledge and had received no specific reports regarding the student's conduct. The court ruled that the cocaine found in the student's pocket could not be admitted into evidence.
10. Burnham v West, 681 F Supp 1160 (ED Va, 1987). A student principal discovered defacement of school property and directed the teachers to search each student's bookbags, pockets and purses for magic markers. He ordered another search when a teacher informed him that he had seen students with "Walkman radios," which were forbidden by school rules. When a teacher reported that she smelled marijuana in a hallway area, each student again was searched. The three "sweep searches" were held to have violated the students' Fourth Amendment rights.
11. In Re William G., 709 P2d 1287 (Cal, 1985). A California Court held that school officials did *not* have a reasonable basis to search a 16-year-old student's calculator case with an "odd-looking bulge." The assistant principal forcibly seized the case and found marijuana-filled baggies inside. The student's suspected truancy from class, his attempt to hide the case and his demand for a warrant when approached to be searched did not provide a reasonable basis for the search. The court ruled that these actions did not provide sufficient justification for a search given that school officials had no prior information linking the student to possession, use or sale of drugs or other contraband.

C. Strip Searches.

1. Cornfield by Lewis v Consolidated High School Dist No. 230, 991 F2d 1316 (CA 7, 1993). The Seventh Circuit Court of Appeals held that a strip-search of a 16-year-old male student suspected of "crotching" drugs was reasonable. Relatively recent drug-related incidents reported by various teachers and aides, as well as personal observations of an unusual bulge in the student's crotch area, created a reasonable suspicion for the search. The scope of the

search was also reasonable because the search was performed in the privacy of the boys' locker room, and the student was allowed to put on a gym uniform during a search of his clothes.

2. In the Interest of S.F., 607 A2d 793 (Pa Super, 1992). A plainclothes police officer corroborated his observation of what appeared to be a drug sale with prior information he received from six or seven people, both students and teachers, who said that the accused student had been flashing large sums of money around and had narcotics. The subsequent search of the student conducted in the vice principal's office discovered numerous vials of cocaine. The search was held to be reasonable.
3. In the Matter of DuBois, 821 P2d 1124 (Oregon App, 1991). A campus supervisor overheard two students, who she believed to be "good" students, speaking to each other concerning a rumor that there was a gun on campus. She questioned the students, and one of them told her that the student in question had been in possession of a gun the day before. A subsequent search of the student conducted in the vice principal's office resulted in the discovery of a gun and marijuana. The search was held to be justified.
4. Williams by Williams v Ellington, 936 F2d 881 (CA 6,1991). A fellow student told school officials that another student possessed drugs. The tip was corroborated by other information and evidence. School officials confronted the student who denied having drugs. After searching her locker, school officials conducted a strip search of the student in the presence of two female school officials. The search failed to disclose any drugs. The student filed a civil rights claim against the school officials. The Sixth Circuit Court of Appeals held that the school officials had qualified immunity against suit because they had reasonable grounds to strip search the student.
5. In Re Devont, 584 A2d 1287 (Md App, 1991). After a student who was found with drugs implicated the accused student, school officials had abundant "articulable suspicion" to search the accused student.
6. Berry v State, 561 NE2d (Ind App, 1990). Two students decided to arrange to buy marijuana from defendant and then report him to the school principal. The defendant agreed to sell marijuana to one student, then later told the other student that he sold only tobacco products. This denial provoked an altercation which delivered the second student and the defendant to the principal's office, where the second student accused the defendant of possessing marijuana. The principal's subsequent search of the defendant's jacket was held to be reasonable.
7. In Re Corey L., 250 Cal Rptr 359 (Cal App, 1988). One student reported that the accused student possessed cocaine. The subsequent search was held to be based on reasonable suspicion.

8. Cales v Howell Public Schools, 635 F Supp 454 (ED Mich, 1985). Interpreting T.L.O., a federal court held that in order for a search to be reasonable at its inception, a school district must be able to establish that the student's conduct creates a reasonable suspicion that a specific rule or law has been violated and that the search could reasonably be expected to produce evidence of that violation. School officials may not search a student because the student's behavior creates a reasonable suspicion that the student has violated some unidentified rule or law. The behavior must indicate a violation of a particular rule or law rather than merely suggest that the student is "up to something." The court ruled that the search of the student's purse and her body (she was forced to take off her jeans and lean over so her bra could be visually examined) was "not reasonable at its inception."
9. Tarter v Raybuck, 742 F2d 977 (CA 6, 1984), cert den 470 US 1051 (1985). The Sixth Circuit Court of Appeals, in dicta, stated that body cavity searches exceed the outer limits of reasonableness for school searches, even when the search is conducted to detect possession of drugs.
10. Rone v Daviess Co Bd of Ed, 655 SW2d 28 (Ky App, 1983). The Kentucky Court of Appeals upheld the strip search of a high school student suspected of carrying drugs because school officials had reasonable suspicion for the search. The court noted that: (1) the student voluntarily submitted to the strip search; (2) he was never touched offensively during the search; (3) the investigation was conducted without law enforcement officers present; and (4) no criminal charges were brought subsequent to any of the drug related incidents.
11. Bellnier v Lund, 438 F Supp 47 (ND NY, 1977). In an effort to solve the disappearance of three dollars, school officials conducted a strip search of a classroom of fifth graders. Teachers first inspected the children's coats, then instructed the students to empty their pockets and remove their shoes. When the money still had not been found, teachers marched the children to their respective restrooms and conducted a strip search of every child. The court held that the search was invalid since there was no reasonable suspicion to believe that each student possessed contraband or evidence of a crime.
12. M.M. v Anker, 607 F2d 588 (CA 2, 1979). Student was allowed to collect damages for the humiliation she suffered as a consequence of a strip search conducted by school officials.

D. Locker/Desk Searches.

1. In the Interest of Isiah B., 500 NW2d 637 (Wis, 1993), cert den, 114 S. Ct. 231 (1993). The Wisconsin Supreme Court ruled that school officials acted lawfully when they searched lockers for guns after the principal had heard rumors about a planned shootout. A school security aide search



approximately 100 lockers before he lifted a heavy coat which contained a loaded revolver. Cocaine was also found in the same coat. The 15-year-old student who owned the coat was found criminally delinquent, even though his attorney argued that the evidence should be thrown out because the search had been unreasonable. The court held that neither the student nor his classmates had a right of privacy in their lockers because the student handbook contained a statement that the school district owned the lockers and that the lockers were subject to search at any time. The court found that:

[W]hen the [school district] . . . has a written policy retaining ownership and possessory control of school lockers . . . and notice of the locker policy is given to students, then students have no reasonable expectation of privacy in those lockers.

Because the student had no "reasonable expectation of privacy" under those circumstances, the court held that no Fourth Amendment violation resulted from the locker search.

2. Commonwealth v Snyder, 597 NE2d 1363 (Mass, 1992). The Massachusetts Supreme Court held that a high school principal's warrantless search of a student's locker was reasonable, under both State and Federal Constitutions. Another student had told a reliable faculty member, who in turn had told the principal, that the student had attempted to sell marijuana and had placed marijuana in his book bag. The court ruled that the principal could search the locker for the book bag before confronting the student.
3. In the Matter of L.J., 468 NW2d 211 (Wis App, 1991). A student complained that a portable radio he had brought to school was missing. A school official went to the coat rack to pat down the student's jackets. When he felt something very heavy in one jacket, he asked the jacket's owner what it was and was told that it was a gun. The pat-down of the jackets was held to be reasonable.
4. R.D.L. v State, 499 So2d 31 (Fla App, 1986). After a witness implicated a student for a theft, a search of the accused student's locker was held to be reasonable.
5. In the Interest of S.C. v State, 583 SE2d 188 (Miss, 1991). A student reported to the assistant principal that the accused student had tried to sell a gun to him at school. This information was found sufficient to provide reasonable grounds for a subsequent search of the accused student's locker.
6. Commonwealth v Carrie, 554 NE2d 1199 (Mass, 1990). A school administrator's pre-existing knowledge of an earlier fight, plus the eyewitness report of two students that a gun linked to the fight was seen in the defendant's possession, together with the administrator's failure to find the

gun on the defendant's person or at the places he had been most recently, justified the search of defendant's locker.

7. State v Brooks, 718 P2d 837 (Wash App, 1986). A student informant whose school locker was in the same bay as that of the defendant told the vice principal that the defendant kept a blue metal box in his locker from which he was selling marijuana. Hallucinogenic mushrooms were subsequently found in the box. The reasonableness of the vice principal's search was buttressed by her own observations and three prior reports by teachers of defendant's suspected drug use. The court held that the search was justified because there were reasonable grounds for school officials to suspect that the search would turn up evidence that the defendant had violated the law or school rules.
8. In the Interest of Dumas, 515 A2d 984 (Pa Super, 1986). A teacher observed a student getting a pack of cigarettes from his locker, and notified the assistant principal who searched the locker. A pack of cigarettes in a jacket in the locker contained marijuana. The assistant principal searched the locker because he suspected the student was involved with drugs. Because the assistant principal was unable to state any basis for the suspicion and because the initial discovery of cigarettes did not justify a suspicion that there would be more cigarettes in the locker, the court refused to admit the marijuana as evidence.
9. In Re William G., 709 P2d 1287 (Cal, 1985). The California Supreme Court held that indiscriminate searches of lockers was impermissible, stating that students have the "highest privacy interest" in their person, belongings and "physical enclaves."
10. State v Engerud, 463 A2d 934 (NJ, 1983). In a companion case to *T.L.O.*, the New Jersey Supreme Court held that a student had an expectation of privacy in his locker in the absence of a school policy of regularly inspecting lockers.
11. Zamora v Pomeroy, 639 F2d 662 (CA 10, 1981). Student lockers and desks are school property which are controlled by school officials and for which students have no "reasonable expectation of privacy."

E. Automotive Searches.

1. Coronado v State, 835 SW2d 636 (Tex Crim App, 1992). The Texas Court of Appeals ruled that a public school official's search of a student's automobile in the student parking lot was *illegal* because the search was unreasonable and excessively intrusive in light of the nature of the student's infraction (skipping school). After determining that the student's excuse for leaving school was not valid, school officials patted down the student for



safety reasons and found not evidence that the student was violating the law or the school rules. Accordingly, school officials did *not* have reasonable grounds to conduct any further searches of the student or his possessions, despite the fact that the official, approximately one week earlier, had received information that the student was selling drugs to other students.

2. State v Slattery, 787 P2d 932 (Wash App, 1990), rev den 791 P2d 534 (1990). A student told the school's vice principal that the defendant was selling marijuana in the parking lot. The vice principal believed the information to be reliable because of his past experience with the informant and because he had received other reports that the defendant was involved with drugs. When the vice principal searched the accused student, he found a slip of paper with a telephone number on it. A security officer searched the student's locker, but found nothing. The officials found a pager and a notebook inside the student's car; the notebook had names with dollar amounts next to their names. When officials found a locked briefcase in the car's trunk, the accused student said he did not know who owned then said it was a friend's and that he not know the combination. School officials pried open the briefcase and found 80.2 grams of marijuana. The searches were held to be reasonable.
3. Jennings v Joshua Indep School Dist, 877 F2d 313 (CA 5, 1989). Conducting an automobile search in a school parking lot pursuant to a search warrant did not violate any constitutional guarantees.
4. In the Interest of P.E.A., 754 P2d 382 (Colo, 1988). A police officer was told by a minor that two other minor, M.M. and F.M. possessed marijuana with intent to sell. Subsequent searches of M.M. and F.M. uncovered no contraband. When asked how they came to school that date, the students said they had ridden in P.E.A.'s car. The subsequent search of P.E.A.'s car was deemed to be reasonable.
5. Shamberg v State, 762 P2d 488 (Alas App, 1988). A teacher in the school library informed the assistant principal that a student appeared to be under the influence of alcohol. The assistant principal sent the school's security officer to the library, where the teacher pointed out the student in question. The security officer questioned the student after seeing that the student's eyes were glassy, his face was flushed and his speech was slurred. The security officer and the assistant principal then searched the student's car, and discovered vials of cocaine in the car's ashtray. The search was held to be reasonable.
6. State v D.T.W., 425 So2d 1383 (Fla App, 1983). During a routine patrol, a teacher's aide discovered drug paraphernalia on the seat of a student's car. The car was opened and drugs were found. The court held that reasonable suspicion is necessary to search the interior of a car. However, the discovery

of the drug paraphernalia in plain view through the car window supplied reasonable suspicion to search the car's interior. The court held that no showing of cause is needed to justify patrolling student parking lots or inspecting the outside of cars.

F. Drug Detecting Dogs.

1. Horton v Goose Creek, 690 F2d 470 (CA 5, 1982), withdrawing op at 677 F2d 471 (CA 5, 1982), reh'g den 693 F2d 524 (CA 5, 1982), cert den 463 US 1207 (1983). The Fifth Circuit held that the use of sniffing dog was not a "search".
2. Zamora v Pomeroy, 639 F2d 662 (CA 10, 1981). Sniffer dogs searching for narcotics were walked from locker to locker. One of the dogs alerted to a student locker which contained marijuana. The student brought suit to challenge the inspection of his locker without his permission and without a warrant. Alternatively, the student also argued that it was unlawful to use sniffer dogs to discover the drugs. The court applied the "reasonable suspicion" standard and upheld the search because the "probability existed that there was contraband inside of the locker." Although the court did not directly comment upon the legality of the use of the dogs, it can be inferred that the dog's alert provided a valid means of security the requisite "reasonable suspicion" for the search.
3. Jones v Latexo Indep School Dist, 499 F Supp 223 (ED Tex, 1980). The court held that the use of sniffer dogs to smell the exterior of cars must be based on a reasonable suspicion.
4. Doe v Renfrow, 475 F Supp 1012 (ND Ind 1979), aff'd 631 F2d 91, reh'g den 635 F2d 582 (CA 7, 1980), cert den 451 US 1022 (1981). In response to reports of student drug abuse, school officials authorized the use of drug-detecting dogs in a general search of junior and senior high school students. The search was conducted by police officers and trained dog handlers. The court found that the general inspection of the school for drugs and the sniffing of each student by the dogs were reasonable in light of the school's *in loco parentis* responsibilities.

G. Metal Detectors, Breathalyzers and Cameras.

1. People v Dukes, 580 NYS2d 850 (NY Crim Ct, 1992). During the 1990-91 school year, over 2,000 weapons had been confiscated in the school system. In May of that year, school officials arranged for a special policy unit to use hand-held metal detectors to search all students entering the school. Students were notified of this new procedure. A student caught with a switchblade challenged the search in a "suppression hearing." In upholding the search, the court concluded that "the governmental interest underlying this type of

search is equal to if not greater than the interest justifying the airport and courthouse [metal detector] searches." The court ended its decision by applauding the school board for taking "a significant step in the battle to maintain peace and serenity in our schools."

2. Martinez v School District No. 60, 852 P2d 1275 (Colo App, 1992). The behavior and appearance of a high school student attending a dance lead a school monitor to believe the student was under the influence of alcohol. Subsequently, the monitor required two other students, who had been with the first student at a prior party, to blow in his face so he could smell their breath. The court held that the monitor "had reasonable suspicion that the two [other] students had also consumed alcohol, and he was warranted in attempting to verify that fact."
3. Anable v Ford, 653 F Supp 22 (WD Ark, 1985). A student's exclusion from school based upon a positive reading on a breathalyzer test administered by the police department.
4. Stern v New Haven Community Schools, 529 F Supp 31 (ED Mich, 1981). Court upheld the use of a two-way mirror in the boys' restroom at the high school to detect drug transactions.

#### H. Drug Tests.

1. Acton v Vernonia School Dist, 23 F3d 1514 (CA 9, 1994). In contrast to the Schall decision discussed below, the Ninth Circuit Court of Appeals ruled that a school district's policy of testing student athletes for drugs violated their rights to be free from unreasonable searches. Although noting that the policy contributed to the desired good of reducing drug use among students and was completely random, the court found that the policy violated the students' privacy rights. The court stated, "Children are compelled to attend school, but nothing suggests that they lose their right to privacy in their excretory functions when they do so." While determining that random testing was not justified, the court found that an individualized testing policy may have been appropriate.
2. Colorado v Derdeyn, 114 S. Ct. 1646 (1994). The United States Supreme Court let stand the Colorado Supreme Court's ruling that a university's random drug testing policy for student athletes was unconstitutional.
3. Hess v Melvindale North-Allen Park School Dist, Wayne Co Cir Ct No. 90-019-383 (Finch, J., 1991). The Wayne County Circuit Court found a school district's random drug testing program for student athletes, including cheerleaders, to be *unreasonable and unconstitutional*. In invalidating the drug testing program as a condition of participating in student athletics, the court stated: "This opinion does not speak to the permissibility of a program

which calls for drug or alcohol testing upon a reasonable suspicion of use, or to the validity of a program in which participation is voluntary. It is further the Court's opinion that if there were a reasonable basis for consent for such a search, the method of obtaining the sample is not an undue invasion of privacy, so long as the student's name was not posted or made known to third parties." Note: Both the ACLU and the Michigan Attorney General appeared on behalf of the students in the case.

4. Brooks v East Chambers Consolidated Indep School Dist, 730 F Supp 759 (SD Tex, 1989), aff'd 930 F2d 915 (CA 5, 1991). Court permanently enjoined a Texas high school's random drug-testing program for students involved in extracurricular activities. Because the school district's policy affected participants in all extracurricular activities, as opposed to just athletes and cheerleaders, the court did not apply the *Schail* holding (see below).
5. Schail v Tippercanoe Co School Corp, 679 F Supp 833 (ND Ind, 1988), aff'd 864 F2d 1309 (CA 7, 1988). Student athletes Darcy Schail and Shelley Johnson (supported by the ACLU) sought an injunction to block the school district's requirement that interscholastic athletes and cheerleaders consent to random urinalysis drug testing to be eligible for interscholastic sports. The Seventh Circuit Court of Appeals upheld the lower court's ruling that the testing program was constitutional. The Court of Appeals took judicial notice that drug usage by athletes is highly publicized and is of great concern to society in general. The school district's drug testing policy is summarized below:
  - \* Student athletes are required to attend one or more drug education sessions.
  - \* The student and parents must sign a consent form which allows the school district to conduct urinalysis at any time.
  - \* Each athlete is assigned a number, which is placed in a box and later drawn when the head coach or athletic director institutes a random urine test during the athletic season.
  - \* Although the student will not be watched, the sample is verifiable.
  - \* The sample's chain of custody is assured and sent to a private testing laboratory.
  - \* Only the student, the parents, the athletic director and head coach will be informed of the test results.

- \* Progressive penalties for positive test results are imposed. The student may decrease the punishment by participating in an approved drug counseling program.

6. Anable v Ford, 653 F Supp 22 (WD Ark, 1985) and Odenheim v Carl Stadt-East Rutherford Regional School Dist., 510 A2d 709 (NJ Super, 1985). Random drug testing of the general student body of a public school was unreasonable and an impermissible search under the Fourth Amendment. The Anable Court stated: "Requiring a student to disrobe from the waist down and urinate into a tube while being observed is little different from nude search. Such a search is so inherently invasive as to be obviously suspect in the school setting." Moreover, the court noted that the urine test could not determine whether a student has possessed, used or appeared at school under the influence of a drug and at best revealed only that a student had ingested certain drugs at some time during the preceding days or weeks.

#### I. Searches by Law Enforcement and Security Personnel.

1. In the Interest of A.J.M., 617 So2d 1137 (Fla App, 1993). The court held that the standards applicable to a search by school officials did *not* apply to a search by a school resource officer, who was paid by the sheriff's office, and who was passing by the principal's office when the principal asked him to search a number of students who were in the office. The court held that where a law enforcement officer directs, participates, or acquiesces in a search conducted by private parties, that search must comport with usual constitutional standards. Additionally, where a law enforcement officer directs, participates, or acquiesces in a search conducted by school officials, the officer must have *probable cause* for that search, even though the school officials, acting alone, are held to a lesser constitutional standard. Since the resource officer conducted the searches solely pursuant to the principal's request and without conducting any independent investigation, cocaine found in the pocket of one of the students was suppressed as evidence. The court noted that the appropriate test to determine the validity of the searches was whether probable cause or reasonable suspicion existed for them. Here, neither existed because the principal failed to come forward with any basis for the search. The court invalidated the search for lack of probable cause.
2. State v Serna, 860 P2d 1320 (Ariz App, 1993). The court held that a warrantless search of a student by public high school security personnel was reasonable. The security personnel were "state actors" and, therefore, the warrantless search of the student was subject to Fourth Amendment standards of reasonableness. The security personnel found the student at the scene of a fight which may have involved weapons and which took place off school grounds just after school. They observed the student step out from some bushes and one security agent saw the student reach for something under the bushes and put it into his pocket. In this case, the security personnel had



reasonable grounds to suspect that a search of the student might uncover evidence of a violation of the law. Therefore, the trial court did not abuse its discretion in denying the student's motion to suppress cocaine found in this pocket.

3. In the Interest of P.E.A., 754 P2d 382 (Colo, 1988). Acting on a tip from a student, a police officer went to the school and informed the principal that two students had brought marijuana to school intending to sell it. The principal and school security guard questioned and searched the suspected students and their lockers and found no marijuana. Upon further questioning, marijuana was found in P.E.A.'s car. The lower court suppressed the evidence, finding that the school security guard and principal acted as agents of the police. The Colorado Supreme Court reversed and noted that the police officer did not request or participate in the searches or interrogations. The fact that the police supplied the information to the principal and remained on campus did not create an agency relationship.
4. In Re Frederick B., 237 Cal Rptr 338 (Cal App, 1987). A school police officer observed two students exchanging paper currency in an area where the officer had earlier made narcotics-related detainments. One of the students refused to accompany the officer to the dean's office, and then attempted to flee. The student was wrestled to the ground, handcuffed and searched. The court ruled that reasonable suspicion for the search existed, based upon the observation of money exchanging hands in an area known for drug-related transactions.
5. Cason v Cook, 810 F2d 188 (CA 8, 1987), cert den 482 US 930 (1987). The Eighth Circuit Court of Appeals held that the probable cause standard did not apply to a search conducted by a police liaison officer where the officer conducted a pat down search only after a school official found stolen property in a student's purse. The court noted that the liaison officer did not initiate the investigation or participate in the initial interviews with suspected students; he only conducted brief interviews after the suspects' stories did not agree. Because the officer acted in conjunction with school officials and the investigation and search were not at the behest of law enforcement, the court upheld the search based on reasonable suspicion.

#### NOTES:



### III. STUDENTS AND DISCIPLINE: DUE PROCESS RIGHTS

"The better the society, the less law there will be. In Heaven there will be no law, and the lion will lie down with the lamb. . . . The worse the society, the more law there will be. In Hell there will be nothing but law, and due process will be meticulously observed."

-- Grant Gilmore

The Ages of American Law (1977)

#### A. Statutory Authority for Student Discipline

##### 1. Michigan School Code of 1976.

- a. Sec. 1149. "Beginning in 1994, a school district *shall provide* special assistance to each pupil enrolled in the school district who is ... in danger of being expelled...."
- b. Sec. 1261. The board of a school district shall have the general care and custody of the schools and property of the district and shall make and enforce suitable regulations for the general management of the schools and the preservation of the district."
- c. Sec. 1300. "The board of a school district shall make reasonable regulations relative to anything necessary for the proper establishment, maintenance, management, and carrying on of the public schools of the district, including regulations relative to the conduct of pupils concerning their safety while in attendance at school or enroute to and from school. The regulations made under this section may include a dress code for pupils."
- d. Sec. 1311. "The board, or a school building principal if designated by the board, may authorize or order suspension or expulsion from school of a pupil guilty of a gross misdemeanor or persistent disobedience, if, in the judgement of the board or principal, as applicable, the interest of the school is served by the authorization or order...."
- i. Holman v Trustees of School Dist No 5, Twp of Avon, 77 Mich 605 (1889). The pupil must be guilty of some willful or malicious act to the detriment of the school.
- ii. Tanton v McKenney, 226 Mich 245 (1924). Criminal activity is not required.

- e. Sec. 1311. If there is reasonable cause "to believe that the pupil is disabled" and the pupil has not been evaluated by the school district, the pupil must be evaluated immediately by the ISD.

2. Judicially Created Authority.

- a. Tanton v McKenney, 226 Mich 245 (1924). Actions of school officials are presumed to be valid. Absent abuse of discretion by school officials, a court will not prescribe proper disciplinary measures.
- b. Cochrane v Mesick Consolidated School Dist., 360 Mich 390 (1960). A court will void the rules and regulations of a board of education if they are unreasonable or arbitrary.
- c. Davis v Ann Arbor Public Schools, 313 F Supp 1217 (ED Mich, 1970). The courts will not rule upon the wisdom or expedience of school rules, but whether they are a reasonable use of the authorities' power.
- d. Birdsey v Grand Blanc Community Schools, 130 Mich App 718 (1983). A school administrator's construction of the school district's rules and regulations must be given great deference by a court.
- e. Darby v School Dist., 544 F Supp 428 (WD Mich, 1982). A school board may create a policy delineating what conduct it believes merits disciplinary measures as to suspension or expulsion.
- f. Robinson v Oak Park and River Forest High School, 571 NE2d 931 (Ill App, 1992). School officials have broad discretion in school discipline. A court reviewing the action of a board of education to determine whether it abused its discretion in a student discipline matter must consider the egregiousness of student's conduct, history, or record of student's past conduct, the likelihood that the student's conduct will affect the delivery of educational services to other students, the severity of punishment, and the interests of the student.

B. Due Process Requirements.

1. Constitutional Rights.

- a. Tinker v Des Moines Indep School Dist., 393 US 503 (1969). Students do not shed their constitutional rights at the schoolhouse gates.

- b. Due process is controlled by the concept of fundamental fairness. The process due may differ with the circumstances.
- c. A student discipline hearing is not a criminal proceeding.
  - i. In Re Corey, 250 Cal Rptr 359 (Cal App, 1988). A "Miranda" warning is not required before a student is questioned by a school official.
  - ii. Brewer v Austin Indep School Dist, 779 F2d 260 (CA 5, 1985). The "technicalities of criminal procedure" need not be transported into school suspension cases.
  - iii. Eisner v Stamford Bd of Ed, 440 F2d 803 (CA 2, 1971). School disciplinary regulations need not be drawn with the same preciseness as are criminal codes.
  - iv. New Jersey v T.L.O., 469 US 325 (1985). Given a school's need to impose discipline for a wide range of unanticipated conduct, school disciplinary rules need not be as detailed as a criminal code.

## 2. Suspension and Expulsion.

- a. Goss v Lopez, 419 US 565 (1975). Students facing temporary suspension from a public school have property and liberty interests that qualify for protection under the due process clause of the Fourteenth Amendment.
- b. Suspension of 10 days or less only requires "rudimentary due process."
  - i. Oral or written notice of charge.
  - ii. Explanation of evidence against student.
  - iii. Opportunity for student not present his or her side of the story.
  - iv. Note: An opportunity to appeal the suspension decision to another school authority operates as a safeguard to cure any defect in this administrative process.
- c. Suspension of more than 10 days or expulsion requires more formal due process.

- i. Written notification of the specific charges and grounds which, if proven, would justify the suspension under regulations of the board of education.
- ii. Provision of a list of witnesses against the student and a summary of the facts to which each witness will testify.
- iii. Reasonable time to prepare for the hearing.
- iv. Hearing with the right of the student to present witnesses and evidence, and to cross-examine any adverse witness. This right of cross-examination, however, is limited. Newsome v Baravia Local School Dist., 842 F2d 920 (CA 6, 1988); Paredes v Curtis, 864 F2d 426 (CA 6, 1988).
- v. Right to counsel at the student's expense.
- vi. Carey v Maine School Admin Dist No. 17, 754 F Supp 906 (D Me, 1990). There are seven minimum requirements which must be observed in student disciplinary hearings to ensure the requisite balance of the student's and the school's interest: (1) student must be advised of charges, (2) student must be informed of nature of evidence, (3) student must be given opportunity to be heard, (4) student must be punished except on the basis of substantial evidence, (5) student must be permitted assistance of lawyer in major disciplinary hearings, (6) student must be permitted to confront and cross-examine witnesses, and (7) student has a right to impartial tribunal.

3. Discipline for Off-Campus Criminal Activity.

- a. Courts generally uphold discipline to students for off-campus conduct if school officials can show that the student's actions have a direct and immediate effect either on school discipline or on the general safety and welfare of students and staff.
- b. Durso v Taylor, 624 A2d 449 (DC App, 1993). A high school student was charged with an armed rape of a fellow student based on alleged conduct at his home. The student was arrested at school and as many as 20 students saw him taken from school in handcuffs. The next day the principal met with the student and his mother to discuss arrangements for his education while the charges were pending. The principal proposed transfer to another school or participation in a home-study program. The mother initially agreed to the home-study program, but later appealed. The student later sued to challenge his suspension, claiming his due process rights had been violated. The

court rejected this claim and held that the informal hearing afforded the student was constitutionally sufficient to justify his removal from school.

- c. Howard v Colonial School Dist, 621 A2d 362 (Del Super, 1992). The court upheld the school board's decision to expel a student for off-campus sale and distribution of cocaine. The student argued that the board had no jurisdiction over his conduct away from school. The court disagreed and held that the board could reasonably conclude that the presence of a drug dealer at school would have a detrimental impact on the health, safety and welfare of the school's students.
  - d. Brands v Sheldon Comm Schools, 671 F Supp 627 (ND Iowa, 1987). The court upheld the discipline of a star athlete who participated in a group sexual assault on a female student at another student's home.
  - e. Pollnow v Glennon, 594 F Supp 220 (SD NY, 1984), aff'd 757 F2d 496 (CA 2, 1985). The court upheld the discipline of a student who assaulted the mother of his teenage friend at her home during the spring school vacation.
  - f. Porter v Bd of School Dist, 445 A2d 286 (PA Commw, 1982). Court upheld discipline to a student who assaulted a fellow student off school grounds following an argument that began at a school basketball game.
- C. Expulsion from Transportation.
- 1. OAG No. 6049, p 603 (March 26, 1982); Sutton v Cadillac Area Schools, 117 Mich App 38 (1982). Under certain circumstances it is appropriate to expel a student from transportation without a hearing.
  - 2. Hiers v Brownell, 376 Mich 225 (1965). The authority to deny transportation may not be exercised arbitrarily and unreasonably.
- D. Athletes and Substance Abuse.
- 1. Berschback v Grosse Point Schools, 154 Mich App 102 (1986). Participation in athletics is a privilege which may be extended or withdrawn at the discretion of school officials.
  - 2. Bush v Dassel-Cokato Bd of Ed, 745 F Supp 562 (D Minn, 1990). The court ruled that school officials could punish an athlete for attending a last-day-of-school party at which alcohol was consumed. Although the athlete attended a party for only 15 minutes and drank

no alcohol, the athlete was banned from two summer swim meets and had an athletic award revoked.

3. Idziak v Jenison Public Schools, Ottawa Co Cir Ct No. 89-10776-CZ (Bosman, J., 1989). A softball player who violated the athletic code's drinking prohibition in November brought suit to enjoin school officials from suspending her for one quarter of the spring softball season. The athletic code defined the athletic school year "from the first day of practice in the fall through the last day of school in the spring." The court upheld the penalty and noted that the athletic code's proscription against the use of tobacco, alcohol or illegal drugs "is not the type of conduct for which the school ought to give its students 'seasons' of approval and 'seasons' of disapproval. Engaging in illegal conduct by a student ought to be of concern to the school whether an athlete or not."
4. Clements v Decatur Bd of Ed, 478 NE2d 1209 (Ill App, 1985). Court upheld student's suspension from softball team for her *presence* at a party where minors were drinking beer. School officials deemed the student's presence at the party to be "anti-social" behavior.
5. Nieland v Cheboygan Area Schools, Cheboygan Co Cir Ct No. 862 (Fenlon, J., 1970). Court upheld one-year suspension from athletics for student athlete caught consuming alcoholic beverages.

NOTES:



#### IV. JUVENILE DELINQUENTS AND WARDS OF THE COURT

1. Sec. 628 of the School Code. "The intermediate school board may: (a) Establish a school for persons of school age who live in children's homes operated by a juvenile division of the probate court. The intermediate school board may lease or purchase sites; build, lease, or rent housing facilities; and employ the personal necessary to operate the schools. The intermediate school board may exclude a pupil for persistent misbehavior; classify and promote pupils for educational purposes; and do all things to the proper conduct of the school".
2. Sec. 1148 of the School Code. "Except as provided in section 1711, a child placed under the order or direction of a court or child placing agency in a licensed home, shall be considered a resident after education purposes of the school district where the home is where the child is living and located. The child shall be admitted to the school in the district." MCL 380.1148.
3. Michigan Dep't of Social Services v Tawas Area Schools, Iosco Co Cir Ct No. 93-8730-AW (Iosco Co. Cir. Ct., 1993). Iosco County Circuit Court Judge Richard Ernst ruled that a local school does not have to admit a 13-year-old boy expelled from a neighboring school for pointing a loaded .22 caliber pistol at a teacher.
4. In Re Calvin William Jackson, Jr., 352 SE2d 449 (NC App, 1987). After physically assaulting a student and a teacher, a student was suspended from the school system. In addition, the student was adjudicated a delinquent on the basis of convictions for assault, larceny of a firearm and carrying a concealed weapon. The juvenile court judge attempted to compel the local board of education to provide some alternative education program for the student. While recognizing the good faith and sincere interest of the juvenile judge in placing the student in an educational setting which would be in the best interest of the student, the North Carolina Court of Appeals, nonetheless recognized the overriding obligation of the board of education to exclude the student from programs altogether when the board reasonably determined exclusion to be necessary in the best interest of the remainder of the student body.

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## V. DRUGS AND ALCOHOL

### A. Statutory Authority.

#### 1. Drug-Free Schools and Communities Act, 20 USC § 3171.

- a. Sec. 3173. Establishes programs of drug abuse education and prevention through the provision of federal financial assistance to states for:
  - i. Grants to local and intermediate educational agencies and consortia to establish, operate, and improve local programs of drug abuse prevention, early intervention, rehabilitation referral, and education in elementary and secondary schools (including intermediate and junior high schools).
  - ii. Grants to and contacts with community based organizations for programs of drug abuse prevention, early intervention, rehabilitation referral, and education for school dropouts and other high-risk youth.
- b. Sec. 3224a. Requires school district to certify that it has "adopted and implemented a program to prevent the use of illicit drugs and alcohol by students or employees that at a minimum includes:
  - i. Age-appropriate, developmentally based drug and alcohol education and prevention programs (which address the legal, social, and health consequences of drug and alcohol use and which provide information about effective techniques for resisting peer pressure to use illicit drugs or alcohol) for students in all grades of the schools operated or served by the applicant, from early childhood level through grade 12;
  - ii. Conveying to students that the use of illicit drugs and the unlawful possession and use of alcohol is wrong and harmful;
  - iii. Standards of conduct that are applicable to students and employees in all the applicant's schools and that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on school premises or as part of any of its activities;
  - iv. A clear statement that sanctions (consistent with local, State, and Federal law), up to and including expulsion or termination of employment and referral for prosecution, will

be imposed on students and employees who violate the standards of conduct and a description of those sanctions;

- v. Information about any available drug and alcohol counseling and rehabilitation and re-entry programs that are available to students and employees;
  - vi. A requirement that parents, students, and employees be given a copy of the standards of conduct and the statement of sanctions;
  - vii. Notifying parents, students, and employees that compliance with the required standards of conduct is mandatory; and
  - viii. A biennial review by the applicant of its program to determine its effectiveness and implement changes to the program if they are needed; and to ensure that the required sanctions are consistently enforced."
2. Federal Drug-Free School Zones, 20 USC § 3216. Any person who distributes, manufactures, or possesses with the intent to distribute a controlled substance within 1000 feet of school property or 100 feet of a playground is subject to a greater minimum criminal sentence.
  3. Michigan Drug-Free School Zones, as amended by PA 174 of 1994 (effective September 1, 1994) provides additional criminal penalties to persons who deliver or possess with the intent to deliver illicit substances to minors within 1,000 feet of a drug-free school zone.

B. Judicial Authority.

1. Kubany by Kubany v School Bd of Pinnellas Co, 818 F Supp 1504 (MD Fla, 1993). The court noted that a student suspended for consuming alcohol before attending a school function stated a § 1983 claim against school officials for violating his constitutional rights. However, the court ruled that the student's allegations of illegal coercion to submit to alcohol or drug treatment failed since it is the express intent of the Legislature that students have the option of attending such programs as an alternative to suspension. The court found that the use of alcohol by a minor is illegal and that providing students with treatment and counseling is rationally related to the government's compelling interest in protecting minors from the dangers caused by alcohol and drug abuse. The student also failed on the claim that he had been stigmatized by the code of student conduct which classified alcohol as an illegal drug. The court found that the code does not categorize alcohol as an illegal. The court added that alcohol possession by a minor is

a criminal offense and not a matter to be taken lightly by the school board in its efforts to maintain a safe and disciplined educational atmosphere.

2. Student Alpha ID Number Guja v School Bd of Volusia Co, 616 So2d 1011 (Fla App, 1993). A court upheld the suspension of a student who admitted to the possession of marijuana but whose suspension was based on a distribution that occurred off campus. The court held that the fact of delivery, whether on or off campus, was relevant in determining the punishment.
3. Morgan v Girard City School Dist, 630 NE2d 71 (Ohio App, 1993). Of three students caught with drugs on school property, two received three-day suspensions and the other was expelled for selling drugs. One student brought marijuana to school and gave it to another student, who sold it to a classmate for \$5.00. The court upheld the expelled student's harsher punishment because it was based on the student's violation of school policy which provided for a more severe penalty for selling drugs.
4. Howard v Colonial School Dist, 621 A2d 362 (Del Super, 1992). The court upheld the expulsion of a student who sold cocaine to an undercover police officer off school property. The court noted that:

"The local school authorities are in a better position than the courts to determine the impact on their students by the presence of a drug dealer among the student body. Those authorities are responsible for the health, safety and welfare of all of their students. Those authorities also are better able to judge the impact on their students of off-campus criminal activity."
5. Walter v School Bd of Indian River Co, 518 So2d 1331 (Fla App, 1987). The court upheld the expulsion of a student who was found to have possessed marijuana on school property.
6. Jones v Bd of Trustees of the Pascagoula Municipal Separate School Dist, 524 So2d 968 (Miss, 1988). The Mississippi Supreme Court upheld the expulsion of a student found to have distributed drugs on school grounds, noting that "though courts should not become involved in running schools, expulsion and suspension are severe sanctions requiring solemn attention to a pupil's rights."
7. Carol v City of Dothan Bd of Ed, 435 So2d 757 (Ala App, 1986). The court upheld the expulsion of a student who brought alcohol on school property. The court held that the expulsion did not violate Alabama's compulsory attendance law. The court stated:

"A student is entitled and indeed required to attend school under our compulsory education law. However, this does not mean that a student may escape the consequences of his misconduct at school. Our schools are permitted to reasonably exercise their authority for the government of conduct of a student."

The court went on to say that school disciplinary matters are best resolved by local school officials and that courts should supersede only when the school's actions are clearly unconstitutional.

8. Wilson v Collinsville Comm Unit School Dist No. 10, 451 NE2d 939 (Ill App, 1983). An Illinois appellate court upheld the expulsion of a student who possessed "look-a-like" drugs on school property. The court stated that:

"dissemination of drugs, whatever their legal status, to fellow students endangers the physical health of those students and need not be tolerated by the school board .... Whether or not these drugs are controlled substances, their potential for causing harm is considerable and apparent, .... Additionally, ... the distribution of any form of pills, however harmless, in the restricted environment of a school would directly contribute to the creation of a drug oriented atmosphere and could lead to a psychological dependence on the part of some students."

9. Clark Co Bd of Ed v Jones, 625 SW2d 586 (Ky App, 1981). A Kentucky court reversed the expulsion of a student who consumed alcohol while on a school-sponsored band trip. The court reasoned that the school board acted arbitrarily since it only considered whether the student had consumed alcoholic beverages in deciding to expel him. It should have taken into consideration the previous general conduct of the student involved, the academic standing of the student, the probability of a recurring violation and the consideration of alternative punishment or restrictions.

NOTES:

## VI. WEAPONS IN THE SCHOOLS

### A. Statutory Authority

#### 1. Michigan School Code

- a. Sec. 1312. "... (2) a person employed by or engaged as a volunteer or contractor by a local or intermediate school board, ... may use such reasonable physical force as may be necessary to:

(a) *Protect* himself, herself, the pupil, or others from immediate physical injury.

(b) *Obtain possession of a weapon* or other dangerous object upon or within the control of a pupil."

- c. Sec. 1313. "(1) If a *dangerous weapon* is found in the possession of a pupil while the pupil is in attendance at school or a school activity or while the pupil is enroute to or from school on a school bus, the superintendent of the local or intermediate school district or his or her designee, immediately shall report that finding to the pupil's parent or legal guardian and the local law enforcement agency,

(2) As used in this section 'dangerous weapon' means a firearm, dagger, dirk, stiletto, knife with a blade over three inches in length, pocket knife opened by a mechanical device, iron bar, or brass knuckles."

#### 2. Federal Gun-Free School Zones Act, 18 USC § 921 (g)(1)(a) et seq.

- a. This legislation prohibits the possession of firearms within 1,000 feet of a school. Sec. 922(g)(1) states:

"(1)(A) It shall be unlawful for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(2)(A) ... It shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm at a place that the person knows is a school zone."

- b. The U.S. Supreme Court has agreed to review the constitutionality of this Act because the lower courts have issued conflicting decisions. United States v Lopez, 2 F3d 1342 (CA 5, 1993). Fifth Circuit invalidated the Act as unconstitutional because it goes beyond



Congressional power under the Commerce Clause and a twelfth-grade student's conviction for possession of a firearm on school property was reversed; U.S. v Edwards, No. 93-10058 (CA 9, 1993) (Ninth Circuit upheld the Act as constitutional because violence through the possession of firearms adversely affects the national economy).

B. Judicial Authority

1. In Interest of Michelle D., 512 NW2d 248 (Wis App, 1994). A Wisconsin appellate court held that a *pellet or "BB" air pistol* is a "dangerous weapon" on school grounds. In addition, the evidence supported a finding that a middle school student knowingly possessed such a pistol on school premises.
2. Washington by Patton v Smith, 618 NE2d 561 (Ill App, 1993). On June 9, 1993, an Illinois Appellate Court reversed a school board's decision to suspend a high school student for one semester for carrying an *ice pick* in her purse while on school property. The trial court reversed the board's decision to suspend the student based upon the inadequate record of the Board's proceedings, as only a partial transcript of the proceedings could be produced from an unintelligible audio tape. The trial court stated that:

"It is with genuine regret that this court finds it must reverse the board's finding because of an insufficient record of proceedings before it that does not allow the court to intelligently fulfill its certiorari obligations."

The Illinois Court of Appeals found the incomplete board records to be sufficient for appellate review under Illinois law, since any type of report made from the "best available sources" may provide a record for appellate review in that state. Nevertheless, it chose to affirm the trial court by finding the board's "expulsion" decision to be against the manifest weight of the evidence and an abuse of discretion. In so holding, the Court of Appeals reasoned that:

"There is no evidence ... that Taprecia [the student] exhibited, brandished, or otherwise threatened anyone with the ice pick. Her explanation for possessing the ice pick was that she was returning it to a friend who left it at her house the previous evening. Moreover, although Taprecia's past conduct is not exemplary, neither is it egregious. The school principal testified that Taprecia's disciplinary record contained six or seven disciplinary incidents, including one suspension for fighting. The Board concedes, however, that Taprecia has never had a "severe" referral disciplinary problem."

The facts, combined with a 10-day suspension which had been previously imposed and served, led to the Court of Appeals' finding that an abuse of discretion had occurred.

3. Consolidated School Dist No. 2 v King, 786 SW2d 217 (Mo App, 1990). The Missouri Court of Appeals reversed the decision of a circuit judge who had overruled a disciplinary suspension of an eighth grade student for carrying a "*butterfly knife*" to school in his jacket pocket. School administrators offered testimony during the board-level hearing that "anyone who brings a knife to school creates a potentially dangerous situation." The court specifically rejected the argument raised by the student's attorney that his exemplary prior academic and behavior records made imposition of a long-term suspension arbitrary, capricious, or unreasonable.
4. Lusk v Triad Community Unit School Dist No. 2, 551 NE2d 660 (Ill App, 1990). An Illinois Appellate Court emphatically reversed the decision of a local judge and upheld the school district's expulsion of a student for possession of a *.357 magnum pistol and a single live round of ammunition*. The court ruled that the local judge had abused his discretion in enjoining the expulsion and stated:

"a gun in school is dangerous. A gun in school sweeps all into harms' way. Carrying a gun in school cannot be endorsed. Carrying a gun in school must be condemned. Expulsion is condemnation, appropriate condemnation. This expulsion is not arbitrary, is not unreasonable, is not capricious or oppressive."
5. McClain v Lafayette Co Bd of Ed, 673 F2d 106 (CA 5, 1982). Suspension of student for carrying a *switchblade* in school did not violate due process.
6. R.R. v Bd of Ed, 263 A2d 180 (NJ Super, 1970). A New Jersey appellate court upheld the suspension of a high school sophomore for involvement in a *stabbing* incident outside of school hours and outside of school grounds. The court concluded that a disciplinary exclusion of the student from class would be permissible upon a determination by the school district that it was reasonably necessary for either the physical/emotional safety of the student himself, or for the safety and well-being of the other students and teachers in the school system and/or preservation of public school property.
7. Mitchell v Oxford Municipal Separate School Dist, 625 F2d 661 (CA 8, 1980). Court ruled that the expulsion of students for the balance of the semester for possessing *knives* on school grounds did not violate the student's due process rights.

C. Recent Legislation.

1. Public Act 320 of 1993 (Dec 31, 1993). Amended the School Code to allow a school district to establish a local school security task force to perform functions at the local level similar to those performed by the state level task force. The local task force would have to include representatives of parents, teachers and other school employees, school administrators, law enforcement officials, students, and other community members. A school district could use school operating funds for task force activities. A school district is not required to establish a local school security task force and would incur no liability if they did not. MCL 380.1291.
2. Public Act 321 of 1993 (Dec 31, 1993). Requires the Department of State Police to establish and maintain a firearms safety program to educate children about the dangerous nature and safe handling of firearms. The Department make the program available to local school districts.
3. Public Act 158 of 1994. Amended the Michigan Penal Code to establish special penalties for possession or use of a weapon on school property or within a school bus (collectively known as "weapon-free school zones"). The Act not only punishes someone who brings a weapon onto school property, but it also holds parents accountable for failing to uphold their responsibility to see to it that their children do not carry weapons to school. This legislation is effective August 15, 1994.
4. Goals 2000: Educate America Act of 1994. Amended the Elementary and Secondary Education Act of 1965 to condition federal funding on a requirement that a school district automatically expel a student for at least one year if that student brings a weapon to school. 20 USC 8001(a)(1).

D. Proposed Legislation.

1. HB 4675. This bill would create the School Security Task Force Act, under which there would be established an 18-member school security task force within the Michigan Department of Education to investigate the problems of weapons in schools and other factors that threaten school security and to recommend administrative and legislative responses to provide students with a safe environment.
2. SB 966. This bill requires the immediate, permanent expulsion of any student from school who is in possession of a firearm. No other school district is required to accept a student that has been expelled under those circumstances. Parents may petition a school district for a student's reinstatement. However, for students in grade 5 or below, reinstatement cannot be requested prior to 60 school days after expulsion and the student cannot be reinstated prior to 90 school days after expulsion. For a student in grade 6 or higher,

reinstatement cannot be requested prior to 150 school days after expulsion and reinstatement cannot take place prior to 180 school days after expulsion.

3. Safe Schools Act. This federal legislation would include \$175 million in appropriations for schools to purchase metal detectors, security officers, peer mediation and violence prevention programs.

#### NOTES:

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