

LESSON PLANS FOR HIGH SCHOOL

Lesson Plan I: Case Studies In Law And Culture

Case 1

A Colorado county court must decide a custody dispute between a Hmong husband and wife. The case began six months ago when the couple, who had been married for 10 years, separated. At that time, the court placed the five children in the temporary custody of the father, who was then living with his extended family in the same county. The mother was allowed frequent visitation, as established by the court.

Two months after this temporary custody was established, the mother fled with her five children to Minnesota, where her own family lives. After a warrant was issued for her arrest by the Colorado county, the mother returned to Colorado. Speaking through an interpreter in her court testimony, the mother claimed that her children had been abused and neglected by their father and his family; she felt forced to flee with her children to her own family in Minnesota, unaware that she was breaking the law by doing so.

The mother*s attorney has argued that the mother*s guilt in taking her children to Minnesota must be resolved in the context of Hmong culture and that the judge must understand that Hmong define themselves in terms of their clan. The father*s attorney has argued that the father put his faith in the American legal system and had been abiding by the temporary custody arrangement; the father*s rights had been violated.

The court must decide on two issues; the mother*s guilt in breaking the custody guidelines and the final custody arrangements for the children.

How do you think the judge should rule on these two issues and why? Present a verdict and an explanation for your decision.

Case 2

A California county judge must rule on a misdemeanor charge of cruelty to animals against two Cambodian refugees. The two refugees, both in their thirties, admitted to killing a German Shepherd for food. They said that eating dog meat was a common practice in their country, and that they had no idea that killing a dog for food would be illegal in the United States. Penalty for the misdemeanor charge is a fine and/or up to one year in jail.

How do you think the judge should rule on this case and why? Present a verdict and an explanation for your decision.

Case 3

While riding his bicycle home from English class in the early evening, Yongnian Shi, a visiting researcher from the People*s Republic of China, was stopped by a police patrol car.

“You had better have a light; it*s better for your safety,” the officer said. He then issued a ticket. The ticket seemed a fearful thing to Shi. Shi explained to the officer that in China, where bicycles are the principal means of transportation, a night-light is optional. The officer replied that if Shi had something to explain, he could do it in court. This order was equally fearful to Shi; if the Chinese government calls someone to court, it is a very serious matter. Shi did appear in court on the traffic violation.

How do you think the municipal court should decide on this case? Present a verdict and an explanation for our decision.

Case 4

The customary folk remedy for headaches among some Vietnamese is to massage the back and shoulders with the serrated edge of a coin. This practice leaves bruises that are easily recognizable by children's teachers.

A teacher noticed bruises on the shoulders of one of her Vietnamese students and called in social workers to investigate for child abuse. Teachers and social workers are obligated to follow the law and investigate any allegation of child abuse. The social worker filed child abuse charges against the Vietnamese family.

How do you think the court should rule on this case? Present a verdict and an explanation for your decision.

Case 5

The U.S. Supreme Court must decide whether the U. S. Constitution's guarantee of religious freedom gives worshippers the right to sacrifice animals in ritual ceremonies. The Miami suburb of Hialeah enacted a law to stop Caribbean immigrants from killing chickens, pigeons, doves, ducks, goats, sheep, and turtles in the practice of an ancient religion called Santeria. The religion originated in Africa and is widely practiced in Nigeria today. The religion was brought to the Caribbean by slaves and remained underground for 400 years. Cuban refugees brought the religion to the United States in the early 1960s.

The Church of Lukumi Abaalu Aye argues that the city and the state of Florida permit the killing of animals for many secular reasons (*i.e.*, food, recreational hunting and fishing) so the ban on religious ceremonial sacrifice as practiced by Santeria followers is wrongful government infringement on its religion. The minister says that his religion should be institutionalized as other faiths have been so that its practitioners can become part of mainstream America. In Florida, his defense claims, religion is almost the only unacceptable reason for killing an animal.

How do you think the U.S. Supreme Court should rule on this case and why? Present your decision and an explanation for it.

Case 6

Ainossau Foutuua, a Samoan immigrant, was stabbed to death outside the door of his home in Hawaii by Tonny Williams, also a Samoan. Williams was charged with murder and jailed until his trial. Tonny Williams' family responded to the crime by initiating an ancient traditional Samoan ceremony called an ifonga. In this ceremony, two Samoan high chiefs (one of whom was Tonny's father) went to the Foutuua family home covered with treasured Samoan fine mats and gifts of food, money and handicrafts. Through the ceremony, the Williams family placed themselves at the mercy of the Foutuua family and asked for forgiveness. The Foutuuas accepted the offer and gave something in return. They agreed that they would not testify against Williams at his trial. The prosecutor's office was not pleased about this decision. Without the eyewitness account of the stabbing, Williams would serve about ten years in prison rather than a life sentence.

Should the U.S. legal system recognize the ifonga as a legitimate form of handling criminal cases when both parties are Samoan? Why or why not?

ACTUAL CASE RESULTS

Case 1

The Colorado county district judge admitted that he was stymied by the cultural and language barriers posed by the case. The judge appointed a separate attorney to represent the five children in the custody case. After hearing testimony of all parties, as well as psychologists, the court decided that the custody case should not be settled by the judicial system but by their own people. The case was referred to the Laotian Family Counsel, a mediation group of Laotian and Hmong located in cities where large numbers of Southeast Asian refugees have settled. Charges against the mother for breaking the custody arrangement and leaving the state with her children were dropped, with admonitions that she must familiarize herself with the laws of the state and country where she resides.

Case 2

The California judge dismissed all charges against the Cambodian refugees for misdemeanor cruelty to animals. In his decision, the judge stated that killing an animal for food is not illegal unless done in a cruel way; the evidence did not indicate that the men had inflicted any unreasonable pain on the animal. The judge supported his decision by citing common practice in slaughterhouses and on farms.

Case 3

Yongnian Sin's American host accompanied him to municipal court. The judge and prosecutor listened to Sin's story and agreed to cancel the \$20 fine. Later, the chief of police wrote a letter to the American host thanking him for the explanation and saying that, for an officer on duty, a simple warning to Sin would have sufficed. Friends of Sin heard about the episode and bought him a light.

Case 4

When prosecutors learned of the Vietnamese folk remedy for headaches, child abuse charges against the family were dropped.

Case 5

Although the trial court and appellate courts both upheld the right of the city of Hialeah to limit the killing of animals as part of religious ceremonies, the U.S. Supreme Court rules in favor of the church, which had argued that the city's laws unfairly singled out an unpopular minority faith in violation of the First Amendment's Free Exercise Clause.

Case 6

As a result of the ifonga, the Foutuua and Williams families have a very good relationship. The Williams family did not expect the Foutuua family to refuse to testify. The families do not see the ceremony as thwarting the criminal justice system. Courts in Hawaii and California have looked for ways to integrate the ifonga into the criminal justice proceedings and serve both systems of justice. While the practice is not uniformly accepted, the courts have "accepted the ifonga as a strong cultural tradition of the Samoan community" as part of a plea bargaining process.

Lesson Plan II: Copyrights

What is a copyright?

Copyright isn't new. It is a right rooted in English common law and discussed in the U.S. Constitution. George Washington signed the first U.S. copyright law. The law was designed to encourage creativity and scholarship by allowing students and educators limited rights to use copyrighted materials for research and in classes. Copyright is commonly referred to as a property right, hence the term "intellectual property."

Who is a copyright owner?

Anyone who has ever put a work into a "tangible medium" owns the copyright to that work immediately upon creation. Registration of the material is not required for a work to be protected under copyright law, and no notice of copyright is required. Teachers and students own copyrights on their own works, just as publishers and authors own copyrights to their published and unpublished works.

What does a copyright owner own?

Owning a copyright entitles the owner/creator with five exclusive rights:

- X Right of production — making copies in paper or in media. Copies do not have to be exact.
- X Right of distribution — giving copies of the work to others either by gift, rental, sale, loan, etc.
- X Right of adaptation — creating derivative works or changing the medium of a work.
- X Right of public performance/Right of public display — these two rights cover the use of materials in situations beyond those of a family and its immediate circle of friends.

What on the Internet is copyrighted?

Determining what is copyrighted isn't as difficult as it may seem. Items marked as copyrighted are obviously covered, but so are items not marked as in the public domain. For over a dozen years, notice of copyright has not been required in order for a work to be protected by copyright. One cannot rely on the absence of a copyright symbol to indicate material that can be used freely.

How does one know if an item is copyrighted?

If it has a notice of copyright, one can easily determine copyright status. If a work has no copyright notice but has no public domain notice, one must assume that the work is copyrighted. Even materials that grant educators permission to use the works in the classroom as still covered by copyright and any use beyond the stated permitted uses must be licensed.

Can teachers use all Internet materials for free?

Under the fair use exemption to the copyright law, some materials may be used in class. Materials in the public domain would be "free" to use in any manner. No permission need be sought. Some copyrighted material may have rights granted for school use. These materials may only be used in the manner prescribed in the permission.

What may you legally do with copyrighted material found on the Internet?

While there is no legal precedent for Internet materials, some guidelines can be extrapolated from print and non-print rules. One can probably view copyrighted Internet information live on your screen or out of real time cache (replaying a page already viewed in this session) as long as the use is directly related to the day's lesson for the specific class. One could probably make a single hard (paper) copy for your personal file or use in teaching. One can

create links to images or documents on web pages since the actual document or image isn't moved from its home location. One can also argue for whatever the fair use exemption will permit.

What may students do legally with copyrighted material found on the Internet?

Students can view copyrighted material on the computer screen or out of real time cache. They can make a single, hard copy for their personal use and education or create links to them on web pages. A student can use limited amounts of copyrighted materials in work-done for class (only), not for extracurricular activities or public or commercial use. Students must acknowledge the sources of the copyrighted materials they use. Students must also retain all copies of products created, so teachers and librarians cannot legally create anthologies of student products if the products contain copyrighted materials used under the fair use exemption.

How does one get permission to use copyrighted Internet materials?

Use mail-to links on web pages to ask permission. If you know you will use material more than 4 or 5 days ahead, you are obligated to request permission. Keep any permissions on file in case of questions.

How long can one use materials?

Fair use allows a single use without express permission and only if there isn't enough time to ask. Subsequent uses MUST have written permission.

Why even bother?

Theft of intellectual property is treated the same as the theft of physical property, with significant monetary and statutory penalties. From an ethical point of view, librarians should model ethical use of materials for teachers and students. Additionally, copyright holders are increasingly defensive of their copyrights, even to the point of hiring "bounty hunters" to track down violators. Copyright is federal law, and it deserves to be respected and followed. It's the right thing to do.

RIGHTS AND RESPONSIBILITIES OF PUBLIC SCHOOL STUDENTS

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I. COMPULSORY EDUCATION

With certain exceptions, Kansas law requires every parent or person who acts as a parent and has control over or charge of any child who has reached the age of seven years and is under the age of eighteen years to require that child to continuously attend school each year.

- A. Students must attend either a public school or a “private, denominational or parochial school taught by a competent instructor for a period of time which is substantially equivalent to the period of time public school is maintained in the school district in which the private, denominational or parochial school is located.” K.S.A. § 72-1111.
- B. Exemptions from the Kansas compulsory attendance requirements are possible for children sixteen or seventeen years of age (under certain circumstances) and for exceptional children (except for gifted).
- C. Kansas law also contains a special provision for children who are members of a recognized church or religious denomination that objects to a regular public high school education and who offers a regularly supervised program of instruction meeting certain requirements. K.S.A. § 72-1111(f).
- D. Children attending public school cannot be required to participate in any activity which is contrary to their religious teachings if their parent files a written statement with the proper school authorities requesting that the child be excused and stating the reason for such request. K.S.A. § 72-1111(e).
- E. Violation of the compulsory school attendance law can give rise to criminal charges against a student*s parent and/or a finding in juvenile court that the child is a “child in need of care.” K.S.A. § 72-1113(e), (f)
- F. Law enforcement officers may temporarily detain and assume temporary custody of any child subject to compulsory school attendance laws who is found away from home or school during school hours without a valid excuse. K.S.A. § 38-1527(d). The law enforcement officer is authorized to deliver the child to the child*s parent or custodian, to the school in which the child is enrolled, or to any location designated by the school in which the child is enrolled to address truancy issues. K.S.A. § 38-1528(g).

II. DISCIPLINE OF STUDENTS

The Board of Education of every school district in Kansas is authorized to adopt rules which govern the conduct of all persons attending such schools, and to provide specific procedures for their enforcement. K.A.R. § 91-15-1.

Select disciplinary rules need not be as detailed as the criminal code, given the school*s need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process. Spencer v. U.S.D. 501.23 Kan. App. 2d 737 (1997). The state*s interest in control and safety of students and authority to control the educational setting is so broad that restrictions for the purpose of maintaining discipline and promoting an environment conducive to education may be permitted in public schools which would not be permitted in another context. Matter of C.A.J., 259 Kan. 854, 915 P.2d 62 (1996).

- A. Corporal Punishment.

In Ingram v. Wright, 430 U.S. 651 (1977), the United States Supreme Court held that corporal punishment does not violate the cruel and unusual punishment clause of the Eighth Amendment of the United States Constitution or the Due Process Clause of the Fourteenth Amendment, even if it is administered without notice and without a hearing. A student*s substantive due process rights will be violated when corporal punishment is arbitrary, capricious, or unrelated to the goal of maintaining an atmosphere conducive to learning. Hawerkamp v. U.S.D. No. 380, 689 F. Supp. 1055 (D. Kan. 1986).

A student*s substantive due-process rights may also be violated by corporal punishment which shocks the conscience. See Garcia v. Miera, 817 F.2d 650(10th Cir. 1987).

School districts with corporal punishment policies usually require prior notice such as a written warning, a witness to the administration of corporal punishment, and an explanation of the reason for the punishment given to the child*s parent.

B. Suspensions -- Generally.

Any public school student may be suspended for any of the following:

1. willful violation of any published regulation for student conduct adopted or approved by the board of education;
2. conduct which substantially disrupts, impedes or interferes with the operation of any public school;
3. conduct which endangers the safety of others or which substantially impinges upon or invades the rights of others at school, on school property, or at a school supervised activity;
4. conduct which, if the pupil is an adult, constitutes the commission of a felony or, if the pupil is a juvenile, would constitute the commission of a felony if committed by an adult;
5. conduct at school, on school property, or at a school supervised activity which, if the pupil is an adult, constitutes the commission of a misdemeanor or, if the pupil is a juvenile, would constitute the commission of a misdemeanor if committed by an adult; or
6. disobedience of an order of a teacher, peace officer, school security officer or other school authority when such disobedience can reasonably be anticipated to result in disorder, disruption or interference with the operation of any public school or substantial and material impingement upon or invasion of the rights of others.

K.S.A. § 72-8901.

C. Short Term Suspensions.

Short term suspensions are those not exceeding ten school days. K.S.A. § 72-8902(a)(1), (2). Short term suspensions may be imposed without a hearing if the presence of the student endangers other persons or property or substantially, disrupts, impedes, or interferes with the operation of the school. K.S.A. § 72-8902(b)(2). In that event, written notice within twenty-four hours after the suspension, plus an informal hearing no later than seventy-two hours after the suspension, is sufficient.

For other short term suspensions, students are entitled to notice of the charges and an informal hearing on them prior to suspension. The hearing must include the following procedural due-process requirements: the right of the student to (a) be present at the hearing, (b) be informed of the charges, (c) be informed of the basis for the accusation, and (d) make statements in defense or mitigation of the charges or accusations. K.S.A. § 72-8902(b)(1). A student who fails to attend the hearing waives his or her right to such a hearing.

School advisers are entitled to rely on traditional sources of actual information in matters of discipline, and are not limited to “evidence” of a sort that is admissible at trial because prompt action is necessary. West v. Derby U.S.D. 260,23 F. Supp. 2d 1223 (D. Kan. 1998).

D. Long Term Suspensions

A long term suspension triggers due process rights, including written notice of the proposal to suspend, which notice must specify the charges for the proposal and must state the time, date and place for the formal hearing. The hearing is to be conducted no later than ten days after the date of the notice.

The due process rights to be afforded to the student and/or parent at the formal bearing include: the right of “counsel” (any person chosen by the student to represent him or her); the right of the parent or guardian to be present; the right to see written reports of the testimony of witnesses against the student; the right to confront and cross-examine witnesses who appear in person; the right to present witnesses in person or by affidavit; the right to testify in his or her own behalf; the right to a fair and impartial decision based on substantial evidence, a record of the hearing to be paid for by the school district; and the right to appeal. K.S.A. § 72-8903.

E. Expulsion/Weapons* Possession.

Under the Weapons Free Schools Act, K.S.A. § 72-89a01 *et seq.*, school boards are required to adopt policies which require the expulsion of students for a period of not less than one year for the possession of a weapon at school, on school property, or at a school-supervised activity. 1999 changes to the Act expand the definition of a “weapon” to include, among other items, metal knuckles and switchblades, and remove the prior exception for a rifle “intended to be used solely for sporting, recreational or cultural purposes.” Boards are also required to report weapons offenses to the appropriate law enforcement agency, and if the student is a juvenile, to the Secretary of S.R.S. K.S.A. § 72-89a02(a), (f).

The Kansas School Safety and Security Act, K.S.A. § 72-89b01 *et seq.*, requires reports to be made to the appropriate law enforcement agencies by any school employee who knows or has reason to believe that any of the following acts has been committed at school, on school property, or at a school-supervised activity:

1. conduct constituting the commission of a felony or misdemeanor;
2. the possession, use or disposal of explosives, firearms, or other weapons (K.S.A. § 78b03(b)(1));

Persons who have a duty to report and fall to do so are subject to criminal penalties (K.S.A. § 72-89b04(a).

Additional internal reporting requirements apply to school employees having information regarding potentially dangerous students. 1999 Session Law, Chapter 116, House Bill 2191. Student expulsions for weapons violations have been upheld against challenges of substantive and procedural due process violations. James v. U.S.D. 512, 899 F. Supp. 530(D. Kan. 1995), and vagueness, Spencer v. U.S.D. 501, 23 Kan. App. 2d 737 (1997).

F. Suspension or Revocation of Driving Privileges.

A new provision of the law mandates that students who have been expelled or given a long term suspension for possession of a weapon; possession, use, sale or distribution of an illegal drug or controlled substance; or behavior likely to produce serious bodily injury, shall have their driver*s license (if any) suspended for a period of one year. Additional provisions penalize such students who are not yet eligible to drive, or who have had driving privileges revoked, suspended or canceled for other reasons. 1999 Session Laws, Chapter 124, Senate Bill 38.

III. SEARCHES OF STUDENTS

A. General Principles.

Students are entitled to Fourth Amendment protection against unreasonable searches and seizures in public schools, but not all searches of school students, their property, or their lockers are prohibited. Because the school has a legitimate need to maintain its learning environment, search warrants and probable cause are not required for school searches. Instead, courts balance the need for authorities to search against the invasion of privacy, and apply a standard of reasonableness based upon all circumstances. New Jersey v. T.L.O., 469 U.S. 325, (1985). In considering the reasonableness of the search, the courts will take into account the age of the student, the sex of the student, and the nature of the suspected infraction. Singleton v. B.O.E. U.S.D. 500, 894 F. Supp. 386 (D. Kan. 1995).

For purposes of determining the reasonableness of a search, the state, in its role as schoolmaster of children, may exercise a greater degree of supervision and control than it could over adults. Veronica School District 47J v. Acton, 515 U.S. 646, (1995); see Edwards for and on behalf of Edwards v. Rees, 883 F.2d 882 (10th Cir. 1989) (relaxed Fourteenth Amendment standard applies in cases involving school searches).

B. Specific Applications

1. Urinalysis Testing.

The Fourth Amendment is not violated by a school district's requirement that all student athletes submit to urinalysis testing. See Vernonia School Dist. v. Acton, *supra*. In reaching that result, the Supreme Court focused upon the decreased expectation of privacy of student athletes, the relative unobtrusiveness of the search, and the severity of the need met by the search. Strip searches are, however, likely not justifiable in a school setting. See Doe v. Renfrow, 475 F. Supp. 1012 (N.D. Ind. 1979), *modified*, 631 F.2d 91(7th Cir. 1980), *cert. denied*, 451 U.S. 1022 (1981).

2. Student Lockers.

Because lockers are school property, students have only a limited expectation of privacy in their contents. School officials have an inherent right to inspect lockers on high school property. State of Kansas v. Stein, 203 Kan, 638, 456 P.2d 1 (1969); see Singleton v. B.O.E. U.S.D. 500, 894 F. Supp. 386 (D. Kan. 1997).

3. Students* Cars.

Cars driven by students on school property may be searched by school authorities upon reasonable suspicion that the car contains contraband or other evidence of violation of law or school rules. See Coronado v. State, 806 S.W.2d 302 (Tex. Ct. App. 1991) (report of attempted drug sale from another student). A school principal cannot be liable for a search of a car on school property by a police officer where the principal, though present, did not participate in the search. Janes v. U.S.D. 512, 959 F. Supp. 1407 (D. Kan. 1997).

4. Purses, Bags, Jackets, Persons.

A pat-down search of a purse, bookbag, or pocket is usually permissible upon reasonable suspicion that it contains contraband or other evidence of violation of law or school rule. Reports from other students can give rise to such suspicion. New Jersey v. T.L.O., *supra*.

A search of middle school student was based on reasonable grounds where an adult stated that the student had stolen a large sum of money and had been in trouble with the police. The search, conducted in the principal*s office with only two male administrators present, was not excessively intrusive, despite the student*s removal of all clothes but his underwear. Singleton v. B.O.E. U.S.D. 500, 894 F. Supp; 386 (D. Kan. 1997).

5. Drug Sniffing Dogs.

United States District Courts have split on the opinion of whether canine searches for drugs in schools violate the Fourth Amendment. See, e.g., Horton v. Goose Creek Independent School Dist., 690 F.2d 470 (5th Cir.), cert. denied, 463 U.S. 1207(1982) (lockers and perhaps unattended cars can be checked by drug sniffing dogs, but student population cannot); Doe v. Renfrow, *supra* (sniffing of students by dogs upheld).

IV. FIRST AMENDMENT FREEDOMS

A. General Provisions

Students do not shed their constitutional rights at the schoolhouse door, and may exercise their right to freedom of expression unless that right materially and substantially interferes with the requirements of appropriate discipline or conflicts with the rights of others in the school. Tinker v. Des Moines Independent Com*v School Dist., 393 U.S. 503 (1969); see Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675 (1986) (no First Amendment protection to a vulgar and sexually explicit campaign speech at a student assembly).

First Amendment protection applies to actual speech and to symbolic speech on a matter of public concern, such as a black armband conveying a particularized message. See Connick v. Meyers, 461 U.S. 138 (1983); Tinker, *supra*.

B. Literature/Symbols

1. Student-Sponsored Newspapers

- a. School officials are entitled to impose reasonable restrictions on the speech of students, teachers and other members of the school community in school-sponsored newspapers written and edited by a high school journalism class. Hazelwood School Dist. v. Kuhlmeier, 44 U.S. 260.
- b. School authorities have the right to regulate or prohibit student expression that is part of a school-sponsored activity if such control is reasonably related to legitimate pedagogical concerns. Hazelwood, *supra*. Un-sponsored student expression cannot be regulated unless the schools can reasonably predict on the basis of specific facts that such expression will substantially interfere with the appropriate discipline of school operations. *Id.*; Tinker, *supra*.
- c. In response to Hazelwood, the Kansas legislature enacted in 1992 a Student Publications Act to protect the liberty of the press and student publications. The act states that student expression should not be suppressed solely because it involves political or controversial subject matter, although the number, length, frequency, distribution and format of student publications may be regulated. The act does not protect publication of matter that is “libelous, slanderous or obscene or matter that commands, requests, induces, encourages, commends or promotes conduct as defined by law as a crime or conduct that constitutes grounds for suspension or expulsion or that which creates a material or substantial disruption of normal school activity.” K.S.A. § 72-1506(c).

2. Library Materials

Where a school board orders removal of a book from the school library based on board members' personal preferences rather than established policy for review of objectionable material, and without discussion of less restrictive alternatives or access, First Amendment rights of students are violated. Case v. U.S.D. 233, 908 F. Supp. 864 (D. Kan. 1995).

3. Student*s Drawings

First Amendment rights of a student suspended for drawing a Confederate flag in class were not violated where school officials had evidence that such drawing would likely lead to disruption of class, and school policy against racial harassment and intimidation specifically prohibited possession of Confederate symbols in school. West v. Derby U.S.C. 260,23 F. Supp. 2d 1223 (D. Kan. 1998).

C. Dress Codes

1. Hair Length

A Fourteenth Amendment challenge to a dress code regulating hair length failed because it was found to meet the rational basis test. Blame v. Board of Education, 210 Kan. 560, 502 P.2d 693 (1972). In 1971, the Tenth Circuit found that hair length requirements did not implicate any constitutional rights, and therefore dismissed the case. Freeman v. Flake, 448 F.2d 258 (10th Cir. 1971).

2. T-Shirts

Courts have recently upheld dress codes aimed at eliminating gang symbols; see, e.g., Olesen v. Board of Education, 676 F. Supp. 820 (N.D. 111. 1987), prohibiting statements advocating the use of alcohol or illegal drugs or denigrating school authority, see Gano v. School Dist. No.411, 674 F. Supp. 796 (D. Idaho 1987), and restricting vulgar or disruptive speech, including sexual innuendo, see Pyle by and through Pyle v. South Hadley School Committee, 801 F. Supp. 157 (D. Mass. 1994) (First Amendment basis).

D. Religious Expression

1. Bible Clubs

Pursuant to the Equal Access Act, 20 U.S.C. 4071 *et seq.*, public secondary school students have the right to conduct meetings during non-instructional time at public secondary schools without discrimination on the basis of the religious, political, philosophical or other content of their speech, as long as the school allows other noncurriculum-related groups to so meet. See Mergens v. Board of Education of Westside Community Schools, 110 S. Ct. 2356 (1990) (upholding constitutionality of E.A.A.). 20 U.S.C. 4071 *et seq.*

2. Distribution of Literature

Policies barring out-of-class distribution of literature "of a religious nature" by students or requiring prior approval by school administrator have been held unconstitutional under the First Amendment. See, e.g., Johnston Loehner v. O*Brien, 859 F. Supp. 575 (M.D. Fla. 1994) (policy allowing unrestricted discretion by school superintendent to reject religious materials violated requirement that state neither advance nor inhibit religion); Hedges v. Wauconda Community Unit School District No. 118, No. 92-3779 (7th Cir. 1993).

3. Moment of Silence

K.S.A. § 72-5308a authorizes the teacher in charge of each public school classroom to observe, at his or her option, a brief period of silence at the opening of each school day. Such a period of silence is not to be conducted as a religious exercise, but is to be used for silent prayer or silent reflection on the activities of the day. The Kansas Attorney General has opined that because both the statute itself and the legislative history of this and subsequent bills indicates a legislative purpose which is not exclusively religious, the statute is not invalid under the holding of the United States Supreme Court in Wallace v. Jaffree, 105 S. Ct. 2479 (1985). Kan. Atty. Gen. Op. No. 85-83.

Juvenile Law

Prepared by Laura Shaneyfelt

MISCELLANEOUS LAWS THAT IMPACT STUDENTS

1. Curfew—Wichita

Age	Weeknights	Weekends
15 and under	11 p.m.-6 a.m.	Midnight-6 a.m.
16 & 17	Midnight-6 a.m.	1 a.m.-6 a.m.

Exceptions to Curfew

- With parent or guardian
- Parent or guardian sent minor on an emergency errand
- Attending official school, church, or city activity—with no detours on the way home
- Working or going to and from work
- On sidewalk next to minor’s house or minor’s neighbor’s house (if neighbor didn’t complain)
- Attending, or going to and from, an activity involving exercise of free speech, freedom of assembly, or free exercise of religion.

Penalty

- Child gets a warning from the police officer.
- After a warning, the parent can be fined from \$50-\$500 with a recommendation that the juvenile have to perform community service.

2. Alcohol

It is unlawful for anyone under 21 to possess, consume, obtain, purchase—or try to do any of these things—any beer or alcohol.

Furnishing alcohol and beer to a minor is a misdemeanor offense.

Unlawfully hosting kids under 18 who are drinking alcohol or beer is an offense.

It is illegal for anyone (any age) to transport an open container of beer or alcohol in a car.

	FINE	DL	JAIL	OTHER
Minor in possession of Alcohol—if under 18 years old	In county--\$200 mandatory minimum In Wichita— 1 st : \$100 mandatory minimum 2 nd : \$200 mandatory minimum 3 rd : \$250 mandatory	Mandatory suspension for 30 days	Up to 1 month	Judge may order 40 hours public service & education program

	minimum			
Minor in possession of beer—if under 18 years old	In county--\$200 mandatory minimum In Wichita--\$100 mandatory minimum if at club or bar; \$25 if not at club or bar	Mandatory suspension for 30 days	Up to 1 month	Judge may order 40 hours public service & education program
Transportation of open container	In county—up to \$200 In Wichita—If alcohol, up to \$200; If beer, up to \$500	In county: Mandatory suspension for 1 year if more than 1 conviction in 5 years. In Wichita: Mandatory suspension for 3 months on 1 st conviction; mandatory suspension for 1 year if more than 1 conviction in 5 years.	In county or Wichita: Up to 6 months	
Unlawful use of DL to buy alcohol	1 st : Mandatory minimum of \$200—up to \$500 2 nd : Up to \$2,500	1 st : Up to \$2,500	1 st : Up to 1 year	1 st : Mandatory minimum of 100 hours of community service

3. Tobacco

No tobacco products can be used in school buildings.

It is illegal for minors under 18 years of age to purchase or possess—or try to do either of those things—cigarettes or tobacco products. The court can fine minors for this, and the police can take the cigarettes away from them

4. Impact of conduct on driving privileges

If any student, 13 years or older, is found to be:

- (1) in possession of a weapon, *or*
- (2) in possession of a controlled substance or illegal drugs, *or*
- (3) has engaged in any activity which resulted in, or was substantially likely to have resulted in bodily injury to others, *while*
- (4) at school, on school property, or at a school-supervised activity,

the student's drivers license—or the student's ability to get a drivers license—is automatically suspended for one year.

The student has a right to request a hearing, after receiving notice of the suspension, but the hearing is just to determine whether there are reasonable grounds to believe that one of the above things happened.

SUMMARY OF THE KANSAS JUVENILE JUSTICE CODE

A. Purpose of Juvenile Justice Code

“The primary goal of the juvenile justice code is to promote public safety, hold juvenile offenders accountable for such juvenile’s behavior and improve the ability of juveniles to live more productively and responsibly in the community.” K.S.A. 38-1601.

B. Who is a juvenile and juvenile offender?

1. A person 10 years of age or older but less than 18 years of age.
2. Juvenile offender means a person who commits an offense while a juvenile which, if committed by an adult, would constitute the commission of a felony or misdemeanor.
3. Exceptions:
 - a. Traffic infraction--14 years or older
 - b. Fish & Game violations--16 years or older
 - c. Persons under 18 years of age who previously have been convicted as an adult (in Kansas or another state) or sentenced under the extended jurisdiction juvenile.

C. Time limitations

Most offenses have a two-year statute of limitation, but sex offenses have a five-year statute when the victim is under 16, and there is no time limit for first and second degree murder.

D. Juvenile taken into custody

1. A juvenile can be arrested when an officers sees him/her committing an offense; the officer has an arrest warrant; the officer has probable cause to believe that an arrest warrant exists; or the officer has probable cause to believe that the juvenile is committing or has committed an act which, if committed by an adult, would constitute a felony or a misdemeanor and the juvenile will not be apprehended, or evidence would be lost or the juvenile may cause injury or harm to self or others.
2. Arrest procedure:
 - a. The alleged juvenile offender will be taken without unnecessary delay to an intake and assessment worker. (JIAC)

- b. When the juvenile is less than 14 years of age, no in-custody or arrest admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made following a consultation between the juvenile and the juvenile's parents, guardian or attorney.

E. Juvenile detained

1. A juvenile taken into custody can be kept up to 48 hours—not including weekends and legal holidays—from the time the initial detention was imposed, unless the court determines after a hearing within the 48-hour period, that further detention is necessary.
2. If a juvenile is held in jail, the detention hearing has to be held within 24 hours.
3. The hearing can be waived or a bond may be set. The judge will consider facts such as whether the juvenile is wanted in other jurisdictions, the severity of the alleged offense, past records of failures to appear, history of criminal and/or violent behavior, and any reasons to believe that the juvenile might flee.

F. Right to counsel

Every juvenile has the right to counsel, at every stage of the proceedings. Every juvenile is qualified to have a court-appointed attorney, but may retain private counsel, if he/she so desires.

G. Duty of parents and others

A parent or guardian has to go to all hearings with the juvenile. The responsible adult will receive a summons.

H. Prosecution as an adult

1. The code presumes that juveniles in the stated age range will be treated as juvenile. In some instances, however, the State may file a motion requesting adult prosecution. This can occur at any stage of the proceedings.
2. The presumption shifts to a presumption of an adult for those juveniles who meet these criteria:
 - a. 14, 15, 16 or 17 years of age at the time of the offense or offenses alleged in the complaint, if any such offense would, if committed by an adult, be an off-grid offense, a person felony, a nondrug

- severity level 1 through 6 felony or any drug severity level 1 or 2 felony; or
 - b. the offense was committed while in possession of a firearm; or
 - c. The juvenile is charged with a felony after having been adjudicated or convicted of a felony in a separate prior juvenile proceeding and the convictions occurred before the new crime was committed.
- 3. Factors the court will consider to determine whether they should authorize adult prosecution:
 - a. The seriousness of the alleged offense and whether community protection is aided by prosecuting the juvenile as an adult;
 - b. whether the alleged offense is committed in a violent, aggressive, premeditated or willful manner;
 - c. whether the alleged offense is directed against property or person, greater weight being given to physical injury to persons;
 - d. number of pending, unadjudicated offense under the juvenile code;
 - e. previous history of juvenile, including whether juvenile has been adjudicated under the code and the nature of the offense as adjudicated;
 - f. sophisticated and maturity of juvenile, considering environment and general behavior;
 - g. whether available facilities and programs are likely to result in the juvenile's rehabilitation;
 - h. whether the community interests will be better served by a criminal prosecution.

4. Procedure

A hearing is held at which the State must show “substantial evidence” that the juvenile ought to be prosecuted as an adult. If the court agrees, the juvenile case is dismissed and the case is refiled in adult court. If the juvenile is found to be guilty of a lesser charge, he/she reverts back to being treated as a juvenile. This is only true after a trial—not if he/she enters a plea to a lesser offense.

I. Diversion (aka Immediate intervention programs)

- 1. Each county or district attorney may adopt a policy and establish guidelines for an immediate intervention program by which a respondent may avoid prosecution as a juvenile offender.
- 2. By statute, diversion cannot be offered to any juvenile if:
 - a. He/she has been previously adjudicated to be a juvenile offender.
 - b. A violation of an off-grid crime.
 - c. Sex-related offenses.

- d. Person crimes.
- e. Most drug offenses (with the exception of marijuana or alcohol).
- f. Where the respondent was illegally possessing a firearm or using a deadly weapon in the commission of such crime.

J. Jury trials

Although the law provides that a judge can order a jury trial for a juvenile who is charged with what would be a felony if he or she were an adult, this never happens.

K. Adjudicatory procedures

1. Timing

Cases are to be heard “without unnecessary delay.” There’s no speedy trial provision, as in K.S.A. 22-3402, so the court just determines whether there was unnecessary delay and prejudice.

- 2. Hearings are generally open to the public, but can be closed if the juvenile is under 16 years old and the court determines that having the hearing open to the public is not in the juvenile’s best interest.
- 3. Rules of evidence apply.

L. Sentencing alternatives

Some of the options available to the court, in any combination, are:

- 1. Probation or supervised probation for a fixed period of time, subject to conditions the court deems appropriate.
- 2. Placement in the custody of a parent or other suitable person.
- 3. Placement in the custody of a youth residential facility or in a secure facility.
- 4. Placement in the custody of the Juvenile Justice Authority (state custody).
- 5. Commit the juvenile offender to a sanctions house (juvenile detention facility) for a period no longer than seven days. Following such period, the court shall review the placement. Commitment to a sanctions house shall not exceed 28 consecutive days. An offender over 18 years of age or less than 23 years of age may be committed to a county jail.
- 6. Commit the juvenile offender to a community-based program.
- 7. Commit the juvenile offender to a juvenile correctional facility as provided by the placement matrix.
- 8. Place the juvenile offender under a house arrest program administered by the court.
- 9. The court can order the juvenile offender and parents to seek certain counseling and other related services.

10. Restitution.
11. Impact driving privileges.
12. Fines up to \$250 per offense.

M. Sentencing juvenile offenders

1. The court now uses a sentencing grid, or matrix, to arrive at a specific term of commitment.
2. Good time credit is available to any terms of confinement.
3. Modification of the sentence is possible. The commissioner may seek this from the court.
4. The juvenile may seek a departure and the court may depart if it finds substantial and compelling reasons to do so.

N. Expungement of records

Most juveniles are eligible to have their records expunged once they are 23 years old or when two years have elapsed since the completion of the sentence or of probation, if they've not been convicted of any other crime and the court find that their behavior warrants expungement. Different rules apply to sex offenders.

O. Impact on criminal history

1. If a conviction occurred before July 1, 1993:
 - a. Class D and E felonies decay at age 25
 - b. Class A, B & C felonies do not decay
2. If a conviction occurred after July 1, 1993:
 - a. Decay at age 25
 - i. Non-drug SL 6-10
 - ii. Drug SL 4
 - iii. Misdemeanors
 - b. No decay
 - i. Non-drug SL 1-5
 - ii. Drug SL 1-3
 - iii. Person felonies