

THE FOURTH AMENDMENT RIGHTS OF STUDENTS IN PUBLIC SCHOOLS



Produced by the
Law Related Education
Committee



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Picture on the cover: (l-r) Alex Sharp, Katelyn Cook, and Jackson Swain

PURPOSE/STANDARDS

This multi-faceted resource is designed to assist teachers in teaching students about the Constitution, generally, and about the Fourth Amendment, specifically.

It is recommended for use in meeting the following Kansas civics-government standard: The student uses a working knowledge and understanding of governmental systems of Kansas and the United States and other nations with an emphasis on the United States Constitution, the necessity for the rule of law, the civic values of the American people, and the rights, privileges, and responsibilities of becoming active participants in our representative democracy.

Specifically, this resource assists in meeting Benchmark 1 of that standard: "The student understands the rule of law as it applies to individuals, family, school, local, state and national governments."

This resource will assist the student to evaluate the purposes and function of law and to analyze how the rule of law can be used to protect the rights of individuals while promoting the common good. See high school instructional suggestions, recommending a Fourth Amendment search and seizure case.

METHOD

You may find this DVD to be distinctively different than most teaching resources. This film was made by students, for students, with the goal of engaging and educating today's youth. We hope you enjoy this format and that it serves as an effective teaching tool for you.

CONTENTS (16 PAGES)

- 1) **DVD** - The film on the DVD is approximately nine minutes long, if not stopped for discussion. It presents some narration or teaching by students, and a skit in which a school official searches a student's backpack upon hearing that the student has stolen a teacher's computer. The film is designed so that it can be stopped in several places for discussion, as noted in the DVD itself and in the script.
- 2) **Script of film** - for teacher's information.
- 3) **Law Wise article** - "The Fourth Amendment Rights of Students." This article summarizes the law presented in the film, and lists cases for further research.
- 4) **Questions** for verbal or written delivery (discussion or test) with answer key.
- 5) **Glossary**

SCRIPT OF DVD - "THE SHORT STORY OF SAM SNEAD'S SEARCH AT SCHOOL," A.K.A. THE FOURTH AMENDMENT RIGHTS OF STUDENTS

INTRODUCTION (TWO STUDENTS)

Katelyn: Have you ever heard of the Fourth Amendment?

Alex: Sure. Everyone's heard of that.

Katelyn: So what is it?

Alex: Well ... it's that Amendment to the United States Constitution that uh... is right after the Third Amendment and right before the Fifth Amendment.

Katelyn: No kidding. So, what does it say?

Alex: Duh uh I forget?

Katelyn: Permit me to refresh your memory. The Fourth Amendment to the Constitution says:

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.

Alex: OK, so what does that mean to me?

Katelyn: It means that the government can't make unreasonable, warrantless intrusions into areas where people have legitimate expectations of privacy.

Alex: Huh?

Katelyn: Well, instead of just telling you, let me show you.

Alex: All right.

SCENE 1, HIGH SCHOOL STUDENT AND SCHOOL LIBRARIAN

Student: You're the lady we're supposed to report crimes to, right?

Librarian: Yes, I am.

Student: Sam Snead's got a teacher's laptop in his backpack.

Librarian: What?

Student: I just saw him grab it off Mr. Taylor's desk when fourth hour class let out. He stuffed it in his backpack and left. He didn't see me but I saw him. I gotta go!

Librarian: OK Susie. Thanks. I'll take care of it. You to on to class.

SCENE 2, LIBRARIAN AND VICE PRINCIPAL

Librarian: I just heard that Sam Snead just stole a laptop from Mr. Taylor's desk, and has it in his backpack.

V.P.: Who told you that?

Librarian: A student that I consider to be pretty reliable.

V.P.: Was it Mr. Taylor's laptop?

Librarian: Yes, that's what she said.

V.P.: Who said so?

Librarian: Susie Myers.

V.P.: Oh, yes, I know her. I wouldn't think she'd be lying about that. OK, thanks, I'll take care of it.

SCENE 3, V.P. (ON CELL PHONE TALKING TO THE SCHOOL RESOURCE OFFICER)

V.P.: Paul, I need you to bring Sam Snead to the office a.s.a.p.

SRO's voice: Yes, ma'am. Will do. What class is he in now?

V.P.: His fifth hour class is choir, Room 204. And make sure he brings his backpack.

SRO: OK. I'll bring him down.

SCENE 4, VICE PRIN., SAM THE STUDENT, AND PAUL THE SRO.

V.P.: Sam, I just got word that someone saw you take a computer today that does not belong to you. Is that right?

Sam: No, it's not right. Who said that?

V.P.: Do you have anything in your backpack that belongs to a teacher?

Sam: No.

V.P.: Is this your backpack?

Sam: Yeah, it's mine and you can't look in it. That's my private stuff.

V.P.: Paul, why don't you take a look.

Sam: Hey, you can't do that. I've got my constitutional rights, just like anyone else, don't I? That's an illegal search cuz you don't have a warrant.

(Teachers, optional stop of DVD for discussion)

DISCUSSION POINT 1 - (OR Q & A) (GENERAL RIGHTS OF STUDENTS; NO WARRANT NECESSARY)

What do you think? Is Sam right that his backpack cannot be searched without a search warrant?

Response - Sam is only partly right. He does have constitutional rights, but they are different than those adults have in other settings, and no warrant is required in this situation.

(Teachers, restart the DVD)

Alex: Sam's right isn't he -they can't search his backpack without a search warrant, can they?

Katelyn: Sam is only partly right. He does have constitutional rights, but they are different than those adults have in other settings, and no warrant is required in this situation.

Alex: Are you telling me that students shed their constitutional rights at the schoolhouse door like a dog sheds fleas?

Katelyn: No, but students don't automatically get the same protections under the Fourth Amendment that adults do. Students in schools only have a limited expectation of privacy.

Alex: So, does the Fourth Amendment, which prohibits unreasonable searches and seizures, apply to all searches conducted by public school officials?

Katelyn: Yes, but the rights of students must be determined in light of special characteristics of a school environment. The State, in its role as schoolmaster of children, may exercise a greater degree of supervision and control over students than it can exercise over adults.

Alex: Are you saying that a search of a student may be legal when a search of an adult under similar circumstances would be illegal?

Katelyn: Exactly.

Alex: Well don't school officials have to get a warrant before searching a student's things?

Katelyn: No, school officials do not need to get a warrant before searching a student who is under their authority. Requiring a teacher to get a warrant before searching a child suspected of breaking the school's rules or committing a crime would "unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools."

Alex: So you're telling me that even though Sam has a legitimate expectation of privacy in his backpack, the school does not need to get a search warrant before searching it?

Katelyn: Right. No warrant is necessary.

Alex: So what's going to happen to Sam?

Katelyn: Well, let's see.

SCENE 5, SAM THE STUDENT AND VICE-PRINCIPAL

Sam: Well, even if you don't need a warrant, you need probable cause to believe I've broken the law, before you can search. You didn't see me do anything. You can't search without a warrant unless you have probable cause!

V.P.: Oh really?

(Teachers, optional stop of DVD for discussion)

DISCUSSION POINT 2

REASONABLE SUSPICION STANDARD

What do you think? Is Sam right that if there is no warrant, a school official needs to have probable cause before searching?

Response: Sam is correct that generally, in non-school settings, probable cause is required to justify a warrantless search, but school searches are an exception to that general rule. For school searches, a lesser standard of reasonable suspicion, not probable cause, is required.

(Teachers, restart the DVD)

Alex: Well even I know that searches have to be based on probable cause.

Katelyn: Well, most searches, even those that can be done without a warrant, must be based on probable cause.

Alex: What is probable cause anyway?

Katelyn: “Probable cause exists where the facts and circumstances known to an officer raise a “fair probability” or a “substantial chance” of discovering evidence of criminal activity, or here, violating a school rule.

Alex: So probable cause is required for school searches?

Katelyn: No, school searches are different. Only reasonable suspicion, and not probable cause, is required. Reasonable suspicion requires less than probable cause, and exists where the facts and circumstances known to a school official raise a “moderate chance” of finding evidence of wrongdoing.

Alex: Are you telling me that school officials can just ignore students’ privacy rights?

Katelyn: No, the privacy interests of students are not ignored, but are balanced against the substantial interest of teachers and administrators in maintaining order in the schools.

Alex: Can an anonymous tip provide reasonable suspicion for a search?

Katelyn: Yes, if it is sufficiently reliable. Here, the tip to the librarian was found to be reliable enough to create reasonable suspicion.

Alex: What if a student’s acts are not illegal - just a little disruptive?

Katelyn: Well, even if a student’s actions are not criminal or illegal, they can be prohibited by a school, especially when they materially and substantially disrupt the work or discipline of school.

Alex: Well, what if the school’s rule or policy is really stupid?

Katelyn: Well THAT never happens, but if it did, it probably wouldn’t make any difference. Courts are courts - they are not teachers or principals, and they like to let school administra-

tors determine school standards of conduct without second-guessing them, even if the school’s rules might appear to be unwise or strict.

Alex: So what’s happening with Sam and his school administrators, anyway?

SCENE 6 – SAM THE STUDENT, V.P. AND SRO

Sam: So, someone snitched, huh?

(Guard searches, finds stolen computer.)

V.P.: (To SRO) I suppose we should search his pants pockets and his car too. Who knows what else we may find.

Sam: What? Stop! You can’t search me! Just because you find something in my backpack doesn’t give you the right to search wherever you want.

(Teachers, optional stop of DVD for discussion.)

DISCUSSION POINT 3

SCOPE OF SEARCH

What do you think? Is Sam right that there is no reason to search his pockets and car?

Response: Amazingly, Sam is right.

(Teachers, restart DVD)

Alex: So, if it’s OK to search, can school officials search anywhere?

Katelyn: No, the search has to be “reasonably related in scope to the circumstances which justified the interference in the first place.”

Katelyn: A school search has to consider the reason for the search, the age and sex of the student and the nature of the student’s acts, and can’t be excessively intrusive.

Alex: What’s excessively intrusive mean?

Katelyn: Well, for example, a strip search would be excessively intrusive unless the official had reasonable suspicion to believe the students were hiding evidence in their underwear.

Alex: So what about searching Sam?

Katelyn: Well they can’t search Sam’s pants pockets since the computer is too large to fit in them, and they can’t search his car for the computer since the tip said that Sam had just put the computer in his backpack, and Sam did not have time to go to his car.

Alex: Well can they search for other stuff?

Katelyn: Searching for other stolen items or evidence would be beyond the reasonable scope of the search. Based upon the

facts known to the school officials and security guard, there is no reason to suspect that there's any evidence of wrongdoing in Sam's pockets or in his car.

So, now do you understand more about the Fourth Amendment and students' rights?

Alex: Well, sure. Even for students, searches have to be reasonable. So that means my mom can't search my room unless she has a good reason to think I'm hiding food there, right?

Katelyn: Well the Fourth Amendment only restricts what the state or government officials can do - it doesn't keep your mom or other private parties from doing anything.

Alex: What??? Hey, see ya later - I gotta go clean my room.

END OF DVD/SCRIPT

Law Wise Article

"The Fourth Amendment Rights of Students"

By Kathryn Gardner, J.D.

The Fourth Amendment to the Constitution says:

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.

This means that the government cannot make unreasonable, warrantless intrusions into areas in which people have legitimate expectations of privacy. Does this right apply to students in school and if so, to what extent?

Different standards apply to students

Students, like adults, have constitutional rights, but they are different than the constitutional rights free adults have in other settings. Students do not shed their constitutional rights at the schoolhouse gate, but students are not automatically entitled to the same protections under the Fourth Amendment as adults are in other settings. Students in schools enjoy only a limited expectation of privacy.

The Fourth Amendment, which prohibits unreasonable searches and seizures, applies to searches conducted by public school officials.

But the rights of students must be determined in light of special characteristics of a school environment. The State, in its role as schoolmaster of children, may exercise a greater degree of supervision and control than it could exercise over free adults for the purpose of determining reasonableness of search. So a search of a student may be legal when a search of an adult under similar circumstances would be illegal.

In general, the search of a student by a school official must be reasonable under all the circumstances. To determine the reasonableness of a search: First, one must consider 'whether the action was justified at its inception; Second, the search as actually conducted must be reasonably related in scope to the circumstances which justified the interference in the first place. Under ordinary circumstances, a search of a student by a teacher or other school official will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.

No search warrant is necessary in schools

Most searches of adults by a law enforcement officer must be supported by a search warrant signed by a judge, based on probable cause. But school officials do not need to get a warrant before searching a student who is under their authority. The warrant requirement is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools.

So a school official usually does not need to get a search warrant before searching a student's backpack or other object for evidence of wrongdoing.

No probable cause is necessary in schools

In non-school settings, law enforcement officers usually must have probable cause to get a warrant to search a residence, or to justify a warrantless search of a vehicle. Ordinarily, a search-even one that may permissibly be carried out without a warrant-must be based upon 'probable cause' to believe that a violation of the law has occurred. "Probable cause exists where the facts and circumstances known to an officer raise a "fair probability" or a "substantial chance" of discovering evidence of criminal activity.

But for school searches, only reasonable suspicion, and not probable cause, is required. Reasonable suspicion requires less information than probable cause, and exists where the facts and circumstances known to a school official raise a "moderate chance" of finding evidence of wrongdoing. The privacy interests of schoolchildren are not ignored, but are balanced against the substantial interest of teachers and administrators in maintaining order in the schools.

What is reasonable suspicion?

Reasonable suspicion requires less information than probable cause, and exists where the facts and circumstances known to a school official raise a "moderate chance" of finding evidence of wrongdoing.

Even an anonymous tip can provide reasonable suspicion for a search, if the source is sufficiently reliable. So, for example, if a person anonymously calls in a tip and has provided valid information several times before, reasonable suspicion could be

based upon the information given by that person, even though the person's name is unknown.

School administrators have the right to prohibit students' acts that are not illegal. Even if a student's actions are not criminal or illegal, they can be prohibited by a school, especially when they materially and substantially disrupt the work or discipline of school. The wisdom of the school's policy or rule usually does not matter to the courts. Courts are courts - they are not teachers or principals, and they find that school standards of conduct are for school administrators to determine without second-guessing by courts, even if the school's rules might appear to some to be unwise or too strict.

Extent of search

A search at school as actually conducted must be "reasonably related in scope to the circumstances which justified the interference in the first place." A school search will be permissible in its scope when "the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." The younger the student and the more invasive the search, the more likely it is to be found unreasonable.

For example, where a school administrator has reasonable suspicion that a student has stolen a school's laptop computer, a search of his locker would be reasonable, because the computer could be found there. However, a search of the student's pants pockets would not be legal as there is no chance that the stolen computer is in them. The scope or extent of any search of the student's pockets would likely be deemed intrusive and unreasonable. Unless the administrator has reasonable suspicion that the student is in possession of other stolen items or evidence, a search of his pockets would be unreasonable in scope.

For further information, check out these cases.

United States v. Chadwick, 433 U.S. 1, 7, 53 L.Ed.2d 538, 97 S.Ct. 2476 (1977). The government cannot make unreasonable, warrantless intrusions into areas where people have legitimate expectations of privacy.

Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 506 (1969); *Morse v. Frederick*, 127 S. Ct. 2618, 2628, 168 L. Ed. 2d 290, 220 Ed. Law Rep. 50 (2007). Students do not shed their constitutional rights at the schoolhouse gate.

Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 682 (1986). Students in schools enjoy only a limited expectation of privacy and are not automatically entitled to the same protections under the Fourth Amendment as adults are in other settings.

New Jersey v. T.L.O., 469 U.S. 325 (1985). The Fourth Amendment, which prohibits unreasonable searches and seizures, applies to all searches conducted by public school officials. School officials do not need to get a warrant before searching a student who is under their authority. "School standards of conduct are for school administrators to determine without second-guessing by courts." 469 U.S. at 342 n. 9.

Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260, 266 (1988). The rights of students must be determined in light of special characteristics of a school environment.

Vernonia School Dist. 47J v. Acton, 515 U.S. 646 (1995). The State, in its role as schoolmaster of children, may exercise a greater degree of supervision and control than it could exercise over free adults for the purpose of determining reasonableness of search.

Healy v. James, 408 U.S. 169 (1972). In the context of the special characteristics of a school environment, the government's power to prohibit lawless action is not limited to criminal acts of students, but includes actions which materially and substantially disrupt the work and discipline of the school.

Wood v. Strickland, 420 U.S. 308 (1975). It is not the role of the federal courts to set aside decisions of school administrators which the courts may view as lacking in wisdom or compassion.

Safford USD No. 1 v. Redding, _ U.S. _, 129 S.Ct. 2633 (2009). A school administrator's search of a student's backpack and outer clothing for prescription drugs was legal, but a search of the student's underwear was intrusive and unreasonable, since the administrator had no reasonable suspicion that the student had used her underwear for hiding evidence, or that the circumstances posed any danger.

In re L.A., 270 Kan. 879, 21 P.3d 952 (2001). *Miranda* warnings do not need to be given to Kansas school students who are questioned by school officials or school security officers. As K.S.A. 72-8222 says, the primary responsibility of a school security officer is not to be a public law enforcement officer, but to protect school district property and the students, teachers, and other employees on the premises of the school district.

Findlay v. State, 235 Kan. 462, 463-64, 681 P.2d 20 (1984). In Kansas, minors who committed crimes historically had no right to a jury trial. There is generally no right to a jury trial in a juvenile delinquency proceeding under the Sixth Amendment.

In re L.M., 286 Kan. 460, Syl. ¶¶ 1, 2, 186 P.3d 164 (2008). The Kansas Supreme Court held that juveniles charged with crimes now have the same right to a jury trial as adults under the United States and Kansas Constitutions (overruling the *Findlay* case).

QUESTIONS WITH ANSWER KEY.

The Fourth Amendment to the Constitution says:

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.

1. What does the Fourth Amendment to the United States Constitution mean?
 - A. It means that the government cannot make unreasonable, warrantless intrusions into areas where people have legitimate expectations of privacy.
2. Does the Fourth Amendment apply to students in school?
 - A. Yes.
3. Does the Fourth Amendment apply to students in school in the same way as it applies to adults?
 - A. No. Students have only a limited expectation of privacy, which must be balanced against the rights of school administrators to maintain order and discipline. The State, in its role as schoolmaster of children, may exercise a greater degree of supervision and control over students than it can exercise over adults.
4. When is a school official's search of a student or the student's property legal?
 - A. A school official's search is legal if it is reasonable under all the circumstances. A school search will usually be found to be reasonable, and thus legal, if: 1) the action was justified at its beginning, such as where the official has reasonable grounds to suspect that the search will uncover evidence that the student has violated the law or the school's rules; and 2) the search is limited in scope to the circumstances known to the official.
5. Is a warrant required before a school official can search a student?
 - A. No. School searches are an exception to the usual requirement that officers cannot search without a warrant. The special needs of the school setting can justify a search even without a warrant.
6. Is probable cause required before a school official can search a student?
 - A. No. Probable cause is generally required before a law enforcement officer can search outside the school context for evidence of a crime, but not before a school official can search in school.
7. What is probable cause?
 - A. Probable cause exists where the facts and circumstances known to an officer raise a "fair probability" or a "substantial chance" of discovering evidence of criminal activity.
8. What level of suspicion or belief do school officials need before they can legally search a student at school?
 - A. Reasonable suspicion.
9. What is reasonable suspicion?
 - A. Reasonable suspicion requires less than probable cause, and exists where the facts and circumstances known to a school official raise a "moderate chance" of finding evidence of wrong doing.
10. Can an anonymous tip provide reasonable suspicion for a search?
 - A. Yes, if it is reliable enough. Reliability may be shown if the tip has details that make it seem reliable, if the same person (although unidentified) has provided trustworthy information in the past, etc.
11. If a school official has reasonable suspicion for a search, can the official search all the students' belongings?
 - A. No. The search must be limited in its scope to the reasons for the search in the first place.
12. Can a school prohibit disruptive acts that are not illegal?
 - A. Yes. Even if a student's actions are not criminal or illegal, they can be prohibited by a school, especially when they materially and substantially disrupt the work or discipline of school.
13. Will a court change or overrule a legal but unwise school rule or policy?
 - A. No. Courts are courts - they are not teachers or principals, and they like to let school administrators determine school standards of conduct without second-guessing them, even if the school's rules might appear to the court to be unwise.
14. Does the Fourth Amendment prohibit a private person from conducting an unreasonable search?
 - A. No. It only protects against acts of the government, not against acts of private parties.

GLOSSARY

Constitution: The document containing the system of fundamental principles by which a nation, state or other body is governed.

Bill of Rights The first ten amendments to the Constitution of the United States, which state the rights that cannot be violated by the United States government.

Fourth Amendment: One of the provisions in our Bill of Rights which secures the right of the people to be free from unreasonable searches and seizures by the government.

Probable cause: The level of knowledge generally required for a law enforcement officer's search outside school, where the known facts and circumstances raise a "fair probability" or a "substantial chance" of finding evidence of criminal activity.

Reasonable suspicion: The level of knowledge required for a school search which is less than probable cause, and exists where the facts and circumstances known to a school official raise a "moderate chance" of finding evidence of wrongdoing.

Search warrant: A written order signed by a judge and based on sworn testimony, which authorizes a law enforcement officer to search a specific place, and to seize evidence of a crime or other listed items from that place.