STUDENT SEARCHES and DRUG TESTING

STUDENT SEARCHES

I. When in Doubt, Read the Statute

Iowa Code Chapter 808A – Student Searches

808A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Protected student area" includes, but is not limited to:
   a. A student's body.
   b. Clothing worn or carried by a student.
   c. A student's pocketbook, briefcase, duffel bag, bookbag, backpack, knapsack, or any other container used by a student for holding or carrying personal belongings of any kind and in the possession or immediate proximity of the student.
      - *Protected student area does not include lockers or desks.*
      - *Protected student area does not include clothing or a container not in possession or close proximity of student.*

2. "School" means a public or nonpublic educational institution offering any of grades kindergarten through twelve.
   - *This includes an AEA when instruction is offered to students. It also includes non-accredited "schools."*

3. "School official" means a licensed school employee, and includes unlicensed school employees employed for security or supervision purposes.

4. "Student" means a person enrolled in a school for any of grades kindergarten through twelve.
   - *This includes a CPI student who is enrolled in a Home School Assistance Program as well as a CPI student who is dually enrolled.*

5. "Student search rule" means a rule established by the school board of a public school, pursuant to section 279.8 or 279.9, or the authorities in charge of a nonpublic school controlling the manner of the searching of students or protected student areas and school lockers, desks, and other facilities or spaces owned by the school. A student search rule, to be valid for purposes of this chapter, shall require that all searches of students or protected student areas be reasonably related in scope to the circumstances which gave rise to the need for the search and based upon consideration of relevant factors which include, but are not limited to, the following:
   a. The nature of the violation for which the search is being instituted.
   b. The age or ages and gender of the students who may be searched pursuant to the rule.
   c. The objectives to be accomplished by the search.
      - *Student search rule must be a board policy. See Appendix A for IASB's sample policy.*

- *Rule must be published in student handbook.*
- *Rule must facially require that searches of protected student areas be reasonably related to the particular circumstances (no suspicionless searches) and based on listed factors.*

808A.2 Searches of students, protected student areas, lockers, desks, and other facilities or spaces.

1. The school board of each public school and the authorities in charge of each nonpublic school shall establish and may search a student or protected student area pursuant to a student search rule. The student search rule shall be published in each public school's and each nonpublic school's student handbook. A school official may search individual students and individual protected student areas if both of the following apply:
   a. The official has reasonable grounds for suspecting that the search will produce evidence that a student has violated or is violating either the law or a school rule or regulation.
   b. The search is conducted in a manner which is reasonably related to the objectives of the search and which is not excessively intrusive in light of the age and gender of the student and the nature of the infraction.
      - *School officials must have reason to suspect that the search will produce fruit.*
      - *Factors listed by which to judge how intrusive search may be: age of student, gender of student, and type of violation suspected.*

2. School officials may conduct periodic inspections of all, or a randomly selected number of, school lockers, desks, and other facilities or spaces owned by the school and provided as a courtesy to a student. The furnishing of a school locker, desk, or other facility or space owned by the school and provided as a courtesy to a student shall not create a protected student area, and shall not give rise to an expectation of privacy on a student's part with respect to that locker, desk, facility, or space. Allowing students to use a separate lock on a locker, desk, or other facility or space owned by the school and provided to the student shall also not give rise to an expectation of privacy on a student's part with respect to that locker, desk, facility, or space. However, each year when school begins, the school district shall provide written notice to all students and the students' parents, guardians, or legal custodians, that school officials may conduct periodic inspections of school lockers, desks, and other facilities or spaces owned by the school and provided as a courtesy to a student without prior notice. An inspection under this subsection shall either occur in the presence of the students whose lockers are being inspected or the inspection shall be conducted in the presence of at least one other person.
      - *No expectation of privacy "with respect to that locker, desk," etc.*
      - *Written notice that school officials may conduct periodic inspections of lockers, desks, etc., must be provided at start of school year. OK if the notice is in the handbook?*
      - *Must searches of desks or other spaces (non-lockers) be conducted in the presence of the student or anyone?*

3. Under no circumstances may a search be made which is unreasonable in light of the following:
   a. The age of the student.
   b. The nonseriousness of the violation.
   c. The sex of the student.
   d. The nature of the suspected violation.
      - *This is different from issue of intrusiveness, but uses same factors as listed in 808A.2(1)(b), with the addition of "nonseriousness of the violation."*

4. A school official shall not conduct a search which involves:
   a. A strip search.
   b. A body cavity search.

c. The use of a drug-sniffing animal to search a student's body.
d. The search of a student by a school official not of the same sex as the student.
   - *No drug dogs for searches of "a student's body."*

5. If a student is not or will not be present at the time a search of a protected student area is conducted pursuant to subsection 1, the student shall be informed of the search either prior to or as soon as is reasonably practicable after the search is conducted.

808A.3 Student search by peace officer.

The search of a student or of a protected student area by a peace officer who is not a school official, or by a school official at the invitation or direction of a peace officer who is not a school official, shall be governed by the statutory and common law requirements for police searches.

808A.4 Exclusion of evidence.
Material or evidence obtained directly or indirectly as a result of a search conducted in violation of this chapter is inadmissible in a criminal proceeding against a student.

II. Snatching Confusion from the Jaws of Clarity – *State v. Jones*

State v. Jones, 666 N.W.2d 142 (Iowa 2003) The full case is electronically available at http://www.judicial.state.ia.us/supreme/opinions/20030717/02-0505.asp?printable=True.

In July of 2003, the Iowa Supreme Court issued a decision regarding the validity of a student locker search conducted by the Muscatine Community School District. Although it is a criminal case (the student was charged with possession of marijuana), the sole issue before the Court involved the reasonableness of the search of the student's locker. While the Court upheld the District's actions, caution is strongly urged because the Court only mentioned Iowa Code chapter 808A, which was enacted in 1986, in passing.

FACTS:
The high school conducted an annual "locker clean-out" on December 20, 2001, just before winter break. The purpose was "to ensure the health and safety of the students and staff and to help maintain the school's supplies." This means that staff was on the lookout for overdue library books, "misplaced" school property, excessive trash, and contraband. All students were given a few days' notice of the date on which the clean-out would occur, and all students were asked to report to their locker at an assigned time.

Only about 18% of the students did not report to their lockers when asked to do so. For those students, school employees opened their lockers – without any knowledge of to whom the lockers were assigned – on the day following the assigned clean-out. Student Jones was among those who did not voluntarily participate in the clean-out. When school employees opened his locker, it contained only a coat. Concerned that the coat might hold "trash, supplies, or contraband," one employee manipulated the coat and discovered a small bag of pot in an outside pocket. Jones was charged with the serious misdemeanor of possession of marijuana. He alleged that the search of his locker violated his Fourth Amendment right of freedom from unreasonable search and seizure. The trial court granted Jones' motion to suppress.

RULING:
Our Supreme Court (Justice Cady wrote the opinion) analyzed this case using the usual three factors: (1) the nature of the privacy interest at stake, (2) the nature of the intrusion caused by the search, and (3) the nature of the purpose(s) of the search.

1. **Nature of Privacy Interest.** About half the states who have faced this issue have ruled that a student has no expectation of privacy in a school locker; half have concluded that a

student does have an expectation of privacy in the contents of his/her school locker. The Iowa high court labeled a student's locker an "island of privacy in an otherwise public school," and ruled therefore that "a student such as Jones has a measure of privacy in the contents of his locker." **Regarding 808A, the Court acknowledged that state law [808A.2(2)] and the District's policy based on 808A "clearly contemplate and regulate searches of school lockers. Nevertheless, we believe Jones maintained a legitimate expectation of privacy in the contents of his locker."** 666 N.W.2d at 148.

2. **Nature of the Intrusion.** Using a standard of "reasonableness under the circumstances," the Court concluded that the search was not overly intrusive, and that the underlying purposes of the search were necessary to "maintain a proper educational environment."

3. **Nature of Purpose of Search.** Important to the Court was the fact that the search took place in a public school where officials have both a duty to educate students and to protect them. The Court concluded that the students, including Jones, who did not comply with the request to be present at their locker gave the school little choice of how to carry out its duty to protect students.

BOTTOM LINE:
Schools and school districts should not rely solely on Iowa Code 808A.2(2). That statute states that "[s]chool officials may conduct periodic inspections of all, or a randomly selected number of, school lockers … ." The Court makes it clear that, despite this statutory language, a student does have an expectation of privacy in the contents of his/her locker. However, the good news for schools and school districts is that this privacy may be "impinged upon for reasonable activities by the school in furtherance of its duty to maintain a proper educational environment." As was the case here, if the purposes of the search are directly related to maintenance of that proper educational environment and if the search is conducted in such a way to meet those purposes and nothing else, the search has a good chance of surviving a Constitutional challenge.

THEREFORE, the prudent approach to a mass search of all lockers would now be to give prior notice to students (i.e., in addition to the beginning of the year notice).

III. Other Cases

A. In the Beginning

New Jersey v. T.L.O., 105 S.Ct. 733 (1985)
T.L.O. answered the lowest common denominator question, "Does the 4th Amendment apply to searches conducted by public school officials?"

Facts: 14 year old female, upon being discovered smoking in the girls' bathroom at school, was taken to the principal's office. In the office, she foolishly denied smoking – both in the bathroom and ever. Principal asked to see her purse, which the student had with her, and immediately discovered cigarettes and rolling papers. He then conducted a more thorough search of the entire purse, which netted marijuana, a pipe, plastic baggies, a large amount of cash, and a list of names of other students who owed the student money.

Holdings: (1) The 4th Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials. School officials are acting as representatives of the state.
(2) For a student to be protected by the 4th Amendment in the school context, the student must have a legitimate expectation of privacy in the items the student brings to school.
(3) Search of student's purse was reasonable. It was based on reasonable suspicion that the student had been smoking, a violation of school and state

rules. Finding the rolling papers gave rise to the reasonable suspicion that other illegal activity was afoot.

Cason v. Cook, 810 F.2d 188 (8th Cir. 1987)
Cason is Iowa's first 4th Amendment case post-*T.L.O.*, and answered the additional question of whether it makes a difference if a law enforcement official is present when a school official conducts a student search at school.

Facts: Within a matter of a few minutes, three separate incidents of theft from the high school girls' locker room were reported to the vice principal, who was standing in the hallway at the time with the school's school resource officer (an employee of the Des Moines Police Department) After some basic detective work, the administrator questioned a female student and searched the student's purse. She found items that matched the description of some of the stolen property. The S.R.O. did not participate in the questioning of the student, nor in touching her purse, but did conduct a pat down of the student after stolen items had been discovered in the student's purse.

Holdings: (1) The search was justified at its inception and reasonable in scope as to the circumstances.
(2) The search was not conducted "at the behest of" the S.R.O., but "in conjunction with" law enforcement. Therefore, the reasonableness standard applies, and not a heightened level of suspicion of illicit activity.

B. Suspicionless Searches

Vernonia School Dist. 47J v. Acton, 115 S.Ct. 2386 (1995)
Held, that students who participate in athletics have even lesser privacy expectations than their non-participant classmates and thus may be subjected to random, suspicionless urinalysis drug testing. At the time, it appeared to be important to the Court that drug use "increase[d] the risk of sports-related injury," and that the district's athletes were leaders of the local "drug culture" that had reached "epidemic proportions."

Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls, 122 S.Ct. 2559 (2002)
In a 5-4 decision the Court expanded the holding in *Vernonia* to apply to students who participate in any extracurricular activity, despite the lack of evidence that seemed to be so persuasive in *Vernonia*.

> Of course, UAs are "searches" under Iowa Code chapter 808A. *Vernonia* and *Earls* are just interesting cases for us Hawkeyes.

Doe v. Little Rock School District, 380 F.3d 349 (8th Cir., August 18, 2004)
With no advance notice and with no suspicion of illicit activity, district personnel ordered all students in a secondary classroom to leave the room after removing all contents of their pockets and placing all of the belongings (backpacks and purses, too) on their desks. Marijuana was found in Doe's purse. This search was found to violate the 4th Amendment. The 8th Circuit did not agree with the district's argument that it gave "notice" via a statement in the student handbook that backpacks and purses were subject to random and periodic inspections by school officials.

Query: Could an Iowa school official thwart the definition of "protected student area" in chapter 808A by having students place their belongings on a desk and walk away?

C. Miscellaneous: Including Dogs, Magnetometers, and "9/11"

Thompson v. Carthage School District, 87 F.3d 979 (8th Cir. 1996)

Facts: Because fresh cuts were found by a bus driver at the end of her morning route in seats on her bus, the school principal determined that a knife or other cutting weapon was on school grounds. She then decreed that all male students in grades 6 – 12 be searched. The students removed their jackets, shoes, and socks, and emptied their pockets. A metal detector was used to check all the male students for concealed weapons; if the detector sounded, the student was patted down by a male instructor. Cocaine was found on the person of student Lea (Thompson's ward); he was expelled for the remainder of the school year. No weapons were found.

Holdings: (1) The 4th Amendment did not apply to the student's § 1983 wrongful expulsion action to prevent school officials from disciplining him based upon fruits of the search.
(2) Search of all male students in grades 6 – 12 was not clear violation of 4th Amendment; search was reasonable in light of the fresh cuts in the bus seats which gave rise to a reasonable fear that a cutting weapon was at school.

Not only did the 8th Circuit rule that Lea was not wrongfully expelled, it reversed the trial court's $10,000 damage award to him.

B.C. v. Plumas Unified School Dist., 192 F.3d 1260 (9th Cir. 1999)
This case is going to the dogs. We know from *U.S. v. Place,* 103 S.Ct. 2637 (1983) that a trained dog may sniff unattended luggage without violating the 4th Amendment (in fact, such sniffing is not a search, per the Supreme Court), but whether sniffing a person is a search has remained without answer from our highest court. The two Circuits to address this directly – the Fifth[1] and the Seventh[2] – are split. The Ninth Circuit had previously hinted that such circumstances might be labeled by it as a search.[3] That Court removed all doubt in this case.

Facts: High school students in one classroom were told to exit the classroom. They passed by a drug-sniffing dog who "alerted" to a student other than B.C. The students waited outside the classroom while the dog sniffed backpacks, jackets, and all other items left behind in the classroom. No drugs were found. B.C. sought a preliminary injunction against a repeat performance.

Holdings: (1) When high school students are sniffed by a trained dog, there is an infringement of their reasonable expectation of privacy, and thus a search has occurred.
(2) Therefore, such a search must be based on individualized suspicion of wrong doing.

Summary judgment for the defendant district was upheld, however, because B.C. had left no belongings in the classroom, and thus had not been subjected to any search.

Bourgeois, et al. v. Peters, et al., ___ F.3d ___ (11th Cir., October 15, 2004)
Bourgeois is not a school law case, but involved a mass, suspicionless, warrantless search using magnetometers (metal detectors) of all who wishes to participate in a non-violent protest

[1] *Horton v. Goose Creek Ind. School Dist.*, 690 F.2d 470 (5th Cir. 1982)(yes – it is a search)

[2] *Doe v. Renfrow*, 631 F.2d 91 (7th Cir. 1980)(no – it is not a search)

[3] *U.S. v. Beale*, 736 F.2d 1289 (9th Cir. 1984)

held annually at Fort Benning, Georgia, against the "School of the Americas." In the 13-year history of the protest, no weapons have ever been found at the protest site; no protestor has ever been arrested for an act of violence. The police chief invoked "9/11" as his general reason for instituting the search. The 11th Circuit held that the search violated both the 4th and 1st Amendments.

State v. K.L.M., 628 S.E.2d 651 (Ga. App. 2006)
In this case, a student was suspected of selling drugs at school. A school employee searched the student, but justified the search as necessary to "preserve the safety of school personnel."

In Iowa, this is NOT a legal justification for the search. Any drugs found during a search undertaken for safety reasons would be tossed out. But the good news is that the search would have been allowable if the school official had just stated that his reason for searching the student was that the official had reasonable grounds for suspecting that the search would produce evidence that the student was violating either the law or a school rule or regulation.

DRUG TESTING of STUDENTS

The U.S. Supreme Court has ruled that students who participate in extracurricular activities may be subjected to random, suspicionless drug testing – but: only in states that don't have state law prohibiting such tests.

Iowa has such a law – Iowa Code chapter 808A – that prohibits random, suspicionless drug testing of students. School officials may not directly or indirectly require random, suspicionless drug testing as a condition of participation in extracurricular activities.

If school officials have a reasonable belief that a student is under the influence of illegal drugs or alcohol, such testing may occur because of the suspicion that has been raised.

This is not to be confused with testing offered by hospitals or clinics whereby *parents* may bring in their children for testing, even if such programs are advertised through the schools (pupils bring home flyers or info is posted at school).

Finally, the Iowa law prohibits using drug dogs to sniff a student's body. This is true even if there is reason to believe that a student has illegal drugs on his/her person; the dog cannot be used to sniff the student. It may be used to sniff the student's locker or vehicle.

When in doubt, contact law enforcement.