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Safety, Security, and Student Discipline – Protecting Students, Staff, and Others!

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Date:

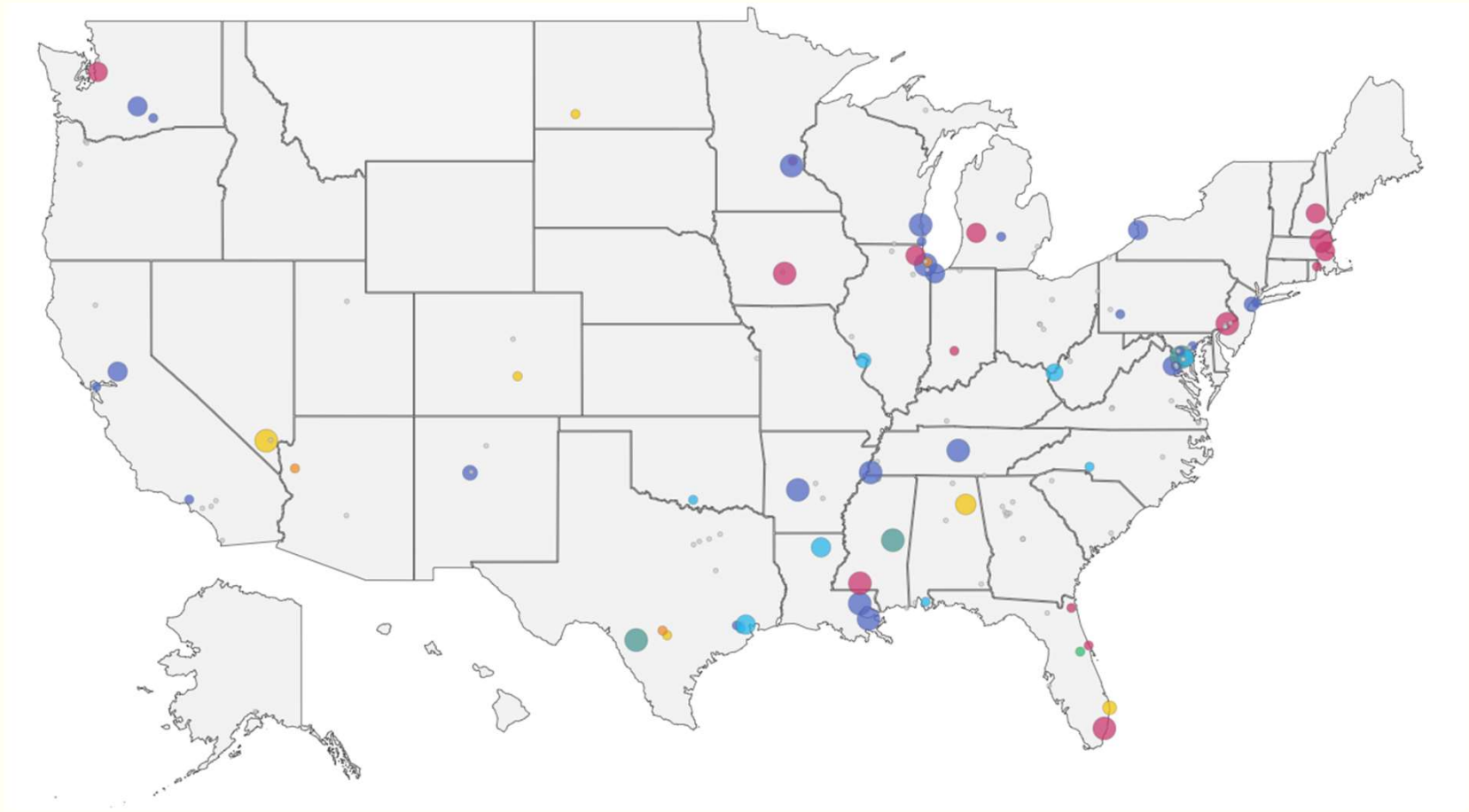
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DIFFERENT
BY DESIGN

The law can never make
us as secure as we are
when we do not need it.

- Alexander M. Bickel, *The Morality of Consent*, 1975

School Shootings Since 2022



Agenda

- Missouri and Federal Gun Laws
- Student Searches
- Student Discipline
- Student Discipline Wrinkles:
 - Off Campus Conduct
 - Safe Schools Act
 - Special Education

MISSOURI AND FEDERAL GUN LAWS

Different Categories of Carrying Firearms in MO

- Missouri is an OPEN carry state, generally permitting the open or concealed carry of firearms with or without a permit.
 - However, limitations apply depending upon:
 - Whether you have a concealed carry permit
 - Local ordinances limiting the open carry of weapons
- Three types of CONCEALED Carry in Missouri:
 - Lifetime or Extended Concealed Carry Permit – § 571.215 RSMo.
 - Concealed Carry Permit – § 571.107 RSMo.
 - “Permitless” Carry – § 571.030 RSMo.

"Permitless" Carry

- Most who can legally possess a firearm in Missouri may conceal and carry without a permit.
- However, certain restrictions apply:
 - Must be at least 19 years of age.
 - Must be a citizen or permanent resident of the United States.
 - Cannot carry into certain restricted areas in the state including schools.
 - “A person commits the offense of unlawful use of weapons... if he or she knowingly... [c]arries a firearm, whether loaded or unloaded, or any other weapon readily capable of lethal use into any school, onto any school bus, or onto the premises of any function or activity sponsored or sanctioned by school officials or the district school board.”
§ 571.030.1(10) RSMo.

What Options are Available?

- School Resource Officer (SRO)
 - § 162.215 R.S.Mo.
- School Protection Officer (SRO)
 - § 160.665 R.S.Mo.
- "Consent" to a concealed carry license holder
 - § 571.107 R.S.Mo.
 - Third Party Vendor?

SRO vs. SPO

| School Resource Officer* | School Protection Officer |
|---|---|
| School Boards can "authorize and commission school officers to enforce laws relating to crimes committed on school premises, at school activities, and on school buses operating within the school district. . ." | School Boards can designate "teachers or administrators" to serve voluntarily as SPO. Can designate SPO to have firearm or self-defense spray device, but it must be in their "control" while on school property. |
| Must execute a "memorandum of understanding" with each "municipal law enforcement agency and county sheriff's office" that has jurisdiction in the District. | Long list of administrative requirements - Public notice of hearing published in newspaper, notice to law enforcement. |
| Licensed peace officers OR retired officers, if meet specific criteria in statute. | 120 hours of training, including 40 hours of firearm training. |
| May be limits to search and seizure abilities. | Cannot use state funds to pay for training required or compensate SPOs. |
| Must follow Board Policy and are District employees. | Authority to detain for 1 hour. Must notify admin or SRO. |

* SROs commissioned by a school board, pursuant to Section 162.215

Consent to Carry on Campus

- In Missouri, with a Concealed Carry Permit or a Lifetime/Extended Concealed Carry Permit, an individual can bring a gun on school grounds only **with the consent** of "a school official."
- No other regulations or guidance provided by the Legislature or the Courts.

Consent to Carry on Campus

- What *is* clear:
 - No requirement for training beyond the 8 hours required to get permit under § 571.111(6) R.S.Mo.
 - Not limited to teacher or administrator, as are SPOs
- What is *not* clear:
 - A lot! Undeveloped area of the law for schools.
- Some third-party vendors offer training and other support.
 - Enforceability of terms remains unclear
 - Ex) Joint Employment occurs for SPO simultaneously with use of firearm?

Security Guards

- No Missouri state law regulates security guards.
- However, the state gives power to local municipalities and counties to regulate security guards.
- Municipal codes exist in a number of urban counties
 - Set requirements to obtain security guard license for individuals
 - Regulates duties of employers to ensure compliance
 - Appeal process if license revoked
- Best to check local ordinance of each jurisdiction and as always, work with local law enforcement before arming security guards.

Exception to the Consent Rule – Parking Lots

- So long as a person has a concealed carry permit, they may possess a firearm in their car in a school's parking lot, as long as the firearm is not removed from the vehicle without permission or brandished while the vehicle is on the premises.
- Even without a permit, if the firearm is lawfully possessed by the person and they are at school to transport a student or participate in a school-approved firearms event, they may have a firearm in the car in the parking lot.
- Districts likely can still restrict the presence of firearms in cars on their parking lot through policies.
 - However, consider 2014 Amendment to Missouri Constitution- Strict Scrutiny.

Federal Law

- **Gun Free Schools Act – 20 U.S.C. § 7961**
 - Requires states to establish laws requiring districts to expel any student who brings a gun to school for a year.
- **Gun Free School Zones Act – 18 U.S.C. § 922(q)**
 - Restricts firearm possession within a distance of 1,000 feet from the grounds of a public, parochial or private school unless the individual is “licensed to do so by the State...”
 - A “school zone” is defined by the Act as (a) in or on the ground of a public, parochial, or private school; or (b) within 1000 feet from the grounds of a public, parochial, or private school.

STUDENT SEARCHES

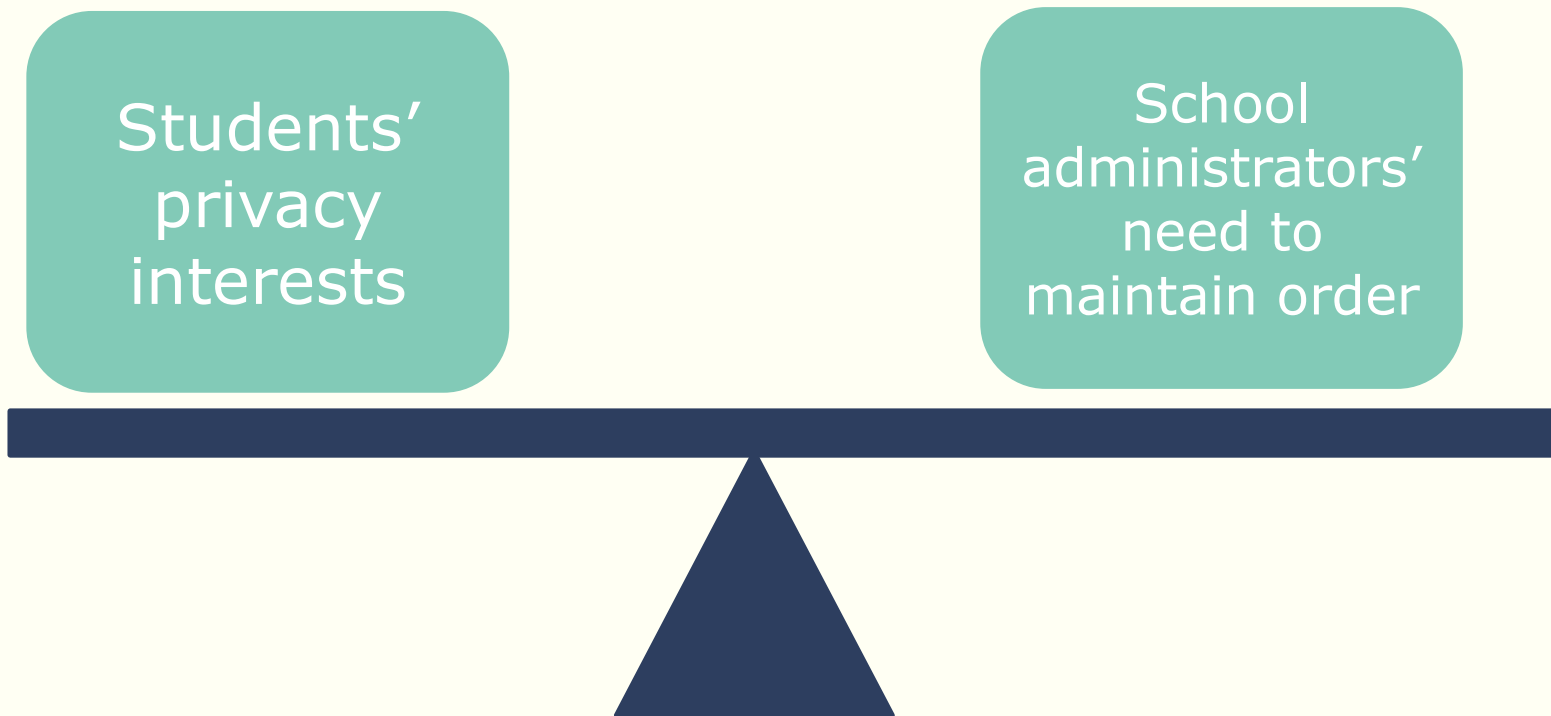
Fourth Amendment

- The Fourth Amendment to the United States Constitution provides:

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.

New Jersey v. T.L.O.

- Balancing test:



New Jersey v. T.L.O.

- Held that student searches must be “reasonable”
- Requires consideration of two questions:
 1. Whether the action was justified at the beginning;
and
 2. Whether the extent of the search as conducted was reasonable related to the circumstances that justified the search in the first place
- In other words, to justify a student search, reasonable grounds must exist for suspecting that the search will turn up evidence that the student has violated or is violating either the law or school policy.

Specific Types of Searches

- **Locker Searches:**

- Is there a legitimate expectation of privacy?
 - Check the Board of Education policy to see if it includes that lockers remain under the control of the school.
 - Check to see if students have been notified of that policy
 - Does notice diminish or eliminate the expectation of privacy?
- Individualized suspicion may not be required, but it is preferred!

Specific Types of Searches

- **Automobile Searches:**
 - Students have an expectation of privacy
 - Administrator should have individualized suspicion to search
- **Personal Belongings (backpacks, purses, clothing, etc.):**
 - Students have an expectation of privacy
 - Administrator should have individualized suspicion to search

Specific Types of Searches

- **Strip Searches**

- Highly intrusive; disfavored by courts
- Strip searches of students by school personnel are **prohibited** by Missouri law (R.S.Mo. § 167.168), except in very specific circumstances

General/Random Searches

- Individualized suspicion is *not* always required for school searches
- Following factors used to determine whether search is reasonable:
 - Nature of the privacy interest upon which the search intrudes;
 - The character of the intrusion complained of;
 - The nature and immediacy of the governmental (school) concern at issue;
 - The efficacy of the chosen means to meet the government's concern.

Specific Types of Searches

- **Use of Camera Surveillance**

- In a public area (hallways, cafeteria, etc.)
 - It is reasonable to use camera surveillance
- In a private area (locker rooms, restrooms, etc.)
 - It is NOT reasonable to use camera surveillance because students have a reasonable expectation of privacy in those locations
- What about school buses?

Specific Type of Searches

- **“Sniff” Searches**

- Use of drug-sniffing dogs

- Legally depends on whether it is considered a search
- Supreme Court has not yet addressed this specific issue, but federal courts have upheld the constitutionality of random, unannounced drug searches in schools
- Reasonable expectation of privacy

Specific Type of Searches

- **Metal Detector Searches**

- Is individualized suspicion necessary?
- Is consent required?

Quick Note on Consent

- Even when an administrator lacks reasonable suspicion, the administrator may ask a student for his or her permission to search the student's possession or person.
- Always reasonable but must be voluntary!

STUDENT DISCIPLINE

LEGAL BACKGROUND

- Must establish a written discipline policy and make it available for public inspection (Mo. Rev. Stat. § 160.261)
- The school, “after notice to parents or others having custodial care and a hearing upon charges preferred, may suspend or expel a pupil for conduct which is prejudicial to good order and discipline in the schools or which tends to impair the morale or good conduct of the pupils.” (Mo. Rev. Stat. § 167.161)

LEGAL BACKGROUND

- The school . . . may authorize the summary suspensions of pupils by principals of schools for a period not to exceed ten school days and by the superintendent of schools for a period not to exceed one hundred and eighty school days.”
- “In case of a suspension by the superintendent for more than ten school days, the pupil, the pupil’s parents or others having such pupil’s custodial care may appeal the decision of the superintendent to the board or to a committee of board members. . . .”
(Mo. Rev. Stat. § 167.171)

LEGAL BACKGROUND

- Where do discipline policies apply?
 - School / classroom
 - School property, including parking lots, etc.
 - School bus
 - School-sponsored activities
 - Off – campus – sometimes...more later!

PROCEDURES

- Short Term Suspension:
 - Up to 10 days
 - May be imposed by Principal
 - Must be immediately reported to Superintendent, who may revoke
 - Student must be given:
 - Oral or written notice of charges
 - Oral or written explanation of facts that form the basis of suspension
 - Opportunity to present their version of the incident
 - No opportunity for appeal

PROCEDURES

- Long Term Suspension:
 - 11 to 180 days
 - May be imposed by Superintendent
 - Student must be given:
 - Oral or written notice of charges
 - Oral or written explanation of facts that form the basis of suspension
 - Opportunity to present their version of the incident
 - Opportunity to appeal to board (or a board committee) – advance notice of hearing
 - Student may appeal to Circuit Court

PROCEDURES

- Expulsion:
 - Permanent removal from school
 - May only be imposed by the Board
 - Hearing is required unless waived in writing by parents/guardians
 - Student may appeal to Circuit Court

NOTE: “Prior disciplinary actions shall not be used as the *sole basis* for removal, suspension or expulsion of a pupil.”

Mo. Rev. Stat. § 167.161

PROCEDURES

- Continued Educational Services?
 - Any suspension issued pursuant to section 167.161 . . . or expulsion pursuant to section 167.161 shall not relieve the state or the suspended student’s parents or guardians of their responsibilities to educate the student.”
Mo. Rev. Stat. § 167.164
 - Meaning????

OFF-CAMPUS CONDUCT

- General Rule: schools can prohibit speech that:
 - * involves substantial disruption of school environment; OR
 - * infringes on the rights of others

See *B.L. v. Mahanoy Area Sch. Dist.*, 141 S.Ct. 2038 (2021)

OFF-CAMPUS CONDUCT

Circumstances where schools may regulate off-campus student speech:

- Serious or severe bullying or harassment targeting particular individuals
- Threats aimed at teachers or other students
- Failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities
- Breaches of school security devices

SAFE SCHOOLS ACT

- Certain criminal offenses fall under the Safe Schools Act
- May require reports to law enforcement
- May require reports from law enforcement
- Some mandatory exclusions – subject to IDEA/504

SPECIAL EDUCATION

- Any removal must be done consistent with federal disability law – IDEA, ADA & Section 504
- Supersedes zero-tolerance policies, including the Safe Schools Act
- Reasoning: Nondiscrimination statutes that protect students from being excluded from school because of their disabilities

Disciplining Special Education Students: The Basics

- In-School Suspension \neq Removal When:
 - Afforded opportunity to continue to participate appropriately in the general curriculum
 - Continue to receive the services specified in IEP/504 Plan
 - Continue to participate with nondisabled children
- Partial day suspensions / removals
 - Can be counted, so keep track!!
- Bus suspensions

SPECIAL EDUCATION

- Limitations on Removals
 - 10 “free” days of removal per school year
 - After 10th day, services must be provided under the IEP
 - Additional removal days may result in a “change of placement”
- Change in Placement
 - Removal for more than 10 school days in a row, i.e., long-term suspension
 - A series of removals that constitutes a pattern of removals

SPECIAL EDUCATION

- Prior to implementing a “change in placement” for disciplinary reasons, school must conduct a “manifestation determination”
- Purpose: Determine if the conduct at issue is a manifestation of the child’s disability

SPECIAL EDUCATION

- IEP or 504 team members review all relevant information in the student's file, including the IEP/504 Plan, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was:
 - Caused by or had a direct and substantial relationship to the child's disability; or
 - The direct result of the school's failure to implement the IEP/504 Plan
- Must be held within 10 school days of decision

SPECIAL EDUCATION

- If the behavior is NOT a manifestation of the child's disability:
 - School may discipline in the same manner as nondisabled students
 - Must provide services to enable the child to participate in general education curriculum and make progress toward IEP goals (for IEP, not 504)
 - Must provide modifications designed to address the problem behavior

SPECIAL EDUCATION

- If the behavior IS a manifestation of the child's disability:
 - The child must be returned to the placement from which the child was removed*
 - Unless:
 - The removal is due to weapons, drugs, or serious bodily injury, or
 - The parent and the school agree to a change of placement

**Does NOT mean that behavior cannot be addressed – but student can't be removed*

SPECIAL EDUCATION

- May the school be required to have a manifestation determination hearing if the child does not have an IEP? YES!
- The school has knowledge of the disability when:
 - The parent has expressed concern in writing that the student needs special education services;
 - The parent has requested an evaluation; or
 - The student's teacher or other school staff has expressed concern about a pattern of the student's behavior
- Should have known?

So, What Can We Do?!?!

- Think creatively!
- Alternatives to Removal
 - Detention
 - Saturday school
 - Loss of privileges
 - Positive behavioral supports

TAKEAWAYS.....

- Know and follow discipline policies and procedures
- Consider alternatives for suspension when appropriate
- Refer for special education evaluation when appropriate
- Be proactive about addressing student behavior
- Trend! Not to suspend / expel at PreK-3 level and to consider alternatives like behavior supports and restorative justice techniques

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