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Student Suspension for Possession of Contraband in Student Vehicles: Correct Guidance from the Tenth Circuit

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STUDENT SUSPENSION FOR POSSESSION OF CONTRABAND IN STUDENT VEHICLES: CORRECT GUIDANCE FROM THE TENTH CIRCUIT

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I. Introduction

An administrator of a large high school in Midwest City, Oklahoma noticed that a car parked in the school parking lot did not have, as required by the school, a parking permit hanging from the rear view mirror.[1] When the administrator looked through the side window to see if a permit was on the seat or floor of the vehicle, he observed knives in the passenger door console.[2] When the school determined the identity of the student who drove the vehicle, the school requested the student to open the car.[3] The school discipline code banned weapon possession on school property, including knives with more than a two-and-one-half-inch blade.[4] Based on the administrator's sighting of the weapon on school property, the administration disciplined the student with a short-term suspension.[5]

The student sought an injunction in the district court of Oklahoma County, alleging denial of due process.[6] The student claimed that weeks earlier he had borrowed his father's knives to install a new speaker system in the vehicle, and he merely had forgotten to take the knives out of his car when he finished.[7] He argued that his forgetfulness to take the knives out of his car and his lack of

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1. Petition, Ex. F (School District "Findings of Fact") at 2, ¶ 3, Mahan v. Mid-Del Sch. Dist. (Okla. County Dist. Ct.) (No. CJ-2002-7539).

2. *Id.* at 4, ¶ 2.

3. *Id.* at 1, ¶ 2.

4. *Id.* at 1, ¶ 1.

5. *Id.* at 7.

6. Petition, Mahan v. Mid-Del Sch. Dist. (Okla. County Dist. Ct.) (No. CJ-2002-7539). The local media gave the issue extensive coverage. Coverage included several television news broadcasts and the following articles: Ann Kelley, *Midwest City Student's Suspension Reversed*, DAILY OKLAHOMAN, Sept. 5, 2002, at 1A; Ann Kelley, *Student Faces Alternative School*, DAILY OKLAHOMAN, Sept. 6, 2002, at 1A; Ann Kelley, *District Judge to Hear Student's Case*, DAILY OKLAHOMAN, Sept. 7, 2002, at 2A; Ann Kelley, *Judge's Order Allows Wrestler Back In Class*, DAILY OKLAHOMAN, Sept. 10, 2002, at 1A; Ann Kelley, *Suspended Wrestler To Transfer*, DAILY OKLAHOMAN, Sept. 17, 2002, at 1A.

7. Plaintiff's Trial Brief, Mahan v. Mid-Del Sch. Dist. (Okla. County Dist. Ct.) (No. CJ-2002-7539).

intent to harm anyone prevented him from "possessing" the weapons in violation of the school discipline code.[8] The parties settled the case, and no Oklahoma courts have since issued opinions regarding the necessary intent or knowledge required for a student to "possess" a weapon in violation of school policy.[9]

Despite the lack of Oklahoma precedent, other courts, including the Tenth Circuit, have decided whether suspension of a student who possesses a weapon on school property violates the student's substantive due process rights. These courts have addressed cases where the student parks a vehicle containing a weapon on school property, but claims that he did not intend to transport the weapon to school or use it to injure or threaten others.[10] Specifically, these courts have determined whether weapons possession requires knowing possession.[11] Oklahoma courts can look to these opinions when deciding cases with facts similar to those presented above.[12]

This Article examines how courts apply substantive due process to student suspensions for contraband in student vehicles. Part II reviews the Sixth Circuit's decision in *Seal v. Morgan*,[13] and contends that the appellate court incorrectly decided this case in light of school needs and existing case law. Part III examines court opinions that have affirmed school authority to suspend students for possessing contraband in cars on school property. Next, Part IV discusses the Tenth Circuit's recent decision in *Butler v. Rio Rancho Public Schools Board of Education*.[14] Part V briefly describes the revised "possession" policy adopted by the Midwest City school district mentioned above. This Article concludes that *Butler* correctly recognized the purpose of school anti-weapon policies and relevant case law. The *Butler* decision provides guidance for Oklahoma school districts in the formation of "possession" discipline codes that will withstand substantive due process scrutiny.

II. Seal v. Morgan: "Possession" of a Weapon Requires "Knowing" Possession

A. Facts

Ray Pritchert, a high school student at Powell High School in Knox County, Tennessee, carried a hunting knife for protection against feared hostile acts by

8. *Id.*

9. Mahan v. Mid-Del Sch. Dist., No. CJ-2002-7539 (Okla. County Dist. Ct.).

10. *See, e.g.*, Seal v. Morgan, 229 F.3d 567, 571-73 (6th Cir. 2000).

11. *Compare id.* at 575-76 *with* Bundick v. Bay City Indep. Sch. Dist., 140 F. Supp. 2d 735, 740 (S.D. Tex. 2001).

12. *See, e.g., Mahan*, No. CJ-2002-7539.

13. 229 F.3d 567 (6th Cir. 2000).

14. 341 F.3d 1197 (10th Cir. 2003).

another high school student who was dating Pritchert's ex-girlfriend.[15] On October 30, 1996, Pritchert showed the knife to his friend and fellow classmate, Dustin Seal.[16] The next evening, Seal, accompanied by Pritchert and another friend, David Richardson, drove his mother's car to pick up his girlfriend from her house.[17] At some point during the drive, Pritchert placed the knife on the floorboard of the car behind the driver's seat.[18] When Seal left the car to walk to the door of his girlfriend's house, Richardson placed the knife in the glove compartment of the vehicle.[19]

The following evening Seal drove his girlfriend and Pritchert to the high school for a football game.[20] All three students were members of the Powell High School band and were scheduled to perform at the game.[21] Shortly after Seal and Pritchert entered the school building, the band director and the vice-principal, Charles Mashburn, summoned both students into the band director's office.[22] Mashburn told Seal and Pritchert that four students had reported seeing them drinking alcohol.[23] After questioning the students and searching their belongings, Mashburn announced that he needed to search Seal's car because an assistant band director had reported that he had observed the students sharing a flask, checking each other's breath, and passing chewing gum.[24] Seal consented to the search of his mother's car.[25]

Although Mashburn failed to find a flask, he did find two cigarettes, a bottle of prescription drugs, and Pritchert's knife in the glove compartment of Seal's car.[26] Mashburn asked Seal to accompany him to his office and explain in writing why there was a knife in his car.[27] Seal wrote that "[t]he knife was there because [Pritchert's] ex-girlfriend's boyfriend had been following [them] around with a few of his friends so [they] were a little uneasy."[28] A few days later, the high school principal conducted a disciplinary hearing and suspended Seal, pending expulsion, for possessing the knife in violation of school policy.[29]

15. *Seal*, 229 F.3d at 570-71.
16. *Id.*
17. *Id.* at 571.
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.* at 572. The school district's policy provided that "students may not possess, handle, transmit, use or attempt to use any dangerous weapon [including knives] in school buildings or

Seal appealed his punishment to the board of education's disciplinary hearing authority.[30] At the appeal hearing, Seal testified that he knew Pritchert was carrying the knife on October 31, but was unaware that the knife was in his car the following day when he parked on school property.[31] The hearing authority affirmed Seal's suspension.[32] On appeal to the full board of education, Seal's attorney argued that Seal had no idea that the knife was in his mother's car and that Seal did not "knowingly" possess the weapon on school property.[33] The board voted unanimously to uphold Seal's expulsion.[34]

Seal initiated an action in federal district court pursuant to 42 U.S.C. § 1983.[35] Seal claimed, among other things, that the board's actions violated his due process rights under the Fourteenth Amendment.[36] The district court denied the board's motion for summary judgment on the due process claim,[37] and the board appealed to the Sixth Circuit.[38]

B. Majority's Analysis

The Sixth Circuit began its analysis by noting that although a student has a property interest in continued education and is entitled to notice and an opportunity to be heard,[39] the touchstone of the Fourteenth Amendment's substantive due process clause is protection against arbitrary government action.[40] Government action that burdens a fundamental right must pass strict scrutiny and will only be upheld if the action is narrowly tailored to a compelling government interest.[41] To determine whether government action offends a student's substantive due process rights, the court must look to whether the school policy interferes with a "fundamental" constitutional interest.[42] The Sixth Circuit correctly acknowledged that a state-created right to

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on school grounds at any time and that students who [violate] the policy shall be subject to suspension and/or expulsion of not less than one . . . year." *Id.* at 573 (internal quotations omitted).

30. *Id.* at 572.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* at 572-73.

35. *Id.* at 573. Seal's father initiated the action on Seal's behalf in district court. *Id.* Once Seal turned eighteen years old, he was substituted as the plaintiff. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* at 574.

39. *Id.* (citing Goss v. Lopez, 419 U.S. 565 (1975)).

40. *See id.* at 574-75; *see also* County of Sacramento v. Lewis, 523 U.S. 833, 845 (1998) (citing Wolff v. McDonnell, 418 U.S. 539, 558 (1974)).

41. Washington v. Glucksberg, 521 U.S. 702, 719 (1997).

42. *Id.*

attend public school is not a "fundamental" constitutional right.[43] Because Seal's interest in his continued education was not fundamental, the court determined that the school anti-weapon policy would be upheld only if it was rationally related to a legitimate state interest.[44]

In ruling on Seal's argument, the Sixth Circuit found that a substantive due process challenge may be applicable to school discipline only in the "rare case" where no rational relationship exists between the punishment and the offense.[45] According to the majority, the circumstances of Seal's suspension fit this "rare case" exception.[46] Despite its acknowledgment that the Supreme Court has explicitly warned courts not to set aside decisions of school administrators on the basis that courts may view them as lacking in wisdom or compassion,[47] the majority held that suspending a student for possessing a weapon, when that student was "totally unaware" of the weapon's presence, was not rationally related to any legitimate state interest.[48]

The majority explained its holding through one cursory observation of case law and two inapposite hypothetical school situations. First, the court stated that substantive criminal law ordinarily implies knowing or conscious possession.[49] Although the majority cited several cases holding that possession in a criminal statute normally means conscious possession,[50] it ignored the vast number of cases recognizing the difference between criminal proceedings and administrative proceedings, which frequently occur in the educational environment.[51]

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43. *Seal*, 229 F.3d at 575 (noting that in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 33-37 (1973), the Supreme Court explicitly held that the right to attend public school is not a fundamental right for purposes of a substantive due process analysis).

44. *Id.* In other words, a discipline rule will be upheld against substantive due process charges unless the rule shocks the conscience of judges or lacks any reasonable relationship to a legitimate state interest. *See* Wagner v. Fort Wayne Cmty. Schs., 255 F. Supp. 2d 915, 922 (N.D. Ind. 2003).

45. *Seal*, 229 F.3d at 575 (quoting Rosa R. v. Connelly, 889 F.2d 435, 439 (2d Cir. 1989)).

46. *Id.*

47. *Id.; see also* Wood v. Strickland, 420 U.S. 308, 326 (1975); *Wagner*, 255 F. Supp. 2d at 918 ("[D]ue process does not require the judicializing of school disciplinary proceedings.") (quoting Osteen v. Henley, 13 F.3d 221, 225 (7th Cir. 1993)).

48. *Seal*, 229 F.3d at 575 ("No student can use a weapon to injure another person, to disrupt school operations, or, for that matter, any other purpose if the student is totally unaware of its presence.").

49. *Id.* at 575-76.

50. *Id.* at 576 (citing *United States v. Lewis*, 701 F.2d 972, 973 (D.C. Cir. 1983) and *United States v. Sawyer*, 294 F.2d 24, 29 (4th Cir. 1961), among other cases, as examples).

51. The educational environment necessitates close supervision of students, as well as "enforcement of rules against conduct" otherwise "permissible if undertaken by an adult." New Jersey v. T.L.O., 469 U.S. 325, 339 (1985). While children do not "shed their constitutional rights . . . at the schoolhouse gate," Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S.

The majority then explained its holding through two inapposite analogies. The first hypothetical supposes the suspension of a valedictorian for weapons possession after a vindictive student slips a knife in the valedictorian's backback without the scholar's knowledge.[52] The second analogy posits a school suspending a student for possessing and consuming punch at a school dance after another student secretly spiked the punch.[53] The majority explained that under the board's policy, these innocent students would also be subject to suspension and that such school policies would not rationally advance the school's relative interests.[54] Using these analogies for Seal's case, the majority concluded that the school's zero tolerance policy on weapons possession was not rationally related to a legitimate school interest.[55] The court then affirmed the district court's judgment to the extent that it denied the board's motion for summary judgment.[56]

C. Dissent

While the dissent agreed with the majority that a school discipline decision would only survive a substantive due process challenge if it was rationally related to a legitimate state interest, the dissenting judge would have held that the board's decision to expel Seal was rational for several reasons.[57] First, the dissent noted that the public education system depends on school

503, 506 (1969), the nature of those rights extends only to what is appropriate conduct in school, Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995). One court, for example, declined to read into a suspension policy on fighting a requirement that the school must prove the student intended to cause personal injury. Busch v. Omaha Pub. Sch. Dist., 623 N.W.2d 672, 680 (Neb. 2001) (refusing to bar discipline of a student who alleged that his infliction of physical harm upon others was accidental). Because of the "wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need *not* be as detailed as a criminal code which imposes criminal sanctions." Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 686 (1986) (emphasis added). For examples of other cases illustrating the differences between suspension or expulsion hearings and criminal proceedings, see *Vernonia*, 515 U.S. at 664-65 (holding that schools may search students without complying with the probable cause standard invoked in criminal trials); *Schneider v. Board of School Trustees, Fort Wayne Community Schools*, 255 F. Supp. 2d 891, 899 (N.D. Ind. 2003) (holding that students facing suspension enjoy no right to cross-examine witnesses for reliability or sincerity or even to learn the identities of student accusers); *James v. Unified School District No. 512*, 899 F. Supp. 530, 534 (D. Kan. 1995) (noting that "[s]chool disciplinary hearings are not quasi-criminal proceedings" and that the exclusionary rule does not apply) (internal quotations omitted).

52. *Seal*, 229 F.3d at 576.
53. *Id.* at 578.
54. *Id.* at 576, 578.
55. *See id.* at 579.
56. *Id.* at 582.
57. *Id.*

administrators' discretion and judgment and that Congress did not intend § 1983 as a "'vehicle for federal-court corrections of errors [that] do not rise to the level of violations of specific constitutional guarantees.'"[58] The dissent argued that the court "should not further hamstring" the educational process "by substituting its judgment on matters relating to the safety of students for that of school administrators and school board members."[59]

Second, the dissent emphasized the "enormous responsibility" that schools have in educating youth and "the potentially devastating consequences of weapons on campus . . . ."[60] Given the national landscape of violence on school campuses, the dissent correctly determined that a strict ban on weapons is rationally related to the legitimate government interest of "protecting our children from the very real threat of violence."[61]

The dissent also found the valedictorian analogy inapt. The dissent argued that unlike the clueless valedictorian, Seal knew that Pritchert's knife was in his mother's car the previous day and that Pritchert was keeping the weapon accessible in case of a fight with his ex-girlfriend's boyfriend.[62] A more apt comparison, the dissent reasoned, would have been if a friend gave the valedictorian a knife, the valedictorian placed the knife in his own coat pocket, and the friend then retrieved the knife without the valedictorian's knowledge and transferred the weapon to the valedictorian's backpack, which the valedictorian carried to school.[63] Under this scenario, the valedictorian, like Seal, would have known about his friend's knife.[64]

The dissent concluded by discussing the faulty premise upon which the majority rested its decision and the effects of the majority's ruling. The dissent argued that there was ample proof of scienter based on Seal's written statement and testimony before the board.[65] Even if the majority did not agree that Seal's signed confession and testimony were sufficient proof of knowing possession, the dissent contended that the court could impute scienter based on Seal's possession of the knife.[66] Finally, the dissent noted the "far-reaching

58. *Id.* (quoting Wood v. Strickland, 420 U.S. 308, 326 (1975)).

59. *Id.* at 583.

60. *Id.* at 582 (mentioning the Columbine High School massacre as an example).

61. *Id.*

62. *Id.* at 584.

63. *Id.* at 584 n.2.

64. *Id.* The spiked punch bowl hypothetical is also a false analogy. No valid comparison exists between a student who drives his car on school premises with knowledge that a dangerous weapon was in the car the previous day and a student who drinks school-supplied and school-prepared punch at a school dance without knowledge of contamination by a clandestine punch-spiker.

65. *Id.* at 585.

66. *Id.*

implications" of the majority's decision, such as the majority's requirement that school boards essentially include a scienter requirement in weapons and drug policies.[67]

III. Other Decisions: Knowledge of Possession Is Not Required

Other courts have considered the same issues as the Sixth Circuit in *Seal v. Morgan*, including (1) whether suspension of a student who possesses a weapon on school property violates the student's substantive due process rights, and (2) whether weapon possession on school property requires knowledge of possession. Unlike the Sixth Circuit, however, these courts have reached the opposite conclusion.

In *Bundick v. Bay City Independent School District*,[68] the U.S. District Court for the Southern District of Texas considered whether scienter could be imputed from the fact of possession.[69] The plaintiff, David Bundick, brought a § 1983 action against the school district after the school expelled him for having a knife in his vehicle on school property.[70] Bundick claimed that his expulsion was arbitrary and capricious, in violation of his right to substantive due process.[71] Specifically, Bundick argued that the school had failed to show the necessary culpable mental state to justify punishment.[72] Bundick contended that he did not have the necessary mental state to "possess" a weapon in violation of school policy because he merely neglected to remove his machete from his truck after work on the previous day.[73] In support of his contention, Bundick cited the majority opinion in *Seal*.[74]

The federal district court rejected Bundick's argument, declaring that the dissenting judge in *Seal* "has a better understanding of the law in this area."[75] The court did not find a requirement of scienter in the district's anti-weapons policy and would not read a knowledge requirement into the school board's discipline code.[76] The court determined that scienter could be imputed from

67. *Id.* at 586.

68. 140 F. Supp. 2d 735 (S.D. Tex. 2001).

69. *Id.* at 740.

70. *Id.* at 739-41.

71. *Id.* at 740.

72. *Id.*

73. *See id.* In his part-time job, Bundick used a machete, and he transported his work materials, including the machete, in a toolbox located in his truck. *Id.* The machete surfaced at school when a drug-detection dog alerted to Bundick's parked truck. *Id.* at 738.

74. *Id.* at 740.

75. *Id.*

76. *Id.* ("Scienter is not a requirement of the school district's policy, and that policy is entitled to deference.").

Bundick's awareness of the machete's presence in the truck, even if he had forgotten to take the knife out of the toolbox before coming to school.[77]

In ruling for the school district, the court stressed that in the context of school discipline, punishment implicates no substantive due process concerns unless a school's actions do not relate to the legitimate goal of maintaining a safe learning environment.[78] To be arbitrary and capricious in violation of a student's right to substantive due process, a school discipline decision must be patently unreasonable, in total disregard of the circumstances, and lacking any basis to reasonably arrive at the same conclusion.[79] Just as there are valid safety reasons to mandate that public library patrons wear shoes in the library — such as avoiding unsanitary conditions in the library[80] — there is a legitimate reason to direct students not to transport contraband onto school property. If clean feet form a valid health requirement to prevent library users from infection and injury, then requiring student vehicles on school campuses to be "clean" of weapons and contraband also represents a valid safety interest. Because school officials are in the best position to determine when a student's actions threaten the safety and welfare of other students, courts should grant school officials "substantial" or "considerable" deference in their disciplinary choices.[81]

IV. Butler v. Rio Rancho Public Schools Board of Education: A Student Can Be Charged for What the Student Should Have Known About the Contents of a Vehicle

In *Butler v. Rio Rancho Public Schools Board of Education*, the Tenth Circuit addressed the issue of "whether a school's decision to suspend a student when he should have known he was bringing a weapon onto school property violates the student's substantive due process right[s] . . . ."[82] The plaintiff in this case, Stephen Butler, brought a § 1983 action on behalf of his son, Joshua, who was

77. *Id. Bundick* correctly recognizes the "heavy burden" that would be imposed on schools if administrators had to uncover and establish a student's reasons for violating school policy. *See also* Watson *ex rel.* Watson v. Beckel, 242 F.3d 1237, 1242 (10th Cir. 2001).

78. *See Bundick*, 140 F. Supp. 2d. at 741; *see also* James v. Unified Sch. Dist. No. 512, 899 F. Supp. 530, 534 (D. Kan. 1995) (noting that regulation of student conduct and behavior in itself does not violate substantive due process).

79. Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 82 (2000).

80. Neinast v. Bd. of Trs. of the Columbus Metro. Library, 346 F.3d 585, 596 (6th Cir. 2003).

81. Gibson v. Caruthersville Sch. Dist. No. 8, 336 F.3d 768, 773 (8th Cir. 2003); Schneider v. Bd. of Sch. Trs., Fort Wayne Cmty. Sch., 255 F. Supp. 2d 891, 902 (N.D. Ind. 2003); Doe v. Superintendent of Schs. of Stoughton, 767 N.E.2d 1054, 1057-58 (Mass. 2002).

82. Butler v. Rio Rancho Pub. Sch. Bd. of Educ., 341 F.3d 1197, 1201 (10th Cir. 2003) (internal quotations omitted).

suspended for bringing weapons onto school property.[83] On the day in question, Joshua drove his brother's car to school and parked in the faculty parking lot without a parking permit.[84] When the security guard stopped at the vehicle to check for a permit, he "observed the butt end of a knife sticking up from between the passenger seat and the center console."[85] The guard summoned Joshua to open the vehicle and found a hunting knife, gun, and ammunition.[86] These items belonged to Joshua's brother.[87]

After a disciplinary hearing and an appeal hearing before the school board, the school suspended Joshua for one year.[88] On appeal to the federal district court, the plaintiffs argued that the school violated Joshua's substantive due process right "to a free public education" by suspending him for one year "without finding that he knowingly/intentionally brought, carried or kept a weapon or firearm on school grounds."[89] Echoing the majority opinion in *Seal*, the district court announced that "suspending a student for unknowingly transporting a weapon onto the school campus does not rationally support the legitimate state interest in maintaining school safety and discipline."[90]

On appeal, the Tenth Circuit recognized that the Supreme Court has not delineated what type of interest triggers substantive due process guarantees, an issue also left unanswered by circuit case law.[91] Nevertheless, the court determined that there was no need to decide if Joshua had a substantive due process right to his education because assuming the right did apply to suspensions from school, Joshua failed to state a substantive due process violation.[92] Rather, the court found that the district court wrongly concluded that Joshua was suspended for "unknowingly" bringing a knife onto school property.[93] Instead, the school board found that Joshua "should have known, as

83. *Id.* at 1199.
84. *Id.* at 1198.
85. *Id.* at 1198-99.
86. *Id.* at 1199.
87. *Id.*
88. *Id.*
89. *Id.* at 1200.
90. Butler *ex rel.* Butler v. Rio Rancho Pub. Sch. Bd. of Educ., 245 F. Supp. 2d 1188, 1198 (D. N.M. 2002).
91. *Butler*, 341 F.3d at 1200.
92. *Id.* The Tenth Circuit also noted that it "will uphold a school's decision to suspend a student in the face of a substantive due process challenge if the decision is not arbitrary, lacking a rational basis, or shocking to the conscience of federal judges." *Id.* at 1200-01. Although the Tenth Circuit had previously employed the "shock the conscience of federal judges" standard in reviewing actions taken by public educational institutions, the court did not determine whether this standard or the requirement of rational basis is the appropriate analysis because the school did not deny substantive due process rights under either standard. *Id.* at 1201 n.4.
93. *Id.* at 1201.

the driver of the vehicle that he was in possession of and transporting a weapon onto school grounds."[94] The court stated that Joshua should have been aware of the knife's presence because "the knife was in plain view and readily identifiable as a knife to persons standing outside the vehicle looking in" and because Joshua "knew, or should have known that he was responsible for the vehicle he brought onto school property and the contents thereof."[95]

The Tenth Circuit resisted deciding if suspension for "unknowingly" transporting a weapon onto school property deprives a student of substantive due process rights.[96] Instead, the court determined only whether the suspension of a student who should have known "he was bringing a weapon onto school property violates the student's substantive due process rights, if any, to a public education,"[97] and concluded that it did not.

The court found that schools have a legitimate interest in providing a safe environment for students and staff and that it was not unreasonable to assume that the presence of accessible weapons on school property increases the threat to this interest.[98] To protect against school violence and advance the safety of those on campus, the court stated, "[W]e believe there is a rational basis for the School to suspend Mr. Butler, even for one year, when he should have known he brought a weapon onto school property. The School's decision was not arbitrary, nor does it shock the conscience."[99]

Butler correctly grasped that the objective of a zero tolerance policy is to prevent the availability of weapons for student use. This paramount consideration requires that students assume responsibility for what their vehicles contain. Preventing accessibility to contraband rationally relates to the legitimate school interest in maintaining a campus free from the threat of violence.

V. The District's Revised Policy: A Guide

Following the enormous media attention aired and written about the suspension for the Midwest City student discussed above,[100] the school district amended its weapons possession policy.[101] The policy specifically states that the purpose of the regulations is to prevent student *access* to contraband or weapons

94. *Id.*
95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.*
99. *Id.*
100. *See supra* Part I. Coverage in the *Daily Oklahoman* included the articles cited *supra* note 6.
101. Policy J-18, Mid-Del Public Schools.

on school property, and that a student will be deemed to "possess" the contents of a vehicle driven by the student onto school property.[102] Under the policy, students must ensure before driving a vehicle onto school property that whatever vehicle the student drives or parks does not contain contraband prohibited by the policy.[103] Thus, a student who drives or parks a vehicle on school property remains responsible for what the vehicle contains, regardless who owns title to the vehicle, who has been driving the vehicle, or who has been riding in the vehicle. The policy provides notice to students that there is a duty of inspection and therefore no defense to the presence of contraband, even if the student claims that he was unaware of the contraband in the vehicle.

VI. Conclusion

The courts in *Bundick* and *Butler* properly recognize a school's heightened concerns about the problems of weapons and violence on school premises. These courts have accorded school officials substantial discretion in matters regarding the safe operation of schools. The need to protect students and staff from violent acts "is even greater today because of the horrific shooting incidents and other acts of violence which have occurred at schools in the United States and elsewhere in recent times."[104]

Substantive due process violations occur where a government act *"in and of itself"* is "egregiously unacceptable, outrageous, or conscience-shocking."[105] Requiring students to inspect and clean cars of any contraband before driving those vehicles onto school property does not shock the conscience. The requirement to inspect cars and remove any contraband is also rationally related to ensuring student and faculty safety.

The Tenth Circuit in *Butler* has formed a reasonable and constitutional view of school weapons policies: a student is accountable for what the student should have known about the contents of student-driven vehicles. To protect students and staff from harm, school districts should follow *Butler* by forming policies that place the responsibility for a contraband-free vehicle upon students who elect to drive a vehicle on school premises.

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102. *Id.*

103. *Id.*

104. Porter v. Ascension Parish Sch. Bd., 301 F. Supp. 2d 576, 588 (M.D. La. 2004).

105. Demers *ex rel.* Demers v. Leominster Sch. Dep't, 263 F. Supp. 2d 195, 205 (D. Mass. 2003) (quoting Amsden v. Moran, 904 F.2d 748, 754 (1st Cir. 1990)).