

Search and Seizure In Schools

Presented by
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What is a Search?

- Two Requirements:
1. Government Action
 2. The individual has a protected interest in what is being searched
- Focus is whether there is a reasonable expectation of privacy

What is a Seizure?

A seizure "in the constitutional sense ... occurs when there is a restraint on liberty to the degree that a reasonable person would not feel free to leave."
Doe ex rel. Doe v. Hawaii Dep't of Educ., 334 F.3d 906, 909 (9th Cir. 2003).

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You Be the Judge!

Facts:

A student in math class who has a history of tardies and discipline events interrupts instruction asking to go get a drink of water. The teacher says no. The student walks out of the classroom to the drinking fountain in the hallway. The teacher approaches the student and grabs his wrist to get his attention. The student and teacher get into an argument about the student leaving class, the teacher shoulder bumps the student who takes a step back. They then both go back into the classroom.

- Search? Seizure?

You Be the Judge!

Decision

- The Teacher abused his position of authority and conducted an unreasonable seizure under the Fourth Amendment.

Search and Seizure

Two Key Constitutional Amendments:

- Fourth Amendment
- Fifth Amendment

Fourth Amendment

The Fourth Amendment to the U.S. Constitution guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

The Fourth Amendment is concerned with privacy and making sure that government entities, such as public schools, do not get overzealous in investigating violations. Investigatory techniques in a school setting often mirror activities used by police officers, but school probes lack the criminal enforcement power.

Fifth Amendment

The Fifth Amendment is concerned with fundamental fairness. It means that school officials cannot hold or punish a student without stating the reason and providing an opportunity to contest the charges

When the offense and potential penalty are small, the due process requirement can be met with an informal conversation in the principal's office.

When the offense is great and penalties such as long-term suspension, expulsion, job loss, or referral for criminal charges loom, then a formal, "full-blown" hearing with an adversarial process and potential legal representation are more in order.

Fourth and Fifth Amendment Interplay:

The Fourth Amendment prohibits “unreasonable” searches and seizures. The Fifth Amendment’s Due Process Clause is triggered as the follow-up step, requiring school officials who plan to discipline a student or employee to first provide the alleged wrongdoer with two rights:

- Specific information about the charges and the evidence behind it.
- A chance to tell his or her side of the story.

Fourth Amendment

In 1985, the U.S. Supreme Court determined that the Fourth Amendment applies to students in the public schools (New Jersey v. T.L.O., 469 U.S. 325 (1985)). The Court concluded, however, that the school environment requires an easing of the restriction to which searches by public authorities are normally subject. School officials, therefore, do not need probable cause or a warrant to search students.

The Court articulated a standard for student searches: reasonable suspicion.

Who can define “reasonable suspicion”?

Fourth Amendment

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Who can define “reasonable suspicion”?

Reasonable Suspicion

Reasonable suspicion is satisfied when two conditions exist:

- (1) the search is justified at its inception, meaning that there are reasonable grounds for suspecting that the search will reveal evidence that the student has violated or is violating the law or school rules, and
- (2) the search is reasonably related in scope to the circumstances that justified the search, meaning that the measures used to conduct the search are reasonably related to the objectives of the search and that the search is not excessively intrusive in light of the student's age and sex and the nature of the offense.

Reasonable Suspicion

Search is Justified at its inception:

Must be based on information, facts or circumstances that would lead a reasonable person to conclude that a search will turn up evidence of the violation of a school rule or the law.

No hunches or inferences, must be based on **recent, credible** evidence

Student informants ok, provided there is no reason to believe the informant is lying.

Reasonable Suspicion

Reasonable in Scope:

Searches must be reasonable in scope in light of the age and sex of the student and the nature of the infraction.

Always consider the size of the item for which you are searching.

Must consider the intrusiveness of the search.

Remember: More intrusive searches require more serious reasons for the search.

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Reasonable Suspicion

Reasonable in Scope: Jenkins v Talladega City Bd of Educ., 95 F3d 1036 (11th Circ. 1996)

Student reported \$7 missing from her backpack and classmates reported to principal that one of two female students had the money in their backpack. Principal searched the backpacks but failed to find the money there. Principal then asked the students to remove their socks and shoes, but the money was not found. Principal directed the two girls to the girls' restroom with another female teacher and ordered the girls to enter the bathroom stalls and come back out with their underpants down to their ankles. The money was not found. Parents of the two girls filed suit.

Was there reasonable suspicion for the following: backpacks, socks and shoes, bathroom search?

Reasonable Suspicion

Reasonable in Scope: Jenkins v Talladega City Bd of Educ., 95 F3d 1036 (11th Circ. 1996)

"[because] the possibility of finding the cash in the two restroom searches was slight (at best), we conclude that the extreme measures adopted here were not reasonably related to the objectives of the search."

"strip searches are probably only permissible in the school setting, if permissible at all, where there is a threat of imminent, serious harm."

Reasonable Suspicion

Safford Unified School District v. Redding, 557 U.S. 364 (2009)

School officials received a report that 13-year-old female student had given a classmate four prescription-strength 400 mg ibuprofen and a 200 mg over-the-counter naproxen. Based on this suspicion, they first searched her belongings; then, believing that "students ... hid contraband in or under their clothing," had her strip to her underwear, "pull her bra out and to the side and shake it," and "pull out the elastic on her underpants" to see what might fall out. The officials did not find any contraband on the student's person and they did not contact her parents at any point during the investigation.

Search Justified? Scope?

Reasonable Suspicion

Search Justified? Yes

Court determined that the information was "sufficiently plausible to warrant suspicion that Savana was involved in pill distribution," a suspicion that in turn "was enough to justify a search of Savana's backpack and outer clothing" (as neither party disputed).

Reasonable Suspicion

Scope of Search? No

However, "the content of the suspicion failed to match the degree of intrusion," noting that petitioners failed to provide arguments sufficient to justify "the categorically extreme intrusiveness of a search down to the body of an adolescent" for "nondangerous school contraband". "In sum, what was missing from the suspected facts that pointed to Savana was any indication of danger to the students from the power of the drugs or their quantity, and any reason to suppose that Savana was carrying pills in her underwear."

Scope of Search Summary

No reasonable person would strip search a student to find a missing three dollars. A strip search, however, may be appropriate under circumstances of weapons. For drugs, a search of the person is likely ok, but not a strip search.

Fourth Amendment

Situations where the Fourth Amendment (and depending on the results, the Fifth Amendment) might apply:

- Drug testing students in extracurricular activities.
- Drug-sniffing dogs on campus.
- Locker searches and metal detectors.
- Backpacks, wallet, and personal cell phones and computer searches.
- Searching a student's car in the parking lot.

Students' Rights

If contraband items are in plain view, then they can be seized without probable cause, reasonable suspicion, or a warrant.

Lockers: Although there is an expectation of privacy, it is low, and courts have generally upheld locker searches. Note, WCSD Parent Student Handbook notifies families there is no expectation of privacy in students' lockers or desks

Students' Rights

Purses and book bags: School officials need reasonable suspicion to search personal items. (TLO case concerned search of a student's purse)

Car Searches: May search students' cars on school campus if reasonable suspicion exists. May not search cars off school property without probable cause (even if a block away from property).

Canine Searches: Generally seen as non-intrusive since there is no expectation of privacy in the air around objects. Drug-sniffing dogs only explore what is within "plain smell."

Student Drug Testing

In Vernonia School District 471 v. Acton, 515 U.S. 646, (1995), the Supreme Court upheld the constitutionality of random drug testing regimen implemented by the school district. That regimen, student athletes were required to submit to random drug testing through urinalysis before being allowed to participate in sports. During the season, 10% of all athletes were selected at random for testing. The Supreme Court held that although the tests were searches under the Fourth Amendment, they were reasonable in light of the schools' interest in preventing teenage drug use.

Student Drug Testing

In examining the "nature of the privacy interest" at stake, the Court explained that public-school children generally have diminished privacy interests because they require constant supervision and control. Athletes further have their privacy interests diminished, the Court wrote, because they regularly undergo physical exams and routinely experience conditions of "communal undress" in locker rooms. The district's random testing program was held to be minimally intrusive **because it required urine collection under conditions that were virtually identical to those that students confront in public-school restrooms.**

The Court found several goals of the school district to be sufficiently compelling to justify random testing: deterring drug use in schoolchildren, maintaining the functioning of the schools, and protecting athletes from drug-related injury.

Student Drug Testing

Blood Draws For Drug Testing

Not a good idea:

Missouri v. McNeely, 569 U.S. 141 (2013): The United States Supreme Court ruled that police must generally obtain a warrant before subjecting a drunken-driving suspect to a blood test, and that the natural metabolism of blood alcohol does not establish a per se exigency that would justify a blood draw without consent.

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Cell Phone Searches

G.C. v. Owensboro Pub. Schs., 711 F.3d 623, 635 (6th Cir. 2013)

A student, G.C., who was involved in a string of disciplinary incidents and had communicated to school officials that he was suicidal. During his freshman year, school officials searched G.C.'s phone after an incident where he walked out of a meeting with a prevention coordinator, left the school building without permission, made a phone call to his father in the parking lot and was found in the parking lot with tobacco products in plain view. The school official who searched the phone cited concerns that the student was going to harm himself as a basis for conducting the search.

Cell Phone Searches

G.C. v. Owensboro Pub. Schs., 711 F.3d 623, 635 (6th Cir. 2013)

That fall, at the beginning of his sophomore year, G.C. violated the school cell phone policy by using his phone to send text messages during class. His teacher confiscated the phone and delivered it to another administrator. The administrator read four text messages on the phone in an effort to see if there was evidence that he was going to harm himself. Although no evidence of misconduct was found on the phone, G.C., who was attending the school as an out-of-district student, was told that he had lost his privileges to attend Owensboro High School because of his behavior.

Cell Phone Searches

G.C. v. Owensboro Pub. Schs., 711 F.3d 623, 635 (6th Cir. 2013)

- Two cell phone searches, freshman year and sophomore year
- Justified or unconstitutional?

Cell Phone Searches

The court found that the first cell phone search during G.C.'s freshman year was acceptable, but the search during his sophomore year was not.

Freshman year: There was reason to believe—based on the sequence of events—that G.C. was contemplating injuring himself or breaking additional school rules.

Sophomore year: not justified at its inception or reasonable in scope. The school only relied on generalized concerns about G.C. harming himself, which was not enough to justify the search

Cell Phone Searches

School leaders should keep in mind the following insights¹¹ from the case when considering when the right to search a cell phone or other student technology exists:

- Any search of student technology must be justified at its inception, which means there must be reasonable suspicion that the search will uncover evidence of further wrongdoing or of injury to the student or another. Not all infractions involving cell phones will present such indications.

[1] <https://www.lexology.com/library/detail.aspx?g=f734d476-0fe8-4e44-be52-6357eccc4d4a>

Cell Phone Searches

• A student's violation of a school rule or a state, federal or local law using personal technology is likely sufficient to justify a search at its inception. **But the search must also be reasonable in scope.** The mere fact that a student has violated a school district rule or a state or federal law with the phone does not justify searching the student's technology without limit.

• General background knowledge of drug abuse, depressive tendencies by a student or other violations of law or school district policy, without more, are typically not enough to justify a search at the inception.

Cell Phone Searches

• Any search relating to the violation of a rule or law must be limited to that necessary to establish that violation and not any other unrelated violation.

• For instance, if a student who is suspected of dealing drugs at school is caught violating a school rule against texting during the school day, school leaders may not search his phone for evidence of drug dealing as that is unrelated to the texting violation at issue.

Cell Phone Searches

• If the school official conducting a reasonably narrow search comes across information about a violation of a school rule or a law unrelated to the initial search, it may be justified in a further search.

- Does anyone have an example they can share?

Cell Phone Searches

DO NOT CATFISH!!!

• School officials should never attempt to use a student's technology to obtain information about wide-scale situations within the school that are only tangentially related to the student's offense. For example, school officials should not attempt to text, call or email other students on behalf of the owner of the technology in an effort to obtain more information about an ongoing situation at school.

Searches and Seizures

Questions?
